



**AGENDA
CANBY CITY COUNCIL
WORK SESSION - 6:00 PM
REGULAR MEETING - 7:30 PM**

April 20, 2022

**Hybrid/Virtual Meeting/Council Chambers
Council Chambers - 222 NE 2nd Avenue, 1st Floor**

Register here to attend the meetings virtually:

https://us06web.zoom.us/webinar/register/WN_T7GIfoKGRG3igVi8IOIbw

The meetings can be viewed on CTV Channel 5 and YouTube:

<https://www.youtube.com/channel/UCn8dRr3QzZYXoPUEF4OTP-A>

Mayor Brian Hodson

Councilor Christopher Bangs
Councilor Greg Parker
Council President Traci Hensley

Councilor Sarah Spoon
Councilor Shawn Varwig

WORK SESSION – 6:00 PM

- 1. CALL TO ORDER**
- 2. DISCUSSION REGARDING STREET FEE**
- 3. ADJOURN**

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REGULAR MEETING – 7:30 PM

- 1. CALL TO ORDER**
 - a. Invocation
 - b. Pledge of Allegiance
- 2. CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS:** This is an opportunity for audience members to address the City Council on items not on the agenda. If you are attending in person, please complete a testimony/comment card prior to speaking and hand it to the City Recorder. Each person will be given 3 minutes to speak. Staff and the City Council will make every effort to respond to questions raised during citizens input before the meeting ends or as quickly as possible thereafter. *****If you would like to speak virtually please email or call the Deputy City Recorder by 4:30 pm on April 20, 2022 with your name, the topic you'd like to speak on and contact information: benhamm@canbyoregon.gov or**

call 503-266-0720. Once your information is received, you will be sent instructions to speak.

3. PUBLIC HEARING

a. Noise Variance request from the Oregon Department of Transportation (ODOT) – Noise variance

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Expected to be 12 workdays between October 25, 2022 and April 25, 2023.

Addresses of Variance: OR 99 E and 4th Pine Street (estimated 3 days)

OR 99 E and S Ivy Street (estimated 3 days)

OR 99 E and S Grant Street (estimated 3 days)

OR 99 E and SW Berg Parkway (estimated 3 days)

****If you are present in the Council Chambers you may speak in person. If you prefer to speak virtually, please email or call the Deputy City Recorder by 3:00 pm on April 20, 2022 with your name and contact information: benhamm@canbyoregon.gov or call 503-266-0720.**

4. **CONSENT AGENDA:** This section allows the City Council to consider routine items that require no discussion and can be approved in one comprehensive motion.

An item may be discussed if it is pulled from the consent agenda to New Business.

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a. Approval of the Minutes of the February 16, 2022 City Council Regular Meeting.

b. Amendment to City Attorney/Assistant City Administrator Employment Contract.

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5. ORDINANCE

a. Consider **Ordinance No. 1570:** An Ordinance Amending Canby's Title 16 of the Canby Municipal Code Adding Newly Created Code Chapter 16.45 for Food Cart Pods and Modifying Existing Chapters in the Title to be consistent with Chapter 1645. (*First Reading*)

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6. NEW BUSINESS

a. Discussion regarding Sergeant at Arms presence at Council Meetings.

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7. MAYOR'S BUSINESS

8. COUNCILOR COMMENTS & LIAISON REPORTS

9. CITY ADMINISTRATOR'S BUSINESS & STAFF REPORTS

10. CITIZEN INPUT

11. ACTION REVIEW

12. ADJOURN

*The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to Maya Benham at 503-266-0720. A copy of this Agenda can be found on the City's web page at www.canbyoregon.gov.



City Council Staff Report

Meeting Date: April 20, 2022
To: Honorable Mayor Hodson and City Council
Thru: Scott Archer, City Administrator
From: Jerry Nelzen, Public Works Director
Agenda Item: Street Maintenance Fee Discussion

Summary

Discussion on the Street Maintenance Fee History, Uses, and Amount.

Background

Ordinance 1262 established the Street Maintenance Fee in January 2008. The rate was set as follows:

Residential fees:

1. Detached single family residences shall be charged \$5.00 per month.
2. Multi-family residences, except for senior housing, mobile home parks, and congregate care, shall be charged \$3.34 per month for each dwelling unit.
3. Detached senior housing and mobile home parks will be charged \$2.09 per month for each dwelling unit.
4. Attached senior housing and congregate care facilities will be charged \$1.04 per month or each dwelling unit.

Non-residential fees:

The Street Maintenance Fee shall be calculated by multiplying the number of units set by category of use by the trip rate per unit for that assigned category of use and then by the monthly per trip charge of \$0.522 to establish the monthly fee to be billed. The minimum monthly Street Maintenance Fee for non-residential accounts shall be \$5.00.

Discussion

There have been no increases to the Street Maintenance Fee since its inception in 2008. The cost of materials and labor has steadily increased over the past 13 years and with no increase in the fee the amount of street maintenance that can be accomplished has decreased.

At this work session, staff will present data and potential options related to the Street Maintenance Fee for Council consideration.



City Council Staff Report

Meeting Date: April 20, 2022
To: Honorable Mayor Hodson and City Council
Thru: Scott Archer, City Administrator
From: Maya Benham, Deputy City Recorder
Agenda Item: Request for Noise Variance from ODOT

Summary

On November 3, 2021, Oregon Department of Transportation (ODOT) submitted a Noise Variance Request for an estimated 12 days of work is being requested to allow for installation of reflective backing on existing traffic lights at the listed intersections. The initial window of workdays changed and a revised Noise Variance Request has been submitted by ODOT for the Council's consideration. The Public Hearing Notice for the revised dates was published in the *Canby Herald* on March 30, 2022.

Discussion

Per [Canby Municipal Code Section 9.48.050B](#), at least 10 days prior to the public hearing a notice was published in the *Canby Herald*, and posted in various locations around the City. The nearest residence is 255 feet from one of the sites. Section 9.48.050B allows the Council to approve a variance after certain criteria which would apply to the facts of the requested variance are considered by the Council. In granting a variance, the Council shall consider:

- a. The protection of health, safety and welfare of citizens as well as the feasibility and cost of noise abatement;
- b. The surrounding type of existing land uses;
- c. The acoustical nature of the sound emitted; and
- d. Whether variance from the provision would produce a benefit to the public.

If, after review of the evidence submitted by the applicant and hearing any testimony from the public, the Council chooses to allow the variance as requested, a motion to grant the variance would be appropriate.

Attachments

Noise Variance Application
Public Hearing Notice

Fiscal Impact

None

Options

1. Approve the Noise Variance Application.

2. Deny the request.

Recommendation

Staff recommends Council approve the Noise Variance Application.

Proposed Motion

I move to grant a Noise Variance to ODOT for estimated 12 days of work for installation of reflective backing on existing traffic lights at OR 99 E and 4th Pine Street (estimated 3 days), OR 99 E and S Ivy Street (estimated 3 days), OR 99 E and S Grant Street (estimated 3 days), OR 99 E and SW Berg Parkway (estimated 3 days) for work between October 25, 2022 and April 25, 2023.



City of Canby

PO Box 930 Phone: 503.266.4021
222 NE 2nd Ave Fax: 503.266.7961
Canby, OR 97013 www.canbyoregon.gov

Dear Noise Variance Applicant:

Attached is a City of Canby Noise Variance Application along with a copy of Canby Municipal Code Chapter 9.48. Once you have completed the application you will need to take it to the Police Department to obtain the Police Chief's signature.

A list of property owners and their addresses within 200' of the location of the noise variance must be submitted with this application. This information can be obtained from a title company or the Clackamas County Assessor's Office.

When you have the list of property owners, please return it, along with the completed application, and a \$75.00 application fee to City Hall. The City Recorder will schedule the noise variance request for a public hearing before the City Council, publish a Notice of Public Hearing, and mail a Notice of Public Hearing to the property owners that are within 200' of the request. The notice must be published and mailed at least 10 days prior to the Public Hearing, therefore it is imperative to return the information several weeks prior to the event in order to meet the deadlines. The City Council meets the 1st and 3rd Wednesdays of each month.

Please feel free to contact the City Recorder at 503.266.0733 if you have further questions.



**CITY OF CANBY
NOISE VARIANCE
APPLICATION
\$75.00**

Receipt No: _____
Date Paid: _____
Amount Paid: _____

Attn: City Recorder - PO Box 930 -222 NE 2nd Avenue - Canby, OR 97013 - 503.266.0733

Applicant Name _____

Address _____

City _____ State _____ Zip _____ Phone _____

Address of Noise Variance Request _____

Name of Property/Business Owner of Variance Request _____

Type of Event _____

Date(s) of Event _____ Time of Event _____ Requested Hours of Variance _____

Date(s) of Event _____ Time of Event _____ Requested Hours of Variance _____

Date(s) of Event _____ Time of Event _____ Requested Hours of Variance _____

Acoustical Nature of Sound to be Emitted _____

Will you be continually present at this activity ____ Yes ____ No If No is marked, who is to be the contact should the need arise? _____

Additional Comments _____

A list of property owners and their addresses within 200' of the location of the noise variance must be submitted with this application. Canby Municipal Code Chapter 9.48 requires that any person who owns, controls or operates any source which violates provisions of that chapter apply to the City Council for a noise variance.

By signing below, I acknowledge that I have read the attached Canby Municipal Code Chapter 9.48 and understand that violations of this chapter are subject to a fine of \$500. Signature of Police Chief or Designee must be obtained prior to submitting Application for Council Approval.

Signature of Applicant

Date

Police Chief or Designee

Date

Mayor

Date

CHAPTER 9.48: NOISE CONTROL

Section

- 9.48.010 Standards and definitions.
- 9.48.020 Responsibility and authority.
- 9.48.030 Prohibited acts.
- 9.48.040 Maximum permissible sound levels.
- 9.48.050 Exceptions and variances.
- 9.48.060 Chapter additional to other law.
- Appendix A: Table 1: Allowable Sound Levels

§ 9.48.010 Standards and definitions.

A. Terminology and Standards. All terminology used in this chapter that is not defined below shall be in accordance with the American National Standards Institute (ANSI).

B. Measurement of Sound Level.

1. Measurements shall be made with a calibrated sound level meter in good operating condition, of a standard design and quality that meets the basic specifications established by the American National Standards Institute (ANSI).

2. Procedures and tests required by this chapter and not specified herein shall be placed on file with the Code Enforcement Officer.

C. Definitions.

Ambient Noise means all-encompassing noise associated with a given environment, being usually a composite of sounds from any sources near or far.

Amplifying Equipment means public address systems, musical instruments and other similar devices which are electronically amplified.

Commercial Land Use includes land uses zoned C-1, C-2 and C-M, or any use of an office, service establishment, retail store, park, amusement or recreation facility, or other use of the same general type, whether publicly or privately owned.

Construction means any and all activity necessary or incidental to the erection, demolition, assembling, altering, installing, repair or equipping of buildings, roadways and utilities. It shall include land clearing, grading, excavating and filling, before, during or following that activity.

Continuous Sound means any steady sound with a deviation no greater than plus or minus 2 dBA of its mean, or total fluctuation of 4 dBA, during the period of observation when measured with a sound level meter set on fast response.

Day Time Period means 7:00 a.m. until 10:00 p.m. of the same day, local time.

Domestic Power Tools means any mechanical powered nail gun, stapler, saw, drill, sander, grinder, lawn or garden tool, lawn mowers, generators or similar devices generally used out of doors in residential areas.

Emergency Work means work made necessary to restore property to a safe condition following severe inclement weather and natural disasters, work required to restore public utilities or work required to protect persons or property from imminent exposure to danger.

Industrial Land Use includes land uses zoned M-1 and M-2 or any use of a warehouse, factory, mine, wholesale trade establishment or other use of the same general type, whether publicly or privately owned.

Night Time Period means 10:00 p.m. of one day until 7:00 a.m. the following day, local time.

Noise Sensitive Land Use includes property on which residential housing, apartment buildings, schools, churches, hospitals and nursing homes are located.

Off-Road Recreational Vehicle means any self-propelled land vehicle designed for or capable of traversing over natural terrain, including but not limited to racing vehicles, mini-bikes, motorcycles, go-karts and dune buggies, when operated off the public right-of-way for noncommercial purposes.

Plainly Audible means unambiguously communicated sounds which disturb the comfort, repose or health of the listener. Plainly Audible sounds include, but are not limited to understandable musical rhythms, understandable spoken words, and vocal sounds other than speech, which are distinguishable as raised or normal.

Powered Model Vehicle means any self-propelled airborne, waterborne or landborne plane, vessel or vehicle, which is not designated to carry persons, including but not limited to any model airplane, boat, car or rocket.

Recreational Park means a facility open to the public for the operation of off-road recreational vehicles.

Warning Devices means electronic devices used to protect persons or property from imminent danger, including but not limited to firearms, civil defense warning systems and safety alarms required by law.

(Am. Ord. 1450, passed 11-16-2016)

§ 9.48.020 Responsibility and authority.

A. Responsibility. The responsibility for enforcement of this chapter shall reside with the City Administrator or his or her designee.

B. Authority. In order to implement this chapter and for the general purpose of sound abatement and control, the City Administrator or his or her designee shall have, in addition to any other authority vested with him or her, the following powers:

1. Planning. Implement a noise control strategy in consonance with the city's zoning ordinance and comprehensive plan to assure public and private enterprises do not adversely impact existing noise sensitive properties and properties designated for noise sensitive use and to prevent the encroachment of noise sensitive uses into high impact areas, such as industrial zones and immediately adjacent to major highways or arterials, which are incompatible for the uses by virtue of existing projected noise impacts.

2. Inspection. Upon presentation of proper credentials, enter and inspect any private property or place, and inspect any report or record at any reasonable time when granted permission by the owner, or by some other person with apparent authority to act for the owner. The inspection may include administration of any necessary tests.

3. Issue Summons. Issue summons, notices of violations or other legal orders to any person in alleged violation of any provision of this chapter.

4. Investigate Violations. In accordance with other provisions of this chapter, investigate and document violations and take necessary actions preparatory to enforcement.

5. Amendments and Modifications. Develop and recommend amendments and modifications to this chapter so as to maintain or enhance the effectiveness of the noise control program.

6. Education. Develop programs for public education regarding the requirement and remedies available through the noise control chapter.

§ 9.48.030 Prohibited acts.

A. No person shall knowingly continue, cause or permit to be made or continue to make any excessive or unnecessary sounds which are listed in division B. of this section or § 9.48.040.

B. The following acts are declared to create excessive and unnecessary sounds in violation of the chapter without regard to the maximum sound levels of § 9.48.040.

1. Radios; Phonographs; Tape Players; Television Sets; Stereo Systems. The playing, using or operating of any radio, tape player, television set or stereo system, including those installed in a vehicle, in such a manner so as to be plainly audible at any time between 10:00 p.m. and 7:00 a.m. the following day, local time, either:

a. Within a noise-sensitive unit which is not the source of the sound;
or

b. At a distance of 100 feet or more from the source of the sound.

2. Revvng Engines. Operating any motor vehicle engine above idling speed on or off the public right-of-way, so as to create excessive or unnecessary sounds within a noise-sensitive area.

3. Compression Braking Devices. Using compression brakes, commonly referred to as jake brakes, on any motor vehicle, except to avoid imminent danger to persons or property.

4. Exhausts. Discharging into the open air the exhaust of any steam engine, internal combustion engine, or any mechanical device operated by compressed air or steam without a muffler, or with a sound control device less effective than that provided on the original engine or mechanical device.

5. Idling Engines on Motor Vehicles or Compressors on Refrigerated Trailers. Idling more than 15 consecutive minutes between the hours of 10:00 p.m. and 7:00 a.m. the following day, local time, any motor vehicle with a Gross Vehicle Weight Rating (GVWR) of 8,000 pounds or greater which exceeds 50 dBA on the nearest occupied noise-sensitive property.

6. Vehicle Tires. Squealing tires by excessive speed or acceleration on or off public right- of-way, except when necessary to avoid imminent danger to persons or property.

7. Motorcycles; Go-Karts; Dune Buggies. Operating motorcycles, go-karts, dune buggies and other off-road recreational vehicles off the public right-of-way on property not specifically designated as a recreational park for off-road recreational use in such a manner as to exceed 75 dBA at 50 feet or more.

8. Powered Model Vehicles. Operating or permitting the operation of powered model vehicles, with the exception of gliders and aircraft propelled by electric motors, in areas not designated by the City Administrator or City Council for that use, in such a manner as not to exceed 75 dBA at 50 feet or more.

9. Explosives. The discharge of fireworks and other explosive devices unless pursuant to a locally permitted display or program.

10. Tampering. The removal or rendering inoperative for purposes other than maintenance, repair or replacement of any noise control device.

11. Animals. Owing, possessing or harboring any bird or other animal, which barks, bays, cries, howls or makes any other noise continuously for a period of 10 minutes or more, for reasons other than being provoked by a person trespassing or threatening to trespass.
12. Steam Whistles. Blowing any steam whistle attached to any stationary boiler, except to give notice of the time to begin or stop work.
13. Compressed Air Devices. The use of a mechanical device operated by compressed air, steam or otherwise, unless the noise thereby created is effectively muffled.
14. Warning Devices. The sound created by warning devices that are not reset within 5 minutes after being triggered.

§ 9.48.040 Maximum permissible sound levels.

- A. No person shall cause or permit sound(s) to intrude onto the property of another person which exceeds the maximum permissible sound levels set forth below in this section.
- B. The sound limitation established herein, as measured at or within the property boundary of the receiving land use, are as set forth in Table 1 appended to this chapter after any applicable adjustments provided for herein are applied. When the sound limitations are exceeded, it shall constitute excessive and unnecessary sound(s) and shall be violations in their own right as well as being prima facie evidence of noise.
- C. This section is violated if any of the following occur:
 1. Any continuous sound that exceeds the limits of Table 1 for a cumulative total of greater than 5 minutes in any 10-minute period;
 2. Any sound that exceeds the limits of Table 1 by 5 dBA for a cumulative total of greater than 1 minute, but less than 5 minutes in any 10-minute period;
 3. Any sound that exceeds the limits of Table 1 by 10 dBA at any point in time; or
 4. Any sound that exceeds the ambient noise levels existing by 10 dBA created by a new industrial or commercial noise source on a previously unused industrial or commercial site.

§ 9.48.050 Exceptions and variances.

- A. Exceptions. The following sounds are exempted from the provisions of this chapter:
 1. Sounds caused by the performance of emergency work, vehicles and/or equipment;
 2. Aircraft operations in compliance with applicable federal laws or regulations;
 3. Railroad activities as defined in Subpart A, Part 201 of Title 40, CER of the Environmental Protection Agency’s railroad emission standards, incorporated herein by reference;
 4. Sounds produced by sound-amplifying equipment at activities, including fireworks and other explosive devices at football games, sponsored by Canby School District between 7:00 a.m. and midnight, local time;
 5. Sounds created by refuse pickup operations during the period of 6:00 a.m. to 10:00 p.m., local time;

6. Sounds created by domestic power tools during the period 7:00 a.m. to 10:00 p.m., local time, provided sound-dissipating devices on tools so equipped are maintained in good repair;
7. Sounds made by warning devices operating continuously for 5 minutes or less;
8. Idling motor vehicles, including compressors on refrigerated trailers, within a Gross Vehicle Weight Rating (CVWR) of 8,000 pounds or greater between the hours of 7:00 a.m. to 10:00 p.m., local time, provided they are equipped with an exhaust system which is in good working order and in constant operation;
9. Sounds created at the Clackamas County Fairgrounds as a result of events sanctioned by the Clackamas County Fair Board;
10. Sounds caused by business operations in the commercial and industrial zones, provided the sounds result from lawful commercial business activity or manufacturing operations;
11. Construction activities during the period of 7:00 a.m. to 10:00 p.m., local time, provided equipment is maintained in good repair and equipped with sound dissipating devices in good working order;
12. Sounds caused by city maintenance equipment between the hours of 7:00 a.m. and 10:00 p.m.;
13. Sounds created from city sanctioned events in the Downtown Commercial zone; and
14. Sounds, including the discharge of fireworks and other explosive devices, created from City and Canby Fire District sanctioned events. (Am. Ord 1489, passed 8-15-2018)

B. Variations. Any person who owns, controls or operates any sound source which violates any of the provisions of this chapter may apply, in writing, to the City Council for a variance from the provisions. Any person who is planning a noise source which is expected to violate any provision of this chapter may apply to the City Council for a variance from the provisions. Any person granted a variance under this chapter may apply for renewal of that variance upon its expiration. The renewal application shall be processed just as if it was an initial application.

1. Application. An application for a noise variance shall be made on forms provided by the City Recorder's Office. The application shall be accompanied by all the required information and fees. If more than 1 date is being requested for a noise variance at 1 location, they can be on 1 application. The written application shall state the provision from which a variance is being sought, the period of time the variance is to apply, the reason for which the variance is sought, and any other supporting information which the City Council may reasonably require. A list of property owners within 200 feet of the location of the variance shall be provided by the applicant with the application.

2. Review Standards. In establishing exceptions or granting variances, the City Council shall consider:

- a. The protection of health, safety and welfare of citizens as well as the feasibility and cost of noise abatement;
- b. The surrounding type of existing land use;
- c. The acoustical nature of the sound emitted; and
- d. Whether compliance with the provision would produce a benefit to the public.

3. Time Duration of Variance. Any variance shall be granted for a specific time interval, not to exceed 1 year.

4. Public Notification and Public Hearing.

- a. Notice of the public hearing shall be published in a newspaper at least 10 days prior to the public hearing.
- b. Notice of the public hearing shall be mailed to all property owners within 200 feet of the location for the variance at least 10 days prior to the public hearing.
- c. The City Council shall hold a public hearing before the granting of a variance.

5. Variances.

a. Conditions for Granting. The City Council may grant specific variances from the particular requirements of any rule, regulation or order, to specific persons, class of persons or specific noise source upon those conditions as it may deem necessary to protect the public health and welfare, if it finds that strict compliance with the rule, regulations or order is inappropriate because of conditions beyond the control of the persons requesting the variance; because of special circumstances which would render strict compliance unreasonable or impractical due to special physical conditions or cause; because strict compliance would result in substantial curtailment or closing down of a business, plant or operation; or because no other alternative facility or method of handling is yet available. Granting of the variance shall not be materially detrimental to other property within the same vicinity and the variance requested shall be the minimum which will alleviate the hardship.

b. Revocation or Modification. A variance granted may be revoked or modified by the City Council after a public hearing held upon not less than 20 days' notice. The notice shall be served upon the holder of the variance by certified mail and all persons who have filed with the City Council a written request for this notification.

6. Emergency and Safety Hazard. In the case of an emergency or safety hazard, the City Administrator or his or her designee may revoke a variance immediately by setting forth the nature of the emergency or hazard in a letter mailed or hand-delivered to the holder of the variance. A public hearing before the City Council shall be held at the next regularly scheduled City Council meeting following the revocation to reverse, affirm or modify the revocation action.

(Am. Ord. 1373, passed 5-1-2013; Am. Ord. 1465, passed 9-6-2017)

§ 9.48.060 Chapter additional to other law.

The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other claim, cause of action or remedy; not unless specifically provided shall it be deemed to repeal, amend or modify any law, ordinance or regulation relating to noise or sound, but shall be deemed additional to existing legislation and common law on the subject.

APPENDIX A
TABLE 1: ALLOWABLE SOUND LEVELS

<i>Allowable Sound Levels (in dBA) in any 10-minute Period</i>						
Type of Source by Use	Type of Noise Received by Use					
	Noise Sensitive		Commercial*		Industrial*	
	Day	Night	Day	Night	Day	Night
Noise sensitive	55	45	70	65	75	70
Commercial	55	50	70	65	75	70
Industrial	55	50	70	65	75	70

* NOTE: Sounds caused by lawful business activity or manufacturing are exempt. See § 9.48.050.A.10.

Attachment 1

City of Canby Noise Variance
K20336/20339 East Systemic Signals and Illumination Project

Mitigation Measures

- All equipment used shall have sound control devices no less effective than those provided on the original equipment. No equipment shall have an unmuffled exhaust.
- All equipment shall comply with pertinent equipment noise standards of the U.S. Environmental Protection Agency.
- The contractor may install temporary or portable barriers around stationary construction noise sources should a specific noise impact complaint occur.
- Idling equipment will be turned off when not in use.

General Noise Impacts

Equipment list: Man lift/bucket truck x2, TMA (traffic control), night intersection closure w/4 flaggers w/light plants, and 4 generators.

Distance	L_{max}	L_{eq}
50 feet	75 dBA	79 dBA
100 feet	69 dBA	73 dBA
150 feet	66 dBA	69 dBA
200 feet	63 dBA	67 dBA

Site 1 – OR99E and 4th/Pine St

SOW – Add reflectorized backplates to the existing traffic signals to improve visibility. Estimated 3 days of work at this location.

Noise impacts – The nearest residence to the work site appears to be 370 feet away. At a distance of 370 feet, the maximum sound level from any given piece of equipment (L_{max}) would be approximately 58 dBA and the L_{eq} would be approximately 61 dBA.



Site 2 – OR99E and S Ivy St

SOW – Add reflectorized backplates to the existing traffic signals to improve visibility. Estimated 3 days of work at this location.

Noise impacts – The nearest residence to the work site appears to be 430 feet away. At a distance of 430 feet, the maximum sound level from any given piece of equipment (L_{max}) would be approximately 56 dBA and the L_{eq} would be approximately 60 dBA.



Site 3 – OR99E and S Grant St

SOW – Add reflectorized backplates to the existing traffic signals to improve visibility. Estimated 3 days of work at this location.

Noise impacts – The nearest residence to the work site appears to be 255 feet away. At a distance of 255 feet, the maximum sound level from any given piece of equipment (L_{max}) would be approximately 61 dBA and the L_{eq} would be approximately 65 dBA.



Site 4 – OR99E and SW Berg Parkway

SOW – Add reflectorized backplates to the existing traffic signals to improve visibility. Estimated 3 days of work at this location.

Noise impacts – There are no residents or hotels within 500 foot of the work site.



CITY OF CANBY

NOTICE OF PUBLIC HEARING - NOISE VARIANCE

Date and Time Requested for Variance:

Expected to be 12 workdays between 10/25/2022 and 4/25/2023.

Address of Variance: OR 99 E and 4th Pine Street (estimated 3 days)
 OR 99 E and S Ivy Street (estimated 3 days)
 OR 99 E and S Grant Street (estimated 3 days)
 OR 99 E and SW Berg Parkway (estimated 3 days)

Name of Business: Oregon Department of Transportation (ODOT)

A public hearing conducted by the Canby City Council will be held on Wednesday, April 20, 2022 at 7:30 PM via Zoom and in person in the City Council Chambers located at 222 NE 2nd Avenue in Canby. If you prefer to speak virtually, please contact the Deputy City Recorder at benham@canbyoregon.gov or 503-266-0720. You may also submit written comments by sending an email to benham@canbyoregon.gov by 3 PM on April 20th.

The purpose of this hearing is to consider the granting of a Noise Variance to ODOT.

The variance for an estimated 12 days of work is being requested to allow for installation of reflective backing on existing traffic lights at the listed intersections.

Dated this 30th day of March, 2022.

Melissa Bisset, CMC
City Recorder

**CANBY CITY COUNCIL
REGULAR MEETING MINUTES
February 16, 2022**

PRESIDING: Mayor Brian Hodson

COUNCIL PRESENT: Traci Hensley, David Bajorin, Sarah Spoon, Greg Parker, and Shawn Varwig.

ABSENT: Christopher Bangs

STAFF PRESENT: Scott Archer, City Administrator; Joseph Lindsay, City Attorney/Assistant City Administrator; and Maya Benham, Deputy City Recorder.

CALL TO ORDER: Mayor Hodson called the Regular Meeting to order at 7:30 p.m. in the Council Chambers.

PROCLAMATION: Iwo Jima Remembrance Day – Mayor Hodson read the proclamation declaring February 19, 2022 as Iwo Jima Remembrance Day.

Pat Schauer member of Canby VFW, said there would be a small program this Saturday, February 19, 2022 at the Canby Adult Center at 10:00 am and everyone was invited.

Irene Breshears, VFW Auxiliary, said there would be marines at the ceremony to raise and lower the flag. The ceremony would honor World War II veterans.

CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS:

There was no citizen input and community announcements.

CONSENT AGENDA:

****Council President Hensley moved to approve the Approval of December 15, 2021 City Council Work Session Minutes, Annual Liquor License Renewals, New Winery 1st Location OLCC Liquor License for Archetyp, LLC, located at 181 N. Grant Street, and the Appointment of Eric Van Zandt to the Traffic Safety Commission for a term expiring June 30, 2022. Motion was seconded by Councilor Varwig and passed 5-0.**

ORDINANCE:

Ordinance No. 1568 – ****Council President Hensley moved to approve Ordinance 1568, AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH ARBOR PRO TREE EXPERT IN THE AMOUNT OF \$67,500 AND DECLARING AN EMERGENCY. Motion was seconded by Councilor Varwig and passed 5-0 by roll call vote.**

MAYOR'S BUSINESS: Mayor Hodson extended congratulations to Carol Palmer for being recognized as a Hometown Hero at the last Council meeting. He welcomed the new Planning

Commission members. He reported on the Parks and Recreation Advisory Board meeting where updates on restrooms at Community Park, park naming procedure, and Park Master Plan were discussed. C4 had discussed the current legislative session and tolling. The Council held a goal setting session, and was planning to schedule another in March.

COUNCIL COMMENTS & LIAISON REPORTS:

Mayor Hodson read a report from Councilor Bangs. CHS Principal Greg Dinse was retiring at the end of this year. The School District intended to make masks optional beginning March 31 or April 1. The School District also hoped to bring back visitors to the schools, including guest speakers and parent volunteers; and also to once again allow student field trips. There remained an acute shortage of bus drivers.

Councilor Parker suggested a capacity carrying study on 99E in light of the I-205 tolling. The Bike and Pedestrian Committee was working on plans for the Traverso property for bike lanes. The Heritage and Landmark Commission was working with staff to finish up the arch for plaques and restoring the old City Hall building to historic accuracy. They were also trying to get more grant money and schedule a clean up of Zion Memorial Cemetery. The Adult Center was returning to in-person dining and programming in March.

Councilor Bajorin reported on the last Canby Utility Board meeting where they discussed updates to their anti-discrimination and harassment policies, questions about the Molalla River watershed, and Water Master Plan.

Councilor Spoon suggested scheduling a presentation regarding the ball park project during a meeting instead of at a work session.

Councilor Varwig reported that the walls were starting to go up at the Northside Fire Station. There was one more opening on the Planning Commission.

Council President Hensley reported on the Traffic Safety Commission meeting where Clackamas County gave a presentation on the Knights Bridge rehab project. The Enterprise Rent a Car situation was still being worked on and there would be a four way stop at Territorial by Public Works. She attended a tolling project meeting. There was an initiative petition for putting tolling to a vote. They also discussed impacts to businesses and clarity for how tolling dollars would be spent. She also met the new Chamber of Commerce Director.

CITY ADMINISTRATOR'S BUSINESS & STAFF REPORTS: Scott Archer, City Administrator, said ODOT would make a presentation on tolling at the March 2 meeting. The Canby sign would be installed on the arch on February 25.

CITIZEN INPUT: None.

ACTION REVIEW:

1. Approved the Consent Agenda.
2. Approved Ordinance No. 1568.

Mayor Hodson read the Executive Session statement.

****Councilor Spoon moved to go into Executive Session pursuant to ORS 192.660(2)(h) Litigation. Motion was seconded by Council President Hensley and passed 5-0.**

Mayor Hodson recessed the Regular Meeting at 8:19 p.m.

Mayor Hodson reconvened the Regular Meeting at 8:50 p.m. and immediately adjourned.

Melissa Bisset
City Recorder

Brian Hodson
Mayor

Assisted with Preparation of Minutes - Susan Wood

DRAFT



City Council Staff Report

Meeting Date: 4/20/2022

To: The Honorable Mayor Hodson & City Council

Thru: Scott Archer, City Administrator

From: Melissa Bisset, HR Director/ City Recorder

Agenda Item: Amendment to City Attorney/Assistant City Administrator Employment Contract.

Summary

The City Attorney/ Assistant City Administrator is one of only two full-time, non-represented employees of the City Council. At the April 6, 2022, the City Attorney/ Assistant City Administrator received a favorable performance evaluation from the City Council during an Executive Session. As the Mayor and Council are aware, it is difficult to attract and retain quality professionally trained employees into the public sector. This has become increasingly challenging during the last year. Council approval of the proposed amendment to the City Attorney/ Assistant City Administrator contract will help the City remain competitive in our efforts to attract and retain high quality professional staff. If approved, the attached Amendment to the City Attorney Contract would establish an increase in salary of four (4) percent.

Attachments

Amendment to the City Attorney/ Assistant City Administrator Contract.

Recommendation

Approve the Amendment to the City Attorney/ Assistant City Administrator Contract.

Proposed Motion

This item is under the consent agenda and one motion will be made to approve the consent agenda unless this item is moved off of the consent agenda for discussion.

**AMENDMENT TO EMPLOYMENT CONTRACT
City Attorney/ Assistant City Administrator**

This Amendment, dated April 13, 2022 to the Employment Agreement between the City of Canby, Oregon, a Municipal Corporation, and Joseph A. Lindsay, is intended to memorialize negotiations between the parties regarding a salary adjustment to the current base salary.

Section 5 of the current employment agreement is amended by changing the amount of the base salary by four (4) percent per year, effective April 21, 2022 representing a salary adjustment increase and continuing at said base salary until further amended in accordance with the provisions of this paragraph.

Effective April 21, 2022, Section 5 of the current employment agreement is amended by changing the amount of the base salary by four (4) percent per year, which represents a comparable and competitive salary for the City Attorney/ Assistant City Administrator position.

All other terms and conditions of the current employment agreement remain in full force and effect.

IN WITNESS WHEREOF, the undersigned have executed this Amendment to Employment Agreement the day and year first written above.

CITY OF CANBY:

Brian Hodson
Mayor

ATTEST:

Melissa Bisset
City Recorder, CMC

Joseph A. Lindsay
Canby City Attorney/ Assistant City Administrator



City Council Staff Report

Meeting Date: 4/20/2022

To: The Honorable Mayor Hodson & City Council

Thru: Scott Archer, City Administrator

From: Don Hardy, Planning Director

Agenda Item: Food Cart Pods and Mobile Food Vendors Text Amendment

Summary

City Planning Staff are requesting consideration of a legislative text amendment to add regulations and processes to allow Food Cart Pods and Mobile Food Vendors to the Canby Land Development and Planning Ordinance Title 16 Canby Municipal Code (CMC). The text amendment proposal is an effort to allow and regulate an emerging business concept that could increase local business activity and provide more dining options to the community of Canby. The purpose of this staff report is to summarize the text amendments and to provide findings of fact related to the text amendment process.

Background

Planning staff used a variety of sources to craft the text amendments. This included analyzing Development Codes from Beaverton, Hillsboro, Oregon City, Happy Valley, Milwaukie, Lake Oswego and Portland, visiting Food Cart Pods in these cities, and working closely with the Economic Development Director to perform local business outreach. Several work sessions have been held with City Council and Planning Commission to refine the city's goals and standards for Pods and Mobile Food Vendors, which are reflected in the draft code text.

Discussion

The need for this amendment is largely driven by the emerging business model of the Food Cart Pod. Without these amendments, the City of Canby would miss opportunities to foster economic development, and lose out on exciting and local creative cuisine options.

The following Statewide Planning Goals apply to this application:

Goal 1: Citizen Involvement.

The Planning Commission will make a recommendation to the City Council on this application in a public hearing which was noticed in the Canby Herald. Additionally, this amendment has been discussed in 3 separate work sessions with the City Council and Planning Commission.

Goal 9: Economic Development

This goal requires Cities to have an inventory of commercial and industrial land available for development. Creative uses like Food Cart Pods have the unique ability to develop constrained parcels into commercial enterprises. Allowing this use would (1) encourage the creative use of constrained or remnant parcels and (2) leave the large 'shovel ready' parcels for large format traditional commercial and industrial development.

Citizen Involvement Element Policy No. 2:

Canby shall strive to eliminate unnecessarily costly, confusing, and time consuming practices in the development review process.

Economic Element Policy No. 3:

Canby shall encourage economic programs and projects which will lead to an increase in local employment opportunities.

This amendment is the best course of action at the present time. The City has received numerous inquiries from private developers interested in creating a Pod in Canby, as well as frequent comments that the current Temporary Mobile Vendor permitting process is prohibitive for single Food Carts. No code changes at this juncture would result in a lost opportunity for the City of Canby to encourage local businesses and enjoy increased food options. This amendment preserves the functions and local control of land conservation and development within the City of Canby.

Attachments

- A. Text Amendment Application
- B. Proposed Text Amendments throughout Chapter 16 of the Municipal Code
- C. Draft Chapter 16.45 Food Cart Pod text
- D. Oregon Health Authority Mobile Food Unit Operation Guide
- E. OHA Food Sanitation Rules
- F. Link to Oregon Plumbing Specialty Code

Fiscal Impact

There will be a \$2,000 fee associated with a Food Cart Pod application. These applications will be processed by Planning Staff.

Options

City Council may elect to approve, deny, or continue the Text Amendment application to a future hearing.

Recommendation

Staff recommends the Council approve Amending Canby's Title 16 of the Canby Municipal Code Adding Newly Created Code Chapter 16.45 for Food Cart Pods and Modifying Existing Chapters in the Title to be consistent with Chapter 1645.

Proposed Motion

I move to approve Ordinance No. 1570; An Ordinance Amending Canby's Title 16 of the Canby Municipal Code Adding Newly Created Code Chapter 16.45 for Food Cart Pods and Modifying Existing Chapters in the Title to be consistent with Chapter 1645 to come up for a second reading on May 4, 2022.

ORDINANCE NO. 1570

AN ORDINANCE AMENDING CANBY'S TITLE 16 OF THE CANBY MUNICIPAL CODE ADDING NEWLY CREATED CODE CHAPTER 16.45 FOR FOOD CART PODS AND MODIFYING EXISTING CHAPTERS IN THE TITLE TO BE CONSISTENT WITH CHAPTER 16.45.

WHEREAS, City staff propose a legislative text amendment adding a new chapter 16.45 – Food Cart Pods to the Canby Land Development and Planning Ordinance; Title 16 of the Canby Municipal Code (CMC);

WHEREAS, City staff propose legislative text amendments modifying Chapter 16.04 Definitions; Chapter 16.08 General Provisions; Chapter 16.10 – Off Street Parking and Loading; Chapter 16.22 – C-1 Downton Commercial Zone; Chapter 16.24 – C-R Residential/Commercial Zone; Chapter 16.28 – C-2 Highway Commercial Zone; Chapter 16.30 – C-M Heavy Commercial/Manufacturing Zone; Chapter 16.32 – M-1 Light Industrial Zone; Chapter 16.89 – Application and Review Procedures to the Canby Land Development and Planning Ordinance; Title 16 of the Canby Municipal Code (CMC);

WHEREAS, the Planning Commission found that the standards and criteria of Section 16.88.160 of the Land Development and Planning Ordinance concerning Text Amendments were met, and forwarded a recommendation of approval to the City Council on a 7-0 vote as specified in their Findings and Final Order; and

WHEREAS, the City Council, after reviewing the record of the Canby Planning Commission regarding the subject amendments, concluded that the Planning Commission's recommendation is appropriate as recommended.

NOW, THEREFORE, THE CANBY CITY COUNCIL ORDAINS AS FOLLOWS:

Section 1. TA 22-01 is hereby approved and are hereby amended as detailed in Exhibit A for the Land Development and Planning Ordinance amendments (as directed by the City Council findings and final order);

SUBMITTED to the Council and read the first time at a regular meeting thereof on April 20, 2022, ordered posted in three (3) public and conspicuous places in the City for a period of five (5) days, as authorized by the Canby City Charter; and to come up for final reading and action by the Canby City Council at a regular meeting thereof on May 4, 2022 commencing after the hour of 7:30 p.m., in the Council Chambers located at 220 NE 2nd Avenue, Canby, Oregon.

Melissa Bisset, City Recorder

on the second and final reading by the Canby City Council at a regular meeting thereof on May 4, 2022 by the following vote:

YEAS _____ NAYS _____

Brian Hodson, Mayor

ATTEST:

Melissa Bisset, City Recorder



City of Canby
 Planning Department
 222 NE 2nd Avenue
 PO Box 930
 Canby, OR 97013
 (503) 266-7001

LAND USE APPLICATION

TEXT AMENDMENT APPLICATION

Process Type IV

APPLICANT INFORMATION: *(Check ONE box below for designated contact person regarding this application)*

Applicant Name: _____ Phone: _____
 Address: _____ Email: _____
 City/State: _____ Zip: _____

Representative Name: _____ Phone: _____
 Address: _____ Email: _____
 City/State: _____ Zip: _____

City Representative _____ Phone: _____
 Signature: _____
 Address: _____ Email: _____
 City/State: _____ Zip: _____

Property Owner Name: _____ Phone: _____
 Signature: _____
 Address: _____ Email: _____
 City/State: _____ Zip: _____

NOTE: Property owners or contract purchasers are required to authorize the filing of this application and must sign above

- ① All property owners represent they have full legal capacity to and hereby do authorize the filing of this application and certify that the information and exhibits herewith submitted are true and correct.
- ② All property owners understand that they must meet all applicable Canby Municipal Code (CMC) regulations.
- ③ All property owners hereby grant consent to the City of Canby and its officers, agents, employees, and/or independent contractors to enter the property identified herein to conduct any and all inspections that are considered appropriate by the City to process this application.

PROPERTY & PROJECT INFORMATION:

Street Address or Location of Subject Property	Total Size of Property	Assessor Tax Lot Numbers
Existing Use, Structures, Other Improvements on Site	Zoning	Comp Plan Designation

Describe the Proposed Development or Use of Subject Property

STAFF USE ONLY				
FILE #	DATE RECEIVED	RECEIVED BY	RECEIPT #	DATE APP COMPLETE



City of Canby
 Planning Department
 222 NE 2nd Avenue
 P.O. Box 930
 Canby, OR 97013
 Ph: 503-266-7001
 Fax: 503-266-1574

CHECKLIST

TEXT AMENDMENT APPLICATION PROCESS TYPE IV

Instructions to Applicant

All required application submittals detailed below must also be submitted in electronic format on a CD, flash drive or via email to: PlanningApps@ci.canby.or.us.

1. The applicant will be required to hold a neighborhood meeting with adjacent property owners and neighborhood representatives prior to submitting their application, unless this requirement is waived by the City.
2. Afterwards, the applicant files a complete application with the City, which includes following information:

Applicant Check	City Check
--------------------	---------------

- | | | |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | A. An application for amendment by a property owner or his authorized agent shall be filed with the City Planner on forms prescribed for the purpose, in written format. |
| <input type="checkbox"/> | <input type="checkbox"/> | B. The application shall be accompanied by a written statement explaining the conditions surrounding the proposal and addressing the required criteria of Section 16.88.160 (D). |
| <input type="checkbox"/> | <input type="checkbox"/> | C. One (1) copy in written format of the minutes of the neighborhood meeting. The minutes to include the date of the meeting and a list of attendees. |
| <input type="checkbox"/> | <input type="checkbox"/> | D. One (1) electronic copy of mailing addresses in either an EXCEL SPREADSHEET or WORD DOCUMENT for all property owners and all residents within 500 feet of the subject property. If the address of a property owner is different from the address of a site, an address for each unit on the site must also be included and addressed to "Occupant." A list of property owners may be obtained from a title insurance company or from the County Assessor's office. |

3. Staff will check the application, making sure that it is complete and all fees are paid. Copies of the application materials are routed to various City/State/County departments, as applicable, for their comments. Along with the comments received from others, the application is reviewed for completeness. The City Planner will accept or return the application with a written list of omissions within thirty (30) calendar days of the submittal.
4. Staff investigates the request, writes a staff report, places a public notice in the newspaper, notifies surrounding property owners, and makes all facts relating to the request available to the Planning Commission and all interested parties.
5. The staff report will be available seven (7) days prior to the hearing.

6. The Planning Commission holds a public hearing approximately thirty (30) days after the complete application is submitted. The staff report is presented. Testimony is presented by the proponents and the opposition, followed by rebuttal from the proponents.
7. The commission then issues findings of fact which support approval, modification or denial of the application and passes such recommendation on to City Council for final action within forty (40) days after the close of the hearing.

STANDARDS AND CRITERIA FOR TEXT AMENDMENT

In judging whether or not this title should be amended or changed, the Planning commission and City Council shall consider:

1. The Comprehensive Plan of the City and the plans and policies of the County, State, and local districts, in order to preserve functions and local aspects of land conservation and development;
2. A public need for the change;
3. Whether the proposed change will serve the public need better than any other change which might be expected to be made;
4. Whether the change will preserve and protect the health, safety and general welfare of the residents in the community;
5. Statewide planning goals.

TITLE 16

PLANNING AND ZONING DECEMBER 2020

Chapters:

Division I. General Provisions

- 16.02 Title
- 16.04 Definitions
- 16.05 Interpretations

Division II. Planning Commission

- 16.06 Planning Commission

Division III. Zoning

- 16.08 General Provisions
- 16.10 Off-street Parking and Loading
- 16.12 Classification of Zones
- 16.13 Plan Districts
- 16.16 R-1 Low Density Residential Zone
- 16.18 R-1.5 Medium Density Residential Zone
- 16.20 R-2 High Density Residential Zone
- 16.21 Residential Design Standards
- 16.22 C-1 Downtown Commercial Zone
- 16.24 C-R Residential/Commercial Zone
- 16.28 C-2 Highway Commercial Zone
- 16.30 C-M Heavy Commercial/Manufacturing Zone
- 16.32 M-1 Light Industrial Zone
- 16.34 M-2 Heavy Industrial Zone
- 16.35 Canby Industrial Area Overlay (I-O) Zone
- 16.36 Planned Unit Development Overlay Zone (PUD)
- 16.37 Riparian Overlay Zone
- 16.38 Historical Protection Overlay Zone (A)
- 16.39 Wetland Overlay Zone
- 16.40 Hazard Overlay Zone (H)
- 16.41 Downtown Canby Overlay (DCO) Zone
- 16.42 Signs
- 16.43 Outdoor Lighting Standards
- 16.44 Manufactured and Mobile Homes and Trailer Parks
- 16.45 Food Carts and Food Cart Pods
- 16.46 Access Limitations
- 16.48 Site Plan Review
- 16.49 Site and Design Review
- 16.50 Conditional Uses
- 16.52 Non conforming Uses and Structures
- 16.53 Variance
- 16.54 Amendments to Zoning Map
- 16.55 Telecommunications Facilities

Division IV. Land Division Regulations

- 16.56** General Provisions
- 16.58** Lot Line Adjustments
- 16.60** Major or Minor Partitions
- 16.62** Subdivisions - Applications
- 16.64** Subdivisions - Design Standards
- 16.68** Subdivisions - Final Procedures and Recordation

Division V. Planned Unit Development and Condominium Regulations

- 16.70** General Provisions
- 16.72** Applications
- 16.74** Uses Permitted
- 16.76** Requirements
- 16.78** Condominium Project Involving New Construction of Six or Fewer Units
- 16.80** Manufactured and Mobile Home Subdivisions
- 16.82** Special Housing Projects for the Elderly or Handicapped

Division VI. Annexations

- 16.84** Regulations

Division VII. Street Alignments

- 16.86** Regulations

Division VIII. General Standards and Procedures

- 16.88** Standards and Procedures:
General, Text Amendments, Comprehensive Plan Amendments, and Transportation Planning_
- 16.89** Application and Review Procedures

Division X. Historic Preservation

- 16.110** General Provisions

Division XI. Park, Open Space and Recreation Land

- 16.120** General Provisions

Division XII. Riparian Preservation

- 16.130** General Provisions

Division XIII. Wetland Preservation

- 16.140** General Provisions

Chapter 16 was updated by the City of Canby City Council on 12/18/2020 with Ord. 1539, 9/4/2019 with Ord. 1514, 9/17/14 with Ord.1398, 2/20/2013 with Ord. 1369, 7/16/08 with Ord. 1286, 9/3/08 with Ord. 1294 and 10/1/08 with Ord. 1296, 10/21/15 with Ord. 14.

Chapter 16.04

DEFINITIONS

Sections:

- 16.04.010 Grammatical interpretation.
- 16.04.020 Generally.
- 16.04.030 Abutting-adjoining-adjacent.
- 16.04.035 Acceptable site.
- 16.04.036 Access.
- 16.04.037 Access classification.
- 16.04.038 Access connection.
- 16.04.039 Access management.
- 16.04.040 Accessory Dwelling Unit.
- 16.04.043 Accessory structure or use.
- 16.04.045 Accessway.
- 16.04.050 Agriculture.
- 16.04.060 Alley.
- 16.04.061 Antenna.
- 16.04.063 Application.
- 16.04.064 Attached telecommunications facility.
- 16.04.065 Backhaul network.
- 16.04.066 Bed and Breakfast.
- 16.04.068 Bicycle Facilities.
- 16.04.070 Billboard.
- 16.04.080 Boarding, lodging or rooming house.
- 16.04.090 Building.
- 16.04.100 Building line.
- 16.04.105 Cell Coverage Area.
- 16.04.110 Central business district (CBD).
- 16.04.120 City.
- 16.04.125 City Planner.
- 16.04.127 Collocation.
- 16.04.128 Commercial Recreation Uses.
- 16.04.130 Commission.
- 16.04.135 Conditionally suitable site.
- 16.04.137 Corner clearance.
- 16.04.140 Council.
- 16.04.145 Cross access.
- 16.04.150 Curb line.
- 16.04.155 Day care facility.
- 16.04.158 Detached WTS facility.
- 16.04.160 Development plan.
- 16.04.170 Dwelling, duplex-dwelling, two family.
- 16.04.180 Dwelling, multi-family.
- 16.04.190 Dwelling, single-family.
- 16.04.195 Dwelling, townhouse.
- 16.04.200 Dwelling unit.
- 16.04.210 Easement.
- 16.04.212 Eco-roof
- 16.04.215 Equipment shelters.
- 16.04.218 Façade.
- 16.04.220 Family.
- 16.04.221 Floor area ratio.
- 16.04.221.1 Food Cart Pod.
- 16.04.222 Foster Home.
- 16.04.223 Frontage road.
- 16.04.225 FCC.
- 16.04.228 Grade plane.
- 16.04.230 Height of building.
- 16.04.240 Home occupation.
- 16.04.250 Hotel.
- 16.04.253 Impervious Surface.
- 16.04.255 Infill homes.
- 16.04.275 Infiltration.
- 16.04.260 Intersection.
- 16.04.265 Joint access (or shared access).
- 16.04.270 Kennel.
- 16.04.275 Lattice tower.
- 16.04.280 Loading space.
- 16.04.290 Lot.
- 16.04.300 Lot area.
- 16.04.310 Lot, corner.
- 16.04.315 Lot depth.
- 16.04.318 Lot, flag.
- 16.04.320 Lot front.
- 16.04.321 Lot frontage.
- 16.04.330 Lot, interior.
- 16.04.340 Lot line.

- 16.04.350 Lot line, interior.
- 16.04.360 Lot line, street.
- 16.04.370 Lot, through.
- 16.04.380 Lot width.
- 16.04.383 Low impact development.
- 16.04.385 Lowest floor.
- 16.04.390 Manufactured home.
- 16.04.400 Manufactured (mobile) home park.
- 16.04.410 Manufactured (mobile) home subdivision.
- 16.04.415 Mobile Food Vending Unit**
- 16.04.420 Modular home.
- 16.04.425 Monopole.
- 16.04.430 Motel.
- 16.04.433 Nail Salons
- 16.04.435 Neighborhood activity center.
- 16.04.438 Nonconforming access features.
- 16.04.440 Nonconforming structure, lot or use
- 16.04.445 Nursing Home
- 16.04.450 Parent parcel.
- 16.04.460 Parking space.
- 16.04.470 Partition.
- 16.04.480 Pedestrian way.
- 16.04.490 Person.
- 16.04.500 Planning Commission.
- 16.04.510 Plat.
- 16.04.512 Porches, covered.
- 16.04.514 Preapplication conference
- 16.04.515 Preferred site.
- 16.04.516 Public facility, major
- 16.04.517 Public facility, minor
- 16.04.519 Reasonably direct.
- 16.04.520 Recommendation.
- 16.04.525 Residential Facility
- 16.04.527 Residential Home
- 16.04.530 Right-of-way.
- 16.04.540 Roadway.
- 16.04.545 Safe and convenient bicycle and pedestrian routes.
- 16.04.547 Self-Storage/Mini-Storage Warehouse
- 16.04.550 Setbacks.
- 16.04.560 Sidewalk.
- 16.04.565 Stealth design.
- 16.04.567 Story above grade plane.
- 16.04.570 Street.
- 16.04.580 Structural alteration.
- 16.04.590 Structure.
- 16.04.595 Stub-out (or stub street)
- 16.04.600 Subdivide land.
- 16.04.610 Subdivision.
- 16.04.615 Traffic impact analysis.
- 16.04.620 Trailer coach.
- 16.04.630 Trailer park.
- 16.04.635 Trip generation study.
- 16.04.640 Urban Growth Boundary (UGB).
- 16.04.650 Urbanizable.
- 16.04.660 Use.
- 16.04.666 Vicinity.
- 16.04.670 Vision clearance area.
- 16.04.671 Walkway.
- 16.04.675 Wireless telecommunications facility.
- 16.04.676 Wireless Telecommunications
- 16.04.680 Yard.
- 16.04.690 Yard, interior.
- 16.04.700 Yard, rear.
- 16.04.710 Yard, street.
- 16.04.715 Zero-lot line development.

16.04.010 Grammatical interpretation.

As used in this title, the masculine includes the feminine and the neuter, and the singular includes the plural with no preference or prejudice intended or implied. (Ord. 740 section 10.1.20 (A), 1984)

16.04.020 Generally.

Unless the context requires otherwise, the words and phrases set out in this chapter shall mean as follows. (Ord. 740 section 10.1 .20(B)[part], 1984)

16.04.030 Abutting-adjoining-adjacent.

Abutting, adjoining or adjacent means physically touching, having at least one common point or lots separated only by a public street, public right-of-way, or railroad right-of-way. (Ord. 890 section 3, 1993; Ord. 740 section 10.1.20(B)[part], 1984)

16.04.035 Acceptable site.

For purposes of siting macro wireless telecommunications systems facilities, any land planned and zoned Highway commercial or Commercial-Manufacturing. (Ord. 981 section 17, 1997, Ord. 1539, 2020)

16.04.036 Access.

Access means a way or means of approach to provide pedestrian, bicycle, or motor vehicle entrance or exit to a property. (Ord. 1043 section 3, 2000).

16.04.037 Access classification.

Access classification means a ranking system for roadways used to determine the appropriate degree of access management. Factors considered include functional classification, the appropriate local government's adopted plan for the roadway, subdivision of abutting properties, and existing level of access control. (Ord. 1043 section 3, 2000)

16.04.038 Access connection.

Access connection means any driveway, street, turnout or other means of providing for the movement of vehicles to or from the public roadway system. (Ord. 1043 section 3, 2000)

16.04.039 Access management.

Access management means the process of providing and managing access to land development while preserving the regional flow of traffic in terms of safety, capacity, and speed. (Ord. 1043 section 3, 2000)

16.04.040 Accessory Dwelling.

Accessory dwelling is an interior, attached, or detached residential structure that is used in connection with, or that is accessory to, a single-family dwelling. (Ord. 1514, 2019)

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16.04.043 Accessory structure or use.

Accessory structure or use means a detached structure or use not intended for human habitation, incidental and subordinate to the main use of the property and which is located on the same lot with the main use such as, but not limited to, garage, carport, tool shed, private greenhouse or utility building. (Ord. 740 section 10.1.20(B)[part], 1984)

16.04.045 Accessway.

Accessway means a walkway that provides pedestrian and bicycle passage either between streets or from a street to a building or other destination such as a school, park, or transit stop. Accessways generally include a walkway and additional land on either side of the walkway, often in the form of an easement or right-of-way, to provide clearance and separation between the walkway and adjacent uses. Accessways through parking lots are generally physically separated from adjacent vehicle parking or parallel vehicle traffic by curbs or similar devices and include landscaping, trees, and lighting. Where accessways cross driveways, they are generally raised, paved, or marked in a manner that provides convenient access for pedestrians. (Ord. 1043 section 3, 2000)

16.04.050 Agriculture.

Agriculture means the tilling of the soil, the raising of crops, silviculture and horticulture. (Ord. 740 section 10.1.20(B)[part], 1984)

16.04.060 Alley.

Alley means a narrow street through a block primarily for vehicular service access to the back or side of properties otherwise abutting another street. (Ord. 740 section 10.1.20(B)[part], 1984)

16.04.061 Antenna.

Antenna. Defined in 47 C.F.R. § 1.6002(b). The term includes an apparatus designed for the purpose of emitting radio frequencies (RF) to be operated or operating from a fixed location pursuant to Federal Communications Commission authorization, for the provision of personal wireless service and any commingled information services. For purposes of this definition, the term antenna does not include an unintentional radiator, mobile station, or device authorized under 47 C.F.R. Part 15. (Ord. 1539, 2020)

16.04.063 Application.

Application for a land use permit (site and design review, conditional use permit, annexation, zone change, subdivision, etc.) means a package of information that includes:

- A. The application form filled out and signed by the owner;
- B. Site plan and/or narrative describing the proposal;
- C. List of property owners on mailing labels (1" x 2 5/8"); and
- D. The application fee. (Ord. 981 section 1, 1997)

16.04.064 Attached telecommunications facility.

An existing pole, tower or other structure capable of accommodating a WTS facility antenna, whether originally intended for such use or not. (Ord. 981 section 17, 1997, Ord. 1539, 2020)

16.04.065 Backhaul network.

The land lines that connect a telecommunications provider's radio signals to one or more cellular telephone switching offices and/or local or long distance providers, or the public switched telephone network. (Ord. 981 section 17, 1997, Ord. 1539, 2020)

16.04.066 Bed and Breakfast.

Bed and Breakfast means any single-family residential dwelling having rooms for rent to travelers or transients for a charge or fee paid, for rental or use for a period of less than thirty (30) days. Additionally, such establishment serving only one meal per day prior to the noon hour. (Ord. 890 section 4, 1993; renumbered due to Ord. 981 amendments)

16.04.068 Bicycle facilities.

Bicycle facilities is a general term denoting improvements and provisions made to accommodate or encourage bicycling, including parking facilities and all bikeways. (Ord. 1043 section 3, 2000)

16.04.070 Billboard.

Billboard means a sign which has a surface space upon which advertising may be posted, painted, or affixed, and which is generally, although not necessarily, designed for the rental or lease of such sign space for advertising not relating to the use of the property upon which the sign exists. (Ord. 740 section 10.1.20 (B)[part], 1984)

16.04.080 Boarding, lodging or rooming house.

Boardinghouse, lodging house or rooming-house means a building where lodging with or without meals is provided for compensation for at least four, but not more than ten guests. Board and care, foster care and similar accommodations are considered boardinghouses for the purposes of this title. (Ord. 740 section 10.1.20(B)[part], 1984)

16.04.090 Building.

Building means a structure built for the shelter or enclosure of persons, animals, chattels or property of any kind. (Ord. 740 section 10.1.20(B)[part], 1984)

16.04.100 Building line.

Building line means a line on a plat indicating the limit beyond which buildings or structures may not be erected. (Ord. 740 section 10.1.20 (B)[part], 1984)

16.04.105 Cell Coverage Area.

A geographic area where a single radio transmission sending/receiving station (per provider) and the equipment necessary to connect these radio calls to land lines or other cells are located. (Ord. 981 section 17, 1997, Ord. 1539, 2020)

16.04.110 Central business district (CBD).

Central business district (CBD) means the downtown area of Canby, defined generally by zoning or designation on the Land Use Map of the Comprehensive Plan for downtown commercial development. (Ord. 740 section 10.1.20 (B)[part], 1984)

16.04.120 City.

City means the City of Canby, Oregon. (Ord. 740 section 10.1.20(B)[part], 1984)

16.04.125 City Planner.

City Planner means the person appointed by the city administrator as supervisor of the day-to-day operations of Canby's city planning functions, or another staff person he or she designates for a particular function. Also referred to as "Planning Director." (Ord. 890 section 5, 1993; Ord. 1080, 2001)

16.04.127 Collocation.

Collocation. Defined in 47 C.F.R. § 1.6002(g). Term describes: (1) mounting or installing an antenna facility on a preexisting structure, and/or (2) modifying a structure for the purpose of mounting or installing an antenna facility on that structure. "Collocate" has a corresponding meaning. A collocation includes supporting ancillary equipment that is required to operate the collocated antennas. (Ord. 1539, 2020)

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16.04.128 Commercial Recreation Uses.

Commercial recreation uses means uses intended to provide for gymnastics, tennis, racquetball and other sport-related centers that require oversized indoor space and facilities. (Ord. 960, section 1, 12/18/96)

16.04.130 Commission.

Commission means the Planning Commission of the city. (Ord. 740 section 10.1.20(B)[part], 1984)

16.04.135 Conditionally suitable site.

For purposes of siting wireless macro telecommunications systems facilities, any land planned and zoned Residential / Commercial or Downtown Commercial. (Ord. 981 section 17, 1997, Ord. 1539, 2020)

16.04.137 Corner clearance.

Corner clearance means the distance from an intersection of a public or private road to the nearest access connection, measured from the closest edge of the pavement of the intersecting road to the closest edge of the pavement of the connection along the traveled way. (Ord. 1043 section 3, 2000)

16.04.140 Council.

Council means the City Council of Canby, Oregon. (Ord. 740 section 10.1.20(B)[part], 1984)

16.04.145 Cross access.

Cross access means a service drive providing vehicular access between two or more contiguous sites so the driver need not enter the public street system. (Ord. 1043 section 3, 2000)

16.04.150 Curb line.

Curb line means a line along the edge of the curb nearest the street lot line, not necessarily the right-of-way line. (Ord. 740 section 10.1.20(B) [part], 1984)

16.04.155 Day care facility.

Day care facility means any facility that provides day care to children, including a day nursery, nursery school group, home of a family day care provider, or similar unit operating under any name, but not including any:

- A. Facility providing care that is primarily educational, unless provided to a preschool child for more than four hours a day.
- B. Facility providing care that is primarily supervised training in a specific subject, including but not limited to dancing, drama, music or religion.
- C. Facility providing care that is primarily an incident of group athletic or social activities sponsored by or under the supervision of an organized club or hobby group.
- D. Facility operated by a school district, political subdivision of this state, or a governmental agency.
- E. Residential facility licensed under ORS 443.400 to 443.455.
- F. Babysitters. (Ord. 890 section 6, 1993)

16.04.158 Detached telecommunications facility.

A pole, tower or other structure designed and intended to support telecommunications antennas and other equipment. (Ord. 981 section 17, 1997, Ord. 1539, 2020)

16.04.160 Development plan.

Development plan means any plan adopted by the Planning Commission for the guidance of growth and improvement of the city, including modifications or refinements which may be made from time to time. (Ord. 740 section 10.1.20(B)[part], 1984)

16.04.170 Dwelling, duplex-dwelling, two-family.

Duplex dwelling or two-family dwelling means a building containing two dwelling units located on the same lot or parcel. (Ord. 740 section 10.1.20(B)[part], 1984; Ord 1514, 2019)

16.04.180 Dwelling, multi-family.

Multi-family dwelling means a building containing three or more dwelling units located on the same lot or parcel. (Ord. 740 section 10.1.20(B) [part], 1984; Ord. 1514, 2019)

16.04.190 Dwelling, single-family.

Single-family dwelling means a detached building containing one dwelling unit. Manufactured homes shall not be considered to be single-family dwellings for the purposes of this chapter unless found to meet all city building, mechanical, electrical and other construction codes applicable to conventional units built on the site. (Ord. 740 section 10.1.20 (B)[part], 1984; Ord. 1514, 2019)

16.04.195 Dwelling, Townhouse (Common Wall).

Means single-family attached common wall dwellings with each dwelling unit located on a separate lot. There shall be no more than six attached townhouse dwelling units in a row, and the combined single-family units shall not exceed 120 feet in length. (Ord. 1514, 2019)

16.04.200 Dwelling unit.

Dwelling unit means one or more rooms designed for occupancy by one family and not having more than one cooking facility. (Ord. 740 section 10.1.20(B)[part], 1984)

16.04.210 Easement.

Easement means a grant of the right to use an area of land for specific purposes. (Ord. 740 section 10.1 20(B)[part], 1984)

16.04.212 Eco-roof

Eco-roof means a vegetated roof constructed for water quality and quantity control. Eco-roofs are vegetated roof covers with growing media and plants taking the place of bare membrane, gravel ballast, shingles or tiles. The number of layers and the layer placement vary from system to system and roof type, but all eco-roofs include a single to multi-ply waterproofing layer, drainage, growing media and the plants, covering at least 50% of the roof deck surface. (Ord. 1338, 2010)

16.04.215 Equipment shelters.

For purposes of siting wireless telecommunications systems facilities, the buildings, structures, cabinets or vaults used to house and protect the equipment necessary to connect/relay radio signals from cell site to cell site and to land line systems. Associated equipment such as air conditioning or emergency generators shall be included in this definition of equipment shelters. (Ord. 981 section 17, 1997)

16.04.218 Façade.

Façade means an exterior face of a building. (Ord 1296, 2008)

16.04.220 Family.

Family means an individual or two or more individuals related by blood, marriage, adoption, or legal guardianship living together in a dwelling unit in which meals or lodging may also be provided for not more than two additional individuals excluding servants; or

a group of not more than five individuals, excluding servants, who need not be related by blood, marriage, adoption or legal guardianship living together in a dwelling unit. Five or fewer handicapped persons, along with those individuals charged with caring for such persons and sharing a common dwelling unit, shall be considered to be a family for purposes of this title. (Ord. 740 section 10.1.20(B) [part], 1984)

16.04.221 Floor area ratio.

Floor area ratio means a method of calculating structural massing on a lot. Floor Area Ratio is expressed as a ratio of x divided by y, where x is equal to the sum of the gross floor area of all stories above grade plane, as measured to the outside surface of exterior walls, and y is equal to the lot area net of any publicly dedicated right-of-way or land. Detached accessory structures and detached or attached parking structures above grade plane are not included in the gross floor area calculation. (Ord 1296, 2008)

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16.04.221.1 Food Cart Pod

A site containing space for one or more food carts and associated amenities under common management on private property.

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16.04.222 Foster Home.

"Foster home" means any home maintained by a person who has under the care of the person in the home any child under the age of 21 years unattended by the child's parent or guardian, for the purpose of providing the child with care, food and lodging, but does not include items listed in ORS 418.625 a-f.(Ord. 1514, 2019)

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16.04.223 Frontage road.

Frontage road means a public or private drive which generally parallels a public street between the right-of-way and the front building setback line. The frontage road provides access to private properties while separating them from the arterial street (see also service roads). (Ord. 1043 section 3, 2000)

16.04.225 FCC.

The Federal Communications Commission; the federal agency that regulates interstate and international communications by radio, television, wire, satellite and cable. (Ord. 981 section 17, 1997)

16.04.228 Grade plane.

Grade plane means the average of finished ground level adjoining the building at exterior walls. Where the finished ground level slopes away from the exterior walls, the reference plane shall be established by the lowest points within the area between the building and the lot line or, where the lot line is more than 6 feet from the building, between the building and a point 6 feet from the building. (Ord 1296, 2008)

16.04.230 Height of building.

Height of building means the vertical distance from the grade to the highest point of the coping of a flat roof or to the deck line of a mansard roof or to the height of the highest gable of a pitch or hip roof. (Ord. 740 section 10.1.20(B) [part], 1984; Ord. 1514, 2019)

16.04.240 Home occupation.

Home occupation means a lawful activity commonly carried on within a dwelling by members of the family occupying the dwelling with not more than one non-resident employee being engaged, provided that:

- A. The residential character of the building is maintained;
- B. The activity occupies less than one-quarter of the ground floor area of the building;
- C. The activity is conducted in such a manner as not to give an outward appearance nor manifest any characteristic of a business in the ordinary meaning of the term nor infringe upon the rights of neighboring residents to enjoy the peaceful occupancy of their homes. Business visitors to the premises shall not exceed eight (8) per day and delivery trucks shall not exceed one (1) per day;
- D. The occupation shall not be carried on in an accessory building of the residence where the building is larger than six hundred (600) square feet;
- E. No signs are permitted, except for a single unilluminated nameplate not to exceed two (2) square feet in area;
- F. All home occupations require a city business license. (Ord. 890 section 7, 1993; Ord. 830 section 1, 1989; Ord. 740 section 10.1.20(B) [part], 1984)

16.04.250 Hotel.

Hotel means a building in which lodging is provided for more than ten guests for compensation and in which no provision is made for cooking in the rooms. (Ord. 740 section 10.1.20(B) [part], 1984)

16.04.253 Impervious surface

Impervious surface means a surface area that creates a barrier to or hinders the entry of water into the soil in comparison with natural conditions prior to development, thus causing water to run off the surface in greater quantities or at an increased rate of flow. Impervious surfaces include, but are not limited to, buildings, paved parking areas and driveways, roads, sidewalks, patios, packed earth, and oiled surfaces. Open, uncovered retention/detention facilities, green roofs, and permeable surfacing materials shall not be considered impervious surfaces. Roof surfaces are also considered 'pervious' when 100% of the annual average roof runoff is captured and reused on-site for irrigation or approved interior uses. (Ord. 1338, 2010)

16.04.255 Infill homes.

Infill homes mean existing and new single family dwellings, manufactured homes, two-family dwellings, duplexes and triplexes on lots that are located in an R-1 or R-1.5 zoning district, and that have existing homes on two adjacent sides. Each adjacent home must be within 25 feet of the common lot line with the infill homes and have pre-existed for at least 5 years (dated from the existing homes final building permit approval). (Ord. 1107, 2002; Ord 1237, 2007; Ord 1323, 2010)

16.04.257 Infiltration

Infiltration means the process or rate at which water percolates from the land surface into the ground. Infiltration is also a general category of best management practices (BMP) designed to collect runoff and allow it to flow through the ground for pollutant removal. (Ord. 1338, 2010)

16.04.260 Intersection.

Intersection means the place where two streets meet or cross. (Ord. 740 section 10.1.20(B) [part], 1984)

16.04.265 Joint access (or shared access).

Joint access (or shared access) means a driveway connecting two or more contiguous sites to the public street system. (Ord. 1043 section 3, 2000)

16.04.270 Kennel.

Kennel means a place where four or more dogs more than four months of age are kept on one lot or contiguous lots under one ownership. (Ord. 740 section 10.1.20(B) [part], 1984)

16.04.275 Lattice tower.

For purposes of siting wireless telecommunications systems facilities, a telecommunications support structure which consists of metal crossed strips or bars and which supports antennas and related equipment for one or more telecommunications provider. (Ord. 981 section 17, 1997, Ord. 1539, 2020)

16.04.280 Loading space.

Loading space means an off-street space for the temporary parking of a commercial vehicle or truck while loading or unloading merchandise or materials and which space has access to a street. (Ord. 740 section 10.1.20(B) [part], 1984)

16.04.290 Lot.

Lot means a single parcel or tract of land for which a legal description has been filed in the office of the county recorder or the boundaries of which are shown on a recorded subdivision plat. (Ord. 740 section 10.1.20(B) [part], 1984)

16.04.300 Lot area.

Lot area means the total horizontal area within the boundary lines of a lot, excluding the access strip servicing a flag lot. (Ord. 740 section 10.1.20(B) [part], 1984)

16.04.310 Lot, corner.

Corner lot means a lot abutting two intersecting streets other than an alley, provided that the streets do not intersect at an angle greater than one hundred thirty-five degrees. (Ord. 740 section 10.1.20 (B) [part], 1984)

16.04.315 Lot depth.

Lot depth means the average distance from the front lot line to the rear lot line. (Ord. 1043 section 3, 2000)

16.04.318 Lot, flag.

A flag lot is a lot that does not meet minimum frontage requirements and where access to the public road is by a narrow, private right-of-way. (Ord. 1043 section 3, 2000)

16.04.320 Lot front.

Lot front means the street lot line on a corner lot which the principal use or structure is facing. If no such use or structure exists, it means the street side having the shorter length. If the sides are of approximately equal length, the City Planner may designate the lot front. (Ord. 740 section 10.1.20(B) [part], 1984)

16.04.321 Lot frontage.

Lot frontage means that portion of a lot extending along a street right-of-way line. (Ord. 1043 section 3, 2000)

16.04.330 Lot, interior.

Interior lot means a lot other than a corner lot. (Ord. 740 section 10.1.20(B) [part], 1984)

16.04.340 Lot line.

Lot line means the property line bounding a lot. (Ord. 740 section 10.1.20(B) [part], 1984)

16.04.350 Lot line, interior.

Lot line, interior means all lot lines which separate one parcel from another, other than street lot lines. (Ord. 740 section 10.1.20(B) [part], 1984)

16.04.360 Lot line, street.

Street lot line means a lot line that separates the lot from a street other than an alley. The street lot line is not generally the same as the curb line. (Ord. 740 section 10.1.20(B) [part], 1984)

16.04.370 Lot, through.

Through lot means a lot having frontage on two parallel or approximately parallel streets other than alleys. (Ord. 740 section 10.1.20(B) [part], 1984)

16.04.380 Lot width.

Lot width means the average width of a lot when measured at the front and rear setback lines for a principal use. (Ord. 740 section 10.1.20(B) [part], 1984)

16.04.383 Low impact development

Low impact development (LID) means a stormwater management and land development strategy applied at the parcel, multiple parcel and/or subdivision level that emphasizes conservation and use of on-site natural features integrated with engineered, small-scale controls to more closely mimic predevelopment hydrologic functions. LID tools are designed to reduce environmental impacts of development, such as increased storm water runoff due to impervious areas, poor water quality and inconsistent water quantity in streams and rivers. LID techniques control storm water runoff volume and reduce pollutant loadings to receiving waters. Not all sites are suitable for LID. Considerations such as soil permeability, depth of water table and slope should be considered, in addition to other factors. LID techniques may not completely replace the need for conventional stormwater controls. (Ord 1338, 2010)

16.04.385 Lowest floor.

Lowest floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this title found in Chapter 16.40 (Hazard Overlay Zone). (Ord. 804 section 2(A), 1987)

16.04.390 Manufactured home (Mobile Home)

"Manufactured home" means a structure constructed for movement on public highways that has sleeping, cooking, and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes and that was constructed in accordance with federal manufactured housing construction and safety standards and regulations in effect at the time of construction. This definition includes manufactured dwelling, manufactured home, mobile home, and residential trailer as those terms are defined in ORS 446.003. A manufactured home shall be certified to meet the 1976 HUD Standards, as amended. The definition does not include recreational vehicles, travel trailers, park trailers or structures or vehicles which have a state of Oregon or U.S. Government label designating them as a recreational vehicle. It also does not include buildings or structures subject to the Structural Specialty Code adopted pursuant to ORS 455.100 through 455.450. (Ord 1514, 2019)

16.04.400 Manufactured (Mobile) home park.

Manufactured (Mobile) home park means a tax lot or lots where two or more manufactured homes are used for human occupancy and where the space is available for rent or lease. (Ord. 740 section 10.1.20(B) [part], 1984; Ord. 1514, 2019)

16.04.410 Manufactured (Mobile) home subdivision.

Manufactured (Mobile) home subdivision means a subdivision of property where individual lots are available for the placement of manufactured homes. (Ord. 740 section 10.1.20(B) [part], 1984; Ord. 1514, 2019)

16.04.415 Mobile Food Vending Unit.

A vehicle or trailer designed to be portable and not affixed to any structure, from which food made to order is vended, sold, served, displayed, offered for sale or given away. The vehicle must not require a special permit from the Oregon Department Transportation to be moved.

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16.04.420 Modular home.

Modular home means a residential structure constructed of one or more prefabricated parts which meet all city building, plumbing, mechanical, electrical and other construction codes applicable to conventional units which might be built on the site. (Ord. 740 section 10.1.20 (B) [part], 1984)

16.04.425 Monopole.

For purposes of siting wireless telecommunications systems facilities, a WTS support structure which consists of a single tapered steel pole and which supports antennas and related equipment for one or more WTS provider. (Ord. 981 section 17, 1997)

16.04.430 Motel.

Motel means a building or group of buildings on the same lot containing guest units with separate and individual entrances and consisting of individual sleeping quarters, detached or in connected rows, with or without cooking facilities, for rental. (Ord. 740 section 10.1.20(B) [part], 1984)

16.04.433 Nail Salons.

Establishments primarily engaged in providing nail care services, such as manicures, pedicures, and nail extensions. (Ord. 1514, 2019)

16.04.435 Neighborhood activity center.

Neighborhood activity center means an attractor or destination for residents of surrounding residential areas. Includes, but is not limited to, existing or planned schools, parks, shopping areas, transit stops, and employment areas. (Ord. 1043 section 3, 2000)

16.04.438 Nonconforming access features.

Nonconforming access features means features of the property access that existed prior to the date of ordinance adoption and do not conform with the requirements of this ordinance. (Ord. 1043 section 3, 2000)

16.04.440 Nonconforming structure, lot or use.

Nonconforming structure, lot or use means a structure, lot or use which lawfully existed prior to the adoption of zoning requirements for the zone in which it is located and with which it does not comply. (Ord. 740 section 10.1.20(B)[part], 1984)

16.04.445 Nursing home

Means any institution or facility defined as a long term care facility for licensing purposes under state statute or the rules of the Department of Human Services, including a long term care facility operated as part of a dual facility. "Dual facility" means a facility that operates both a hospital and a long term care facility on the same campus. (ORS 678.710) (Ord. 1514, 2019)

16.04.450 Parent parcel.

Parent parcel means a lot or parcel of land from which other parcels or lots are divided. (Ord. 740 section 10.1.20(B) [part], 1984)

16.04.460 Parking space.

Parking space means a rectangle in the dimensions as set forth in Division III of this title together with maneuvering and access space required for a conventional automobile to park within the rectangle. (Ord. 740 section 10.1.20(B) [part], 1984)

16.04.470 Partition.

Partition means to divide an area or tract of land into two or three parcels within the calendar year when such area or tract of land exists as a unit or contiguous units of land under single ownership at the beginning of such year. Partitioned land does not include any adjustment of a lot line by the relocation of a common boundary where an additional parcel is not created and where the existing parcel reduced in size by the adjustment is not reduced below the minimum lot size. (Ord. 1514, 2019)

16.04.480 Pedestrian way.

Pedestrian way means a right-of-way for pedestrian traffic. (Ord. 740 section 10.1.20(B) [part], 1984)

16.04.490 Person.

Person means an individual, firm, partnership, corporation, company, association, syndicate, or any legal entity, and including any trustee, receiver, assignee, or other similar representative thereof. (Ord. 740 section 10.1.20 (B) [part], 1984)

16.04.500 Planning Commission.

Planning Commission means the Planning Commission of the City of Canby, Oregon. (Ord. 740 section 10.1.20(B) [part], 1984)

16.04.510 Plat.

Plat means the map or drawing on which the subdivider's plan of subdivision is presented and which he submits for approval and intends in final form to record. Plat includes preliminary, tentative and final plats. (Ord. 740 section 10.1.20(B)[part], 1984)

16.04.512 Porches, covered.

Covered porches must not be enclosed by walls that are more than 42 inches in height, for 50 percent or more of their perimeter. (Ord. 1107, 2002)

16.04.514 Preapplication conference.

Preapplication conference means a meeting of the representatives of the city departments and other affected agencies, as determined by the City, to review and provide initial input on land use applications or other proposals. (Ord. 1237, 2007)

16.04.515 Preferred site.

For purposes of siting wireless telecommunications systems facilities, any land planned and zoned Light Industrial or Heavy Industrial. (Ord. 981 section 17, 1997)

16.04.516 Public facility, major.

A major public facility is any public service improvement or structure, other than transportation projects, developed by or for a public agency that is not defined as a minor public facility. Transportation projects are covered by Section 16.08.130. (Ord. 1237, 2007)

16.04.517 Public facility, minor.

A minor public facility includes the following public service improvements or structures developed by or for a public agency:

- A. Minor utility structures, except substations, but including poles, lines, pipes, telecommunications facilities or other such facilities.
- B. Sewer, storm drainage, or water system structures except treatment plants or reservoirs, but including pump stations, manholes, valves, hydrants or other portions of the collection, treatment and distribution systems located within public property or public easements.
- C. Street improvements within existing developments including sidewalks, curbs, gutters, catch basins, paving, signs and traffic control devices and street lights.
- D. Transit improvements, such as shelters or pedestrian and bicycle safety improvements, located within public right of way or public easements or on public property.
- E. School improvements which will not increase the capacity of the school nor create significant additional traffic or other impacts on the surrounding neighborhood.
- F. Park improvements which will not create significant additional motor or foot traffic impact on the surrounding neighborhood. (Ord. 1237, 2007)

16.04.519 Reasonably direct.

A reasonably direct route does not deviate unnecessarily from a straight line or is a route that does not involve a significant amount of out-of-direction travel for likely users. (Ord. 1043 section 3, 2000; Ord. 1237, 2007)

16.04.520 Recommendation.

Recommendation includes any staff report or report from the Planning Commission to the City Council. (Ord. 740 section 10.1.20(B) [part], 1984)

16.04.525 Residential facility

Means a residential care, residential training or residential treatment facility, as those terms are defined in ORS 443.400, that provides residential care alone or in conjunction with treatment or training or a combination thereof for six to fifteen individuals who need not be related. Staff persons required to meet licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential facility. (ORS 197.660)(1)) Under ORS 197.667(4), the city may require an applicant proposing to site a residential facility to supply the city with a copy of the entire application and supporting documentation for state licensing of the facility except for information that is exempt from public disclosure. (Ord. 1514, 2019)

16.04.527 Residential home

Means a residential treatment or training home, as defined in ORS 443.400, a residential facility registered under ORS 443.480 to 443.500 or an adult foster home licensed under ORS 443.705 to 443.825 that provides residential care alone or in conjunction with treatment or training or a combination thereof for five or fewer individuals who need not be related. Staff persons required to meet licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential home. (ORS 197.660(2)) (Ord. 1514, 2019)

16.04.530 Right-of-way.

Right-of-way means the area between the boundary lines of a street or other easement. (Ord. 740 section 10.1.20(B) [part], 1984)

16.04.540 Roadway.

Roadway means the portion or portions of a street right-of-way developed for vehicular traffic. (Ord. 740 section 10.1.20(B) [part], 1984)

16.04.545 Safe and convenient bicycle and pedestrian routes.

Safe and convenient bicycle and pedestrian routes:

A. Are reasonably free from hazards; and

B. Provide a reasonably direct route of travel between destinations, considering that the optimum travel distance is one-half mile for pedestrians and three miles for bicyclists. (Ord. 1043 section 3, 2000)

16.04.547 Self Storage Unit/Ministorage Warehouse (NAICS 531130)

Establishments primarily engaged in renting or leasing space for self-storage. These establishments provide secure space (i.e., rooms, compartments, lockers, containers, or outdoor space) where clients can store and retrieve their goods.

16.04.550 Setback.

Setback means a distance which a structure is required to be set back from a lot line. Where specified in this title, some setbacks are measured from curbs or projected curb lines rather than lot lines. Decks 30 inches or less above grade are exempt from setback standards. (Ord. 830 section 2, 1989; Ord. 740 section 10.1.20(B) [part], 1984; Ord. 955 section 1, 1996; Ord. 1514, 2019)

16.04.560 Sidewalk.

Sidewalk means a pedestrian walkway with permanent surfacing to city standards. (Ord. 740 section 10.1.20(B)[part], 1984)

16.04.565 Stealth design.

Stealth design is a variety of techniques used to disguise or mitigate the visual presence of telecommunications support structures, antennas, and other equipment. Including, but not limited to: screening by mature trees (75 percent or more of the pole beneath the tree canopy), mimicking common features of the urban landscape (light poles, church steeples, trees, etc.), painting antennas to match the color of supporting building walls, or roof mounting behind parapets. (Ord. 981 section 17, 1997, Ord. 1539, 2020)

16.04.567 Story above grade plane.

Story above grade plane means any story having its finished floor surface entirely above grade plane, except that a basement shall be considered as a story above grade plane where the finished surface of the floor above the basement is either (1) more than 6 feet above grade plane, or (2) more than 12 feet above the finished ground level at any point. (Ord 1296, 2008)

16.04.570 Street.

Street means the entire width between the right-of-way line of every way which provides for public use for the purpose of vehicular and pedestrian traffic, and the placement of utilities and including the terms road, highway, lane, place, avenue, alley, or other similar designations.

A. Alley means a narrow street through a block primarily for vehicular service access to the back or side of properties otherwise abutting on another street.

B. Arterial means a street of considerable continuity which is primarily a traffic artery for intercommunication between large areas.

C. Collector means a street supplementary to the arterial street system and a means of intercommunication between this system and smaller areas used to some extent for through traffic and to some extent for access to abutting properties.

D. Neighborhood connector means a street supplementary to the collector street system providing local access to adjacent properties as well as movement into or out of a neighborhood or between neighborhoods.

E. Cul-de-sac (dead-end street) means a short street having one end open to traffic and being terminated by a vehicle turnaround.

F. Half-street means a portion of the width of a street, usually along the edge of a subdivision, where the remaining portion of the street could be provided in another subdivision.

G. Marginal access or frontage street means a minor street parallel and adjacent to a major arterial street providing access to abutting properties, but protected from through traffic.

H. Minor street means a street intended exclusively for access to abutting properties. (Ord. 740 section 10.1.20(B) [part], 1984; Ord. 1043 section 3, 2000)

I. Green street means a street that has been designed to integrate a system of stormwater management within its right of way. Green streets are intended to reduce the amount of runoff that is piped directly to the city stormwater system and/or streams and rivers. Green streets make the best use of the street tree canopy and natural filtration and drainage systems for stormwater interception and provide temperature mitigation and air quality improvements. (Ord. 1338, 2010)

16.04.580 Structural alteration.

Structural alteration means any change in the supporting members of a structure, including the supporting parts of foundations, bearing walls or partitions, columns, beams, girders, or the roof. (Ord. 740 section 10.1.20(B)[part], 1984)

16.04.590 Structure.

Structure means that which is built or constructed. Structure means an edifice or building of any kind or any piece of work artificially built up or composed of parts joined in some manner and which requires a location on the ground. (Ord. 740 section 10.1.20(B) [part], 1984)

16.04.595 Stub-out (or stub street).

Stub-out (or stub street) means a portion of a street or cross access drive used as an extension to an abutting property that may be developed in the future. (Ord. 1043 section 3, 2000)

16.04.600 Subdivide land.

Subdivide land means to divide a parcel of land into four or more lots in a given calendar year for the purpose of transfer of ownership or building development, whether immediate or future, when such parcel exists as a unit or contiguous units under a single ownership. (Ord. 740 section 10.1.20(B) [part], 1984)

16.04.610 Subdivision.

Subdivision means either an act of subdividing land or tract of land subdivided as defined in this chapter. (Ord. 740 section 10.1.20(B) [part], 1984)

16.04.615 Traffic Impact Analysis.

Traffic Impact Analysis A comprehensive traffic analysis of a development proposal which includes trip generation, analysis of access/egress, accident analysis, intersection analysis, and traffic flow analysis. (Ord. 1019 section 22, 1999)

16.04.620 Trailer coach.

Trailer coach means a trailer or motor home not certified as meeting the HUD 1976 standards or as may be amended for design and construction of a mobile home. (Ord. 740 section 10.1.20(B) [part], 1984)

16.04.630 Trailer park.

Trailer park means a tax lot or lots where space is rented or leased for the location of two or more trailer coaches, or some combination of mobile homes and trailer coaches for human habitation. (Ord. 740 section 10.1.20(B) [part], 1984)

16.04.635 Trip generation study.

Trip Generation Study means an analysis of the number of vehicle trips generated by a development proposal. Trip generation for commercial/industrial/residential/ institutional projects are estimated through the Institute of Transportation Engineers' manual. The results of the trip generation study will determine the need for a Traffic Impact Analysis. If the trip generation study determines the use will generate more than 100 vehicle trips per day, the City Traffic Engineer may require a Traffic Impact Analysis. (Ord. 1019 section 23, 1999)

16.04.640 Urban Growth Boundary (UGB)

Urban Growth Boundary (UGB) means the area specifically delineated in the city's comprehensive plan as being already urbanized or available for urban development. (Ord. 740 section 10.1.20(B) [part], 1984)

16.04.650 Urbanizable.

Urbanizable is the term applied to property which is within the city's Urban Growth Boundary and which is planned for eventual urban development. (Ord. 740 section 10.1.20(B) [part], 1984)

16.04.660 Use.

Use means the purpose for which land or a structure is designed, arranged, or for which it is occupied or maintained. (Ord. 740 section 10.1.20 (B) [part], 1984)

16.04.666 Vicinity.

Vicinity means nearby; within the same neighborhood. It should be noted that in applying the criteria of this chapter, the term vicinity will be applied to a larger area when warranted by a large project or a project which is expected to have an impact on a large area. (Ord. 805 section 1, 1987)

16.04.670 Vision clearance area.

Vision clearance area means the triangle area at the intersection of two streets, a driveway and a street, or a street and a railroad, two sides of which are measured from the corner intersection of the existing or proposed curb lines to a distance specified in this title. The third side of the triangle is a line across the corner of the lot joining the ends of the other two sides. Where the curb lines at intersections have rounded corners, the curb lines will be extended in a straight line to their points of intersection. No plantings, structures, or temporary or permanent obstructions shall be located within a vision clearance area, extending from two and one-half to ten feet above the curb or street elevation. Except, however, that one tree trunk not greater than eighteen inches in diameter shall be permitted within a vision clearance area. (Ord. 830 section 3, 1989; Ord. 740 section 10.1.20(B) [part], 1984)

16.04.672 Walkway.

Walkway means a hard-surfaced area intended and suitable for pedestrians, including sidewalks and the surfaced portions of accessways. (Ord. 1043 section 3, 2000)

16.04.675 Wireless telecommunications facilities.

Wireless Telecommunications Facilities means the site, structures, equipment and appurtenances used to transmit, receive, distribute, provide or offer wireless telecommunications services. This includes, but is not limited to antennas, poles, towers, cables, wires, conduits, ducts, pedestals, vaults, buildings, electronics and switching equipment. (Ord. 981 section 17, 1997, Ord. 1539, 2020)

16.04.676 Wireless Telecommunications

Wireless Telecommunications means the system that uses radio frequency, infrared, microwave or other types of electromagnetic or acoustic waves to transmit data, voice and information. (Ord. 1539, 2020)

16.04.680 Yard.

Yard means an open space on a lot which is unobstructed from a point two and one-half feet above the general ground level of the graded lot upward, except as otherwise provided in this title. (Ord. 740 section 10.1.20(B) [part], 1984)

16.04.690 Yard, interior.

Interior yard means a yard lying between the nearest point of a building and measured horizontally to an interior lot line. (Ord. 1296; 2008; Ord. 740 section 10.1.20(B) [part], 1984)

16.04.700 Yard, rear.

Rear yard means a yard lying to the rear of the principal building on the lot and generally opposite the lot front. (Ord. 740 section 10.1.20 (B) [part], 1984)

16.04.710 Yard, street.

Street yard means a yard lying between the nearest point of a building and the street and measured horizontally to the street lot line. (Ord. 740 section 10.1.20(B) [part], 1984)

16.04.715 Zero-lot line development.

Zero-lot line development means detached dwellings required to have a side yard setback on only one side. (Ord. 1111 section 4, 2003)

DIVISION III. – ZONING

Chapter 16.08

GENERAL PROVISIONS

Sections:

- 16.08.010 Compliance with title.**
- 16.08.020 Zoning map.**
- 16.08.030 Zone boundaries.**
- 16.08.040 Zoning of annexed areas.**
- 16.08.050 Prohibited parking.**
- 16.08.070 Illegally created lots.**
- 16.08.080 Area and yard reductions.**
- 16.08.090 Sidewalks required.**
- 16.08.100 Height allowances.**
- 16.08.110 Fences.**
- 16.08.115 Arbors**
- 16.08.130 Standard transportation improvements.**
- 16.08.140 Temporary vendor.**
- 16.08.150 Traffic Impact Study (TIS).**
- 16.08.160 Safety and Functionality Standards**

16.08.010 Compliance with title.

No building, structure, or land shall hereafter be used or occupied, and no building, structure or part thereof shall hereafter be erected, constructed, reconstructed, moved or structurally altered contrary to the provisions of this title. No lot area, yard, or required off-street parking or loading area existing on or after the effective date of the ordinance codified in this title shall be reduced in area, dimension, or size below the minimums required by this title, nor shall any lot area, yard, or required off-street parking or loading area that is required by this title for one use be used to satisfy the lot area, yard, off-street parking or loading area requirement for any other use, except as may be provided in this title. (Ord. 740 section 10.3.05(A), 1984)

16.08.020 Zoning map.

- A.** The location and boundaries of the zones designated in this division are established as shown on the map entitled "Zoning Map of the City of Canby" dated with the effective date of the ordinance codified in this title and signed by the Mayor and the city recorder and hereafter referred to as the zoning map.
- B.** The signed copy of the zoning map shall be maintained on file in the office of the city recorder and is made a part of this title. (Ord. 740 section 10.3.05(B), 1984)

16.08.030 Zone boundaries.

Unless otherwise specified, zone boundaries are lot lines or the centerline of streets, railroad rights-of-way, or such lines extended. Where a zone boundary divides a lot into two or more zones, the entire lot shall be considered to be in the zone containing the greater lot area, provided the boundary adjustment is a distance of less than twenty feet. (Ord. 740 section 10.3.05(C), (1984)

16.08.040 Zoning of annexed areas.

Zoning of newly annexed areas shall be considered by the Planning Commission in its review and by the Council in conducting its public hearing for the annexation. (Ord. 740 section 10.3.05(D), 1984)(Ord. 1294, 2008)

16.08.050 Prohibited parking.

In addition to the provisions of the motor vehicle laws of Oregon regulating parking, no person shall park any vehicle, except an automobile, motorcycle, van or pickup truck rated no larger than one ton, on any public street or alley within any residential zone, except for an emergency or for the purpose of loading or unloading. (Ord. 740 section 10.3.05(E), 1984)

16.08.060

(Ord. 740 section 10.3.05(F), 1984; renumbered as 16.64.040(I)(6) by Ord. 1043 section 3, 2000)

16.08.070 Illegally created lots.

In no case shall a lot which has been created in violation of state statute or city ordinance be considered as a lot of record for development purposes, until such violation has been legally remedied. (Ord. 740 section 10.3.05(G), 1984)

16.08.080 Area and yard reductions.

- A.** When there are existing dwellings on the lots situated immediately to each side of a given lot and each of those neighboring lots has less than the required street yard depth, the street yard of the subject property may be reduced to the average street yard of those two abutting lots.
- B.** When there is an existing dwelling situated on a lot immediately to either side of a given lot which fronts on the same street, and such existing dwelling has a street yard which is less than half of that required in the zone, the street yard of the subject property may be reduced to a depth which is halfway between that normally required in the zone and that of the existing dwelling on the neighboring lot.
- C.** If, on the effective date of the ordinance codified in this title, a lot or the aggregate of contiguous lots held in a single ownership has less than the required area or width, the lot or lots may be occupied by a permitted use subject to the other requirements of the zone; provided that if the deficiency is one of area, residential uses shall be limited to single-family dwellings; and further provided that if the deficiency is one of width, each required interior yard may be reduced by one foot for each four feet of deficient width. In no case, however, shall such reduction result in an interior yard of less than five feet.

D. Where two or more contiguous substandard recorded lots are in common ownership and are of such size to constitute at least one conforming zoning lot, such lots or portions thereof shall be so joined, developed, and used for the purpose of forming an effective and conforming lot or lots. Such contiguous substandard lots in common ownership shall be considered as being maintained in common ownership after the effective date of the ordinance codified in this title for zoning purposes. (Ord. 740 section 10.3.05(H), 1984; Ord. 1237, 2007)

16.08.090 Sidewalks required.

A. In all commercially zoned areas, the construction of sidewalks and curbs (with appropriate ramps for the handicapped on each corner lot) shall be required as a condition of the issuance of a building permit for new construction or substantial remodeling, where such work is estimated to exceed a valuation of twenty thousand dollars, as determined by the building code. Where multiple permits are issued for construction on the same site, this requirement shall be imposed when the total valuation exceeds twenty thousand dollars in any calendar year.

B. The Planning Commission may impose appropriate sidewalk and curbing requirements as a condition of approving any discretionary application it reviews. (Ord. 740 section 10.3.05(I), 1984)

16.08.100 Height allowances.

The following types of structures or structural posts are not subject to the building height limitations: chimneys, cupolas, tanks, church spires, belfries, derricks, fire and hose towers, flagpoles, water tanks, elevators, windmills, utility poles and other similar projections. The height of wireless telecommunications systems facilities shall be in accordance with section 16.08.120. (Ord. 740 section 10.3.05(J), 1984; Ord. 981 section 18, 1997)

16.08.110 Fences.

A. Fences not more than three and one-half feet in height may be constructed within the street setbacks of any R-1, R-1.5, R-2 or C-1 zone. Fences not more than six feet in height may be constructed in any interior yard, rear yard, or street yard along an alley; provided, however, that in no case shall a fence be constructed in violation of the requirements of a vision clearance area.

B. On corner lots, the 3.5-foot height limit will apply within the required setback along both street-facing yards.

C. No more than one row of fencing is allowed within a required street yard setback.

D. The Planning Commission may require sight-blocking or noise mitigating fences for any development it reviews.

E. Fences of up to eight feet in height are permitted for any development in C-2, C-M, M-1 or M-2, or Planned Unit Development zones.

F. No fence/wall shall be constructed throughout a subdivision, planned unit development or be part of a project that is/was subject to site and design review approval where the effect or purpose is to wall said project off from the rest of the

community unless reviewed and approved by the Planning Commission. (Ord. 890 section 8, 1993; Ord. 740 section 10.3.05(K), 1984; Ord. 955 section 2, 1996; Ord. 981 section 43, 1997)

G. In all zones, private fences along a public pedestrian/bicycle pathway shall comply with the following in order to provide security and visibility for pathway users while maintaining privacy for the residence.

1. Fencing installed as part of a new subdivision shall comply with either (a) or (b) below.
2. Fencing installed by a property owner on an individual lot shall comply with either (a), (b), or (c) below.
 - a. Solid fencing shall be no greater than four (4) feet in height; or
 - b. Fencing shall be constructed with black open wire material, wooden slats, or some other material that allows visual access between the pathway and adjacent uses; or
 - c. Solid fencing shall be set back at least three (3) feet from the property line that abuts the pathway.

H. Use of hazardous materials.

Fences and walls shall not be constructed of or contain any material which will do bodily harm, such as electric or barbed wire, razor wire, broken glass, spikes, or any other hazardous or dangerous material, except as follows:

- a. Barbed wire or electrified fences enclosing livestock are permitted in any zone permitting farm use. Electrified fences shall be posted or flagged at not less than 25-foot intervals with clearly visible warnings of the hazard when adjacent to developed areas.
- b. In commercial and industrial zones barbed wire is permitted attached to the top of a fence that is at least six foot in height above grade; provided, that barbed wire shall not extend over a street, sidewalk, alley or roadway. The attached barbed wire shall be placed at least six inches above the top of the fence. (Ord. 890 section 8, 1993; Ord. 740 section 10.3.05(K), 1984; Ord. 955 section 2, 1996; Ord. 981 section 43, 1997; Ord. 1338, 2010; Ord. 1514, 2019)

16.08.115 Arbors

A. Arbors that are constructed of proper design (height and setbacks) and in accordance with, the design standards of the particular zone where it is located are allowed with the following limitations:

1. Arbors shall be stand-alone structures and shall not be attached to a fence.
2. The arbor shall not exceed eight feet in height and shall maintain a five foot setback from the property line.
3. If the vegetation becomes too full or too high, the owner is financially responsible to rectify the situation, and to maintain the vegetation, and arbor;
4. The primary purpose of the arbor is to support and sustain foliage/vegetation, provide shade, recreational space, and ascetic amenity. (Ord. 1514, 2019)

16.08.130 Standard transportation improvements.

A. Pursuant to the Transportation Planning Rule, projects that are specifically identified in the Canby Transportation System Plan, for which the City has made all the required land use and goal compliance findings, are permitted outright and subject only to the standards established by the Transportation System Plan. This section pertains to additional transportation projects that may not be identified in the Canby Transportation System Plan, and whether the use is permitted outright or permitted subject to the issuance of a conditional use permit.

1. Except where otherwise specifically regulated by this ordinance, the following improvements are permitted outright:
 - a. Normal operation, maintenance, repair, and preservation of existing transportation facilities.
 - b. Installation of culverts, pathways, medians, fencing, guardrails, lighting, and similar types of improvements within the existing right-of-way.
 - c. Projects specifically identified in the Transportation System Plan as not requiring further land use regulation.
 - d. Landscaping as part of a transportation facility.
 - e. Emergency measures necessary for safety and the protection of property.
 - f. Acquisition of right-of-way for public roads, highways, and other transportation improvements designated in the Transportation System Plan, except for those that are located in exclusive farm use or forest zones.

- g. Construction of a local street or road as part of subdivision or land partition approved consistent with this Ordinance.
2. Except where otherwise specifically regulated by this ordinance, the following improvements are permitted as a conditional use:
- a. Construction, reconstruction, or widening, and other projects authorized by the Transportation System Plan but not included in the list of projects in the Transportation System Plan. These projects shall comply with the Transportation System Plan and applicable standards, and shall address the following criteria. For State projects that require an Environmental Impact Statement (EIS) or Environmental Assessment (EA), the draft EIS or EA shall be reviewed and used as the basis for findings to comply with the following criteria:
 - i. The project is designed to be compatible with existing land use and social patterns, including noise generation, safety, and zoning.
 - ii. The project is designed to minimize avoidable environmental impacts to identified wetlands, wildlife habitat, air and water quality, cultural resources, and scenic qualities.
 - iii. The project preserves or improves the safety and function of the facility through access management, traffic calming, or other design features.
 - iv. The project includes provision for bicycle and pedestrian circulation as consistent with the Comprehensive Plan and other requirements of this ordinance.
 - b. If review under this section indicates that the use or activity is not clearly authorized by the Transportation System Plan or this ordinance, a plan amendment shall be undertaken prior to or in conjunction with the conditional use permit review. (Ord. 1043 Section 3, 2000)

16.08.140 Temporary vendor.

Any person who exhibits goods or services for sale or for offer in a temporary manner on private property, from a vehicle, trailer, tent, canopy, shipping container, or other temporary structure, or from one's person or displayed on the ground or off the ground, shall first obtain permit approval in compliance with the following standards, and shall operate in compliance with this section and with all other applicable sections of the Canby Municipal Code.

- A. Exemptions. The following temporary activities do not require a Temporary Vendor permit, and are exempt from the standards in this section:
 - 1. Any person engaged in the mere delivery of any goods or services to a site, which were purchased from a regular place of business inside or outside the city;

2. Any person engaged in delivery, exhibition, sale or offering of food on a site for a period of time not to exceed 2 hours during any 24 hour period;
3. Any contractor who is engaged in constructing, maintaining, or repairing a structure, utility, equipment, or landscaping on a site; or
4. Any person conducting a garage sale per Section 5.04.020.

B. Permit process.

1. A request for a Temporary Vendor permit shall be processed as a Type I decision pursuant to the procedures set forth in Chapter 16.89. A Temporary Vendor permit applicant shall demonstrate that the proposed activity meets all fire and life safety codes, and is in compliance with this section and with all other applicable sections of the Canby Municipal Code.
2. An application for a Temporary Vendor permit shall include a site plan drawn to scale, which includes all existing lot lines, setbacks, structures, landscaped areas, paved areas, and parking and loading spaces; and illustrates the proposed location and layout of all the Temporary Vendor's structures, equipment, furnishings, signage, and inventory.
3. The Temporary Vendor activity (e.g., retail, restaurant, etc) shall be an outright permitted use in the zoning district in which it is located; Or if the use is conditionally permitted in the zoning district, a Conditional Use Permit approval shall be required prior to issuance of a Temporary Vendor permit.
4. A "Site and Design Review" permit is not required for a permitted Temporary Vendor.
5. Any signage displayed by the Temporary Vendor must be in compliance with Chapter 16.42 sign standards, and all required Sign permits must be obtained.
6. A Temporary Vendor must obtain a City of Canby business license.

C. Duration. A Temporary Vendor permit may be granted for a site for up to 90 consecutive calendar days, and then may be renewed twice upon request for an additional 90 days, provided that the temporary vendor activity has been conducted in compliance with all applicable codes, and no public safety incidents have occurred on the site related to the temporary vendor activity. In no case shall a site be permitted to host Temporary Vendor activity for more than 270 days in any 12 month period.

D. A Temporary Vendor shall be located on a paved surface with adequate vehicular and pedestrian ingress and egress, in compliance with Section 16.10.070. Inventory and equipment shall not be displayed or stored in any landscaped areas.

- E. A Temporary Vendor shall comply with all required development standards, such as height limitations, setbacks, vision clearance areas, and applicable conditions of any previous land use decisions for the site.
- F. Equipment such as trash cans, fuel tanks, or generators shall be screened such that it is not visible from any abutting public right-of-way.
- G. A Temporary Vendor shall not displace any vehicle parking spaces that are required to meet the minimum off-street parking requirements of another use on site or on a nearby site. A Temporary Vendor shall not encroach into required loading space areas, driveways, or vehicle maneuvering areas.
- H. A Temporary Vendor that displaces one or more vehicle parking spaces is prohibited for any site that:
 - 1. Is non-conforming in terms of meeting minimum required vehicle parking or loading space requirements; or
 - 2. Has been granted a vehicle parking exception, and currently has less than the required minimum number of off-street vehicle parking spaces.
- I. The property owner and the temporary vendor permit holder shall be jointly and separately responsible for any violation of this section or other applicable sections of the Canby Municipal Code. Any such violation may result in the immediate revocation or non-renewal of a temporary vendor permit, and may result in the denial of any future temporary vendor permit for the site upon which the violation occurred. (Ord 1315, 2009; Ord. 1520, 2019)

16.08.150 Mobile Food Vendor

A. Permit process.

- 1. A request for a Mobile Food Vendor permit shall be processed as a Type I decision pursuant to the procedures set forth in Chapter 16.89. A Mobile Food Vendor permit applicant shall demonstrate that the proposed activity meets all fire and life safety codes, and is in compliance with this section and with all other applicable sections of the Canby Municipal Code.
- 2. An application for a Mobile Food Vendor permit shall include a site plan drawn to scale, which includes all existing lot lines, setbacks, structures, landscaped areas, paved areas, and parking and loading spaces; and illustrates the proposed location and layout of all the Mobile Food Vendor's structures, equipment, furnishings, signage, and inventory.
- 3. The Mobile Food Vendor activity (e.g., retail, restaurant, etc) shall be an outright permitted use in the zoning district in which it is located; Or if the use is conditionally permitted in the zoning district, a Conditional Use Permit approval shall be required prior to issuance of a Mobile Food Vendor permit.

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4. The Mobile Food Vending unit shall not require connection to public utilities that do not already exist on site and can be provided by the property owner/manager.
 5. A "Site and Design Review" permit is not required for a permitted Mobile Food Vendor.
 6. Any signage displayed by the Mobile Food Vendor must be in compliance with Chapter 16.42 sign standards, and all required Sign permits must be obtained.
 7. A Mobile Food Vendor must obtain a City of Canby business license.
- B.** Duration. A Mobile Food Vendor permit may be granted for a site for up to 6 months, and then may be renewed upon request for an additional 1 year, provided that the Mobile Food vendor activity has been conducted in compliance with all applicable codes, and no public safety incidents have occurred on the site related to the Mobile Food vendor activity.
 - C.** A Mobile Food Vendor shall be located on a paved surface with adequate vehicular and pedestrian ingress and egress, in compliance with Section 16.10.070. Inventory and equipment shall not be displayed or stored in any landscaped areas.
 - D.** A Mobile Food Vendor shall comply with all required development standards, such as height limitations, setbacks, vision clearance areas, and applicable conditions of any previous land use decisions for the site as well as the development standards of the zone.
 - E.** Equipment such as trash cans, fuel tanks, or generators shall be screened such that it is not visible from any abutting public right-of-way. Portable amenities shall be packed inside the mobile food unit or screened from public view when the business is not in operation. This includes but is not limited to: weather protection elements, seating, tables, trash cans, and signage.
 - F.** A Mobile Food Vendor shall not displace any vehicle parking spaces that are required to meet the minimum off-street parking requirements of another use on site or on a nearby site. A Mobile Food Vendor shall not encroach into required loading space areas, driveways, or vehicle maneuvering areas.
 - G.** A Mobile Food Vendor that displaces one or more vehicle parking spaces is prohibited for any site that:
 1. Is non-conforming in terms of meeting minimum required vehicle parking or loading space requirements; or
 2. Has been granted a vehicle parking exception, and currently has less than the required minimum number of off-street vehicle parking spaces.
 - H.** The property owner and the vendor permit holder shall be jointly and severably responsible for any violation of this section or other applicable sections of the Canby Municipal Code. Any such violation may result in the immediate revocation or non-

renewal of a Mobile Food vendor permit, and may result in the denial of any future Mobile Food vendor permit for the site upon which the violation occurred.

16.08.150 Traffic Impact Study (TIS).

- A. Purpose.** The purpose of this section of the code is to implement Section 660-012-0045(2)(b) of the State Transportation Planning Rule, which requires the city to adopt a process to apply conditions to development proposals in order to minimize adverse impacts to and protect transportation facilities. This section establishes the standards to determine when a proposal must be reviewed for potential traffic impacts; when a Traffic Impact Study must be submitted with a development application in order to determine whether conditions are needed to minimize impacts to and protect transportation facilities: what information must be included in a Traffic Impact Study; and who is qualified to prepare the Study.
- B. Initial scoping.** During the pre-application conference, the city will review existing transportation data to determine whether a proposed development will have impacts on the transportation system. It is the responsibility of the applicant to provide enough detailed information for the city to make a determination. If the city cannot properly evaluate a proposed development's impacts without a more detailed study, a transportation impact study (TIS) will be required to evaluate the adequacy of the transportation system to serve the proposed development and determine proportionate mitigation of impacts. If a TIS is required, the city will provide the applicant with a "scoping checklist" to be used when preparing the TIS.
- C. Determination.** Based on information provided by the applicant about the proposed development, the city will determine when a TIS is required and will consider the following when making that determination.

 - 1. Changes in land use designation, zoning designation, or development standard.
 - 2. Changes in use or intensity of use.
 - 3. Projected increase in trip generation.
 - 4. Potential impacts to residential areas and local streets.
 - 5. Potential impacts to priority pedestrian and bicycle routes, including, but not limited to school routes and multimodal street improvements identified in the TSP.
 - 6. Potential impacts to intersection level of service (LOS).
- D. TIS General Provisions**

 - 1. All transportation impact studies, including neighborhood through-trip and access studies, shall be prepared and certified by a registered Traffic or Civil Engineer in the State of Oregon.

2. Prior to TIS scope preparation and review, the applicant shall pay to the city the fees and deposits associated with TIS scope preparation and review in accordance with the adopted fee schedule. The city's costs associated with TIS scope preparation and review will be charged against the respective deposits. Additional funds may be required if actual costs exceed deposit amounts. Any unused deposit funds will be refunded to the applicant upon final billing.
 3. For preparation of the TIS, the applicant may choose one of the following:
 - a. The applicant may hire a registered Oregon Traffic or Civil Engineer to prepare the TIS for submittal to the city. The city Traffic Engineer will then review the TIS and the applicant will be required to pay to the city any fees associated with the TIS review; or
 - b. The applicant may request that the city Traffic Engineer prepare the TIS. The applicant will pay to the city any fees associated with preparation of the TIS by the city Traffic Engineer.
 4. The TIS shall be submitted with a concurrent land use application and associated with application materials. The city will not accept a land use application for process if it does not include the required TIS.
 5. The city may require a TIS review conference with the applicant to discuss the information provided in the TIS once it is complete. This conference would be in addition to any required pre-application conference. If such a conference is required, the city will not accept the land use application for processing until the conference has taken place. The applicant shall pay the TIS review conference fee at the time of conference scheduling, in accordance with the adopted fee schedule.
 6. A TIS determination is not a land use action and may not be appealed.
- E. TIS Scope.** The city shall determine the study area, study intersections, trip rates, traffic distribution, and required content of the TIS based on information provided by the applicant about the proposed development.
1. The study area will generally comprise an area within a ½-mile radius of the development site. If the city determines that development impacts may extend more than ½ mile from the development site, a larger study area may be required. Required study intersections will generally include (in addition to the primary access points) collector/collector and above intersections with an anticipated peak hour traffic increase of five-percent from the proposed project.
 2. If notice to ODOT or other agency is required pursuant to noticing requirements in Chapter 16.89, the city will coordinate with those agencies to provide a comprehensive TIS scope. ODOT may also require a TIS directly to support an OR 99E approach permit application.

F. TIS Content. A project-specific TIS checklist will be provided to the applicant by the city once the city has determined the TIS scope. A TIS shall include all of the following elements, unless waived by the city.

1. **Introduction and Summary.** This section shall include existing and projected trip generation including vehicular trips and mitigation of approved development not built to date; existing level and proposed level of service standard for city and county streets and volume to capacity for state roads; project build year and average growth in traffic between traffic count year and build year; summary of transportation operations; traffic queuing and delays at study area intersections; and proposed mitigation(s).
2. **Existing Conditions.** This section shall include a study area description, including information about existing study intersection level of service.
3. **Impacts.** This section should include the proposed site plan, evaluation of the proposed site plan, and a project-related trip analysis. A figure showing the assumed future year roadway network (number and type of lanes at each intersection) also shall be provided. For subdivision and other developments, the future analysis shall be for the year of proposed site build-out. For proposed comprehensive plan and/or zoning map amendments, the future analysis year shall be 20 years from the date of the City's adopted TSP, or 15 years, whichever is greater.
4. **Mitigation.** This section shall include proposed site and area-wide specific mitigation measures. Mitigation measures shall be roughly proportional to potential impacts. See Subsection K below for rough proportionality determination.
5. **Appendix.** This section shall include traffic counts, capacity calculations, warrant analysis, and any other information necessary to convey a complete understanding of the technical adequacy of the TIS.

G. TIS Methodology. The City will include the required TIS methodology with the TIS scope.

H. Neighborhood Through-Trip Study. Any development projected to add more than 30 through-vehicles in a peak hour or 300 through-vehicle per day to an adjacent residential local street or neighborhood route will be require assessment and mitigation of residential street impacts. Through-trips are defined as those to and from a proposed development that have neither an origin nor a destination in the neighborhood. The through-trip study may be required as a component of the TIS or may be a stand-alone study, depending on the level of study required in the scoping checklist. The through-trip study shall include all of the following:

1. Existing number of through-trips per day on adjacent residential local streets or neighborhood routes.

2. Projected number of through-trips per day on adjacent residential local streets or neighborhood routes that will be added by the proposed development.
3. Traffic management strategies to mitigate for the impacts of projected through-trip consistent.

If a residential street is significantly impacted, mitigation shall be required. Thresholds used to determine if residential streets are significantly impacted are:

1. Local residential street volumes should not increase above 1,200 average daily trips
 2. Local residential street speeds should not exceed 28 miles per hour (85th percentile speed).
- I. Mitigation. Transportation impacts shall be mitigated at the time of development when the TIS identifies an increase in demand for vehicular, pedestrian, bicycle, or transit transportation facilities within the study area. Mitigation measures may be suggested by the applicant or recommended by ODOT or Clackamas County in circumstances where a state or county facility will be impacted by a proposed development. The city shall determine if the proposed mitigation measures are adequate and feasible. ODOT must be consulted to determine if improvements proposed for OR 99E comply with ODOT standards and are supported by ODOT. The following measures may be used to meet mitigation requirements:
1. On-and off-site improvements beyond required standard frontage improvements.
 2. Development of a transportation demand management program.
 3. Payment of a fee in lieu of construction, if construction is not feasible.
 4. Correction of off-site transportation deficiencies within the study area that are substantially exacerbated by development impacts.
 5. Construction of on-site facilities or facilities located within the right-of-way adjoining the development site that exceed minimum required standards and that have a transportation benefit to the public.
- J. Conditions of Approval. The city may deny, approve, or approve with appropriate conditions a development proposal in order to minimize impacts and protect transportation facilities.
1. Where the existing transportation system will be impacted by the proposed development, dedication of land for streets, transit facilities, sidewalks, bikeways, paths, or accessways may be required to ensure that the transportation system is adequate to handle the additional burden caused by the proposed use.
 2. Where the existing transportation system is shown to be burdened by the proposed use, improvements such as paving, curbing, installation or

contribution to traffic signals, traffic channelization, construction of sidewalks, bikeways, accessways, paths, or street that serve the proposed use may be required.

3. The city may require the development to grant a cross-over access easement(s) to adjacent parcel(s) to address access spacing standards on arterials and collector roadways or site-specific safety concerns. Construction of shared access may be required at the time of development if feasible, given existing adjacent land use. The access easement must be established by deed.

K. Rough Proportionality Determination. Improvements to mitigate impacts identified in the TIS shall be provided in rough proportion to the transportation impacts of the proposed development.

1. The TIS shall include information regarding how the proportional share of improvements was calculated, using the ratio of development trips to growth trips and the anticipated cost of the full Canby Transportation System Plan. The calculation is provided below:

Proportionate Share Contribution = [Net New Trips/(Planning Period Trips-Existing Trips)] X Estimated Construction Cost.

- a. Net new trips means the estimated number of new trips that will be created by the proposed development within the study area.
- b. Planning period trips means the estimated number of total trips within the study area within the planning period identified in the TSP.
- c. Existing trips means the estimated number of existing trips within the study area at the time of TIS preparation.
- d. Estimated construction cost means the estimated total cost of construction of identified improvements in the TSP. (Ord 1340, 2011)

16.08.160 Safety and Functionality Standards.

The City will not issue any development permits unless the proposed development complies with the city's basic transportation safety and functionality standards, the purpose of which is to ensure that development does not occur in areas where the surrounding public facilities are inadequate. Upon submission of a development permit application, an applicant shall demonstrate that the development property has or will have the following:

- A. Adequate street drainage, as determined by the city.
- B. Safe access and clear vision at intersections, as determined by the city.
- C. Adequate public utilities, as determined by the city.

D. Access onto a public street with the minimum paved widths as stated in Subsection E below.

E. Adequate frontage improvements as follows:

1. For local streets and neighborhood connectors, a minimum paved width of 16 feet along the site's frontage.
2. For collector and arterial streets, a minimum paved width of 20 feet along the site's frontage.
3. For all streets, a minimum horizontal right-of-way clearance of 20 feet along the site's frontage.

F. Compliance with mobility standards identified in the TSP. If a mobility deficiency already exists, the development shall not create further deficiencies. (Ord 1340, 2011)

Chapter 16.10

OFF-STREET PARKING AND LOADING

Sections

- 16.10.010 Off-street parking required – exceptions.
- 16.10.020 Definitions.
- 16.10.030 General requirements.
- 16.10.040 Prohibited near intersections.
- 16.10.050 Parking standards designated.
- 16.10.060 Off-street loading facilities.
- 16.10.070 Parking lots and access.
- 16.10.080 Street Tree Plan
- 16.10.090 Drive-up uses.
- 16.10.100 Bicycle parking.

16.10.010 Off-street parking required – exceptions.

A. At the time of establishment of a new structure or use, change in use, or change in use of an existing structure, within any planning district of the city, off-street parking spaces and off-street loading berths shall be as provided in this and following sections, unless greater requirements are otherwise established by the conditional use permit or the site and design review process, based upon clear and objective findings that a greater number of spaces are necessary at that location for protection of public health, safety and welfare. A lesser number of spaces may be permitted by the Planning Commission based on clear and objective findings that a lesser number of parking spaces will be sufficient to carry out the objective of this section.

B. No off-street parking shall be required for any use permitted outright within the C-1 zone ~~in the rectangular area bounded by N. Ivy Street on the east, NW First Avenue on the south, N. Elm Street on the west, and NW Third Avenue on the north.~~

C. At the time of enlargement of an existing structure or use, the provisions of this section shall apply to the enlarged structure or use only. (Ord. 1304, 2009; Ord. 1237, 2007; Ord. 890 section 9, 1993; Ord. 872, 1992; Ord. 854 section 2, 1991; Ord. 848, Part V, section 1, 16.10.010(A)(B), 1990)

16.10.020 Definitions.

A. Floor Area. Except where otherwise specified, the floor area measured shall be the gross floor area of the building primary to the function of the particular use of the property other than space devoted to off-street parking or loading.

B. Employees. Where employees are specified, the term shall apply to all persons, including proprietors, working on the premises during the peak shift. (Ord. 854 section 2, 1991; Ord. 848, Part V, section 1, 16.10.020(A)(B), 1990)

16.10.030 General requirements.

A. Should the owner or occupant of a structure change the use to which the building is put, thereby increasing parking or loading requirements, the increased parking/loading area shall be provided prior to commencement of the new use.

B. Parking and loading requirements for structures not specifically listed herein shall be determined by the City Planner, based upon requirements of comparable uses listed.

C. In the event several uses occupy a single structure, the total requirements for off-street parking shall be the sum of the requirements of the several uses computed separately. If the applicant can demonstrate that the uses do not have overlapping parking needs (based on days and hours of operation) and can share parking, the total requirement for combined uses may be reduced by up to 60 percent.

D. Off-street parking spaces for dwellings shall be located on the same lot, or adjacent lot, with the dwelling. Parking spaces located within an on-site garage shall count toward the minimum parking requirement for residential uses. Other required parking spaces may be located on a separate parcel, provided the parcel is not greater than five hundred (500) feet from the entrance to the building to be served, measured along the shortest pedestrian route to the building. The applicant must prove that the parking located on another parcel is functionally located and that there is safe vehicular and pedestrian access to and from the site.

E. Required parking spaces shall be available for the parking of operable passenger automobiles of residents, customers, patrons and employees and shall not be used for storage of vehicles or materials or for the parking of trucks used in conducting the business.

F. Institution of on-street parking shall not be allowed for off-street parking, where none is previously provided, and shall not be done solely for the purpose of relieving crowded parking lots in commercial or industrial planning districts.

G. Parking facilities may be shared by users on adjacent parcels if all of the following standards are met, or the Planning Commission determines a lesser combination meets the intent of the ordinance:

- 1.** One of the parcels has excess parking spaces, considering the present use of the property; and the other parcel lacks sufficient area for required parking spaces. Excess parking spaces can be determined by considering when the uses need the parking spaces, such as time of day or day of week.

2. The total number of parking spaces meets the standards for the sum of the number of spaces that would be separately required for each use. If the applicant can demonstrate that the uses do not have overlapping parking needs (based on days and hours of operation) and can share parking, the total requirement for combined uses may be reduced by up to 60 percent.

3. Legal documentation, to the satisfaction of the City Attorney, shall be submitted verifying present use of the excess parking area on one lot by patrons of the uses deficient in required parking areas.

4. Physical access between adjoining lots shall be such that functional and reasonable access is provided to uses on the parcel deficient in parking spaces.

5. Adequate directional signs shall be installed specifying the joint parking arrangement.

H. The number of vehicular spaces required in Table 16.10.050 may be reduced by up to 10% if one of the following is demonstrated to the satisfaction of the Planning Director or Planning Commission:

1. Residential densities greater than nine units per gross acre (limit parking to no less than one space per unit for multi-family structures); or

2. The proposed development is pedestrian-oriented by virtue of a location which is within convenient walking distance of existing or planned neighborhood activities (such as schools, parks, shopping, etc.) and the development provides additional pedestrian amenities not required by the code which, when taken together, significantly contribute to making walking convenient (e.g., wider sidewalks, pedestrian plazas, pedestrian scale lighting, benches, etc.). (Ord. 890 section 10, 1993; Ord. 854 section 2 [part], 1991; Ord. 848, Part V, section 16.10.030, 1990; Ord. 1043 section 3, 2000; Ord. 1338, 2010)

16.10.040 Prohibited near intersections.

In no case will off-street parking be allowed within a vision clearance area of an intersection. (Ord. 740 section 10.3.10(D), 1984)

16.10.050 Parking standards designated.

The parking standards set out in Table 16.10.050 shall be observed. (Ord. 854 section 2, [part], 1991; Ord. 848 section 1, 16.10.050, 1990; Ord. 740 section 10.3.10(E), 1984; Ord. 981 section 20, 1997)

TABLE 16.10.050

Off-street Parking Provisions - The following are the minimum standards for off-street vehicle parking:

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USE	PARKING REQUIREMENT
Residential Uses:	
a. Single-family dwellings	2.00 spaces per dwelling unit for new construction. (Existing single-family dwellings having only a single parking space shall not be considered to be nonconforming.)
b. Two-family dwellings	2.00 spaces per dwelling unit.
c. Multi-family dwellings in complexes with private internal driveways	One space per studio or 1-bedroom unit. 2.00 spaces per 2-bedroom or larger unit. One additional guest parking space shall be provided for every five units for each development often or more units.
d. Retirement/assisted living	1.0 spaces per unit
e. Residential day care facility and	1.00 space per employee
Institutions:	
a. Convalescent home, nursing home or sanitarium	1.00 spaces per two beds for patients or residents, plus 1.00 space per employee
b. Hospital	4.00 spaces per two beds
Places of Public Assembly:	
a. Library, reading room	1.00 space per 400 square feet of public area
b. Nursery, primary/elementary, or junior high school	2.00 spaces per employee
c. Senior high school	1.00 space per classroom, plus 1.00 space per six students
d. Other places of public assembly, including churches	1.00 space per four seats or eight feet of bench length
Commercial Amusement:	
a. Theater	1.00 per six seats
b. Bowling alley	3.0 spaces per 1,000 square feet of floor area
c. Dance hall, skating rink	3.0 spaces per 1,000 square feet of floor area
d. Racquet courts, health clubs	3.0 spaces per 1,000 square feet of floor area
Commercial	
a. Retail shops (under 100,000 sq. ft.)	2.00 spaces per 1,000 square feet of floor area
b. Retail store handling exclusively bulky merchandise such as furniture, automobile and service repair shops	1.00 space per 1,000 square feet of sales floor area
c. Shopping center (over 100,000 square feet of gross leasable area)	3.00 spaces per 1,000 square feet of gross leasable area
d. Banks/savings and loans	2.00 spaces per 1,000 gross square feet of floor area
e. Medical/dental offices	3.00 spaces per 1,000 gross square feet of floor area
f. General offices	2.00 spaces per 1,000 gross square feet of floor area
g. Real estate offices	2.00 spaces per 1,000 gross square feet of floor area
h. Government offices	3.50 spaces per 1,000 gross square feet of floor area
i. Restaurant	8.00 spaces per 1,000 gross square feet of floor area
j. Take-out restaurant	8.00 spaces per 1,000 gross square feet of floor area
k. Motel	0.75 spaces per rentable room
l. Residential hotel, rooming house,	0.75 spaces per rentable room
m. Hotel	0.75 spaces per rentable room

n. Club or lodge	1.00 space per 200 square feet of floor area
o. Day care , adult or child care; does not include Family Daycare (12 or fewer children) under ORS 657A.250	1.00 space per 500 square feet of floor area
p. All others	1.00 space per 550 square feet
q. Wireless telecommunication systems	1.00 space per site
r. Self-Storage (Mini) Warehouse	2.00 spaces per 1,000 gross square feet of office space
<u>s. Food Cart Pod</u>	<u>C-R, C-2, C-M zones: 1.5 spaces per cart</u> <u>C-1 zone: none</u> <u>M-1 and M-2 zone: 1 space per cart</u> <u>See Chapter 16.45.035</u>
Industrial:	
a. Manufacturing	2.00 spaces per 1,000 gross square feet of office space, plus 1.00 space per 1,000 gross square feet of non-office manufacturing space. Minimum of 5 parking spaces overall.
b. Warehousing	2.00 spaces per 1,000 gross square feet of office space, plus 1.00 space per 1,000 gross square feet of non-office warehousing space. Minimum of 5 parking spaces overall.
c. Wholesale establishments	2.00 spaces per 1,000 gross square feet of office space, plus 1.50 spaces per 1,000 gross square feet of non-office wholesale space. Minimum of 5 parking spaces overall.

(Ord 1296, 2008, Ord. 1338, 2010; Ord. 1514, 2019)

16.10.060 Off-street loading facilities

A. The minimum number of off-street loading berths for commercial and industrial uses is as follows:

SQUARE FEET OF FLOOR AREA	NUMBER OF BERTHS
Less than 5,000	0
5000 – 25,000	1
25,000 – 60,000	2
60,000 and over	3

B. Loading berths shall conform to the following minimum size specifications:

1. Commercial uses – 13' x 35'
2. Industrial uses – 12' x 60'
3. Berths shall have an unobstructed minimum height of 14'.

C. Required loading areas shall be screened from public view, from public streets, and adjacent properties by means of sight-site obscuring landscaping, walls or other means, as approved through the site and design review process.

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D. Required loading facilities shall be installed prior to final building inspection and shall be permanently maintained as a condition of use.

E. A driveway designed for continuous forward flow of passenger vehicles for the purpose of loading and unloading children shall be located on the site of a school or day care center having a capacity greater than twenty-five (25) students.

F. The off-street loading facilities shall, in all cases, be on the same lot or parcel as the structure they are intended to serve. In no case shall the required off-street loading spaces be part of the area used to satisfy the off-street parking requirement.

G. The Planning Commission may exempt a building from the loading berth requirement, or delay the requirement, based on findings that loading berths are not needed for a particular building or business. (Ord. 854 section 2[part], 1991; Ord. 848, Part V, section 1, 16.10.060, 1990; Ord. 1237, 2007)

16.10.070 Parking lots and access.

A. Parking Lots. A parking lot, whether as accessory or principal use, intended for the parking of automobiles or trucks, shall comply with the following:

1. Parking lot design shall comply with the dimensional standards set forth in Figure 1 of this section.

2. Parking stalls of eight (8) feet in width and sixteen (16) feet in length for compact vehicles may comprise up to a maximum of thirty (30) percent of the total number of parking stalls. Such parking stalls shall be marked "Compact Parking only" either on the parking surface or on a sign in front of the parking stalls.

3. Areas used for standing or maneuvering of vehicles shall have paved asphalt, concrete, solid concrete paver surfaces, or paved "tire track" strips maintained adequately for all weather use and so drained as to avoid the flow of water across sidewalks or into public streets, with the following exception:

a. The Planning Director or Planning Commission may approve the use of an engineered aggregate system for outdoor storage and/or non-required parking areas provided that the applicant can demonstrate that City Standards related to:

i. minimizing dust generation,

ii. minimizing transportation of aggregate to city streets, and

iii. minimizing infiltration of environmental contaminants including, but not limited to, motor oils, fuels, volatile organic compounds (e.g. benzene, toluene, ethylbenzene, xylene), and ethylene glycol are met.

The decision maker may impose conditions as necessary to meet City Standards.

b. Use of permeable surfacing materials for parking lots and driveways is encouraged whenever site and soil conditions make permeable surfacing feasible. Permeable surfacing includes, but is not limited to: paving blocks, turf block, pervious concrete, and porous asphalt. All permeable surfacing shall be designed, constructed, and maintained in accordance with the Canby Public Works Design Standards and the manufacturer's recommendations. Maintenance of permeable surfacing materials located on private property are the responsibility of the property owner.

4. The full width of driveways must be paved in accordance with (3) above:

a. For a minimum of 20 feet from the right-of-way line back into the private property to prevent debris from entering public streets, and

b. To within 150 feet of all portions of the exterior wall of the first story of any structure(s) served by the driveway to ensure fire and emergency service provision.

5. Except for parking to serve residential uses, parking areas adjacent to or within residential planning districts or adjacent to residential uses shall be designed to minimize disturbance of residents. Artificial lighting, which may be provided, shall be so deflected as not to shine or create glare in any residential planning district or on any adjacent dwelling, or any street right-of-way in such a manner as to impair the use of such way.

6. Groups of more than four (4) parking spaces shall be so located and served by driveways that their use will require no backing movements or other maneuvering within a street right-of-way other than an alley.

7. Off-street parking areas, and the accesses to them, shall be designed and constructed to facilitate the flow of traffic, provide maximum safety of traffic access and egress and the maximum safety of pedestrian and vehicular traffic on the site and in adjacent roadways. The Planning Director or Planning Commission may require engineering analysis and/or truck turning diagrams to ensure safe and efficient traffic flow based on the number and type of vehicles using the site, the classification of the public roadway, and the design of the parking lot and access drives.

8. Parking bumpers or wheel stops shall be provided to prevent cars from encroaching on the street right-of-way, adjacent landscaped areas, or adjacent pedestrian walkways.

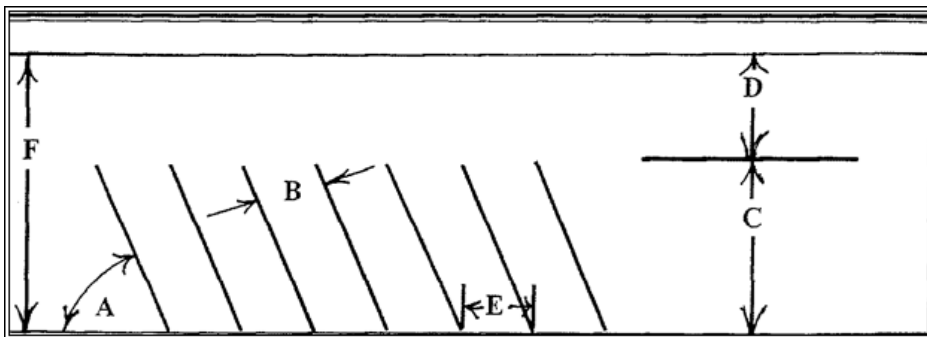
9. Accessible parking shall be provided, constructed, striped, signed and maintained as required by ORS 447.233 and all Oregon Structural Specialty Code requirements.

TABLE 16.10.070
Minimum dimensional Standard for Parking

This table and Figure 16.10.070 provide the minimum dimensional standards for parking areas and spaces.

A = Parking angle in degrees
 B = Minimum stall width
 C = Minimum stall depth
 D = Minimum clear aisle width
 E = Minimum clear stall distance at bay side
 F = Minimum clear bay width

A	B	C	D	E	F
0 (parallel)	8'0"	-	12'0"	22'0"	20'0"
30	8'6"	16'4"	12'0"	17'0"	28'4"
45	8'6"	18'9"	12'6"	12'0"	31'3"
60	8'6"	19'10"	18'0"	9'10"	37'10"
90	8'6"	18'0"	24'0"	8'6"	42'0"



B. Access.

1. The provision and maintenance of vehicular and pedestrian ingress and egress from private property to the public streets as stipulated in this ordinance are continuing requirements for the use of any structure or parcel of real property in the City of Canby. No building permit or other permits shall be issued until scale plans are presented that show how the ingress and egress requirement is to be fulfilled. Should the owner or occupant of a lot or building change the use to which the lot or building is put, thereby increasing ingress and egress requirements, it shall be unlawful and a violation of this ordinance to begin or maintain such altered use until the required increase in ingress and egress is provided.

2. The City of Canby encourages joint/shared access. Owners of two (2) or more uses, structures, or parcels of land may agree to, or may be required by the City to, utilized jointly the same ingress and egress when the combined ingress and egress of both uses, structures, or parcels of land satisfies their combined requirements as designed in this ordinance, provided that satisfactory legal evidence is presented to

the City Attorney in the form of deeds, easements, leases or contracts shall be placed on permanent files with the city recorder.

3. All ingress and egress shall connect directly with public streets.

4. Vehicular access for residential uses shall be brought to within fifty (50) feet of the ground floor entrances or the ground floor landing of a stairway, ramp or elevator leading to dwelling units.

5. Required sidewalks shall extend from the ground floor entrances or the ground floor landing of a stairs, ramps or elevators to the sidewalk or curb of the public street or streets that provide the required access and egress.

6. To afford safe pedestrian access and egress for properties within the city, a sidewalk shall be constructed along all street frontages, prior to use or occupancy of the building or structure proposed for said property. The sidewalks required by this section shall be constructed to city standards except in the case of streets with inadequate right-of-way width or where the final street design and grade have not been established, in which case the sidewalks shall be constructed to a design, and in a manner approved by the Site and Design Review Board. Sidewalks approved by Board may include temporary sidewalks and sidewalks constructed on private property; provided, however, that such sidewalks shall provide continuity with sidewalks of adjoining commercial developments existing or proposed. When a sidewalk is to adjoin a future street improvement, the sidewalk construction shall include construction of the curb and gutter section to grade and alignment established by the Site and Design Review Board.

7. The standards set forth in this ordinance are minimum standards for access and egress, and may be increased through the site and design review process in any particular instance where the standards provided herein are deemed insufficient to protect the public health, safety and general welfare. (Ord. 890 section 12, 1993; Ord. 1237, 2007; Ord. 1338, 2010)

Minimum Access Requirements

16.10.070(B)(8): Minimum access requirements for residential uses - ingress and egress for residential uses shall not be less than the following (except that in the case of flag lots, section 16.64.0400) shall apply):

<i>Dwelling units</i>	<i>Minimum number of accesses required</i>	<i>Minimum access width</i>	<i>Sidewalks & Curbs (in addition to driveways)</i>
1 or 2	1	12 feet	none required
3-19	1	20 feet	Minimum of one sidewalk connection to residences and parking areas; curb required if sidewalk adjacent to driveway.
20-49	Option A: 1 access OR Option B:	20 feet 12 feet	Minimum of one sidewalk connection to residences and parking areas; curb required if sidewalk adjacent to driveway.

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	2 accesses		
50-499	Option A: 1 access OR Option B: 2 accesses	30 feet 20 feet	Curbs required; Minimum of one sidewalk connection to residences and parking areas
Over 500	As required by Site and Design Review Board		As required by Public Works Director
16.10.070(B)(9): Minimum access requirements for commercial or institutional uses - ingress and egress for commercial uses shall not be less than the following:			
<i>Parking spaces required</i>	<i>Minimum number of accesses required</i>	<i>Minimum access width</i>	<i>Sidewalks & curbs (in addition to driveways)</i>
1-4	1	12 feet	<i>None required</i>
5-99	1	20 feet	Curbs required; sidewalk on one side minimum
100-249	2	20 feet	Curbs required; sidewalk on one side minimum
Over 250	As required by Site and Design Review Board		As required by Public Works Director
16.10.070(B)(10): Minimum access requirements for industrial uses - ingress and egress for industrial uses shall not be less than the following:			
<i>Parking spaces required</i>	<i>Minimum number of accesses required</i>	<i>Minimum access width</i>	<i>Sidewalks & curbs (in addition to driveways)</i>
1-250	1	24 feet	Curbs required; sidewalks on one side minimum
Over 250	As required by Public Works Director		

8. One-Way Ingress or Egress – The hard surfaced pavement of one-way drives shall not be less than twelve (12) feet for multi-family residential, commercial or industrial uses. (Ord. 1514, 2019)

9. Driveways:

a. Access to private property shall be permitted with the use of driveway curb cuts. The access points with the street shall be the minimum necessary to provide access while not inhibiting the safe circulation and carrying capacity of the street. Driveways shall meet all applicable guidelines of the Americans with Disabilities Act (ADA). Driveway distance shall be measured from the curb intersection point [as measured for vision clearance area (16.04.670)].

Distances to an intersection shall be measured from the stop bar at the intersection.

b. Driveways shall be limited to one per property except for certain uses which include large commercial uses such as large box stores, large public uses such as schools and parks, drive through facilities, property with a frontage of over 250-feet and similar uses.

c. Double frontage lots and corner lots may be limited to access from a single street, usually the lower classification street. Single family residential shall not have access onto arterials, and shall have access onto collectors only if there is no other option.

d. If additional driveways are approved by the City Administrator or designee, a finding shall be made that no eminent traffic hazard would result and impacts on through traffic would be minimal. Restrictions may be imposed on additional driveways, such as limited turn movements, shared access between uses, closure of existing driveways, or other access management actions.

e. Within commercial, industrial, and multi-family areas, shared driveways and internal access between similar uses are encouraged to reduce the access points to the higher classified roadways, to improve internal site circulation, and to reduce local trips or movements on the street system. Shared driveways or internal access between uses will be established by means of common access easements at the time of development.

f. Driveway widths shall be as shown on the following table.

Driveway Widths (Minimum/Maximum, Ft.)

Street Classification	Res.	Comm.	Ind.
Arterial:	NA (1)	12/36	12/36
Industrial:	NA (1)	12/36	12/36
Collector:	12/24 (2)	12/36	12/36
Neighborhood Route:	12/24 (2)	12/36	12/36
Local:	12/24 (2)	12/36	12/36
Cul-de-sac:	12/24 (2)	12/36	12/36
Public Alley	12/24 (2)	NA	NA

Res. = Residential Zone
 Comm. = Commercial Zone
 Ind. = Industrial Zone

Notes: (1) Special conditions may warrant access.

(2) 28' maximum width for 3-car garage.

g. Driveway spacing shall be as shown in the following table.

Minimum Driveway Spacing

<u>Street Classification</u>	<u>Intersection</u>	<u>Driveway</u>
Arterial (2)	330' (1)	330' (1)
Industrial Streets (2)	100' (1)	100' (1)
Collector (2)	100' (1)	100' (1)
Neighborhood Route	50' (1)(3)	10'
Local (all)	50' (1)(3)	10'
Cul-de-sac	50' (1)(3)	10'
Public Alley	50' (1)(3)	

Notes: (1) Minimum distance or no closer than 60% of parcel frontage unless this prohibits access to the site, in which case City Administrator or designee may approve a deviation.

(2) Direct access to this street will not be allowed if an alternative exists or is planned.

(3) For single-family residential houses, the minimum distance between driveways and an intersection shall be thirty (30) feet.

h. Curb cuts shall be a minimum of five feet from the property line, unless a shared driveway is installed. Single driveways may be paved up to an adjacent property line but shall maintain a five (5) foot separation from the side property line where the driveway enters the property. Driveways shall not be constructed within the curb return of a street intersection. Deviations may be approved by the City Administrator or designee.

i. For roads with a classification of Collector and above, driveways adjacent to street intersections shall be located beyond the required queue length for traffic movements at the intersection. If this requirement prohibits access to the site, a driveway with restricted turn movements may be permitted.

j. Multi-family access driveways will be required to meet the same access requirements as commercial driveways if the multi-family site generated 100 or more trips per day.

k For circular type driveways, the minimum distance between the two driveway curb cuts on one single-family residential lot shall be thirty (30) feet. (Ord. 1514, 2019)

10. When considering a public facilities plan that has been submitted as part of site and design review plan in accordance with this ordinance, the city Public Works Supervisor may approve the location of a driveway closer than fifty (50) feet

from the intersection of collector or arterial streets, based on written findings of fact in support of the decision. Said written approval shall be incorporated into the recommended decision of the City Planner for the site and design review plan under the process set forth.

11. Where an existing alley is 20 feet or less in width, the property line setback abutting the alley shall increase to provide a minimum of 24 feet for maneuvering and backing movements from, garages, carports, or parking areas. (Ord. 890 section 12, 1993; Ord. 872, 1991; Ord. 854 section 2 [part], 1991; Ord 848, Part V, section 16.10.070 (A)(B) 1990; Ord. 955 section 3 & 4 1996; Ord. 981 section 44, 1997; Ord. 1019 section 5, 1999; Ord 1237, 2007; Ord. 1514, 2019)

16.10.080 Street Tree Plan

A Street Tree Plan can be provided in lieu of meeting the requirement of planting a tree every 30 lineal feet of street frontage as stated in Ordinance 1385 Exhibit B. The Street Tree Plan can compensate for driveways, utilities, or other obstructions that inhibit the 30 foot spacing requirement. The requirement for the planting of street trees is required under Chapter 12.32 CMC. (Ord. 854, 1991; Ord. 848, Part VI, section 1, 1990; Ord. 1514, 2019)

16.10.090 Drive-up uses.

A. Drive-up uses shall provide a minimum stacking area clear of the public right-of-way or parking lot aisle from the window service to the vehicles as follows:

1. All drive-up uses. – Each lane shall provide a minimum capacity for two (2) to eight (8) automobiles, as determined by the Site and Design Review Board.

2. For purposes of this section, an automobile shall be considered no less than twenty (20) feet in length. The width and turning radius of drive-up aisles shall be approved by the City Public Works Director.

B. The stacking area shall not interfere with safe and efficient access to other parking areas on the property. Traffic aisles shall be wide enough to accommodate backing movements where adjacent to parking stalls. Parking maneuvers shall not occur in the stacking area. (Ord. 848, Part VII, section 16.10.090, 1990)

16.10.100 Bicycle Parking.

Bicycle parking shall be provided for all multi-family residential, institutional, commercial, and industrial uses.

A. Dimensions and characteristics: Bicycle parking spaces shall be a minimum of six (6) feet long and two (2) feet wide, and overhead clearance in covered spaces shall be a minimum of seven (7) feet. A minimum five (5) foot aisle for bicycle maneuvering shall be provided and maintained beside or between each row of bicycle parking. Bicycle racks located on a sidewalk shall provide a minimum of two (2) feet between the rack and a wall or other obstacle, and between the rack and curb face. Bicycle racks or lockers shall be securely anchored to the surface or a structure. Bicycle racks located in the Downtown Commercial Zone shall be of the inverted U style

(a.k.a. staple racks). See Figure 20 of the Canby Downtown Plan for correct rack placement.

B. Location: Bicycle parking shall be located in well-lit, secure locations within fifty (50) feet of the main entrance to a building, but not further from the entrance than the closest automobile parking space, and in no case further than 50 feet from an entrance when several entrances are involved.

C. Number of spaces: The bicycle parking standards set out in Table 16.10.100 shall be observed. (Ord. 1019 section 1, 1999; Ord. 1076, 2001)

TABLE 16.10.100 BICYCLE PARKING STANDARD	
LAND USE CATEGORY	MINIMUM REQUIRED BICYCLE PARKING SPACES
Residential Multi-family residential, general Multi-family residential, seniors or with physical disabilities	1 space per unit 4, or 1 space per 5 units, whichever is greater
Institutional Schools – Elementary Schools - Jr. High/Middle School Schools - St. High College Transit Centers/Park & Ride Lots Religious Institutions Hospitals Doctor, Dentist Offices Libraries, Museums, etc.	To be determined through design review To be determined through design review To be determined through design review To be determined through design review 5% of auto spaces (or 100% of demand, depending on accessibility to bicyclists) 1 space per 40 seat capacity 1 space per 5 beds 2, or 1 space per 1000 ft ² , whichever is greater 2, or 1 space per 1000 ft ² , whichever is greater
Commercial Retail Sales Auto-oriented Services Groceries/Supermarkets Offices Restaurants/ <u>Food Cart Pods</u> Drive-in Restaurants Shopping Centers Financial Institutions Theaters, Auditoriums, etc. Downtown Commercial Zone	0.33 space per 1000 ft ² , whichever is greater 2, or 0.33 space per 1000 ft ² , whichever is greater 0.33 space per 1000 ft ² 2, or 1 space per 1000 ft ² , whichever is greater 1 space per 1000 ft ² 1 space per 1000 ft ² 0.33 space per 1000 ft ² 2, or 0.33 space per 1000 ² , whichever is greater 1 space per 30 seats 4 spaces per block
Industrial Industrial Park Warehouse Manufacturing, etc.	2, or .1 space per 1000 ft ² , whichever is greater 2, or .1 space per 1000 ft ² , whichever is greater 2, or .15 space per 1000 ft ² , whichever is greater

NOTES:

Each individual use needs to be evaluated for bicycle parking – e.g., a commercial accessory use in an

industrial district may have different requirements than the industrial uses around it. Similarly, in mixed-use developments, the amount of each use and required bicycle parking needs" evaluation. Finally, within each use category one needs to consider the different user categories - residents, employees, customers, etc. - and parking requirements for each. (Ord. 1019 section 1, 1999; Ord. 1043 section 3, 2000; Ord. 1076, 2001)

Chapter 16.22

C-1 DOWNTOWN COMMERCIAL ZONE

Sections:

- 16.22.010 Uses permitted outright.
- 16.22.020 Conditional uses.
- 16.22.030 Development standards.
- 16.22.040 Design Review Matrix.

16.22.010 Uses permitted outright.

Uses permitted outright in the C-1 zone shall be as follows:

A. Residential. Residential uses shall be permitted only when part of a mixed use development (residential with commercial, office, or public/institutional use). Both vertical mixed use (housing above the ground floor) and horizontal mixed use (housing on the ground floor) developments are allowed, as follows:

1. Ground floor dwelling units that are incidental (less than 25% of the ground floor gross area) attached to any use allowed in a C-1 zone, and have access from a side or back entrance, or an entrance that is incidental to the commercial main ground floor use.
2. Residential units occupying the second and/or third story of any structure in the C-1 zone, provided the primary ground floor use is listed in 16.22.010.
3. Limitation on street-level housing. No more than fifty (50) percent of a single street frontage may be occupied by residential uses. This standard is intended to reserve storefront space for commercial uses and public/institutional uses; it does not limit residential uses above the street level on upper stories, or behind street-level storefronts. For parcels with street access at more than one level (e.g., sloping sites with two street frontages), the limitation on residential building space shall apply to all street frontages.

a. Density. There is no minimum or maximum residential density standard. Density shall be controlled by the applicable lot coverage and building height standards.

b. Parking, garages, and driveways. All off-street vehicle parking intended for residential use, including surface lots and garages, shall be oriented to alleys, placed underground, placed in structures above the ground floor, or located in parking areas behind or to the side of the building; except that side yards facing a street (i.e., corner yards) shall not be used for surface

parking. All garage entrances facing a street (e.g., underground or structured parking) shall be recessed behind the front building elevation by a minimum of four (4) feet. On corner lots, garage entrances shall be oriented to a side street when access cannot be provided from an alley.

c. Creation of alleys. When a residential subdivision (e.g., four or more townhome lots) is proposed, a public alley shall be created for the purpose of vehicle access. Alleys are not required when existing development patterns or topography make construction of an alley impracticable. As part of a subdivision, the City may require dedication of right-of-way or easements, and construction of pathways between townhome lots (e.g., between building breaks) to provide pedestrian connections through a development site.

4. Existing dwelling units which are not incidental and attached to a use allowed in the C-1 zone may be altered, expanded (or rebuilt within one year of a fire or other act of nature) provided that any such additions or rebuilding comply with the development standards for dwelling units in the R-2 zone;

B. Retail store or shop, except those listed as permitted or conditional uses in the C-2 zone;

C. Amusement enterprise, including pool hall, bowling alley, dance hall, skating rink or theater, when enclosed in a building;

D. Bakery, for retail sale primarily on premises; Establishments primarily engaged in the retail sale of bakery products. The products may be purchased from others or made on the premises. Provided the manufacturing does not exceed 7000 square feet of floor space. SIC 5461

E. Barber or beauty shop, nail salon;

F. Bank or other financial institution;

G. Bed and Breakfast, in an existing residence;

H. Bicycle sales, service, or repair;

I. Blueprinting, Photostatting, printing or other reproduction process;

J. Bus depot;

K. Business college;

L. Catering establishment;

M. Church or places of worship;

- N.** Club or lodge hall;
- O.** Day care facility;
- P.** Laundry or cleaning establishment;
- Q.** Frozen food lockers;
- R.** Hardware store, not including lumber or other large building materials requiring on-site outside or warehouse storage;
- S.** Hotel and apartment hotel;
- T.** Laboratory for experimental, photo or electronic testing research;
- U.** Locksmith or gunsmith;
- V.** Magazine or newspaper distribution agency;
- W.** Mortuary (including those used for pets);
- X.** Office, business or professional;
- Y.** Pawn shop;
- Z.** Public Transit Center;
- AA.** Restaurant, without drive-in service;
- BB.** Scientific or professional instrument sales or repair;
- CC.** Sales, rental or repair of small recreational, radio, television, business or household equipment;
- DD.** Studio, including music, art, dancing, photography or health;
- EE.** Taxidermy shop;
- FF.** Telephone or telegraph exchange;
- GG.** Theater, except drive-in;
- HH.** Auto parts store and incidental shop facilities;
- II.** Upholstery shop;
- JJ.** Watch and clock repair;

- KK.** Similar commercial uses as determined by the Planning Commission;
- LL.** Public building or land use such as fire station, city hall, park, playground, library or museum.
- MM.** Minor public facility.
- NN.** Drinking Places (alcoholic Beverages) Establishments primarily engaged in the retail sale of alcoholic drinks, such as beer, ale, wine, and liquor, for consumption on the premises. The sale of food frequently accounts for a substantial portion of the receipts of these establishments. SIC 5813
- OO.** Brew Pub: General Manufacturing of products included in SIC 2082: Malt Beverages, provided the manufacturing does not exceed 7,000 square feet of total floor area per development site, and retail sales of the products manufactured is provided on-site, and the sale of food frequently accounts for a substantial portion of the receipts of the establishment.
- PP.** Confectionary Store: Establishments primarily engaged in manufacturing confectionery for direct sale on the premises to household consumers provided the manufacturing does not exceed 7000 square feet of floor space. SIC 5441 (Ord. 890 section 24, 1993; Ord. 805 section 2, 1987; Ord. 802 section 6, 1987; Ord. 740 section 10.3.24(A), 1984; Ord. 955 section 8, 1996; Ord. 981 section 21, 1997; Ord. 1076, 2001; Ord 1237, 2007; Ord. 1514, 2019)
- QQ.** Collocations: Pursuant to the standards and requirements of Chapter 16.55. (Ord. 1539, 2020)

QQ-RR. Food Cart Pods: Pursuant to the standards and requirements of Chapter 16.45.

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16.22.020 Conditional uses.

Conditional uses in the C-1 zone shall be as follows:

- A.** A use listed as conditional in the R-1 zone, except as modified in Section 16.22.010, above;
- B.** Parking lot or parking structures;
- C.** Certain wireless telecommunications facilities, pursuant to the standards and requirements of Chapter 16.55. (Ord. 890 section 25, 1993; Ord. 740 section 10.3.24(B), 1984; Ord. 981 section 22, 1997; Ord. 1076, 2001; Ord 1237, 2007; Ord. 1514, 2019, Ord. 1539, 2020)

16.22.030 Development standards.

The following subsections indicate the required development standards of the C-1 zone:

- A.** Minimum lot area: none;
- B.** Minimum width and frontage: none;

C. Minimum yard requirements:

1. Street yard: none, except ten feet where adjoining a residential zone.
2. Interior yard: none.
3. Rear yard: none

D. Maximum building height:

1. Freestanding signs: thirty feet;
2. All other structures: forty-five feet.

E. Maximum lot coverage: no limit;

F. Other regulations:

1. Vision clearance distances shall be ten feet from an alley and fifteen feet from any other street.
2. Sidewalks a minimum of eleven (11) feet in width shall be required in commercial locations unless existing building locations or street width necessitate a more narrow design.
3. All setbacks to be measured from the foundation line of the building. Overhangs shall not exceed two feet (not including awnings); mechanical units, used for the heating/cooling of residential units, are exempt from interior and/or rear yard setback requirements.
4. New commercial buildings, particularly retail shopping and offices, shall be oriented to the street, near or at the setback line. A main entrance shall be oriented to the street.
5. Off-street motor vehicle parking for new commercial developments shall be located at the side or behind the building(s). (Ord 740 section 10.3.24(C), 1984; Ord. 981 section 48, 1997; Ord. 1043 section 3, 2000; Ord. 1076, 2001; Ord 1237, 2007; Ord. 1514, 2019)

16.22.40 Design Review Matrix.

- A.** For design review applications located in the C-1 zone the following matrix shall apply. This matrix replaces the general matrix contained in Chapter 16.49 for such applications.
- B.** A design review application in the C-1 zone shall be considered to be compatible if a minimum of 65 percent of the total possible points (not including bonuses) are accumulated for the whole development, and if the applicant has received a

minimum of one point in each applicable category. (Ord. 1076, 2001; Ord. 1080, 2001)

TABLE 16.22.040

CRITERIA	POSSIBLE SCORES		
Building Location and Orientation			
Building located at front of property line: Parking in front = 0; 50% of building front at property line = 1; 100% of building front at property line = 2.	0	1	2
Building oriented to street: No = 0; Yes = 2.	0		2
Entrances			
Major retail entrance on street: No = 0; Yes = 2	0		2
Corner building entrances on corner lots: No = 0; Yes = 1	0	1	
Entrance inset (not more than 3 feet behind front glass line except at corner entries): No = 0; Yes = 2.	0		2
Windows			
Regularly spaced and similar-shaped windows – around 70% of storefront area is glass (includes doors). (No mirrored glass): <50% = 0; 50% to 70% = 1; >70% = 2.	0	1	2
Second story windows (where applicable): No = 0; Yes = 2.	0		2
Architectural Details			
Blade sign or painted wall sign (no internally illuminated box signs): No = 0; Yes = 2	0		2
Brick, stucco, and horizontal lap or ship lap painted wood siding; concrete wood or wood siding = 0; concrete masonry, stucco, or similar material = 1; brick or similar appearance = 2.	0	1	2
Colors from recommended color palettes (on file with the City of Canby), or as otherwise approved: No = 0; Yes = 2.	0		2
Cornice treatments to emphasize building tops at parapet-type buildings: flat roofs behind parapets acceptable, otherwise visible roofs should be pitched: no treatment = 0; pitched roof = 1; parapet roof = 2.	0	1	2
All walls have doors, windows, or display windows (no blank walls). Murals, art niches, benches, or light sconces at blank walls where windows are not feasible: no treatment = 0; mural or other treatment = 1; windows or display windows = 2.	0	1	2
Awnings and rain protection of durable canvas, vinyl, glass or acrylic. No awning slope over 45 degrees, with flat or semi-flat awnings along First Avenue and at buildings with windows above entries. Awnings are discontinuous, with lengths generally under 30 linear feet for longer buildings: no awnings = 0; awnings meet criteria = 2.	0		2
Parking			
Off-street parking (if required) located behind or to side of building: No = 0; side = 1; behind = 2	0	1	2
Bonus Points			
Provide usable pedestrian space such as plaza, outdoor seating, or extra-wide pathway/sidewalk near one or more building entrances: No = 0; Yes = 1.	0	1	
Planters and window boxes: No = 0; Yes = 1.	0	1	
Public art (e.g., fountain, sculpture, etc.): No = 0; Yes = 1.	0	1	
Second story residential or office: No = 0; Yes = 1	0	1	

Chapter 16.24

C-R RESIDENTIAL/COMMERCIAL ZONE

Sections:

- 16.24.010 Uses permitted outright.**
- 16.24.020 Conditional uses.**
- 16.24.030 Development standards.**

16.24.010 Uses permitted outright.

Uses permitted outright in the C-R zone shall be as follows:

- A.** Uses permitted outright in the R-1.5 zone, conforming to the development standards of the R-1.5 zone;
- B.** Parking lots or parking structures;
- C.** Bakery, for retail sale primarily on premises; Establishments primarily engaged in the retail sale of bakery products. The products may be purchased from others or made on the premises. Provided the manufacturing does not exceed 7000 square feet of floor space. SIC 5461
- D.** Barber or beauty shop;
- E.** Bicycle service and repair shop with all business and storage conducted within an enclosed building;
- F.** Church or places of worship;
- G.** Ceramic, arts, crafts, or hobby shop, provided that adequate parking exists for any classes given;
- H.** Day care center serving fifteen or fewer children or adults;
- I.** Locksmith shop;
- J.** Magazine or newspaper distribution agency;
- K.** Sales, rental or repair of small recreational, radio, television, business or household equipment;

- L. Studio, including music, art, dance, photography or health;
- M. Upholstery shop;
- N. Watch or clock repair;
- O. Business or professional offices;
- P. Rooming or boarding houses;
- Q. Shoe repair;
- R. Dwelling units attached to any use allowed in the C-R zone.
- S. Brew Pub: General Manufacturing of products included in SIC 2082: Malt Beverages, provided the manufacturing does not exceed 7,000 square feet of total floor area per development site, and retail sales of the products manufactured is provided on-site, and the sale of food frequently accounts for a substantial portion of the receipts of the establishment.
- T. Confectionary Store: Establishments primarily engaged in manufacturing confectionery for direct sale on the premises to household consumers provided the manufacturing does not exceed 7000 square feet of floor space. SIC 5441 (Ord. 890 section 26, 1993; Ord. 740 section 10.3.25(A), 1984; Ord. 1514, 2019)
- U. Collocations: Pursuant to the standards and requirements of Chapter 16.55. (Ord. 1539, 2020)
- U.V. Food Cart Pods pursuant to the regulations and standards of Chapter 16.45.

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16.24.020 Conditional uses.

Conditional uses in the C-R zone shall be as follows:

- A. Uses listed as conditional in R-1 or R-1.5 zones, and not listed as permitted in section 16.24.010; residential development shall conform to the development standards of the R-2 zone.
- B. Uses listed as permitted outright in R-2 zones, and not listed as permitted in section 16.24.010. Such uses shall conform to the development standards of the R-2 zone.
- C. Motels or hotels.
- D. Certain telecommunications facilities, pursuant to the standards and requirements of Chapter 16.55.(Ord. 1539, 2020)
- E. Food services, excluding auto-oriented uses.

F. Self-Storage/Mini-Storage Warehouse Units. As defined in 16.04.547. (Ord. 890 section 27, 1993; Ord. 740 section 10.3.25(B), 1984; Ord. 981 section 23, 1997; Ord. 1080, 2001; Ord 1237, 2007; Ord. 1514, 2019)

16.24.030 Development standards.

The following subsections indicate the required development standards of the C-R zone:

- A. Minimum lot area: seven thousand square feet, except for residential development. The minimum lot area for residential development shall be according to 16.18.030(A) for residential uses permitted outright, and shall be according to 16.20.030(A) for residential uses permitted conditionally;
- B. Minimum width and frontage: sixty feet except that the Planning Commission may approve lots having less frontage, subject to special conditions to assure adequate access;
- C. Minimum yard requirements:
 - 1. Street yard: twenty feet;
 - 2. Interior yard: none, except ten feet where adjoining a residential zone. May be reduced to three feet for detached accessory structure not exceeding one story and erected sixty feet or more from all streets other than an alley;
 - 3. Rear yard: none, except ten feet where adjoining a residential zone. May be reduced to three feet for detached accessory structure not exceeding one story and erected sixty feet or more from all streets other than an alley.
- D. Maximum building height:
 - 1. Freestanding signs: thirty feet;
 - 2. All other structures: forty-five feet.
- E. Maximum lot coverage: sixty percent;
- F. Other regulations:
 - 1. Vision clearance distances shall be fifteen feet from any alley and thirty feet from any other street or railroad.
 - 2. All setbacks to be measured from the foundation line of the building. Overhangs shall not exceed two feet. (Ord. 830, 1989; Ord. 740 section 10.3.25(C), 1984; Ord. 955 section 9, 1996; Ord 1237, 2007; Ord. 1514, 2019)

Chapter 16.28

C-2 HIGHWAY COMMERCIAL ZONE

Sections:

16.28.010 Uses permitted outright.

16.28.020 Conditional uses.

16.28.030 Development standards.

16.28.010 Uses permitted outright.

Uses permitted outright in the C-2 zone are as follows:

- A.** A use permitted outright in a C-1 zone;
- B.** Miniature golf courses;
- C.** Automobile, motorcycle, boat or truck sales, service, repair, rental, storage or parking;
- D.** Theaters;
- E.** Restaurant, including drive-in;
- F.** Kennel;
- G.** Lumber yard;
- H.** Machinery, farm equipment or implement sales, service or rental;
- I.** Hotel or motel;
- J.** Service station;
- K.** Tire shop, including incidental tire recapping;
- L.** Veterinarian's office or animal hospital;
- M.** Fuel oil distribution, retail, provided all fuel oil storage is underground;
- N.** Nursery and greenhouse;

- O. Feed and seed store;
- P. Department store:
- Q. Similar commercial uses as determined by the Planning Commission.
- R. Collocations: Pursuant to the standards and requirements of Chapter 16.55. (Ord. 1539, 2020)
- S. Detached macro-telecommunications facility (monopole), less than 100 feet in height pursuant to the standards and requirements of Chapter 16.55. (Ord. 1539, 2020)
- T. Self-Storage/Mini-Storage Warehouse Units. As defined in 16.04.547. (Ord. 890 section 28, 1993; Ord. 830 section 6, 1989; Ord. 740 section 10.3.28(A), 1984; Ord. 981 section 25, 1997; Ord. 1237, 2007; Ord. 1514, 2019)

T-U. Food Cart Pods pursuant to the regulations and standards found in 16.45.

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16.28.020 Conditional uses.

Conditional uses in the C-2 zone shall be as follows:

- A. A use permitted outright in an M-1 zone;
- B. A use listed as conditional in a C-1 zone and not listed in section 16.28.010.

Macro telecommunications facilities (monopole), equal to or over 100 feet in height pursuant to the standards and requirements of Chapter 16.55. (Ord. 890 section 29, 1993; Ord. 740 section 10.3.28(B), 1984; Ord. 981 section 26, 1997, Ord. 1539, 2020)

16.28.030 Development standards.

The following subsections indicate the required development standards of the C-2 zone:

- A. Minimum lot area: none;
- B. Minimum width and frontage: none;
- C. Minimum yard requirements:
 1. Street yard: twenty feet where abutting Highway 99-E and S. Ivy Street. Gas station canopies shall be exempted from the twenty foot setback requirements. Remaining property none, except ten feet where abutting a residential zone. Sign setbacks along Highway 99-E and S. Ivy Street are to be measured from the face of the curb rather than the lot line. Where no curb exists, the setback shall be measured from the property line. Other than signs which are nonconforming structures and street banners which have been approved per

the requirements of the Uniform Sign Code, no signs will be allowed to be located within or to project over a street right-of-way;

2. Interior yard: none, except ten feet where abutting a residential zone.
3. Rear yard: none, except ten feet where abutting a residential zone.

D. Maximum building height:

1. Freestanding signs: thirty feet;
2. All other structures: forty-five feet.

E. Maximum lot coverage: sixty percent;

F. Other regulations:

1. Vision clearance distances shall be fifteen feet from any alley or driveway and thirty feet from any other street or railroad;
2. Except in cases where existing building locations or street width necessitate a more narrow design, sidewalks eight feet in width shall be required;
 - a. In those locations where angle parking is permitted abutting the curb, and
 - b. For property frontage along Highway 99-E.
3. All setbacks to be measured from the foundation line of the building. Overhangs shall not exceed two feet. (Ord. 830 section 7, 8, 1989; Ord. 802 section 7 [part], 1987; Ord. 740 section 10.3.28(C), 1984; Ord. 981 section 49, 1997; Ord. 1237, 2007; Ord. 1514, 2019)

Chapter 16.30

C-M HEAVY COMMERCIAL MANUFACTURING ZONE

Sections:

16.30.010 Uses permitted outright.

16.30.020 Conditional uses.

16.30.030 Development standards.

16.30.010 Uses permitted outright.

Uses permitted outright in the C-M zone shall be as follows:

- A.** A use permitted outright in a C-2 zone, other than dwelling units;
- B.** Contractor's equipment yard;
- C.** Dwelling for watchman or caretaker working on premises;
- D.** Fuel distribution, wholesale;
- E.** Laundry or Laundromat, with or without dry cleaning operation;
- F.** Motor or rail freight terminal;
- G.** Railroad tracks and related facilities;
- H.** Stone cutting and sales;
- I.** Tire retreading, recapping and sales;
- J.** Transfer or storage;
- K.** Utility storage or service yard;
- L.** Similar heavy commercial, storage, or light manufacturing uses as determined by the Planning Commission.
- M.** Collocations pursuant to the standards and requirements of Chapter 16.55) ((Ord. 1539, 2020)

N. Detached telecommunications facilities (monopole), less than 100 feet in height, pursuant to the standards and requirements of Chapter 16.55. (Ord. 1539, 2020)

O. Self-Storage/Mini-Storage Warehouse Units. As defined in 16.04.547. (See 16.08.120). (Ord. 890 section 30, 1993; Ord. 740 section 10.3.29(A), 1984; Ord. 981 section 27, 1997; Ord. 1237, 2007; Ord. 1514, 2019)

O.P. Food Cart Pods pursuant to regulations and standards in 16.45.

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16.30.020 Conditional uses.

Conditional uses in the C-M zone shall be as follows:

- A.** A use permitted outright in an M-1 zone and not listed in section 16.30.010 or below;
- B.** A use permitted conditionally in a C-1 or C-2 zone, other than dwelling units, and not listed in section 16.30.010 or below;
- C.** Other light industrial uses as determined by the Planning Commission;
- D.** Detached telecommunications facilities (monopole), equal to or over 100 feet in height pursuant to the standards and requirements of Chapter 16.55; (Ord. 740 section 10.3.29(B), 1984; Ord. 981 section 28 & 29, 1997; Ord. 1237, 2007, Ord. 1539, 2020)

16.30.030 Development standards.

The following subsections indicate the required development standards of the C-M zone:

- A.** Minimum lot area: none.
- B.** Minimum width and frontage: none.
- C.** Minimum yard requirements:
 - 1.** Street yard: twenty feet where abutting Highway 99E and S. Ivy Street. Gas station canopies shall be exempted from the twenty foot setback requirements. Properties not fronting on Highway 99E or S. Ivy Street shall maintain a 10 foot street yard setback. Sign setbacks along Highway 99-E and S. Ivy Street are to be measured from the face of the curb rather than the lot line. Where no curb exists, the setback shall be measured from the property line. Other than signs which are nonconforming structures and street banners which have been approved per the requirements of the Uniform Sign Code, no signs will be allowed to be located within, or to project over, a street right-of-way.
 - 2.** Interior yard: none, except ten feet where abutting a residential zone.

3. Rear yard: none, except ten feet where abutting a residential zone.

D. Maximum building height:

1. Freestanding signs: thirty feet;

2. All other structures: forty-five feet.

E. Maximum lot coverage: sixty percent.

F. Other regulations:

1. Vision clearance distances shall be fifteen feet from any alley or driveway and thirty feet from any other street or railroad.

2. Except in cases where existing building locations or street width necessitate a more narrow design, sidewalks eight feet in width shall be required:

a. In those locations where angle parking is permitted abutting the curb, and

b. For property frontage along Highway 99-E.

3. All setbacks to be measured from the foundation line of the building. Overhangs shall not exceed two feet.

4. Outside storage areas abutting a residential zone shall be screened from view by a site-blocking fence, landscaping, or berm and shall be of such material and design as will not detract from adjacent residences. (Ord 830 section 9, 10, 1989; Ord. 802 section 7 [part], 1987; Ord. 740 section 10.3.29(C), 1984; Ord. 981 section 50, 1997; Ord. 1237, 2007; Ord. 1514. 2019)

Chapter 16.32

M-1 LIGHT INDUSTRIAL ZONE

Sections:

- 16.32.010 Uses permitted outright.**
- 16.32.020 Conditional uses.**
- 16.32.030 Development standards.**

16.32.010 Uses permitted outright.

Uses permitted outright in the M-1 zone shall be as follows:

- A.** Manufacturing, fabricating, processing, compounding, assembling or packaging of products made from previously prepared materials such as cloth, plastic, paper, metal, wood (but not including sawmills or lumber mills), the operation of which will not result in
 - 1.** The dissemination of dusts, gas, smoke, fumes, odors, atmospheric pollutants or noise which exceed Oregon Department of Environmental Quality standards
 - 2.** Danger by reason of fire, explosion or other physical hazard;
 - 3.** Unusual traffic hazards;
- B.** Automobile body shop, or heavy repair shop;
- C.** Contractor's equipment or storage yard;
- D.** Dwelling for watchman or caretaker working on the property;
- E.** Food processing plant;
- F.** Fuel distribution, wholesale or retail;
- G.** Ice or cold storage plant;
- H.** Laundry or dry-cleaning plant;
- I.** Lumber yard;
- J.** Machinery, farm equipment or implement sales, service or rent;

- K.** Motor or rail freight terminal;
- L.** Railroad tracks and related facilities;
- M.** Restaurant, when related and incidental to primary industrial uses of the area;
- N.** Service station, when related and incidental to primary industrial uses of the area;
- O.** Stone, marble, or granite cutting;
- P.** Tire retreading or recapping;
- Q.** Transfer and storage company;
- R.** Utility storage or service yard;
- S.** Veterinarian's office or animal hospital;
- T.** Warehouse;
- U.** Wholesale distribution, including warehousing and storage;
- V.** Wireless or cellular communications facility/tower;
- W.** Other light industrial uses as determined by the Planning Commission;
- X.** Business or professional office, when related and incidental to primary industrial uses of the area;
- Y.** Public building or uses such as fire station, or park or playground.
- Z.** Microcell telecommunications facilities pursuant to the standards and requirements of Chapter 16.55. (Ord. 1539, 2020)
- AA.** Collocations pursuant to the standards and requirements of Chapter 16.55 (Ord. 1539, 2020)
- BB.** Detached telecommunications facilities (monopole or lattice tower), under 150 feet in height and at least 660 feet from the nearest land zoned or planned for residential use or Highway 99E pursuant to the standards and requirements of Chapter 16.55. (Ord. 1539, 2020)
- CC.** Detached telecommunications facilities (monopole), under 100 feet in height and less than 660 feet from the nearest land zoned or planned for residential use or Highway 99E pursuant to the standards and requirements of Chapter 16.55. (Ord. 1539, 2020)

DD. Detached telecommunications facilities (monopole), equal to or over 150 feet in height and at least 660 feet from the nearest land zoned or planned for residential use or Highway 99E pursuant to the standards and requirements of Chapter 16.55. (Ord. 1539, 2020)

EE. Minor public facility.

FF. Brewery: General manufacturing of products included in SIC 208: Beverages. (Ord. 890 section 31, 1993; Ord. 749 section 1(A), 1984, Ord. 740 section 10.3.31(A), 1984; Ord. 995 section 10 & 11, 1996; Ord. 981 section 30 & 31, 1997; Ord. 1019 section 10, 1999; Ord. 1237, 2007; Ord. 1514, 2019)

FF.GG. Food Cart Pod, pursuant to regulations and standards in 16.45.

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16.32.020 Conditional uses.

Conditional uses in the M-1 zone shall be as follows:

- A.** Commercial recreation uses;
- B.** Motels, hotels and similar accommodations;
- C.** Other heavy commercial or light industrial uses as determined by the Planning Commission;
- D.** Waste and/or recycling transfer operations.
- E.** Detached telecommunications facilities (monopole), equal to or over 100 feet in height and less than 660 feet from the nearest land zoned or planned for residential use or Highway 99E pursuant to the standards and requirements of Chapter 16.55. (Ord. 1539, 2020)
- F.** Detached telecommunications facilities (lattice tower), equal to or over 150 feet in height and at least 660 feet from the nearest land zoned or planned for residential use or Highway 99E pursuant to the standard and requirements of Chapter 16.55. (Ord. 1539, 2020)
- G.** Major public facility, except as modified by Section 16.32.010. (Ord. 960, section 2, 12/18/96; Ord. 890, section 32, 1993; Ord. 740 section 10.3.31(B), 1984; Ord. 981 section 32, 1997; Ord. 1237, 2007)

16.32.030 Development standards.

The following subsections indicate the required development standards of the M-1 zone:

- A.** Minimum lot area: five thousand square feet;
- B.** Minimum width and frontage: fifty feet;
- C.** Minimum yard requirements:

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1. Street yard: twenty feet where abutting Highway 99E and S. Ivy Street. Gas station canopies shall be exempted from the twenty foot setback requirements. Properties not fronting on Highway 99E or S. Ivy Street shall maintain a 10 foot street yard setback. Sign setbacks along Highway 99-E and S. Ivy Street are to be measured from the face of the curb rather than the lot line. Where no curb exists, the setback shall be measured from the property line. Other than signs which are nonconforming structures and street banners which have been approved per the requirements of the Uniform Sign Code, no signs will be allowed to be located within, or to project over, a street right-of-way.
2. Interior yard: none, except ten feet where abutting a residential zone.
3. Rear yard: none, except ten feet where abutting a residential zone.

D. Maximum building height:

1. Freestanding signs: thirty feet;
2. All other structures: forty-five feet.

E. Maximum lot coverage: no limit.

F. Other regulations:

1. Vision clearance distances shall be fifteen feet from any alley or driveway and thirty feet from any other street or railroad.
2. All setbacks to be measured from the foundation line of the building. Overhangs shall not exceed two feet.
3. Prior to issuance of a building permit, wireless/cellular towers require written certification of approval/compliance from the Federal Communications Commission, Federal Aviation Administration and the Oregon Department of Transportation (Department of Aeronautics).
4. Outside storage areas abutting a residential zone shall be screened from view by a site-blocking fence, landscaping, or berm and shall be of such material and design as will not detract from adjacent residences. (Ord. 890 section 33, 1993; Ord. 830 section 11, 12, 1989; Ord. 740 section 10.3.31(C), 1984; Ord. 955 section 12, 1996; Ord. 981 section 51, 1997; Ord. 1237, 2007; Ord. 1514, 2019)

Chapter 16.89

APPLICATION AND REVIEW PROCEDURES

Sections:

- 16.89.010 Purpose.
- 16.89.020 Description and summary of processes.
- 16.89.030 Type I procedure.
- 16.89.040 Type II procedure.
- 16.89.050 Type III procedure.
- 16.89.060 Type IV procedure.
- 16.89.070 Neighborhood meetings.
- 16.89.080 Application requirements and completeness.
- 16.89.090 Modifications.
- 16.89.100 Administrative Reviews

16.89.010 Purpose.

The purpose of this chapter is to establish standard decision-making procedures that will enable the City, the applicant, and the public to review applications and participate in the decision-making process in a timely and effective way. (Ord. 1080, 2001)

16.89.020 Description and Summary of Processes.

All land use and development applications shall be decided by using the procedures contained in this Chapter. Specific procedures for each type of permit are contained in Sections 16.89.030 through 16.89.060. The procedure type assigned to each permit governs the decision-making process for that permit. Additional requirements may be found in the individual chapters governing each permit type. The four types of procedure are described below. Table 16.89.020 lists the City's land use and development applications and their required procedures.

- A. Type I Procedure (Ministerial). Type I decisions are made by the Planning Director without public notice and without a public hearing. The Type I procedure is used when there are clear and objective approval criteria or provisions and applying those criteria or provisions requires no use of discretion. The appeal of a Type I Planning Director's decision is heard by the Planning Commission.
- B. Type II Procedure (Administrative). Type II decisions are made by the Planning Director with public notice and an opportunity for a public hearing. The appeal of a Type II decision is heard by the Planning Commission.

C. Type III Procedure (Quasi-Judicial/Legislative). Type III decisions are made by the Planning Commission after a public hearing, with appeals reviewed by the City Council. Type III procedures generally use discretionary approval criteria.

D. Type IV procedure (Council Decision). Type IV decisions generally apply to legislative matters, but include certain other applications as well. Legislative matters involve the creation, revision, or large-scale implementation of public policy (e.g., adoption of land use regulations, zone changes, and comprehensive plan amendments that apply to entire districts). Type IV matters are considered initially by the Planning Commission with final decisions made by the City Council. Annexations and certain quasi-judicial applications are also processed under the Type IV process. (Ord. 1080, 2001; Ord 1237, 2007; Ord. 1514, 2019)

TABLE 16.89.020
Land Use and Development Application Procedures

Application Type	Process Type	Notice Radius (Feet)	Neighborhood Meeting Required
Access permit to public street	I	n/a	No
Administrative Review	I	n/a	No
Administrative Review	II	100	No
Amendments to Zoning Map	IV	500	Yes
Annexation, Minor and Major	IV	500	Yes
Appeals	III	200	No
Building Permit	I	n/a	No
Comprehensive Plan Amendment	IV	500	Yes
Conditional Use Permit	III	500	No
Condominium Construct. (less than 6 units)*	I	n/a	No
<u>Food Cart Pod</u>	<u>II</u>	<u>200</u>	<u>No</u>
Interpretation	See Section 16.05.020		
Lot Line Adjustment**	II	100	No
Modification	See Section 16.89.090		
Non-Conforming Structure/Use	II	100	No
Parking Lot/Paving projects	I	n/a	No

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Application Type	Process Type	Notice Radius (Feet)	Neighborhood Meeting Required
Partition	II	100	No
Planned Unit Development	III	200	Yes
Sign Permit (non-SDR)	I	n/a	No
Sign Permit – Discretionary Monument Sign or A-Frame Sign Permit (16.42.040)	II	100	No
Site and Design Review – Type II	II	100	No
Site and Design Review – Type III	III	500	Yes
Site Plan Review	I	n/a	No
Temporary Permit (16.44.090)	See Chapter 16.44		
Temp. Hardship Permit (16.44.100)	II	100	No
Temporary Mobile Food Vendor	I	n/a	No
Subdivision	III	500	Yes
Text Amendment	IV	500	Yes
Variance, Minor	II	200	No
Variance, Major	III	200	No

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NOTES: * See also Chapter 16.78 ** See also Chapter 16.58.

16.89.030 Type I procedure.

- A. Application requirements. Type I applications shall be made on forms provided by the Planning Director. The application shall be accompanied by all required information and fees.
- B. Decision requirements. The Planning Director's decision shall address all of the approval criteria. Based on the criteria and the facts contained within the record, the Planning Director shall approve, approve with conditions, or deny the requested permit or action. A written record of the decision shall be provided to the applicant and kept on file at the City.
- C. Final decision. The decision shall be final on the date it is mailed or otherwise provided to the applicant, whichever occurs first. (Ord. 1080, 2001)

16.89.040 Type II procedure.

- A. Pre-application conference. A pre-application conference may be required by the Planning Director for Type II applications.

B. Application requirements. Type II applications shall be made on forms provided by the Planning Director. The application shall be accompanied by all required information and fees.

C. Public notice.

1. Before making a Type II decision, the Planning Director shall mail notice meeting the requirements of state law to:
 - i. All owners of real property and, if the owner's address is different from the site address, all residents of property, within the distance prescribed in Table 16.89.020.
 - ii. Any person who submits a written request to receive notice; and
 - iii. Any governmental agency which is entitled to notice under an intergovernmental agreement entered into with the City. The City may notify other affected agencies, as appropriate, for review of the application.
 - iv. Any application that involves access to OR 99E or that is expected to impact the state highway system must be provided to the Oregon Department of Transportation for their review and comment regarding conformance with state access management and mobility standards and requirements.
 - v. Any application that is expected to impact a road under the jurisdiction of Clackamas County must be provided to Clackamas County for review and comment regarding county standards.
2. Notice of any proposal that includes a new transportation facility or improvement and where these facilities or improvements included or may impact a collector or arterial street, will be sent to the ODOT and Clackamas County or any special interest transportation groups as appropriate. Special interest transportation groups could include trucking organizations, bicycles and pedestrian interest groups, and interest groups for people with disabilities. Information that should be conveyed with the notice includes the following:
 - a. Project location
 - b. Proposed land use action
 - c. Location of project access point(s)
3. The public notice shall allow a 10-day period for submitting written comments before a decision is made on the permit.
4. The City shall prepare an affidavit of mailing for the public notice and make the affidavit part of the application file.

D. The Planning Director shall make Type II decisions in writing addressing all of the relevant approval criteria and standards. Based upon the criteria and standards, and the facts contained within the record, the Planning Director shall approve, approve with conditions, or deny the requested permit or action.

E. Notice of Decision.

1. Within five days of making a final decision on a Type II application, a notice of decision shall be sent to:

- i. All owners of real property and, if the owner's address is different from the site address, all residents of property, within the distance prescribed in Table 16.89.020;
- ii. Any person who submits a written request to receive notice; and
- iii. Any governmental agency which is entitled to notice under an intergovernmental agreement entered into with the City.

2. The notice of decision shall include information on the application, the City's decision, and a statement explaining how an appeal of the decision may be filed.

F. Effective Date. A Type II decision is final for purposes of appeal when it is mailed by the City.

G. Appeal. A Type II decision may be appealed to the Planning Commission as follows:

1. The following persons have legal standing to appeal a Type II decision:

- i. The applicant;
- ii. Any person who was mailed notice of the decision; and
- iii. Any other person who participated in the proceeding by submitting written comments.

2. Procedure.

a. A Notice of Appeal shall be filed in writing, on forms provided for the purpose by the Planning Director, within 10 days of the date the Notice of Decision was mailed.

b. The Notice of Appeal shall be accompanied by all required information and fees.

c. An appeal of a Type II decision shall be made following the Type III public notice procedures, as described in Section 16.89.050.D.

d. The appeal shall be limited to the specific issues raised during the written comment period unless the hearings body allows additional evidence or testimony concerning any other relevant issue. The hearings body may allow additional evidence if it determines that such evidence is necessary to resolve the case. The purpose of this requirement is to limit the scope of Type II appeals by encouraging persons to submit specific concerns in writing during the comment period. Only in extraordinary circumstances should new issues be considered by the hearings body on appeal of a Type II decision.

3. The decision of the Planning Commission regarding an appeal of a Type II decision is the final decision of the City unless appealed to the City Council. An appeal to the City Council shall follow the same notification and hearing procedures as for the appeal of the staff decision.

H. Any decision or interpretation of this title made by staff that is not a Type II decision may be appealed to the Planning Commission without fee, provided that such appeal is filed in writing within ten days of the staff decision. Such appeals shall be heard as a new business item. The Planning Commission's decision on such appeals may be appealed to the City Council following the Type III public notice procedures, as described in Section 16.89.050.D. (Ord. 1080, 2001; Ord 1237, 2007; Ord. 1340, 2011)

16.89.050 Type III Decision.

A. Pre-application conference. A pre-application conference may be required by the Planning Director for Type III applications.

B. Neighborhood meetings. As directed in Table 16.89.020, the applicant may be required to present their development proposal at a neighborhood meeting before the City accepts the application as complete. See Section 16.89.070.

C. Application requirements. Type III applications shall be made on forms provided by the Planning Director. The application shall be accompanied by all required information and fees.

D. Public notice.

1. At least 20 days prior to a public hearing on a Type III decision or a Type II appeal decision, the Planning Director shall mail notice meeting the requirements of state law to:

- a. All owners of real property and, if the owner's address is different from the site address, all residents of property, within the distance prescribed in Table 16.89.020;
 - b. The appointed chair of any neighborhood association whose boundaries include the subject property;
 - c. Any person who submits a written request to receive notice; and
 - d. Any governmental agency which is entitled to notice under an intergovernmental agreement entered into with the City.
 - e. For appeals, the appellant and all persons who provided testimony.
2. Notice of any proposal that includes a new transportation facility or improvement, and where these facilities or improvements included or may impact a collector or arterial street, will be sent to the ODOT and Clackamas County or any special interest transportation groups as appropriate. Special interest transportation groups could include trucking organizations, bicycle and pedestrian interest groups, and interest groups for people with disabilities. Information that should be conveyed with the notice includes the following:
 - a. Project location
 - b. Proposed land use action
 - c. Location of project access point(s)
 3. The City shall prepare an affidavit of mailing for the public notice and make the affidavit part of the application file. Failure of any individual to receive notice as prescribed in this section does not invalidate the proceedings.
 4. Written notice shall be published in a newspaper of general circulation in Canby once in either of the two consecutive weeks prior to the hearing.
 5. At least ten (10) days before the hearing, written notice shall be posted at City Hall and such other conspicuous locations as the Council may determine to be appropriate.
 6. At least ten (10) days before the hearing, the applicant shall post notice of the hearing on the property as directed by the Planning Director.
 7. The Planning Director may expand the notice area or take other steps to assure that affected property owners or residents are made aware of the pending public hearing.

8. Any application that involves access to the state highway system must be provided to the Oregon Department of Transportation for their review and comment regarding conformance with state access management standards and requirements.

E. Conduct of public hearing.

1. In all evidentiary hearings required by this title the following procedures shall be followed:

- a. All interested persons in attendance shall be heard on the matter of hearing, and this fact shall be communicated to those in attendance;
- b. A summary of the application or other matter for hearing shall be given by the presiding officer or their designee;
- c. The staff report shall be made followed by questions, if any, of the staff by the hearings body;
- d. The public hearing shall be opened and testimony shall be received in the following order:
 - i. Applicant;
 - ii. Proponents;
 - iii. Opponents; and
 - iv. Rebuttal by proponents or applicant;
- e. Close public hearing;
- f. Questions and discussion by hearing body;
- g. Decision by the hearing body except that further discussions, decision, or reopening of the public hearing may be postponed to another meeting, the time, date, and place of which shall be announced before adjournment.

2. All persons who speak at the hearing shall identify themselves by name, address, and interest in the matter. Attorneys or other agents shall be allowed to speak on behalf of all participants.

3. Physical evidence in the form of written documents, photographs, or other exhibits may be accepted by the hearing body if deemed to be pertinent.

4. A record made at any prior evidentiary hearing may be accepted, considered, and used by the hearing body at any subsequent hearing, and said body, by majority vote of a quorum present, may deny to accept or hear any repetitious matter.

5. The hearing body may recess a hearing in order to obtain additional information or to serve further notice upon other property owners or persons it decides may be interested. Upon recessing for these purposes, the hearing body shall announce the time and date when the hearing will be resumed.
6. Before the conclusion of the initial evidentiary hearing, any participant may ask the hearings body for an opportunity to present additional relevant evidence or testimony that is within the scope of the hearing. The hearings body shall grant the request by scheduling a date to finish the hearing as follows:
 - a. If the hearings body grants a continuance, the completion of the hearing shall be continued to a date, time, and place at least seven days after the date of the first evidentiary hearing. An opportunity shall be provided at the second hearing for persons to present and respond to new written evidence and oral testimony. If new written evidence is submitted at the second hearing, any person may request, before the conclusion of the second hearing, that the record be left open for at least seven days, so that they can submit additional written evidence or testimony in response to the new written evidence; or
 - b. If the hearings body leaves the record open for additional written evidence or testimony, the record shall be left open for at least seven days after the hearing. Any participant may ask the City in writing for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is filed, the hearings body shall reopen the record as follows:
 - i. When the hearings body re-opens the record to admit new evidence or testimony, any person may raise new issues which relate to that new evidence or testimony.
 - ii. An extension of the hearing or record granted pursuant to this subsection is subject to the limitations of ORS 227.178 (120-day rule), unless the continuance or extension is requested or agreed to by the applicant.
 - iii. If requested by the applicant, the City shall allow the applicant at least seven days after the record is closed to all other persons to submit final written arguments in support of the application, unless the applicant expressly waives this right. The applicant's final submittal shall be part of the record but shall not include any new evidence.

F. Decision process.

1. Approval or denial of a Type III decision or appeal of a Type II decision shall be based on standards and criteria located in the code.

2. The hearings body shall issue a final written order containing findings and conclusions that approve, approve with conditions, or deny the application.
3. The written decision shall explain the relevant criteria and standards, state the facts relied upon in rendering the decision, and justify the decision according to the criteria, standards, and facts.
4. In cases involving attorneys, the prevailing attorney shall prepare the findings, conclusions, and final order. Staff shall review and, if necessary, revise, these materials prior to submittal to the hearings body.

G. Notice of Decision.

1. The written findings shall be sent to:
 - a. Any person who submits a written request to receive notice, provides written comments during the application review period, or provides written or oral testimony in the public hearing;
 - b. The applicant and owner of the subject property;
 - c. Any governmental agency which is entitled to notice under an intergovernmental agreement entered into with the City.
2. The written findings shall include information on the application, the City's decision, and a statement explaining how an appeal of the decision may be filed.

H. Effective Date. A Type III decision is final for purposes of appeal when it is mailed by the City.

I. Appeal. The Planning Commission's decision on a Type III decision or Type II appeal may be appealed to the City Council as follows:

1. The following have legal standing to appeal:
 - a. The applicant;
 - b. Any person who was mailed notice of the decision;
 - c. Any other person who participated in the proceeding by testifying or submitting written comments; and
 - d. The City Council, on its own motion.
2. Procedure.

a. A Notice of Appeal shall be filed in writing, on forms provided for the purpose by the Planning Director, within 10 days of the date the Notice of Decision was mailed.

b. The Notice of Appeal shall be accompanied by all required information and fees.

c. The appeal shall be limited to the specific issues raised during the comment period and public hearing process unless the hearings body allows additional evidence or testimony concerning any other relevant issue. The hearings body may allow additional evidence if it determines that such evidence is necessary to resolve the case. The purpose of this requirement is to limit the scope of appeals by encouraging persons to be involved in the public hearing. Only in extraordinary circumstances should new issues be considered by the hearings body on an appeal.

3. The City Council shall overturn the decision of the Planning Commission only when one or more of the following findings are made:

a. That the Commission did not correctly interpret the requirements of this title, the Comprehensive Plan, or other requirements of law;

b. That the Commission did not observe the precepts of good planning as interpreted by the Council; or

c. That the Commission did not adequately consider all of the information which was pertinent to the case.

4. The Council's action on an appeal shall be governed by the same general regulations, standards, and criteria as apply to the Commission in the original consideration of the application.

J. Any decision of the Planning Commission may be appealed to the City Council unless otherwise specified in this Title. Such appeals will be processed using the Type III procedures unless otherwise specified in this Title.

K. The decision of the City Council regarding a Type IV decision, appeal of a Planning Commission decision, or any other process contained within this title, is the final decision of the City. (Ord. 1080, 2001; Ord. 1111 section 5, 2003; Ord 1237, 2007)

16.89.060 Type IV decision.

For certain applications, the City Council makes a final decision after a recommendation by the Planning Commission. These application types are referred to as Type IV decisions.

A. Pre-application conference. A pre-application conference may be required by the Planning Director for Type IV applications.

B. Neighborhood meetings. The applicant may be required to present their development proposal at a neighborhood meeting (see Section 16.89.070). Table 16.89.020 sets the minimum guidelines for neighborhood review but the Planning Director may require other applications to go through neighborhood review as well.

C. Application requirements. Type IV applications shall be made on forms provided by the Planning Director. The application shall be accompanied by all required information and fees.

D. Public notice and hearings. The public notice and hearings process for the Planning Commission's review of Type IV applications shall follow that for Type III applications, as provided in subsections 16.89.050.D and 16.89.050.E.

E. Decision process.

1. Approval or denial of a Type IV decision shall be based on the standards and criteria located in the code.
2. The hearings body shall issue a final written order containing findings and conclusions recommending that the City Council approve, approve with conditions, or deny the application.
3. The written decision shall explain the relevant criteria and standards, state the facts relied upon in rendering the decision, and justify the decision according to the criteria, standards, and facts.
4. In cases involving attorneys, the prevailing attorney shall prepare the findings, conclusions, and final order. Staff shall review and, if necessary, revise, these materials prior to submittal to the hearings body.

F. City Council proceedings:

1. Upon receipt of the record of the Planning Commission proceedings, and the recommendation of the Commission, the City Council shall conduct a review of that record and shall vote to approve, approve with conditions, or deny the recommendation of the Planning Commission.
2. The City Council may question those individuals who were a party to the public hearing conducted by the Planning Commission if the Commission's record appears to be lacking sufficient information to allow for a decision by the Council. The Council shall hear arguments based solely on the record of the Commission.
3. The City Council may choose to conduct public hearings on Comprehensive Plan amendments, amendments to the text of this title, zone map amendments, and annexations. If the Council elects to conduct such hearings, it may do so in

joint session with the Planning Commission or after receiving the written record of the Commission. (Ord. 1080, 2001)

16.89.070 Neighborhood Meetings.

- A. Applicants are encouraged to meet with adjacent property owners and neighborhood representatives prior to submitting their application in order to solicit input, identify issues, and exchange information about the proposed meeting.
- B. The Planning Commission or Planning Director may require an applicant to hold a meeting in the neighborhood prior to accepting an application as complete. A neighborhood meeting is required for some application types, as shown in Table 16.89.020, unless this requirement is waived by the Planning Director.
- C. At least two weeks prior to the neighborhood meeting, the applicant shall mail notice of the meeting to:
 - 1. The appointed chair of any neighborhood association in whose boundaries the application lies; and
 - 2. All of those who would receive notice of the application's public hearing before the Planning Commission.
- D. The meeting shall be held in a fully accessible location approved by the City.
- E. Following a required neighborhood meeting, applicants shall prepare a written summary of pertinent issues raised and shall prepare a detailed response to each issue. This material shall be submitted to the Planning Department in electronic format at least two weeks before the initial public hearing.
- F. Applicants or attendees may make audio or video recordings of the neighborhood meeting if desired. (Ord. 1080, 2001; Ord. 1111 section 5, 2003; Ord 1237, 2007; Ord. 1514, 2019)

16.89.080 Application Requirements and Completeness.

- A. Submittal. Applications for land use and development permits shall be filed on forms provided by the purpose by the Planning Director. The application shall be made with all required information and fees.
- B. Fees. Fees shall be set out by resolution adopted by the City Council. Fees shall differentiate between various processes and applications and no part of the fee shall be refunded unless approved by the Planning Director.
- C. Amendments to forms. Application forms may be amended by the Planning Director. The Planning Commission shall first review and approve all proposed amendments as New Business Items.

D. Completeness. In reviewing an application for completeness, the following procedure shall be used:

1. When an application is received by the City, the Planning Director shall immediately determine whether the following essential items are present. If they are not, the Planning Director may choose not to accept the application, in which case the application shall be immediately returned to the applicant:

- a. The required form;
- b. The required fee; and
- c. The signature of the applicant on the form, and signed written authorization of the property owner of record if the applicant is not the owner.

2. Completeness.

a. After the application is accepted, the Planning Director shall review the application for completeness. If the application is incomplete, the Planning Director shall notify the applicant in writing exactly what information is missing within thirty (30) days of the application and allow the applicant 180 days to submit the missing information;

b. In accordance with the application submittal requirements, the application shall be deemed complete upon the receipt by the Planning Director of all required information. The applicant shall have the option of withdrawing the application or refusing to submit information requested under (a), above. For the refusal to be valid, it shall be made in writing and received by the Planning Director no later than fourteen (14) days after the date on the letter of incompleteness. If the applicant refuses in writing to submit the missing information, the application shall be deemed complete for the purposes of processing on the 31st day after first acceptance of the application.

E. The City shall take final action on permit applications which are subject to this chapter, including resolution of all appeals, within 120 days from the date the application is deemed complete. Any exceptions to this rule shall conform to the provisions of ORS 227.178. This 120-day rule does not apply to legislative comprehensive plan and text amendment applications as defined under ORS 227.178.

F. Standards and criteria. Approval or denial of a complete application shall be based upon the standards and criteria that were applicable at the time the application was first accepted. (Ord. 1080, 2001)

16.89.90 Modifications.

Any proposed modification to previously approved land use applications, including site plans, elevations, or conditions of approval, shall be reviewed by the Planning Director to determine

if they are minor, intermediate, or major. Factors to be considered in this determination include the date of the original application, the impact on neighboring properties, and the impact on public service provision. Modifications shall be processed as indicated in subsections A through D below. Modification applications shall be made on forms provided for the purpose by the Planning Director.

- A. Minor Modification. Minor modifications have a negligible impact on an approved site plan, land use decision, or condition of approval. The Planning Director will review all minor modifications under the Type I process.
- B. Intermediate Modification. Intermediate modifications are those that do not fit the definitions in 16.89.090(A) or (C). The Planning Director will review intermediate modifications under the Type II process. If the Planning Director approves an intermediate modification, notice of the decision will be made in accordance with the Type II process. The individuals noticed may obtain a public hearing on the issue by filing a request in writing within ten days of the notice mailing date. Any additional costs of such hearings shall be paid by the modification applicant. Hearing notice shall follow the requirements of the procedure type of the original application.
- C. Major Modification. Any modification that would result in a substantial impact to an approved site plan, land use decision, or condition of approval is a major modification. Major modifications shall be processed using the procedure type of the original application.
- D. Modification criteria. Modification applications shall be evaluated based on the criteria pertaining to the original application being modified. (Ord. 1111, 2003; Ord 1237, 2007)

16.89.100 Administrative Reviews.

Where a determination about a proposed use, structure or the legality of a parcel cannot be made without interpretation or the exercise of factual, policy or legal judgment, the proposed use, structure, or the legality of a lot or parcel may be reviewed as an administrative review subject to submittal of an application as provided in this chapter. The administrative review procedures, as provided below, shall be followed in making these decisions.

- A. The decision shall be made on the basis of the applicable city comprehensive plan and applicable standards and criteria in the City Of Canby land development and planning ordinance. The Planning Director or designee may attach any conditions of approval deemed necessary to ensure conformance of the use, structure, lot or parcel to the standards or criteria. Administrative Review Applications may be submitted and shall be signed as required in this chapter. Notwithstanding any other provisions of this title, the Planning Director or designee may forward any land use permit or application to the planning commission for a public hearing and initial decision.
- B. Notice of a decision shall be sent to the applicant, the owner(s) of the subject property, the co-tenants if the subject property is owned by tenants in common,

and all property owners within the notification area prescribed by this chapter or as required by state law or administrative rule.

- C.** The applicant or any persons aggrieved or affected by the decision may file a request for a hearing to the City Planning Department within 10 days of the date the decision was rendered. The request must follow procedures in Sections 16.89.030 and 040.
- D.** The applicant may file a request for reconsideration without a hearing to the Planning Department within 10 days of the date the decision was rendered. The request must be in writing and received in the Planning Department office prior to the decision being final, and should explain wherein the decision is factually or legally incorrect, or state new facts material to the decision that were not available to the Planning Director, or propose modifications that will better conform the proposal to the requirements of this title. The request for reconsideration shall include a signed 30-day waiver of the 120-day time limit in the Oregon Revised Statutes.

Applicants shall be limited to one request for reconsideration per application. The Planning Director shall reconsider the matter and provide notice to the person requesting reconsideration and as required in subsection (B) of this section.

- E.** When reconsideration has been requested, the decision is stayed until final action is taken. (Ord. 1514, 2019)

Chapter 16.45

Food Cart Pods

Sections:

- 16.45.010 Purpose**
- 16.45.015 Applicability**
- 16.45.020 Administration**
- 16.45.025 Siting and Design Standards**
- 16.45.030 Individual Cart Design Standards**
- 16.45.035 Vehicle and Bicycle Parking**
- 16.45.040 Utilities**
- 16.45.045 Signage**
- 16.45.045 Standards for M-1 and M-2 Zoning Districts**

16.45.010 Purpose.

The purpose of these regulations is to establish criteria for the placement of food cart pods in the City of Canby. Food carts encourage local business and provide the community a wider choice of eating and drinking options. Food cart pods shall comply with all applicable City, County and State standards.

16.45.015 Applicability.

A. This chapter applies to:

1. New Food Cart Pods.
2. Renovation or redevelopment of an existing Food Cart Pod.

B. This chapter does not apply to:

1. Individual Food Carts that have obtained a Temporary Mobile Vendor Permit as regulated by Section 16.08.140 and Section 16.08.145
2. Any person engaged in delivery, exhibition, sale or offering of food on a site for a period of time not to exceed 2 hours during any 24 hour period.
3. Food Carts or other mobile vending units that are approved as part of a City reviewed event, such as a farmer's market or block party.

16.45.020 Administration.

- A. Permit Required. All Food Cart Pods erected after the effective date of this chapter shall require a permit. Applications shall be made on forms provided by the Planning Director with attached required information stated in the application form and in Section 16.45. Food Cart Pod applications are subject to the Type 2 land use process as described in Section 16.89.040.
- B. Business License. The owner of the Food Cart Pod must obtain a business license through the City of Canby before operations begin, and it must be kept current with yearly renewals.
- C. Fee. A fee established by resolution of the City Council shall be paid to the City of Canby upon filing of an application. Such fees will not be refundable.
- D. Construction and Maintenance. All structures, equipment and ancillaries (whether above or underground), shall meet all applicable requirements of building, structural, mechanical and electrical codes.
 - 1. All equipment shall be kept in good repair and maintained in a safe, neat, and clean condition.
 - 2. No structures or equipment shall be erected or maintained in such a manner that any portion of its surface will interfere with the free use of—or any access to—any fire escape, exit or standpipe.
 - 3. No aspect of the Food Cart Pod shall be deployed in a location that creates an immediate danger to the safety and welfare of the public by blocking vision for either pedestrians or motorists at public and/or private roadways, intersections, driveways, paths, sidewalks or railroad crossings.
- E. Appeal. Appeals are limited to procedures set forth in Chapter 16.89 for land use decisions pursuant to requirements in Chapter 16.89. Appeals of building permit decisions are decided by the Clackamas County Building Official.
- F. Permit Expiration. The approval shall be implemented for a Food Cart Pod within 365 days, beginning on the day a final decision is issued.
- G. Permit Suspension or Revocation. The Planning Director and City Engineer or their duly authorized representative may, in writing, suspend or revoke a permit issued under provisions of this chapter whenever the permit is issued on the basis of incorrect information supplied, or in violation of applicable ordinance or regulation or any of the provisions of this chapter.

16.45.025 Site and Design Standards.

- A. The purpose of this section is to provide clear and objective site and design standards for Food Cart Pods in the City of Canby.

B. Site Design Standards for Food Cart Pods:

1. Food carts and amenities shall be located on a paved or concrete surface.
2. Food cart pods shall not occupy pedestrian walkways.
3. Food cart pods shall not occupy or obstruct bicycle or vehicle parking required for an existing use.
4. Carts and/or objects associated with the food cart use shall not occupy fire lanes or other emergency vehicle access areas.
5. Setbacks for food cart pods shall be the same as the zone in which it is located, except when a side or rear yard abuts a residential zoning district. Any side or rear yard abutting a residential zoning district must meet the following setbacks:
 - a. Rear and/or side yards abutting residentially zoned property shall have a minimum setback of 20 feet or the minimum setback for the zone in which it is located, whichever is greater.
6. Carts shall not be located or oriented in a way that requires customers to queue in a driveway or right of way.
7. Uses shall not create tripping hazards in pedestrian and vehicular circulation areas with items including, but not limited to, cords, hoses, pipes, cables, or similar materials.
8. Where more than one cart is located on a site, carts shall be separated by a minimum of 6 feet.
9. Food carts shall not be located in the Vision Clearance Area as described in Section 16.46.020.
10. The Pod must have a perimeter with clear entrance and exit points. This can be achieved by using landscaping, fencing, existing buildings, or topography, or a mix of these elements. Fences shall not be chain link, with or without slats.
11. Landscaping for Pods is as required in the underlying zoning district. Plantings must be installed permanently, or located in planters not smaller than 20 gallons. Nursery pots are prohibited.
12. Lighting in accordance with the LZ2 lighting district is required as regulated in Section 16.43.

C. Standards for Amenities within a Food Cart Pod.

1. All food cart pods which provide seating for customers shall have restrooms with hand washing facilities available during operating hours. Restrooms must have handwashing facilities with hot and cold running water, soap and paper towels or air dryers in an interior space. Restrooms shall be screened from view of the public right of way and abutting residentially zoned properties.
2. All food carts and customer amenities within a food cart pod shall be served by a 5 foot minimum hard surface walkway.
3. Waste and recycling receptacles shall be provided for customer and business waste. Receptacles shall be screened from view of the right of way and abutting residentially zoned properties and serviceable by the applicable waste-hauler.
4. Storage structures accessory to food carts shall be less than 120 square feet in size and no greater than 15 feet in height. Storage structures shall be set back a minimum of 20 feet from public rights-of-way.
5. Structures used to provide shelter to customers may not be tensile structures such as tents or canopies unless they are fully framed with no movable parts. Tensile structures which require stake and rope support are prohibited.
6. Permanent structures must meet the dimensional standards of the underlying zone.
7. Weather protection elements must be immovable by patrons. If individual table umbrellas are utilized, they must be permanently affixed.
8. Screening elements may include landscaping, fencing, existing buildings, topography, or a mix of these elements. Fences shall not be chain link, with or without slats.
9. Lighting for the Pod shall follow Chapter 16.43 Outdoor Lighting Standards.

16.45.030 Individual Cart Design Standards.

A. All Food carts shall be subject to the design standards listed below:

1. Food carts shall enclose or screen from view of the right of way and abutting residentially zoned property all accessory items not used by customers, including but not limited to, tanks, barrels, grills, smokers, or other accessory items.
2. If present, wheels and tongues must remain on the food cart. Wheels must remain inflated.

3. Food carts shall be kept in good repair and maintained in a safe and clean condition.
4. Food carts shall not be longer than 26 feet, as measured from wall to wall. Food Carts shall not exceed 15 feet in height.
5. Food carts shall obtain and keep current a City Business License.
6. Food carts shall maintain all required licenses by the local agencies, including Food Handler's Cards from Clackamas County Health, Housing and Human Services.
7. If provided, cart awnings shall have seven (7) feet of clearance between the ground and awning for safe pedestrian circulation.

16.45.035 Vehicle and Bicycle Parking.

- A. Vehicle and bicycle parking must conform to the dimensional standards found in Section 16.10.070.
- B. Required parking ratios for Pods are as listed in the following table.

Required Parking for Food Cart Pods by Zoning District	
Residential Commercial (C-R)	1.5 spaces per cart
Downtown Commercial (C-1)	None
Highway Commercial (C-2)	1.5 spaces per cart
Commercial Manufacturing (C-M)	1.5 spaces per cart
Light Industrial (M-1)	1 space per cart
Heavy Industrial (M-2)	1 space per cart

1. M-1 and M-2 zoned properties within the Pioneer Industrial Park are eligible for a 10% or 5 space reduction in required parking, whichever is less. To qualify, the applicant must quantitatively show there is existing unutilized parking on the parcel.

C. Bicycle parking is required at 0.5 parking spaces per food cart. If there is existing bicycle parking accessible to patrons and within 50 feet of the site, lower bicycle parking counts may be accepted on a case by case basis.

16.45.040 Utilities.

A. Food Cart Pods are subject to the utility regulations below.

1. All permanent utility lines shall be placed underground. Temporary utilities, lines and tanks shall be screened, covered, or hidden from view from the right-of-way as to minimize visual impacts and prevent tripping hazards or other unsafe conditions.
2. Wastewater shall be addressed in one of the following two ways:
 - a. Food carts shall connect to the sanitary sewer consistent with applicable state plumbing codes and will include an approved grease interceptor for the disposal of fats, oils and grease as described in Chapter 10 of the 2021 Oregon Plumbing Specialty Code, or most recent version thereof. Indirect discharge or leakage draining into the storm water system is prohibited.
 - b. Food carts shall connect to individual or community wastewater holding tanks as allowed by Section 5-4 of the Oregon Health Authority's 2020 Food Sanitation Rules, or most recent version thereof. Tanks shall be owned and serviced by an Oregon Department of Environmental Quality licensed pumper. A copy of the contract shall be provided to the City before any food carts are located on site. Holding tanks shall be screened from view of the right-of-way by fully sight obscuring fencing. Indirect discharge or leakage draining into the storm water system is prohibited. Wastewater shall not be dumped onto the ground, onto the streets, or into a storm a drain. All liquid waste from the waste tank or from cleaning activities such as cleaning the mobile food cart shall be captured and properly disposed of in the sanitary sewer.
3. Potable water shall be addressed in one of the following two ways:
 - a. Food carts shall connect to a permanent water source in conformance with applicable state plumbing codes.
 - b. Food carts shall be connected to a potable water tank consistent with Section 5-3 of the Oregon Health Authority's 2020 Food Sanitation Rules, or the most recent version thereof.
4. Food carts and amenities shall connect to a permanent power source. Power connections must be undergrounded. Generators are prohibited.

16.45.045 Signage

- A. Regulations from Chapter 16.42 shall apply in cases where this Chapter is silent.
- B. Signage for Food Cart Pods shall be allowed as follows:
 1. One freestanding sign, not to exceed 15' in height and 50 square feet per face (up to two faces). If lit, lighting source shall not be seen directly from the right of way or abutting residentially zoned properties.

2. One A-Frame sign per street frontage with a maximum sign window of 24" x 36", unlit and outside of the public right of way.
3. One temporary banner not to exceed 32 square feet is allowed during the first 30 days after opening of the Pod. The banner must be fully secured and kept in good condition.

16.45.050 Standards for M-1 and M-2 Zoning Districts.

A. The purpose of this section is to recognize the Light Industrial (M-1) and Heavy Industrial (M-2) zoning districts require additional regulations for Food Cart Pods to ensure safety and compatibility. The following standards apply to Pods in the M-1 and M-2 zoning districts.

1. A 2' vegetated buffer is required around the Pod in addition to perimeter fencing. The buffer can be counted towards the overall percentage of landscaping required. Landscaping must be installed permanently, or in planters not smaller than 20 gallons. Nursery pots are prohibited.



Oregon Health Authority
Food, Pool & Lodging, Health and Safety Program

MOBILE FOOD UNIT OPERATION GUIDE

Guidelines for Food Service

OREGON HEALTH AUTHORITY

Mobile Food Unit Operation Guide

QUESTIONS?

Contact your county health department for information on licensing your mobile unit:

<https://www.oregon.gov/oha/PH/PROVIDERPARTNERRESOURCES/LOCALHEALTHDEPARTMENTRESOURCES/Pages/lhd.aspx>

Oregon Health Authority
Foodborne Illness Prevention Program
800 NE Oregon Street, Suite 640
Portland, OR 97232

www.healthoregon.org/foodsafety

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Mobile Food Unit Operation Guide

A summary of the Food Sanitation Rules relating to mobile food units

The Mobile Food Unit Operational Guide is intended to help you set up and operate your mobile food unit in a sanitary and safe manner. By focusing on critical food safety practices, you will reduce the possibility of foodborne illness. While this document contains some detailed information about the rules for the construction and operation of mobile food units, it does not contain all the requirements for your unit. Unless otherwise noted, sections of the Food Sanitation Rules, Oregon Administrative Rules (OAR) 333-150-0000 are provided for you to obtain specific rule requirements. The Oregon Food Sanitation Rules www.healthoregon.org/foodsafety.

Licensing Your Mobile Food Unit

A license is required. Before a Mobile Food Unit is licensed, it must go through a plan review with the local Environmental Health Department. Prior to licensing, there may be other agencies from which you will be required to obtain approvals. These include, but are not limited to planning (zoning), Fire Marshall, and other city or county authorities. Oregon law requires that all food service activities open to the public be licensed PRIOR to operation.

Maintain the unit as approved. Mobile food units must be maintained and operated as originally designed and approved. Units that have been modified without approval must revert to the approved design and operation. If a mobile unit operates in a county other than where it is licensed, the operator is required to notify the health department in the county where it has moved prior to operating.

County Health Departments

Contact your county health department early in your planning process. Determine what county you will be operating your mobile unit. The county's environmental health program contact information can also be found at this website or in the table below: <https://www.oregon.gov/oha/PH/PROVIDERPARTNERRESOURCES/LOCALHEALTHDEPARTMENTRESOURCES/Pages/lhd.aspx>

Baker	541-473-5186	Lake	541-947-6045
Benton	541-766-6841	Lane	541-682-4480
Clackamas	503-655-8384	Lincoln	541-265-4127
Clatsop	503-325-8500	Linn	541-967-3821
Columbia	503-397-7210	Malheur	541-473-5186
Coos	541-266-6720	Marion	503-588-5346
Crook	541-447-8155	Morrow	541-278-6394
Curry	541-425-7545	Multnomah	503-988-3400
Deschutes	541-322-7400	Polk	503-623-9237
Douglas	541-440-3574	Sherman-NCPH	541-506-2753
Gilliam-NCPH	541-506-2753	Tillamook	503-842-3943
Grant	541-620-0965	Umatilla	541-278-6394
Harney	541-620-0965	Union	541-962-8818
Hood River	541-387-6885	Wallowa	971-673-0442
Jackson	541-774-8206	Wasco-NCPH	541-506-2753
Jefferson	541-475-4456	Washington	503-846-8722
Josephine	541-474-5325	Wheeler	541-620-0965
Klamath	541-883-1122	Yamhill	503-434-7525

What is a Mobile Food Unit?

A mobile food unit is any vehicle that is self-propelled, or can be pulled or pushed down a sidewalk, street, highway or waterway. Food may be prepared or processed on this vehicle, and the vehicle is used to sell and dispense food to the ultimate consumer. Mobile food units must be secured and protected from contamination when not in operation. Mobile food units have no size limit, but they must meet the following requirements:

Wheels: Mobile units must be mobile at all times during operation. The unit must be on wheels that are functional and appropriate for the type of unit at all times.

Designed in One Piece: Mobile food units must be designed and constructed to move as a single piece. Mobile units may not be designed to be assembled at the operating location.
333-162-0020

Integral: The unit and all operations and equipment must be integral to the unit. This does not preclude the use of one outdoor cooking unit such as a BBQ with a Class IV unit.

Water and Sewer Capacity: Potable water tanks must be designed to be accessible and translucent to determine cleanliness and cleaned at least every 6 months. The tanks must

accommodate the amount of water needed for the operation of the unit including at least 30 gallons for dishwashing, 5 gallons for handwashing, and additional gallonage needed for food preparation and cleaning. The waste tank must be a minimum of 15% greater than the freshwater tank. A mobile food unit may connect to water and sewer if it is available at the operating location. If the unit cannot connect directly to the sewer, then the unit may not connect to the public water system. The water and sewer tanks may not be removed from the unit even if water and sewer are available. 5-305.11

Water Pressure: All sinks must provide water under pressure of a least 20 PSI or provide for a continuous flow of water. Gravity fed is not allowed.

How is a Mobile Food Unit Classified?

There are four types of mobile food units. The mobile food unit classifications are based on the menu. A mobile food unit can serve menu items within its classification number or below (see Table 1). For example, a Class III unit may also sell items allowed under Class II and I.

- Class I** These units can serve only intact, packaged foods and non-potentially hazardous beverages. No preparation or assembly of foods or beverages may take place on the unit. Non-potentially hazardous beverages may be provided from covered urns or dispenser heads only. No dispensed ice is allowed.
- Class II** These units may serve foods allowed under Class I and provide hot and cold holding display areas from which unpackaged foods are displayed. Self-service by customers of unpackaged food is not allowed. Preparation, assembly or cooking of foods is not allowed on this unit.
- Class III** These units may serve any food item allowed under Class II, and may cook, prepare and assemble food items on the unit. However, cooking of raw animal food on the unit is not allowed.
- Class IV** These mobile food units may serve a full menu.

Table 1: Mobile Food Unit General Requirements and Limitations

Requirements	Class I	Class II	Class III	Class IV
Water Supply Required	No	Yes	Yes	Yes
Handwashing System Required	No	Yes ¹	Yes ¹	Yes ¹
Dishwashing Sinks Required	No	Yes – Or Licensed Commissary ²	Yes – Or Licensed Commissary ²	Yes ²
Assembly or Preparation Allowed	No	No	Yes	Yes
Cooking Allowed	No	No	Yes ³	Yes
Off-Unit Cooking Operation Allowed	No	No	No	Yes
Restroom Required	Yes	Yes	Yes	Yes
Examples	Prepackaged Sandwiches/ Dispensed Soda	Service of Unpackaged Food Items	Espresso/ Hot Dogs	No Menu Limitation

¹The handwashing system must be plumbed to provide hot and cold or tempered running water and a minimum of 5 gallons of water must be dedicated for handwashing.

²If provided, must have a minimum of 30 gallons of water for dishwashing or twice the capacity of the three compartment sinks, whichever is greater.

³May only cook foods that are not potentially hazardous when raw (rice, pasta, etc.). Animal foods must be pre-cooked.

Base of Operation

Base of Operation Mobile food units must operate from a base of operation or be fully self-contained. The regulatory authority will determine whether self-contained mobile food units have the ability to operate without a base of operation. To do so, the units must contain all the equipment and utensils that a commissary would provide. A mobile food unit may not serve as a commissary for another mobile food unit.

Activities Allowed Outside of the Unit

All operations and equipment must be an integral part of the mobile food unit, unless your proposed activity meets one of the three exceptions and specific conditions are met. The three exceptions are the use of a cooking unit, customer seating, and auxiliary storage.

Cooking Unit **Cooking Unit:**

Class IV mobile food units may use **one** cooking unit, such as a BBQ or pizza oven that is not integral to the unit. The cooking unit **may not** be a flat top grill, griddle, wok, steamtable, stovetop, oven or similar cooking device. The cooking unit must be able to move with the unit.

A Class IV mobile food unit may use a cooking unit when:

- It is in close proximity to the mobile food unit
- It is used only for cooking. Processing, portioning, preparation, or assembly of food must be conducted from inside the mobile food unit
- A handwashing system must be provided adjacent to the cooking unit.

Seating for Customers

Operators may provide seating for customers if restrooms are readily accessible within 500 feet of the mobile food unit 6-402.11 The restroom must have a handwashing facility that provides hot and cold running water, soap, and paper towels or air dryer.

When seating is provided, mobile food units must provide a garbage container for customers.

Shelves, Tables and Off-Unit Display

Shelves or tables that are integral to the unit may be used to display non-potentially hazardous condiments and customer single-use articles such as napkins and plastic utensils. Mobile food units may display commercially packaged, non-potentially hazardous food items, such as cans of soda or bags of chips, off the unit if they are limited to what might be sold during a typical meal period.

Auxiliary storage

Auxiliary storage shall be limited to an amount that can be used in the course of a day's operation and stored in such a manner as to prevent contamination or infestation (water-tight covered containers). At the end of the day, items **must be placed in the unit or a licensed warehouse**. No self-service, assembly or preparation activities may occur from the auxiliary storage container.

Refrigerators and freezers may **not** be placed outside the unit and must be in the unit or in a licensed warehouse. Handling of unpackaged foods, dishwashing and ice making are **prohibited** in a warehouse.

Mobile Food Units Operating at Temporary Events

Events include fairs, carnivals, circuses, festivals, concerts or any other temporary public gathering. As a licensed mobile food unit, you may operate as a single-event temporary restaurant as specified under ORS 624.650. If you are operating at a temporary event that you may utilize off-unit tables and display areas for non-potentially hazardous foods and dispensed beverages, condiments, and single-service articles such as napkins and utensils. However, the off-unit tables and display areas allowed under this rule may not be used to conduct activities such as food preparation, assembly or cooking. In addition, the display or dispensing of potentially hazardous foods is not allowed. Mobile food units that place equipment or conduct operations outside the unit that are beyond those allowed in this rule must obtain a single-event temporary restaurant license from the county where the event will be held.

Food Handler Certificates

All food service workers must obtain a food handler certificate. For more information on how to obtain a food handler certificate, contact your County Health Department or go to:

<https://www.orfoodhandlers.com/eMain.aspx>

Food Sanitation Requirements

Person In Charge (PIC)

Someone at your mobile unit must be in charge during all hours of operation. This person is responsible for knowing the food sanitation rules and the procedures within your unit. This person needs to be able to provide employees with information they need to perform their job. The Person In Charge (PIC) must inform employees to notify the PIC when the employee is experiencing fever, sore throat, or gastrointestinal symptoms such as vomiting, diarrhea, and nausea. The PIC must have the authority to send an employee home (Sections 2-101.11; 2-201.12). The PIC must also be able to describe the major food allergens and the symptoms that they could cause if a customer had an allergic reaction.

The person in charge is required to demonstrate knowledge of rules applicable to the food service operation. Demonstration of knowledge can be met by obtaining a food manager training certificate, having no critical violations, or by correctly answering the inspector's food safety questions. Critical violations are violations that are known to cause foodborne illness. See www.healthoregon.org/foodsafety/ for approved food manager certificates.

Sick Employees Must Not Work

Employee Illness Any person, who is infected with a communicable disease, has vomiting, abdominal cramps or diarrhea must **not** work in food service until the person is completely free from symptoms (Section 2-201.11). Employees with undiagnosed vomiting and diarrhea may not return to work for at least 24 hours after symptoms have gone.

Infected sores or cuts on employee hands must have a watertight cover such as a finger cot that protects the lesion and a single-use-non-latex glove is worn. Infected sores or cuts on other parts of the body, such as the arms, need to be covered by a dry clean tight-fitting bandage. Latex gloves are prohibited (Section 3-304.15).

Handwashing Facilities

Handwashing facilities must have warm running water, dispensed soap, paper towels, and a wastebasket. (Sections 6-301.11; 6-301.12; 6-301.20; 6-302.11).

Class II, III and IV mobile units must be plumbed to provide hot and cold running water.

When and How to Wash Hands Handwashing is very important when working with food and drinks. Handwashing removes microorganisms that are known to cause illness. Food workers need to wash hands between changing tasks, after handling raw meats, and anytime hands may have been contaminated. The best way to wash hands is to scrub for about 20 seconds with warm running water and soap. Rinse and dry hands with paper towels (Sections 2-301.12; 2-301.14; 2-301.15).

A double handwash is required whenever you enter the unit, after using the restroom, after smoking, and anytime hands become contaminated with body fluids. A double handwash requires you to lather hands with soap and warm water for approximately 20 seconds, rinse, and repeat a second time. Dry hands with paper towel. A double handwash is to prevent the spread of diseases that workers might have even though they are not yet showing the symptoms (Section 2-301.13).

Food Source

All food products must be wholesome and free of spoilage, microorganisms, toxic chemicals, and other harmful substances that can make people sick. All food products must be prepared, stored, handled, or displayed so that it is safe for people to eat (Sections 3-201.11 thru 3-201.17).

Home canned or home processed foods are not allowed. All food must either be prepared in the unit or obtained from an approved source. Home-prepared foods must not be stored on the unit or served to the public. The only alternative to preparing the food in the unit is to prepare the food in an approved licensed facility such as a commissary. If you plan to prepare food off the unit, a separate commissary license is required.

Water Source

All water used in the mobile food unit must be from an approved public water system. A mobile food unit may also use commercially bottled water (Sections 5-1; 5-2; 5-3).

Potentially Hazardous Foods (PHF)

Potentially hazardous foods are:

- Food of an animal origin (raw or cooked)
- Cooked plant products
- Raw seed sprouts, cut melons, garlic and oil mixtures, cut leafy greens and tomatoes

Examples: hamburgers, tacos, hot dogs, spaghetti, chili, cooked rice, cooked potatoes, and cooked beans (Section 1-201.10).

Food Temperatures

Hot and Cold Holding Potentially hazardous foods must be kept cold at 41°F or colder or kept hot at 135°F or hotter. Temperatures between 41°F and 135°F allow for rapid growth of bacteria that can make people sick. Use equipment capable of holding food hot (135°F or hotter). Open flames often fail and blow out. Be sure equipment will work and can hold food hot at all times (Sections 3-501.11 thru 3-501.19).

Use refrigerators or ice to store food cold (41°F). The ice must be from an approved source. All containers used must allow for water to drain away as ice melts (like an insulated cooler with drain plug). Keep enough ice available to keep the food surrounded by ice for the duration of the operation.

Date Marking Date-mark ready-to-eat potentially hazardous foods that will be kept longer than 24 hours at 41°F with a date to discard at 7 days from the day of preparation.

Thawing Foods Foods may be thawed under refrigeration, under cool running water, or in a microwave if it will be cooked immediately.

Cooling The best way to keep food safe is to make it fresh each day, just before you serve it. If you have food that is leftover or made in advance, you must cool it from 135°F to 70°F within two hours. Then the food must cool from 70°F to 41°F within four hours. If the food does not reach 70°F within two hours, you must reheat the food to 165°F, and start the cooling process again or you may serve it immediately or hot hold the food until service. If the food takes longer than four hours to drop from 70°F to 41°F, it must be discarded. Refer to the food handler manual for more information or look online at: www.healthoregon.org/foodsafety.

Cooking Cook raw animal products to the following internal temperatures (Sections 3-401.11 thru 3-401.13):

- Ground beef and other ground meats to 155°F
- Pork, eggs, fish and other potentially hazardous foods 145°F

A consumer advisory will be required for facilities that serve raw or under cooked animal

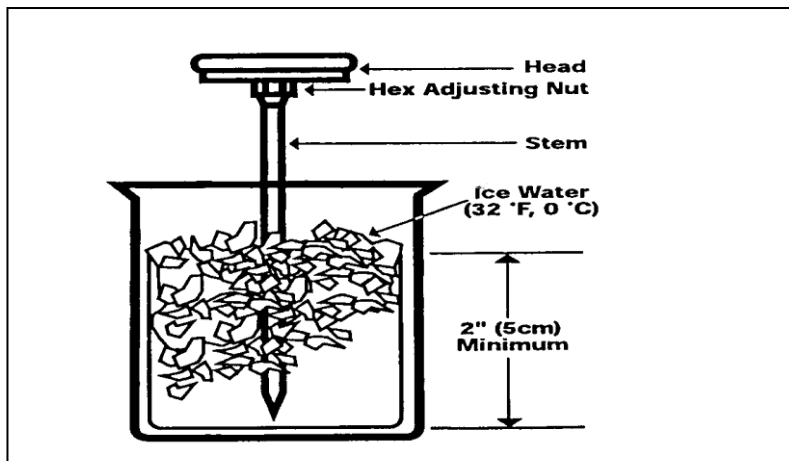
products, such as “burgers cooked to order”.

Reheating All potentially hazardous foods that have been cooked and cooled must be reheated to at least 165°F within two hours before being placed in hot holding (Section 3-403.11).

Thermometers

Metal-stem probe food thermometers with a temperature range of 0°F to 220°F are required to test food temperatures when holding foods hot, cold or when cooking raw animal products. Clean and sanitize your thermometer after each use (Sections 4-203.11; 4-502.11). A small diameter probe is required to measure the temperature of thin foods, such as burgers and fish fillets.

It is important to ensure that the thermometer is working properly. An easy way to check your thermometer is to pack a container with crushed ice and add enough water to make it slushy. Put the thermometer into the slush and wait for 30 seconds until the dial stops moving. The dial should read 32°F. If it has a different reading, adjust the hex nut keeping the probe in the slush until it reads 32°F. For digital thermometers, follow manufacturer instructions on how to adjust the thermometer.



Refrigerator thermometers are required to confirm that the refrigerator or cooler is staying cold at 41°F (Section 4-204.112).

Dishwashing

A commercial dishwasher or a three-compartment sink are used to wash, rinse, and sanitize all equipment and utensils. Using a three-compartment sink, wash equipment and utensils with soapy hot water, rinse with hot water, immerse in sanitizer and air dry. Sanitizer can be made up of 50-100 ppm of chlorine bleach or 200 ppm of quaternary ammonium. Use test strips that are made for the sanitizer that you are using. The test strips will ensure that the sanitizer has been mixed according to manufacturer's directions (Chapter 4).

For units that do not have a dishwashing, you must bring multiple clean utensils to replace any that have been in use for four hours or utensils that have been dropped or contaminated.

Cleaning and Sanitizing

Clean and sanitize food-contact surfaces between preparing raw and ready-to-eat foods. Food contact surfaces must be washed, rinsed, and sanitized as with dishwashing. Wiping cloths must be stored in a sanitizing solution between uses. Wipe cloths used for wiping areas that contacted raw animal products must be stored in a container of sanitizer separate from all other sanitizers (Section 3-304.14).

General Food Protection

- Store food and utensils up off the floor. Store food only in food grade containers. Protect food and utensils from dust and other contaminants (Sections 3-305.11; 4-1)
- Store chemicals such as liquid bleach and detergents below and separate from the food and utensils. Properly label all chemical containers (Section 7-2)
- Keep all garbage in a watertight container with lid (Section 5-5)
- Dispose of wastewater properly into a plumbed sewer (Section 5-4)
- Protect food from insects and rodents (Sections 6-202.15; 6-501.111)

Food Sanitation Rules

Effective Date: February 1, 2020

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**OREGON HEALTH AUTHORITY
DIVISION 150
FOOD SANITATION RULE**

Introduction
Authority, Purpose, Incorporation
by Reference, and Deletions

(1) Authority and Purpose.

This rule establishes definitions, sets standards for management and personnel, food protection, and equipment and facilities, water supply, sewage disposal, provides for food establishment plan review, and employee restriction to safeguard public health and provide consumers food that is safe, unadulterated, and honestly presented.

(2) Incorporation by Reference.

The requirements in the U.S. Public Health Service, Food and Drug Administration (FDA), Food Code 2009, Chapters 1 through 8 are adopted and incorporated by reference. The Food Code is available at <https://fda.gov/food/fda-food-code/food-code-2009>.

(3) Deletions.

The following sections, paragraphs or subparagraphs of the 1999 FDA Food Code are deleted in their entirety: 2-102.11(C)(8)(b), 2-102.20, 2-103.11(K), 3-202.18(A)(1)(a)-(e), 4-301.12(C)(5), (D) and (E), 4-501.115, 4-603.16(B) and (C), 4-603.17(B)(1), 8-302.11, 8-302.14(E), 8-401.10(B), 8-401.20, 8-402.20(A)(3), 8-402.40, 8-406.11, 8-501.40 and Annex 1 through 8.

Chapter 1
Purpose and Definitions

Parts

1-1 TITLE, INTENT, SCOPE

1-2 DEFINITIONS

Subparts: 1-101 Title

1-102 Intent

1-103 Scope

1-101.10 Food Code.

These provisions shall be known as the Food Code, hereinafter referred to as “this Code.”

1-102.10 Food Safety, Illness Prevention, and Honest Presentation.

The purpose of this Code is to safeguard public health and provide to consumers food that is safe, unadulterated, and honestly presented.

1-103.10 Statement.

This Code establishes definitions; sets standards for management and personnel, food operations, and equipment and facilities; and provides for food establishment plan review, permit issuance, inspection, employee restriction, and permit suspension.

1-2 DEFINITIONS

Subpart: 1-201 Applicability and Terms Defined

1-201.10 Statement of Application and Listing of Terms.

(A) The following definitions apply in the interpretation and application of this Code.

(B) Terms Defined.

Accredited program.

(1) "**Accredited program**" means a food protection manager certification program that has been evaluated and listed by an accrediting agency as conforming to national standards for organizations that certify individuals or approved by the Oregon Health Authority (Authority) or the Oregon Department of Agriculture.

(2) "**Accredited program**" refers to the certification process and is a designation based upon an independent evaluation of factors such as the sponsor's mission; organizational structure; staff resources; revenue sources; policies; public information regarding program scope, eligibility requirements, re-certification, discipline and grievance procedures; and test development and administration.

(3) "**Accredited program**" does not refer to training functions or educational programs.

Additive.

(1) "**Food additive**" has the meaning stated in the Federal Food, Drug, and Cosmetic Act, § 201(s) and 21 CFR 170.3(e)(1).

(2) "**Color additive**" has the meaning stated in the Federal Food, Drug, and Cosmetic Act, § 201(t) and 21 CFR 70.3(f).

"**Adulterated**" has the meaning stated in the Federal Food, Drug, and Cosmetic Act, § 402.

"**Approved**" means acceptable to the regulatory authority based on a determination of conformity with principles, practices, and generally recognized standards that protect public health.

"**Assembly**" means the act of putting together foods that do not require further preparation. This includes, but is not limited to, placing a hot dog on a bun, or placing beans, lettuce and cheese on a tortilla.

Asymptomatic.

(1) "**Asymptomatic**" means without obvious symptoms; not showing or producing indications of a disease or other medical condition, such as an individual infected with a pathogen but not exhibiting or producing any signs or symptoms of vomiting, diarrhea, or jaundice.

(2) "**Asymptomatic**" includes not showing symptoms because symptoms have resolved or subsided, or because symptoms never manifested.

"**Authority**" means the Oregon Health Authority.

"**a_w**" means water activity which is a measure of the free moisture in a food, is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature, and is indicated by the symbol a_w.

"**Balut**" means an embryo inside a fertile egg that has been incubated for a period sufficient for the embryo to reach a specific stage of development after which it is removed from incubation before hatching.

"**Base of Operation**" means the licensed restaurant, commissary or warehouse that services a mobile unit or vending operation.

"**Benevolent Meal Site**" means:

(1) A periodic food service operation run by a benevolent organization that provides food to the needy or indigent without charge; and

(2) The meal service does not operate from a permanent kitchen facility.

"**Beverage**" means a liquid for drinking, including water.

"**Bottled drinking water**" means water that is sealed in bottles, packages, or other containers and offered for sale for human consumption, including bottled mineral water.

"**Casing**" means a tubular container for sausage products made of either natural or artificial (synthetic) material.

"**Catering**" means the preparation of food in an approved food establishment and the transportation of the food for service and consumption at some other site.

"**Certification number**" means a unique combination of letters and numbers assigned by a shellfish control authority to a molluscan shellfish dealer according to the provisions of the National Shellfish Sanitation Program.

"**CFR**" means Code of Federal Regulations. Citations in this Code to the CFR refer sequentially to the Title, Part, and Section numbers, such as 40 CFR 180.194 refers to Title 40, Part 180, Section 194.

"CIP"

- (1) "**CIP**" means cleaned in place by the circulation or flowing by mechanical means through a piping system of a detergent solution, water rinse, and sanitizing solution onto or over equipment surfaces that require cleaning, such as the method used, in part, to clean and sanitize a frozen dessert machine.
- (2) "**CIP**" does not include the cleaning of equipment such as band saws, slicers, or mixers that are subjected to in-place manual cleaning without the use of a CIP system.

"**Close**" means to summarily stop the operation of a food establishment pursuant to ORS 624.073 and ORS 624.370.

"**Code**" shall have the same meaning as administrative rule.

"**Combination Food Service Establishment**" means any food establishment located within a single structure or at a single site, and which is engaged in activities subject to licensing or inspecting requirements of both the Authority and the Oregon Department of Agriculture, and the regulated activities are common to the same operator.

"**Commercial warewashing machine**" means a machine designed and manufactured specifically for use in a food service establishment such as a restaurant and not for domestic or light-commercial purposes.

"Commingle" means:

- (1) To combine shellstock harvested on different days or from different growing areas as identified on the tag or label, or
- (2) To combine shucked shellfish from containers with different container codes or different shucking dates.

Comminuted.

- (1) "**Comminuted**" means reduced in size by methods including chopping, flaking, grinding, or mincing.
- (2) "**Comminuted**" includes fish or meat products that are reduced in size and restructured or reformulated such as gefilte fish, gyros, ground beef, and sausage; and a mixture of 2 or more types of meat that have been reduced in size and combined, such as sausages made from 2 or more meats.

"**Commissary**" means a commissary catering establishment, restaurant, or any other place in which, food, beverage, ingredients, containers, or supplies are kept, handled, packaged, prepared or stored, and from which vending machines or mobile units are serviced. A licensed commissary may only be used for catering if licensed mobile food units or vending machines are serviced by the establishment as specified in ORS 624.310.

"**Complete Inspection**" means any inspection conducted at the election of the licensing agency evaluating all items on the inspection form.

"**Confection**" means candy or sweets, including, but not limited to, salted caramel, fudge, marshmallow bars, chocolate covered marshmallows, and hard candy.

"**Convenience store**" means a business that, for compensation, offers or provides a range of commodities that includes food and beverages as it relates to plastic straws.

"**Conditional employee**" means a potential food employee to whom a job offer is made, conditional on responses to subsequent medical questions or examinations designed to identify potential food employees who may be suffering from a disease that can be transmitted through food and done in compliance with Title 1 of the Americans with Disabilities Act of 1990.

"Confirmed disease outbreak" means a foodborne disease outbreak in which laboratory analysis of appropriate specimens identifies a causative agent and epidemiological analysis implicates the food as the source of the illness.

"Consumer" means a person who is a member of the public, takes possession of food, is not functioning in the capacity of an operator of a food establishment or food processing plant, and does not offer the food for resale.

Core Item.

- (1) **"Core item"** means a provision in this Code that is not designated as a priority item or a priority foundation item.
- (2) **"Core item"** includes an item that usually relates to general sanitation, operational controls, sanitation standard operating procedures (SSOPs), facilities or structures, equipment design, or general maintenance.

"Corrosion-resistant material" means a material that maintains acceptable surface cleanability characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and sanitizing solutions, and other conditions of the use environment.

"Counter-mounted equipment" means equipment that is not portable and is designed to be mounted off the floor on a table, counter, or shelf.

"Critical control point" means a point or procedure in a specific food system where loss of control may result in an unacceptable health risk.

"Critical limit" means the maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a critical control point to minimize the risk that the identified food safety hazard may occur.

"Cut leafy greens" means fresh leafy greens whose leaves have been cut, shredded, sliced, chopped, or torn. The term "leafy greens" includes iceberg lettuce, romaine lettuce, leaf lettuce, butter lettuce, baby leaf lettuce (i.e., immature lettuce or leafy greens), escarole, endive, spring mix, spinach, cabbage, kale, arugula and chard. The term "leafy greens" does not include herbs such as cilantro or parsley. The term "cut" does not mean removing and discarding exterior leaves.

"Dealer" means a person who is authorized by a shellfish control authority for the activities of shellstock shipper, shucker-packer, repacker, reshipper, or depuration processor of molluscan shellfish according to the provisions of the National Shellfish Sanitation Program.

"Director" means the Director of the Oregon Health Authority or the Oregon Department of Agriculture or authorized representative.

"Disclosure" means a written statement that clearly identifies the animal-derived foods which are, or can be ordered, raw, undercooked, or without otherwise being processed to eliminate pathogens, or items that contain an ingredient that is raw, undercooked, or without otherwise being processed to eliminate pathogens.

Drinking Water.

- (1) **"Drinking water"** means water that meets 40 CFR 141 National Primary Drinking Water Regulations.
- (2) **"Drinking water"** is traditionally known as "potable water."
- (3) **"Drinking water"** includes the term "water" except where the term used connotes that the water is not potable, such as "boiler water," "mop water," "rainwater," "wastewater," and "nondrinking" water.

"Dry storage area " means a room or area designated for the storage of packaged or containerized bulk food that is not potentially hazardous (time/temperature control for safety food) and dry goods such as single-service items.

Easily Cleanable.

- (1) **"Easily cleanable"** means a characteristic of a surface that:
 - (a) Allows effective removal of soil by normal cleaning methods;
 - (b) Is dependent on the material, design, construction, and installation of the surface; and
 - (c) Varies with the likelihood of the surface's role in introducing pathogenic or toxigenic agents or other contaminants into food based on the surface's approved placement, purpose, and use.

(2) "**Easily cleanable**" includes a tiered application of the criteria that qualify the surface as easily cleanable as specified under Subparagraph (1) of this definition to different situations in which varying degrees of cleanability are required such as:

- (a) The appropriateness of stainless steel for a food preparation surface as opposed to the lack of need for stainless steel to be used for floors or for tables used for consumer dining; or
- (b) The need for a different degree of cleanability for a utilitarian attachment or accessory in the kitchen as opposed to a decorative attachment or accessory in the consumer dining area.

"Easily movable" means:

- (1) Portable; mounted on casters, gliders, or rollers; or provided with a mechanical means to safely tilt a unit of equipment for cleaning; and
- (2) Having no utility connection, a utility connection that disconnects quickly, or a flexible utility connection line of sufficient length to allow the equipment to be moved for cleaning of the equipment and adjacent area.

Egg.

- (1) "**Egg**" means the shell egg of avian species such as chicken, duck, goose, guinea, quail, ratites or turkey.
- (2) "**Egg**" does not include:
 - (a) *A balut*;
 - (b) *The egg of reptile species such as alligator; or*
 - (c) *An egg product.*

"Employee" means the permit holder, person in charge, person having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement, or other person working in a food establishment.

"Enforcement officer" means an authorized representative that conducts inspections as defined in ORS chapter 616 and ORS chapter 624 as it relates to plastic straws.

"Enterohemorrhagic *Escherichia coli*" (EHEC) means *E. coli* which cause hemorrhagic colitis, meaning bleeding enterically or bleeding from the intestine. The term is typically used in association with *E. coli* that have the capacity to produce Shiga toxins and to cause attaching and effacing lesions in the intestine. EHEC is a subset of STEC, whose members produce additional virulence factors. Infections with EHEC may be asymptomatic but are classically associated with bloody diarrhea (hemorrhagic colitis) and hemolytic uremic syndrome (HUS) or thrombotic thrombocytopenic purpura (TTP). Examples of serotypes of EHEC include: *E. coli* O157:H7; *E. coli* O157:NM; *E. coli* O26:H11; *E. coli* O145:NM; *E. coli* O103:H2; or *E. coli* O111:NM. Also see Shiga toxin-producing *E. coli*.

"EPA" means the U.S. Environmental Protection Agency.

Equipment.

- (1) "**Equipment**" means an article that is used in the operation of a food establishment such as a freezer, grinder, hood, ice maker, meat block, mixer, oven, reach-in refrigerator, scale, sink, slicer, stove, table, temperature measuring device for ambient air, vending machine, or warewashing machine.
- (2) "**Equipment**" does not include apparatuses used for handling or storing large quantities of packaged foods that are received from a supplier in a cased or overwrapped lot, such as hand trucks, forklifts, dollies, pallets, racks, and skids.

"Exclude" means to prevent a person from working as an employee in a food establishment or entering a food establishment as an employee.

"FDA" means the U.S. Food and Drug Administration.

Fish.

- (1) "**Fish**" means fresh or saltwater finfish, crustaceans and other forms of aquatic life (including alligator, frog, aquatic turtle, jellyfish, sea cucumber, and sea urchin and the roe of such animals) other than birds or mammals, and all mollusks, if such animal life is intended for human consumption.
- (2) "**Fish**" includes an edible human food product derived in whole or in part from fish, including fish that have been processed in any manner.

"Food" means a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

"Food and beverage provider" means a business that, for compensation, offers or serves food or beverages to a consumer as it relates to plastic straws. A food and beverage provider does not include a health care facility, as defined in ORS 442.015, or a residential care facility, as defined in ORS 443.400, that provides single-use straws to patients or residents.

"Foodborne disease outbreak" means the occurrence of two or more cases of a similar illness resulting from the ingestion of a common food.

"Food-contact surface" means:

- (1) A surface of equipment or a utensil with which food normally comes into contact; or
- (2) A surface of equipment or a utensil from which food may drain, drip, or splash:
 - (a) Into a food, or
 - (b) Onto a surface normally in contact with food.

"Food employee" means an individual working with unpackaged food, food equipment or utensils, or food-contact surfaces.

"Food establishment" means:

- (1) An operation that prepares, assembles, packages, serves, stores, vends, or otherwise provides food for human consumption; or
- (2) Any room, building, structure or place, used or intended for use, or operated for storing, preparing, compounding, manufacturing, processing, freezing, packaging, distributing, handling, salvaging or displaying food; or
- (3) The ground upon which such place or business is operated or used and so much ground adjacent thereto as is also used in carrying on the business of the establishment. The Authority or Department of Agriculture may prescribe additional areas or places which, although they may not be contiguous or adjacent to the above area or establishment, may be included therein; or
- (4) Vehicles, machinery, equipment, utensils, tools, fixtures, implements, and all other articles or items, used in operating or carrying on the business of a food establishment.

"Food establishment regulated by the Oregon Health Authority" includes but is not limited to:

- (1) Bars, bed and breakfast facilities, cafeterias if open to the public, catered feeding locations, caterers, coffee shops, commissaries, conveyance used to transport people, hospitals if open to the public, hotels, microbreweries, motels, private clubs if open to the public, restaurants, satellite sites, senior citizen centers, snack bars, taverns, vending locations, warehouses (associated with a mobile food unit), or similar food facilities.
- (2) An operation that is conducted in a mobile food unit, temporary food establishments, or permanent facility or location; where consumption is on or off premises; and regardless of whether there is a charge for the food.
- (3) The premises of a fraternal, social, or religious organization where food is prepared for the public.
- (4) School food service that is provided by a private person, business, or organization; and that serve persons other than enrolled students, invited guests or staff.
- (5) That relinquishes possession of food to a consumer directly through a restaurant takeout order.

"Food establishment regulated by the Oregon Department of Agriculture" includes but is not limited to:

- (1) Markets, food banks, warehouses (distribution), wineries, microbreweries, grocery stores or other food facilities;
- (2) An establishment that predominantly sells foods that are not for immediate consumption, such as take and bake pizza, whole pies and cakes, loaves of bread, and pre-made dinners that must be cooked or reheated;
- (3) An establishment that offers only prepackaged or bulk foods that are not potentially hazardous;
- (4) A produce stand that offers fresh fruits and vegetables;
- (5) A food processing plant;
- (6) Mobile food units that are operated by an Oregon Department of Agriculture licensed establishment and located on the property of the Oregon Department of Agriculture licensed establishment;
- (7) Outdoor cooking and beverage dispensing area operated by a market that is located on the property of the market and is under the jurisdiction of the Oregon Department of Agriculture; or
- (8) Food prepared in a private home that is licensed as a domestic processor.

"Food establishment" does not include:

- (1) A private home where food is prepared or served for family and guests, and where the public is not invited.
- (2) A private home that receives catered or home-delivered food.
- (3) An establishment or organization that prepares or sells the following food items for immediate consumption only:
 - (a) Non-potentially hazardous confections;
 - (b) Commercially prepackaged ice cream and frozen desserts sold in individual servings;
 - (c) Commercially pickled products, commercially processed jerky, nuts, nutmeats, popcorn, and prepackaged foods such as potato chips, pretzels, and crackers;
 - (d) Unopened commercially bottled and canned non-potentially hazardous beverages to include alcoholic beverages;
 - (e) Coffee and tea, with non-potentially hazardous ingredients;
 - (f) Non-potentially hazardous hot or cold beverages prepared from individually packaged powdered mixes and commercially bottled water, not to include fresh squeezed juice;
 - (g) Non-potentially hazardous foods or beverages provided by a non-food service business or organization as a courtesy for no charge to customers; and
 - (h) Other food items as determined by the Authority or the Oregon Department of Agriculture.
- (4) An establishment or organization that prepares or sells only non-potentially hazardous food items for immediate consumption at an event if:
 - (a) Food employees do not contact exposed, ready-to-eat food with their bare hands and use suitable utensils such as deli tissue, spatulas, tongs, single-use gloves, or dispensing equipment;
 - (b) A handwashing facility that complies with 5-203.11 is provided;
 - (c) A notice is posted in public view that states: "NOTICE: Food served at this location may not have been inspected by the regulatory authority" or similar language that has been approved by the regulatory authority;
 - (d) All ingredients, including water and ice, are from an approved source and the product is produced using safe food handling practices;
 - (e) The establishment vends raw citrus juices that are expressed at the event location and prepared and sold only for immediate consumption in individual servings. The establishment may add only non-potentially hazardous, commercially processed ingredients to the juice, not to include other fresh fruits or vegetables. If raw citrus juice is sold or served that has not been specifically processed to prevent, reduce, or eliminate the presence of pathogens, the following notice must be provided, "NOTICE: This product has not been pasteurized or processed". An establishment that vends raw juices other than raw citrus juice at an event must obtain a temporary restaurant license; and
 - (f) An Exempt Foods Agreement Form is completed and kept at the event location during all hours of operation;
 - (g) The regulatory authority may require a food establishment license if there are food safety concerns associated with an exempt food service operation.
- (5) Private vehicles used for home deliveries.
- (6) Personal chef who prepares food for an individual or private party.
- (7) Continental breakfast served by a traveler's accommodation licensed under ORS chapter 446 and that is limited to the following: individual or bulk dispensed containers of commercially prepared juices; commercially prepared non-potentially hazardous pastries; whole uncut fresh fruit with peel, and coffee and tea with non-potentially hazardous ingredients.
- (8) A beverage dispensing unit, operating in conjunction with and on the same premises as a facility with a licensed restaurant that vends beverages to customers participating in an activity at that facility. These beverage dispensing units cannot vend to members of the public that are not participating in an activity at the facility. Examples include beverage carts operating at stadiums, golf courses and hotel conferences. The beverages must be served in containers that are either single service articles or multi-use containers that are not refilled.
- (9) School food service that provides food only to students, teachers, other school staff, and invited guests.
- (10) Any person holding a "one-day, special retail beer or special retail wine license" for a private residence; or anyone who possesses a "temporary" license from the Oregon Liquor Control Commission who serves alcoholic beverages to the public, but serves only foods exempted under 1-201.10(B) of the 2009 FDA Food Code and uses single-service articles.
- (11) A bed and breakfast facility with two or less rooms for rent on a daily basis.
- (12) Home delivery of grocery orders.
- (13) Institutions that do not serve the public.
- (14) Produce stands located on a farmer's own property wherein only produce grown by the farmer is sold and no food processing is done as specified in OAR 603-025-0030(2).
- (15) Farm Direct Marketers as defined in OAR 603-025-0225(6),

(16) A domestic processor licensed by the Oregon Department of Agriculture that sells only prepackaged and labeled food at a farmer's market.

(17) A food operation in a residential dwelling that sells only baked goods or confectionary items under the provisions of OAR 603-025-0320.

"Food processing plant" means a commercial operation or a domestic kitchen licensed by the Oregon Department of Agriculture that manufactures, packages, labels, or stores food for human consumption.

Game Animal.

(1) **"Game animal"** means an animal, the products of which are food, that is not classified as livestock, sheep, swine, goat, horse, mule, or other equine in 9 CFR 301.2 Definitions, or as Poultry or Fish.

(2) **"Game animal"** includes mammals such as reindeer, elk, deer, antelope, water buffalo, bison, rabbit, squirrel, opossum, raccoon, nutria, or muskrat, and nonaquatic reptiles such as land snakes.

(3) **"Game animal"** does not include ratites.

"General use pesticide" means a pesticide that is not classified by EPA for restricted use as specified in 40 CFR 152.175 Pesticides classified for restricted use.

"Grade A standards" means the requirements of the United States Public Health Service/FDA "Grade A Pasteurized Milk Ordinance" with which certain fluid and dry milk and milk products comply.

"HACCP plan" means a written document that delineates the formal procedures for following the Hazard Analysis Critical Control Point principles developed by The National Advisory Committee on Microbiological Criteria for Foods.

Handwashing Sink.

(1) **"Handwashing sink"** means a lavatory, a basin or vessel for washing, a wash basin, or a plumbing fixture especially placed for use in personal hygiene and designed for the washing of the hands.

(2) **"Handwashing sink"** includes an automatic handwashing facility.

"Hazard" means a biological, chemical, or physical property that may cause an unacceptable consumer health risk.

"Health practitioner" means a physician licensed to practice medicine, or if allowed by law, a nurse practitioner, physician assistant, or similar medical professional.

"Hermetically sealed container" means a container that is designed and intended to be secure against the entry of microorganisms and, in the case of low acid canned foods, to maintain the commercial sterility of its contents after processing.

"Highly susceptible population" means persons who are more likely than other people in the general population to experience foodborne disease because they are:

(1) Immunocompromised; preschool age children, or older adults; and

(2) Obtaining food at a facility that provides services such as custodial care, health care, or assisted living, such as child or adult day care center, kidney dialysis center, hospital or nursing home, or nutritional or socialization services such as a senior center.

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

(1) The number of potential injuries, and

(2) The nature, severity, and duration of the anticipated injury.

"Injected" means manipulating meat to which a solution has been introduced into its interior by processes that are referred to as "injecting," "pump marinating," or "stitch pumping".

"Integral" means that all equipment associated with a mobile unit must be rigidly and physically attached to the unit without restricting the mobility of the unit while in transit.

Juice.

(1) "**Juice**" means the aqueous liquid expressed or extracted from one or more fruits or vegetables, purées of the edible portions of one or more fruits or vegetables, or any concentrates of such liquid or purée.

(2) "**Juice**" does not include, for purposes of HACCP, liquids, purées, or concentrates that are not used as beverages or ingredients of beverages.

"**Kitchenware**" means food preparation and storage utensils.

"**Law**" means applicable local, state, and federal statutes, regulations, and ordinances.

"**License**" means the same as permit for the purposes of this rule.

"**License holder**" means the same as permit holder for the purposes of this rule.

"**Linens**" means fabric items such as cloth hampers, cloth napkins, tablecloths, wiping cloths, and work garments including cloth gloves.

Major Food Allergen.

(1) "**Major food allergen**" means:

(a) Milk, egg, fish (such as bass, flounder, cod, and including crustacean shellfish such as crab, lobster, or shrimp), tree nuts (such as almonds, pecans, or walnuts), wheat, peanuts, and soybeans; or

(b) A food ingredient that contains protein derived from a food, as specified in Subparagraph (1)(a) of this definition.

(2) "**Major food allergen**" does not include:

(a) Any highly refined oil derived from a food specified in Subparagraph (1)(a) of this definition and any ingredient derived from such highly refined oil; or

(b) Any ingredient that is exempt under the petition or notification process specified in the Food Allergen Labeling and Consumer Protection Act of 2004 (Public Law 108-282).

"**Maximum Contaminant Level (MCL)**" means the maximum allowable level of a contaminant in water for consumption delivered to the users of a system, except in the case of turbidity where the maximum allowable level is measured at the point of entry to the distribution system.

"**Meat**" means the flesh of animals used as food including the dressed flesh of cattle, swine, sheep, or goats and other edible animals, except fish, poultry, and animals as specified under Subparagraphs 3-201.17(A)(3), (4) and (5).

Mechanically Tenderized.

(1) "**Mechanically tenderized**" means manipulating meat with deep penetration by processes which may be referred to as "blade tenderizing," "jaccarding," "pinning," "needling," or using blades, pins, needles or any mechanical device.

(2) "**Mechanically tenderized**" does not include processes by which solutions are injected into meat.

"**mg/L**" means milligrams per liter, which is the metric equivalent of parts per million (ppm).

"**Mobile Food Unit**" means 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.

"**Molluscan shellfish**" means any edible species of fresh or frozen oysters, clams, mussels, and scallops or edible portions thereof, except when the scallop product consists only of the shucked adductor muscle.

Non-Continuous Cooking.

(1) "**Non-continuous cooking**" means the cooking of food in a food establishment using a process in which the initial heating of the food is intentionally halted so that it may be cooled and held for complete cooking at a later time prior to sale or service.

(2) "**Non-continuous cooking**" does not include cooking procedures that only involve temporarily interrupting or slowing an otherwise continuous cooking process.

“Outdoor Beverage Dispensing Operation” means an outdoor area on the premises of a food establishment where beverages are dispensed to consumers.

"Outdoor Cooking Operation" means an outdoor area on the premises of a food establishment where food is cooked for service to consumers.

Packaged.

(1) **"Packaged"** means bottled, canned, cartoned, securely bagged, or securely wrapped, whether packaged in a food establishment or a food processing plant.

(2) **"Packaged"** does not include a wrapper, carry-out box, or other nondurable container used to containerize food with the purpose of facilitating food protection during service and receipt of the food by the consumer.

"Permit" means the document issued by the regulatory authority that authorizes a person to operate a food establishment.

"Permit holder" means the entity that:

(1) Is legally responsible for the operation of the food establishment such as the owner, the owner's agent, or other person; and

(2) Possesses a valid permit to operate a food establishment.

"Person" means an association, a corporation, individual, partnership, other legal entity, government, or governmental subdivision or agency.

"Person in charge" means the individual present at a food establishment who is responsible for the operation at the time of inspection.

Personal Care Items.

(1) **"Personal care items"** means items or substances that may be poisonous, toxic, or a source of contamination and are used to maintain or enhance a person's health, hygiene, or appearance.

(2) **"Personal care items"** include items such as medicines; first aid supplies; and other items such as cosmetics, and toiletries such as toothpaste and mouthwash.

“Personal Chef” means an individual that provides cooking services to private individuals or private groups. A personal chef may purchase food from an approved source, but may not store or prepare food in advance. A personal chef may use their own equipment, utensils and spices.

"pH" means the symbol for the negative logarithm of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution. Values between 0 and 7 indicate acidity and values between 7 and 14 indicate alkalinity. The value for pure distilled water is 7, which is considered neutral.

"Physical facilities" means the structure and interior surfaces of a food establishment including accessories such as soap and towel dispensers and attachments such as light fixtures and heating or air conditioning system vents.

"Plumbing fixture" means a receptacle or device that:

(1) Is permanently or temporarily connected to the water distribution system of the premises and demands a supply of water from the system; or

(2) Discharges used water, waste materials, or sewage directly or indirectly to the drainage system of the premises.

"Plumbing system" means the water supply and distribution pipes; plumbing fixtures and traps; soil, waste, and vent pipes; sanitary and storm sewers and building drains, including their respective connections, devices, and appurtenances within the premises; and water-treating equipment.

"Poisonous or toxic materials" means substances that are not intended for ingestion and are included in 4 categories:

(1) Cleaners and sanitizers, which include cleaning and sanitizing agents and agents such as caustics, acids, drying agents, polishes, and other chemicals;

(2) Pesticides, except sanitizers, which include substances such as insecticides and rodenticides;

(3) Substances necessary for the operation and maintenance of the establishment such as nonfood grade lubricants and personal care items that may be deleterious to health; and

(4) Substances that are not necessary for the operation and maintenance of the establishment and are on the premises for retail sale, such as petroleum products and paints.

Potentially Hazardous Food (Time/Temperature Control for Safety Food).

(1) "**Potentially hazardous food (time/temperature control for safety food)**" means a food that requires time/temperature control for safety (TCS) to limit pathogenic microorganism growth or toxin formation.

(2) "**Potentially hazardous food (time/temperature control for safety food)**" includes:

(a) An animal food that is raw or heat-treated; a plant food that is heat-treated or consists of raw seed sprouts,

Table A. Interaction of pH and A_w for control of spores in food heat-treated to destroy vegetative cells and subsequently packaged

A_w values	pH values		
	4.6 or less	> 4.6 - 5.6	> 5.6
≤0.92	non-PHF*/non-TCS FOOD**	non-PHF/non-TCS FOOD	non-PHF/non-TCS FOOD
>0.92 - .95	non-PHF/non-TCS FOOD	non-PHF/non-TCS FOOD	PA***
>0.95	non-PHF/non-TCS FOOD	PA	PA

* PHF means Potentially Hazardous Food

** TCS food means Time/Temperature Control for Safety Food

*** PA means Product Assessment required

cut melons, cut leafy greens, cut tomatoes or mixtures of cut tomatoes that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation, or garlic-in-oil mixtures that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin

Table B. Interaction of pH and A_w for control of vegetative cells and spores in food not heat-treated or heat-treated but not packaged

A_w values	pH values			
	<4.2	4.2 - 4.6	>4.6 - 5.0	>5.0
<0.88	non-PHF*/ non-TCS food**	non-PHF/ non-TCS food	non-PHF/ non-TCS food	non-PHF/ non-TCS food
0.88 - 0.90	non-PHF/ non-TCS food	non-PHF/ non-TCS food	non-PHF/ non-TCS food	PA***
>0.90 - 0.92	non-PHF/ non-TCS food	non-PHF/ non-TCS food	PA	PA
>0.92	non-PHF/ non-TCS food	PA	PA	PA

* PHF means Potentially Hazardous Food

** TCS food means Time/Temperature Control for Safety Food

*** PA means Product Assessment required

formation; and

(b) Except as specified in Subparagraph (3)(d) of this definition, a food that because of the interaction of its A_w and pH values is designated as Product Assessment Required (PA) in Table A or B of this definition:

(3) "**Potentially hazardous food (time/temperature control for safety food)**" does not include:

(a) An air-cooled hard-boiled egg with shell intact, or an egg with shell intact that is not hard-boiled, but has

been pasteurized to destroy all viable salmonellae;

(b) A food in an unopened hermetically sealed container that is commercially processed to achieve and maintain commercial sterility under conditions of non-refrigerated storage and distribution;

(c) A food that because of its pH or A_w value, or interaction of A_w and pH values, is designated as a non-PHF/non-TCS food in Table A or B of this definition;

(d) A food that is designated as Product Assessment Required (PA) in Table A or B of this definition and has undergone a Product Assessment showing that the growth or toxin formation of pathogenic microorganisms that are reasonably likely to occur in that food is precluded due to:

(i) Intrinsic factors including added or natural characteristics of the food such as preservatives, antimicrobials, humectants, acidulants, or nutrients,

(ii) Extrinsic factors including environmental or operational factors that affect the food such as packaging, modified atmosphere such as reduced oxygen packaging, shelf life and use, or temperature range of storage and use, or

(iii) A combination of intrinsic and extrinsic factors; or

(e) A food that does not support the growth or toxin formation of pathogenic microorganisms in accordance with one of the Subparagraphs (3)(a) - (3)(d) of this definition even though the food may contain a pathogenic microorganism or chemical or physical contaminant at a level sufficient to cause illness or injury.

"Poultry" means:

(1) Any domesticated bird (chickens, turkeys, ducks, geese, guineas, ratites or squabs), whether live or dead, as defined in 9 CFR 381.1 Poultry Products Inspection Regulations Definitions, Poultry; and

(2) Any migratory waterfowl or game bird, pheasant, partridge, quail, grouse, or pigeon, whether live or dead, as defined in 9 CFR 362.1 Voluntary Poultry Inspection Regulations, Definitions.

"Premises" means:

(1) The physical facility, its contents, and the contiguous land or property under the control of the permit holder; or

(2) The physical facility, its contents, and the land or property not described under Subparagraph (1) of this definition if its facilities and contents are under the control of the permit holder and may impact food establishment personnel, facilities, or operations, and a food establishment is only one component of a larger operation such as a health care facility, hotel, motel, school, recreational camp, or prison.

"Preparation" means the process whereby food is transformed into a consumable form. This includes, but is not limited to, slicing or dicing vegetables, grating cheese, portioning foods, slicing sandwiches, blending foods, or cooking or reheating foods.

"Primal cut" means a basic major cut into which carcasses and sides of meat are separated, such as a beef round, pork loin, lamb flank, or veal breast.

"Priority item" means a provision in this code whose application contributes directly to the elimination, prevention or reduction to an acceptable level, hazards associated with foodborne illness or injury and there is no other provision that more directly controls the hazard.

(1) **"Priority item"** includes items with a quantifiable measure to show control of hazards such as cooking, reheating, cooling, and handwashing.

(2) **"Priority item"** is an item that is denoted in this code with a superscript P^{-P}; and

(3) **"Priority item"** is an item that carries a weight of five points on the Food Service Inspection Report or Inspectional Guide and is considered a critical violation as referenced in ORS chapter 624.

"Priority foundation item" means a provision in this code whose application supports, facilitates or enables one or more priority items.

(1) **"Priority foundation item"** includes an item that requires the purposeful incorporation of specific actions, equipment or procedures by industry management to attain control of risk factors that contribute to foodborne illness or injury such as personnel training, infrastructure or necessary equipment, HACCP plans, documentation or record keeping, and labeling.

(2) **"Priority foundation item"** is an item that is denoted in this code with a superscript Pf^{-Pf}; and

(3) **"Priority foundation item"** is an item that carries a weight of three points on the Food Service Inspection Report or Inspectional Guide and is considered a critical violation as referenced in ORS chapter 624.

(4) **“Priority foundation item”** includes items that relate to the design and operation of a mobile food unit that are fundamental to maintaining them as a vehicle as defined in ORS chapter 624, such as mobility and integral operations.

“Public water system” has the meaning stated in 40 CFR 141 National Primary Drinking Water Regulations.

“Quarterly Sampling” means a sample is taken and submitted according to the following schedule: 1st Quarter is January 1 through March 31, 2nd Quarter is April 1 through June 30, 3rd Quarter is July 1 through September 30 and the 4th Quarter is October 1 through December 31.

“Ratite” means a flightless bird such as an emu, ostrich, or rhea.

“Raw-to-Finish” means cooking foods that are potentially hazardous when in a raw state to a finished, edible state. This practice includes, but is not limited to, cooking raw hamburgers or barbecuing raw meats.

Ready-to-Eat Food.

(1) **“Ready-to-eat food”** means food that:

- (a) Is in a form that is edible without additional preparation to achieve food safety, as specified under one of the following: ¶ 3-401.11(A) or (B), § 3-401.12, or § 3-402.11, or as specified in ¶ 3-401.11(C); or
- (b) Is a raw or partially cooked animal food and the consumer is advised as specified in Subparagraphs 3-401.11(D)(1) and (3); or
- (c) Is prepared in accordance with a variance that is granted as specified in Subparagraph 3-401.11(D) (4); and
- (d) May receive additional preparation for palatability or aesthetic, epicurean, gastronomic, or culinary purposes.

(2) **“Ready-to-eat food”** includes:

- (a) Raw animal food that is cooked as specified under § 3-401.11 or 3401.12, or frozen as specified under § 3-402.11;
- (b) Raw fruits and vegetables that are washed as specified under § 3-302.15;
- (c) Fruits and vegetables that are cooked for hot holding, as specified under § 3-401.13;
- (d) All potentially hazardous food (time/temperature control for safety food) that is cooked to the temperature and time required for the specific food under Subpart 3-401 and cooled as specified under § 3-501.14;
- (e) Plant food for which further washing, cooking, or other processing is not required for food safety, and from which rinds, peels, husks, or shells, if naturally present are removed;
- (f) Substances derived from plants such as spices, seasonings, and sugar;
- (g) A bakery item such as bread, cakes, pies, fillings, or icing for which further cooking is not required for food safety;
- (h) The following products that are produced in accordance with USDA guidelines and that have received a lethality treatment for pathogens: dry, fermented sausages, such as dry salami or pepperoni; salt-cured meat and poultry products, such as prosciutto ham, country cured ham, and Parma ham; and dried meat and poultry products, such as jerky or beef sticks; and
- (i) Foods manufactured as specified in 21 CFR Part 113, Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers.

“Recheck Inspection” means

- (1) An inspection to determine whether specified corrections have been made or alternative procedures maintained for violations identified in previous inspections; or
- (2) An inspection to determine whether specific corrections have been maintained for priority and priority foundation violations creating a significantly increased risk for foodborne illness. Recheck inspections may also be referred to as reinspections or follow-up inspections.

Reduced Oxygen Packaging.

(1) **“Reduced oxygen packaging”** means:

- (a) The reduction of the amount of oxygen in a package by removing oxygen; displacing oxygen and replacing it with another gas or combination of gases; or otherwise controlling the oxygen content to a level below that normally found in the atmosphere (approximately 21% at sea level); and
- (b) A process as specified in Subparagraph (1)(a) of this definition that involves a food for which the hazards *Clostridium botulinum* or *Listeria monocytogenes* require control in the final packaged form.

(2) **"Reduced oxygen packaging"** includes:

- (a) Vacuum packaging, in which air is removed from a package of food and the package is hermetically sealed so that a vacuum remains inside the package;
- (b) Modified atmosphere packaging, in which the atmosphere of a package of food is modified so that its composition is different from air but the atmosphere may change over time due to the permeability of the packaging material or the respiration of the food. Modified atmosphere packaging includes reduction in the proportion of oxygen, total replacement of oxygen, or an increase in the proportion of other gases such as carbon dioxide or nitrogen;
- (c) Controlled atmosphere packaging, in which the atmosphere of a package of food is modified so that until the package is opened, its composition is different from air, and continuous control of that atmosphere is maintained, such as by using oxygen scavengers or a combination of total replacement of oxygen, nonrespiring FOOD, and impermeable packaging material;
- (d) Cook chill packaging, in which cooked food is hot filled into impermeable bags which have the air expelled and are then sealed or crimped closed. The bagged food is rapidly chilled and refrigerated at temperatures that inhibit the growth of psychrotrophic pathogens; or
- (e) Sous vide packaging, in which raw or partially cooked food is placed in a hermetically sealed, impermeable bag, cooked in the bag, rapidly chilled, and refrigerated at temperatures that inhibit the growth of psychrotrophic pathogens.

"Refuse" means solid waste not carried by water through the sewage system.

"Regulatory authority" means the local, state, or federal enforcement body or authorized representative having jurisdiction over the food establishment.

"Reminder" means a written statement concerning the health risk of consuming animal foods raw, undercooked, or without otherwise being processed to eliminate pathogens.

"Repeat violation" means a violation of a rule that is the same specific problem or process as indicated on the Food Service Inspection Report occurring in two consecutive semi-annual inspections.

"Re-service" means the transfer of food that is unused and returned by a consumer after being served or sold and in the possession of the consumer, to another person

"Restrict" means to limit the activities of a food employee so that there is no risk of transmitting a disease that is transmissible through food and the food employee does not work with exposed food, clean equipment, utensils, linens or unwrapped single-service or single-use articles.

"Restricted egg" means any check, dirty egg, incubator reject, inedible, leaker, or loss as defined in 9 CFR 590.

"Restricted use pesticide" means a pesticide product that contains the active ingredients specified in 40 CFR 152.175 Pesticides classified for restricted use, and that is limited to use by or under the direct supervision of a certified applicator.

"Risk" means the likelihood that an adverse health effect will occur within a population as a result of a hazard in a food.

"Safe material" means:

- (1) An article manufactured from or composed of materials that may not reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any food;
- (2) An additive that is used as specified in § 409 of the Federal Food, Drug, and Cosmetic Act; or
- (3) Other materials that are not additives and that are used in conformity with applicable regulations of the Food and Drug Administration.

"Sample" means a three ounce or less portion of a food or beverage.

"Sanitization" means the application of cumulative heat or chemicals on cleaned food-contact surfaces that, when evaluated for efficacy, is sufficient to yield a reduction of 5 logs, which is equal to a 99.999% reduction, of representative disease microorganisms of public health importance.

"Sealed" means free of cracks or other openings that allow the entry or passage of moisture.

"Semi-annual inspection" means an unannounced complete inspection conducted twice during the calendar year; one in each half of the year, but not less than 90 days or more than 270 days apart.

"Service animal" means an animal such as a guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability.

"Servicing area" means an operating base location to which a mobile food establishment or transportation vehicle returns regularly for such things as vehicle and equipment cleaning, discharging liquid or solid wastes, refilling water tanks and ice bins, and boarding food.

"Sewage" means liquid waste containing animal or vegetable matter in suspension or solution and may include liquids containing chemicals in solution.

"Shellfish control authority" means a state, federal, foreign, tribal, or other government entity legally responsible for administering a program that includes certification of molluscan shellfish harvesters and dealers for interstate commerce.

"Shellstock" means raw, in-shell molluscan shellfish.

"Shiga toxin-producing *Escherichia coli*" (STEC) means any *E. coli* capable of producing Shiga toxins (also called verocytotoxins or "Shiga-like" toxins). Examples of serotypes of STEC include both O157 and non-O157 *E. coli*. Also see *enterohemorrhagic Escherichia coli*.

"Shucked shellfish" means molluscan shellfish that have one or both shells removed.

"Single-service articles" means tableware, carry-out utensils, and other items such as bags, containers, placemats, stirrers, straws, toothpicks, and wrappers that are designed and constructed for one time, one person use after which they are intended for discard.

Single-Use Articles.

- (1) "Single-use articles" means utensils and bulk food containers designed and constructed to be used once and discarded.
- (2) "Single-use articles" includes items such as wax paper, butcher paper, plastic wrap, formed aluminum food containers, jars, plastic tubs or buckets, bread wrappers, pickle barrels, ketchup bottles, and number 10 cans which do not meet the materials, durability, strength, and cleanability specifications under §§ 4-101.11, 4-201.11, and 4-202.11 for multiuse utensils.

Single-use plastic straw.

- (1) "Single-use plastic straw" means a tube made primarily from plastic that is derived from petroleum or a biologically based polymer, such as corn or another plant source, and that is intended:
 - (a) To transfer liquid from a container to a consumer's mouth;
 - (b) For a single use; and
 - (c) For disposal after the single use.
- (2) A "single-use plastic straw" does not include:
 - (a) A straw made from materials other than plastic, including but not limited to paper, pasta, sugar cane, wood or bamboo; and
 - (b) A plastic straw that is attached to or packaged with a beverage container before the beverage container is offered for sale.

"Slacking" means the process of moderating the temperature of a food such as allowing a food to gradually increase from a temperature of -23°C (-10°F) to -4° C (25°F) in preparation for deep-fat frying or to facilitate even heat penetration during the cooking of previously block-frozen food such as shrimp.

"Smooth" means:

- (1) A food-contact surface having a surface free of pits and inclusions with a cleanability equal to or exceeding that of (100 grit) number 3 stainless steel;

- (2) A nonfood-contact surface of equipment having a surface equal to that of commercial grade hot-rolled steel free of visible scale; and
- (3) A floor, wall, or ceiling having an even or level surface with no roughness or projections that render it difficult to clean.

"Tableware" means eating, drinking, and serving utensils for table use such as flatware including forks, knives, and spoons; hollowware including bowls, cups, serving dishes, and tumblers; and plates.

"Temperature measuring device" means a thermometer, thermocouple, thermistor, or other device that indicates the temperature of food, air, or water.

"Temporary food establishment" means the same as ORS 624.010(4), (10) and (11).

"Transport Vehicle" means a vehicle used to transport foods or utensils from the base of operation to a mobile food unit.

"USDA" means the U.S. Department of Agriculture.

"Utensil" means a food-contact implement or container used in the storage, preparation, transportation, dispensing, sale, or service of food, such as kitchenware or tableware that is multiuse, single-service, or single-use; gloves used in contact with food; temperature sensing probes of food temperature measuring devices; trays used with highchairs; and probe-type price or identification tags used in contact with food.

"Variance" means a written document issued by the regulatory authority that authorizes a modification or waiver of one or more requirements of this Code if, in the opinion of the regulatory authority, a health hazard or nuisance will not result from the modification or waiver.

"Vehicle" means any device in, upon or by which any person or property is or may be transported or drawn upon a public highway, and includes vehicles that are propelled or powered by any means. This definition includes watercraft.

"Vending machine" means a self-service device that, upon insertion of a coin, paper currency, token, card, or key, or by optional manual operation, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation.

"Vending machine location" means the room, enclosure, space, or area where one or more vending machines are installed and operated and includes the storage areas and areas on the premises that are used to service and maintain the vending machines.

"Violation" means any condition that fails to meet a requirement of ORS chapter 624 or this rule.

"Violations creating an imminent danger to public health" means those priority item violations in which at least one of the following conditions exists:

- (1) Food and drink is spoiled, unwholesome, or contaminated with pathogenic or fecal organisms, toxic chemicals, insect or rodent parts or excreta, or other harmful substances or articles;
- (2) Potentially hazardous foods have been kept at temperatures above 41 degrees Fahrenheit and below 135 degrees Fahrenheit for four hours or more;
- (3) A food employee has a reportable disease or medical condition under subpart 2-201 of the 2009 FDA Food Code.

"Violations creating a potential danger to public health" means all priority and priority foundation item violations other than those that create an imminent danger to public health.

"Violations creating a significantly increased risk for foodborne illness" include:

- (1) Potentially hazardous foods at improper temperatures;
- (2) Cross contamination of raw to ready-to-eat foods; and
- (3) Poor personal hygiene and handwashing.

“Warehouse” means any place where food, utensils, single-service articles, cleaning or servicing supplies for vending machines, mobile units, or commissaries are stored.

“Warewashing” means the cleaning and sanitizing of utensils and food-contact surfaces of equipment.

“Whole-muscle, intact beef” means whole muscle beef that is not injected, mechanically tenderized, reconstructed, or scored and marinated, from which beefsteaks may be cut.

“Wild fresh mushroom” means a mushroom that has not been processed, dried or cultivated.

Chapter 2 Management and Personnel

Parts

- 2-1 SUPERVISION
- 2-2 EMPLOYEE HEALTH
- 2-3 PERSONAL CLEANLINESS
- 2-4 HYGIENIC PRACTICES

2-1 SUPERVISION

- Subparts:**
- 2-101 Responsibility
 - 2-102 Knowledge
 - 2-103 Duties

2-101.11 Assignment.

(A) Except as specified in ¶ (B) of this section, the permit holder shall be the person in charge or shall designate a person in charge and shall ensure that a person in charge is present at the food establishment during all hours of operation.^{Pf}

(B) *In a food establishment with two or more separately permitted departments that are the legal responsibility of the same permit holder and that are located on the same premises, the permit holder may, during specific time periods when food is not being prepared, packaged, or served, designate a single person in charge who is present on the premises during all hours of operation, and who is responsible for each separately permitted food establishment on the premises.*^{Pf}

2-102.11 Demonstration.

Based on the risks inherent to the food operation, during inspections and upon request the person in charge shall demonstrate to the regulatory authority knowledge of foodborne disease prevention, application of the Hazard Analysis and Critical Control Point principles, and the requirements of this Code. The person in charge shall demonstrate this knowledge by:

- (A) Complying with this Code by having no violations of priority items during the current inspection;^{Pf}
- (B) Being a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program or a training program approved by the Oregon Health Authority or Oregon Department of Agriculture;^{Pf} or
- (C) Responding correctly to the inspector's questions as they relate to the specific food operation. The areas of knowledge include:
 - (1) Describing the relationship between the prevention of foodborne disease and the personal hygiene of a food employee;^{Pf}
 - (2) Explaining the responsibility of the person in charge for preventing the transmission of foodborne disease by a food employee who has a disease or medical condition that may cause foodborne disease;^{Pf}
 - (3) Describing the symptoms associated with the diseases that are transmissible through food;^{Pf}
 - (4) Explaining the significance of the relationship between maintaining the time and temperature of potentially hazardous food (time/temperature for safety food) and the prevention of foodborne illness;^{Pf}
 - (5) Explaining the hazards involved in the consumption of raw or undercooked meat, poultry, eggs and fish;^{Pf}
 - (6) Stating the required food temperatures and times for safe cooking of potentially hazardous food (time/temperature for safety food) including meat, poultry, eggs and fish;^{Pf}
 - (7) Stating the required temperatures and times for the safe refrigerated storage, hot holding, cooling, and reheating of potentially hazardous food (time/temperature for safety food);^{Pf}
 - (8) Describing the relationship between the prevention of foodborne illness and the management and control of the following:
 - (a) Cross contamination,^{Pf}
 - (b) Deleted
 - (c) Handwashing,^{Pf} and
 - (d) Maintaining the food establishment in a clean condition and in good repair;^{Pf}
 - (9) Describing foods identified as major food allergens and the symptoms that a major food allergen could cause in a sensitive individual who has an allergic reaction.^{Pf}

- (10) Explaining the relationship between food safety and providing equipment that is:
 - (a) Sufficient in number and capacity; ^{Pf} and
 - (b) Properly designed, constructed, located, installed, operated, maintained, and cleaned; ^{Pf}
- (11) Explaining correct procedures for cleaning and sanitizing utensils and food-contact surfaces of equipment; ^{Pf}
- (12) Identifying the source of water used and measures taken to ensure that it remains protected from contamination such as providing protection from backflow and precluding the creation of cross connections; ^{Pf}
- (13) Identifying poisonous or toxic materials in the food establishment and the procedures necessary to ensure that they are safely stored, dispensed, used, and disposed of according to law; ^{Pf}
- (14) Identifying critical control points in the operation from purchasing through sale or service that when not controlled may contribute to the transmission of foodborne illness and explaining steps taken to ensure that the points are controlled in accordance with the requirements of this Code; ^{Pf}
- (15) Explaining the details of how the person in charge and food employees comply with the HACCP plan if a plan is required by the law, this Code, or an agreement between the regulatory authority and the food establishment; ^{Pf}
- (16) Explaining the responsibilities, rights, and authorities assigned by this Code to the:
 - (a) Food employee; ^{Pf}
 - (b) Conditional employee; ^{Pf}
 - (c) Person in charge; ^{Pf}
 - (d) Regulatory authority; ^{Pf} and
- (17) Explaining how the person in charge, food employees, and conditional employees comply with reporting responsibilities and exclusion or restriction of food employees. ^{Pf}

2-103.11 Person in Charge.

The person in charge shall ensure that:

- (A) Food establishment operations are not conducted in a private home or in a room used as living or sleeping quarters as specified under § 6-202.111; ^{Pf}
- (B) Persons unnecessary to the food establishment operation are not allowed in the food preparation, food storage, or warewashing areas, except that brief visits and tours may be authorized by the person in charge if steps are taken to ensure that exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles are protected from contamination; ^{Pf}
- (C) Employees and other persons such as delivery and maintenance persons and pesticide applicators entering the food preparation, food storage, and warewashing areas comply with this Code; ^{Pf}
- (D) Employees are effectively cleaning their hands, by routinely monitoring the employees' handwashing; ^{Pf}
- (E) Employees are visibly observing foods as they are received to determine that they are from approved sources, delivered at the required temperatures, protected from contamination, unadulterated, and accurately presented, by routinely monitoring the employees' observations and periodically evaluating foods upon their receipt; ^{Pf}
- (F) Employees are properly cooking potentially hazardous food (time/temperature control for safety food), being particularly careful in cooking those foods known to cause severe foodborne illness and death, such as eggs and comminuted meats, through daily oversight of the employees' routine monitoring of the cooking temperatures using appropriate temperature measuring devices properly scaled and calibrated as specified under § 4-203.11 and ¶ 4-502.11(B); ^{Pf}
- (G) Employees are using proper methods to rapidly cool potentially hazardous foods (time/temperature control for safety foods) that are not held hot or are not for consumption within 4 hours, through daily oversight of the employees' routine monitoring of food temperatures during cooling; ^{Pf}
- (H) Consumers who order raw; or partially cooked ready-to-eat foods of animal origin are informed as specified under § 3-603.11 that the food is not cooked sufficiently to ensure its safety; ^{Pf}
- (I) Employees are properly sanitizing cleaned multiuse equipment and utensils before they are reused, through routine monitoring of solution temperature and exposure time for hot water sanitizing, and chemical concentration, pH, temperature, and exposure time for chemical sanitizing; ^{Pf}
- (J) Consumers are notified that clean tableware is to be used when they return to self-service areas such as salad bars and buffets as specified under § 3-304.16; ^{Pf}
- (K) Deleted.
- (L) Employees are properly trained in food safety, including food allergy awareness, as it relates to their assigned duties; ^{Pf} and
- (M) Food employees and conditional employees are informed of their responsibility to report in accordance with law, to the person in charge, information about their health and activities as they relate to diseases that are transmissible through food, as specified under ¶ 2-201.11(A). ^{Pf}

2-2 EMPLOYEE HEALTH

Subpart: 2-201 Disease or Medical Condition

2-201.11 Responsibility of Person in Charge.

(A) The permit holder shall require food employees to report to the person in charge information about their health and activities as they relate to diseases that are transmissible through food. A food employee or conditional employee shall report the date of onset of symptoms, diagnosis of an illness, or of a diagnosis without symptoms that are listed under 2-201.12.^P

(B) The person in charge shall notify the regulatory authority that a food employee is:

- (1) Jaundice;^{Pf} or
- (2) Diagnosed with an illness listed in 2-201.12.^{Pf}

(C) A food employee shall:

- (1) Report to the person in charge if they have been diagnosed with an illness or are experiencing symptoms specified under 2-201.12;^P
- (2) Report to the person in charge if they have been living in the same household or working in a setting where there is a confirmed disease outbreak with an illness specified under 2-201.12;^P and
- (3) Comply with exclusions and restrictions specified under section 2-201.12.^P

2-201.12 Exclusions and Restrictions.

The person in charge shall exclude or restrict a food employee from a food establishment in accordance with the following:

(A) Except when the symptom is from a noninfectious condition, exclude a food employee that has any of the following signs or symptoms caused by illness, infection, or other source that is associated with an acute illness:

- (1) Vomiting;^P
- (2) Diarrhea;^P
- (3) Sore throat with fever;^P or
- (4) Jaundice.^P

(B) Exclude or restrict a food employee that has a lesion containing pus such as a boil or infected wound that is open or draining and is:

- (1) On the hands or wrists, unless an impermeable cover such as a finger cot protects the lesion and a single use glove is worn over the impermeable cover;^P
- (2) On exposed portions of the arms, unless the lesion is protected by an impermeable cover;^P or
- (3) On other parts of the body, unless the lesion is covered by a dry, durable, tight-fitting bandage.^P

(C) Exclude a food employee from a food establishment if the food employee is diagnosed by a health practitioner or presumptive with:

- (1) Norovirus;^P
- (2) Hepatitis A virus;^P
- (3) Shigella spp.;^P
- (4) Enterohemorrhagic or Shiga Toxin-Producing Escherichia coli;^P or
- (5) Salmonella Typhi.^P

2-201.13 Removal of Exclusions and Restrictions.

The person in charge shall adhere to the following conditions when removing, adjusting, or retaining the exclusion or restriction of a food employee:

(A) Restrictions or exclusions on persons diagnosed or presumptive with Hepatitis A, shigellosis or Shiga-toxigenic Escherichia coli (STEC) or Salmonella typhi infection shall not be lifted until a licensed laboratory has determined that the employee is free of pathogens in accordance with OAR 333-019-0014(4) and 333-019-0046. Such restrictions may be waived or modified at the discretion of the local public health authority.^P

(B) Except as specified in (A) of section 2-201.13, the person in charge may remove a restriction or exclusion specified under 2-201.12 if the restricted person:

- (1) Is free of the symptoms specified under 2-201.12(A)(1)-(3) for 24 hours;^P or
- (2) Provides to the person in charge written medical documentation from a health practitioner that states the symptom is from a noninfectious condition;^P or
- (3) The person in charge obtains approval from the local public health authority.^P

(C) Reinstate a food employee who was diagnosed or presumptive with an infection from Norovirus if the person in charge obtains approval from the local public health authority and one of the following conditions is met:

- (1) The food employee provides to the person in charge written medical documentation from a health practitioner stating the food employee is free of a Norovirus infection;^P or

- (2) The food employee's symptoms of vomiting or diarrhea have resolved and more than 48 hours have passed since the food employee became asymptomatic;^P or
- (3) The food employee did not develop symptoms and more than 48 hours have passed since the food employee was diagnosed.^P

2-3 PERSONAL CLEANLINESS

- Subparts: 2-301 Hands and Arms**
- 2-302 Fingernails**
- 2-303 Jewelry**
- 2-304 Outer Clothing**

2-301.11 Clean Condition.

Food employees shall keep their hands and exposed portions of their arms clean.^P

2-301.12 Cleaning Procedure.

(A) Except as specified in ¶ (D) of this section, food employees shall clean their hands and exposed portions of their arms, including surrogate prosthetic devices for hands or arms for at least 20 seconds, using a cleaning compound in a handwashing sink that is equipped as specified under § 5-202.12 and Subpart 6-301.^P

(B) Food employees shall use the following cleaning procedure in the order stated to clean their hands and exposed portions of their arms, including surrogate prosthetic devices for hands and arms:

- (1) Rinse under clean, running warm water;^P
- (2) Apply an amount of cleaning compound recommended by the cleaning compound manufacturer;^P
- (3) Rub together vigorously for at least 10 to 15 seconds while:
 - (a) Paying particular attention to removing soil from underneath the fingernails during the cleaning procedure,^P and
 - (b) Creating friction on the surfaces of the hands and arms or surrogate prosthetic devices for hands and arms, finger tips, and areas between the fingers;^P
- (4) Thoroughly rinse under clean, running warm water;^P and
- (5) Immediately follow the cleaning procedure with thorough drying using a method as specified under § 6-301.12.^P

(C) *To avoid recontaminating their hands or surrogate prosthetic devices, food employees may use disposable paper towels or similar clean barriers when touching surfaces such as manually operated faucet handles on a handwashing sink or the handle of a restroom door.*

(D) *If approved and capable of removing the types of soils encountered in the food operations involved, an automatic handwashing facility may be used by food employees to clean their hands or surrogate prosthetic devices.*

2-301.13 Double Handwashing.

(A) After defecating, contacting body fluids and discharges, or handling waste containing fecal matter, body fluids, or body discharges, and before beginning or returning to work, food employees shall wash their hands twice using the cleaning procedure specified in § 2-301.12.^P

(B) Except when one handwashing sink is allowed under § 5-203.11(A), after using the toilet facility food employees shall wash their hands twice, first at a handwashing sink in the toilet facility and again at a handwashing sink in the food preparation area.^P

2-301.14 When to Wash.

Food employees shall clean their hands and exposed portions of their arms as specified under § 2-301.12 immediately before engaging in food preparation including working with exposed food, clean equipment and utensils, and unwrapped single-service and single-use articles,^P and:

- (A) After touching bare human body parts other than clean hands and clean, exposed portions of arms;^P
- (B) After using the toilet room;^P
- (C) After caring for or handling service animals or aquatic animals as specified in ¶ 2-403.11(B);^P
- (D) Except as specified in ¶ 2-401.11(B), after coughing, sneezing, using a handkerchief or disposable tissue, using tobacco, eating, or drinking;^P
- (E) After handling soiled equipment or utensils;^P
- (F) During food preparation, as often as necessary to remove soil and contamination and to prevent cross contamination when changing tasks;^P
- (G) When switching between working with raw food and working with ready-to-eat food;^P and
- (H) Before donning gloves for working with food unless a glove change is not the result of glove contamination.^P
- (I) After engaging in other activities that contaminate the hands.^P

2-301.15 Where to Wash.

Food employees shall clean their hands in a handwashing sink or approved automatic handwashing facility and may not clean their hands in a sink used for food preparation, or in a service sink or a curbed cleaning facility used for the disposal of mop water and similar liquid waste.^{Pf}

2-301.16 Hand Antiseptics.

(A) A hand antiseptic and a chemical hand antiseptic solution used as a hand dip shall be used according to labeled directions, be approved for use with food, and be applied to hands that are cleaned as specified under section 2-301.12.^{Pf}

(B) A chemical hand antiseptic solution used as a hand dip shall be maintained clean and at a strength equivalent to at least 100 mg/L chlorine.^{Pf}

2-302.11 Maintenance.

(A) Food employees shall keep their fingernails trimmed, filed, and maintained so the edges and surfaces are cleanable and not rough.^{Pf}

(B) Unless wearing intact gloves in good repair, a food employee may not wear fingernail polish or artificial fingernails when working with exposed food.^{Pf}

2-303.11 Prohibition.

Except for a plain ring such as a wedding band, while preparing food, food employees may not wear jewelry including medical information jewelry on their arms and hands.

2-304.11 Clean Condition.

Food employees shall wear clean outer clothing to prevent contamination of food, equipment, utensils, linens, and single-service and single-use articles.

2-4 HYGIENIC PRACTICES

- Subparts: 2-401 Food Contamination Prevention**
- 2-402 Hair Restraints**
- 2-403 Animals**

2-401.11 Eating, Drinking, or Using Tobacco.

(A) Except as specified in ¶ (B) of this section, an employee shall eat, drink, or use any form of tobacco only in designated areas where the contamination of exposed food; clean equipment, utensils, and linens; unwrapped single-service and single-use articles; or other items needing protection can not result.^{Pf}

(B) *A food employee may drink from a closed beverage container if the container is handled to prevent contamination of:*

- (1) The employee's hands;*
- (2) The container; and*
- (3) Exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.*

2-401.12 Discharges from the Eyes, Nose, and Mouth.

Food employees experiencing persistent sneezing, coughing, or a runny nose that causes discharges from the eyes, nose, or mouth may not work with exposed food; clean equipment, utensils, and linens; or unwrapped single-service or single-use articles.^{Pf}

2-402.11 Effectiveness.

(A) Employees shall use effective hair restraints to prevent the contamination of food or food-contact surfaces.

(B) *This section does not apply to food employees such as counter staff who only serve beverages and wrapped or packaged foods, hostesses, and wait staff if they present a minimal risk of contaminating exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.*

2-403.11 Handling Prohibition.

(A) Except as specified in ¶ (B) of this section, food employees may not care for or handle animals that may be present such as patrol dogs, service animals, or pets that are allowed as specified in Subparagraphs 6-501.115(B)(2)-(5) and (E).^{Pf}

(B) *Food employees with service animals may handle or care for their service animals and food employees may handle or care for fish in aquariums or molluscan shellfish or crustacea in display tanks if they wash their hands as specified under § 2-301.12 and ¶ 2-301.14(C).*

Chapter 3

Food

Parts

3-1 CHARACTERISTICS

3-2 SOURCES, SPECIFICATIONS, AND ORIGINAL CONTAINERS AND RECORDS

3-3 PROTECTION FROM CONTAMINATION AFTER RECEIVING

3-4 DESTRUCTION OF ORGANISMS OF PUBLIC HEALTH CONCERN

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3-6 FOOD IDENTITY, PRESENTATION, AND ON-PREMISES LABELING

3-7 CONTAMINATED FOOD

3-8 SPECIAL REQUIREMENTS FOR HIGHLY SUSCEPTIBLE POPULATIONS

3-1 CHARACTERISTICS

Subpart 3-101 Condition

3-101.11 Safe, Unadulterated, and Honestly Presented.

Food shall be safe, unadulterated, and, as specified under § 3-601.12, honestly presented.^P

3-2 SOURCES, SPECIFICATIONS, AND ORIGINAL CONTAINERS AND RECORDS

Subparts 3-201 Sources

3-202 Specifications for Receiving

3-203 Original Containers and Records

3-201.11 Compliance with Food Law.

(A) Food shall be obtained from sources that comply with law.^P

(B) Except as specified in paragraphs (J), (K) and (L) of this section, food prepared in a private home may not be used or offered for human consumption in a food establishment.^P

(C) Packaged food shall be labeled as specified in law, including 21 CFR 101 Food Labeling, 9 CFR 317 Labeling, Marking Devices, and Containers, and 9 CFR 381 Subpart N Labeling and Containers, and as specified under §§ 3-202.17 and 3-202.18.^{Pf}

(D) Fish, *other than those specified in paragraph 3-402.11(B), that are intended for consumption in raw or undercooked form and allowed as specified in Subparagraph 3-401.11(D), may be offered for sale or service if they are obtained from a supplier that freezes the fish as specified under § 3-402.11; or if they are frozen on the premises as specified under § 3-402.11 and records are retained as specified under § 3-402.12.*

(E) Whole-muscle, intact beef steaks that are intended for consumption in an undercooked form without a consumer advisory as specified in ¶ 3-401.11(C) shall be:

(1) Obtained from a food processing plant that, upon request by the purchaser, packages the steaks and labels them, to indicate that the steaks meet the definition of whole-muscle, intact beef,^{Pf} or

(2) Deemed acceptable by the regulatory authority based on other evidence, such as written buyer specifications or invoices, that indicates that the steaks meet the definition of whole-muscle, intact beef,^{Pf} and

(3) If individually cut in a food establishment:

(a) Cut from whole-muscle intact beef that is labeled by a food processing plant as specified in Subparagraph (E)(1) of this section or identified as specified in Subparagraph (E)(2) of this section,^{Pf}

(b) Prepared so they remain intact,^{Pf} and

(c) If packaged for undercooking in a food establishment, labeled as specified in Subparagraph (E)(1) of this section or identified as specified in (E)(2) of this section.^{Pf}

(F) Meat and poultry that is not a ready-to-eat food and is in a packaged form when it is offered for sale or otherwise offered for consumption, shall be labeled to include safe handling instructions as specified in law, including 9 CFR 317.2(l) and 9 CFR 381.125(b).

(G) Eggs that have not been specifically treated to destroy all viable *Salmonellae* shall be labeled to include safe handling instructions as specified in law, including 21 CFR 101.17(h).

(H) Game meat which has been donated to a charitable organization and has been inspected and processed as provided in ORS 619.095 may be served for human consumption by that charitable organization.^P

(I) Except as required in §§ 3-201.11(A) through (H) of the 2009 FDA Food Code and in accordance with ORS 624.116 any person, business or volunteer group may donate food to a benevolent organization that meets the requirements in ORS 624.101. The Internal Revenue Service (IRS) may issue a “letter of determination” that should be used as the basis for assessing compliance with benevolent status of ORS 624.101. The person, business or volunteer group making the donation shall inspect the food to ensure its fitness for human consumption and discard all food that is unwholesome. The following donated food items are approved for use by benevolent organizations:

- (1) Commercially prepared foods, canned goods, and milk products, marine and freshwater fishery products or meat animals; i.e., cattle, sheep, goats, equine, swine, poultry or rabbits obtained from facilities licensed by the Oregon Department of Agriculture or the Department of Human Services according to ORS 603.616, and ORS Chapters 621, 622, 624, 625 and 635;^P
- (2) Home baked bread, rolls, pies, cakes, doughnuts or pastries not having perishable fillings, icings, toppings or glazes;
- (3) Fresh fruit and produce from private gardens or commercial growers;^P
- (4) Salvageable food which has lost the label or which has been subjected to possible damage due to accident, fire, flood, adverse weather or similar cause. Reconditioning of salvageable food shall be conducted according to the 1984 Model Food Salvage Code recommended by the Association of Food and Drug Officials and U.S. Department of Health and Human Services;^P
- (5) *Other food as may be approved by the Oregon Health Authority upon prior notification by the donator or benevolent organization;*
- (6) Unless alternative language has been approved by the regulatory authority, a notice shall be posted in public view that says: “NOTICE: Food served at this location may not have been inspected by the regulatory authority.”^{Pf}

(J) Food prepared in a private home that is licensed as a home processor by the Oregon Department of Agriculture.^P

(K) A Benevolent Meal Site may serve food prepared by volunteers in an unlicensed kitchen under the following conditions:

- (1) (a) Volunteers must obtain a food handler certificate as required in OAR 333-175. If the food is prepared by a group of people at the same location, only the person supervising the food preparation shall be required to obtain a certificate. The person supervising the food preparation shall be at the preparation site at all times;
- (b) Volunteers that provide only non-potentially hazardous baked goods as allowed under paragraph (I) of this section or whole, uncut fresh fruits and vegetables are exempt from the food handler certification requirement.
- (2) (a) The organization sponsoring the Benevolent Meal Site must obtain a signed statement from the volunteers that they have reviewed and will follow the requirements of this section. The signed statement must include the volunteer’s name, contact information and the kinds of food donated;
- (b) The signed statement shall be maintained at the Benevolent Meal Site and be available for review.
- (3) Food Preparation and Service:
 - (a) The following foods may not be provided: home-canned or home processed foods, wild mushrooms, wild game, shellfish, sport-caught fish, raw milk, raw animal foods, eggs from non-commercial sources, unpasteurized juices, and water and ice from unapproved water systems;^P
 - (b) Except whole, uncut fresh fruit and vegetables and non-potentially hazardous baked goods, leftover food prepared by volunteers must be returned to the volunteer or discarded.^P
 - (c) *Food obtained from licensed establishments may be donated to other facilities if the food is held under proper temperature control and protected from contamination during serving;*
 - (d) At least one portable handwashing facility as described in Section 5-203.11(C) shall be provided at the service location;^{Pf}
 - (e) Self-service of food is limited to packaged or wrapped items and condiments dispensed in a sanitary manner;
 - (f) A statement must be posted at the meal site in public view that states: “Notice: Food served at this location may not have been inspected by the regulatory authority.”^{Pf}
 - (g) Food must be stored, prepared, handled, transported and served in a manner that is consistent with the food safety requirements in these rules.

3-201.12 Food in a Hermetically Sealed Container.

Food in a hermetically sealed container shall be obtained from a food processing plant that is regulated by the food regulatory agency that has jurisdiction over the plant.^P

3-201.13 Fluid Milk and Milk Products.

Fluid milk and milk products shall be obtained from sources that comply with Grade A standards as specified in law. ^P

3-201.14 Fish.

(A) Fish that are received for sale or service shall be:

- (1) Commercially and legally caught or harvested;^P or
- (2) Approved for sale or service.^P

(B) Molluscan shellfish that are recreationally caught may not be received for sale or service.^P

3-201.15 Molluscan Shellfish.

(A) Molluscan shellfish shall be obtained from sources according to law and the requirements specified in the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish.^P

(B) Molluscan shellfish received in interstate commerce shall be from sources that are listed in the Interstate Certified Shellfish Shippers List. ^P

3-201.16 Wild Mushrooms.

(A) Except as specified in (B), identification of mushroom species picked in the wild shall have a written buyer specification which is to remain on file in the food establishment for a minimum of 90 days from the date of sale or service.^{Pf} This written specification shall include:

- (1) Identification by the scientific name and the common name of the mushroom species;^P
- (2) Identification in the fresh state;^{Pf}
- (3) The name and contact information of the person who identified the mushroom and the mushroom seller;^{Pf} and
- (4) A statement as to the qualifications and training of the identifier, specifically related to mushroom identification.^{Pf}

(B) Paragraph (A) of 3-201.16 does not apply to cultivated wild mushroom species that are grown, harvested, and processed in an operation that is regulated by the food regulatory agency that has jurisdiction over the operation.

(C) The food establishment that sells, uses or serves mushrooms picked in the wild shall ensure the mushrooms are conspicuously identified by a label, placard, or menu notation that states:

- (1) The common and usual name of the mushroom;^{Pf} and
- (2) The statement "Wild mushrooms: not an inspected product".^{Pf}

3-201.17 Game Animals.

A) If game animals are received for sale or service they shall be:

(1) Commercially raised for food ^P and:

- (a) Raised, slaughtered, and processed under a voluntary inspection program that is conducted by the agency that has animal health jurisdiction, ^P or
- (b) Under a routine inspection program conducted by a regulatory agency other than the agency that has animal health jurisdiction, ^P and
- (c) Raised, slaughtered, and processed according to:
 - (i) Laws governing meat and poultry as determined by the agency that has animal health jurisdiction and the agency that conducts the inspection program, ^P and
 - (ii) Requirements which are developed by the agency that has animal health jurisdiction and the agency that conducts the inspection program with consideration of factors such as the need for antemortem and postmortem examination by an approved veterinarian or veterinarian's designee; ^P

(2) Under a voluntary inspection program administered by the USDA for game animals such as exotic animals (reindeer, elk, deer, antelope, water buffalo, or bison) that are "inspected and approved" in accordance with 9 CFR 352 Exotic animals; voluntary inspection or rabbits that are "inspected and certified" in accordance with 9 CFR 354 voluntary inspection of rabbits and edible products thereof; ^P

(3) As allowed by law, for wild game animals that are live-caught:

- (a) Under a routine inspection program conducted by a regulatory agency such as the agency that has animal health jurisdiction, ^P and
- (b) Slaughtered and processed according to:
 - (i) Laws governing meat and poultry as determined by the agency that has animal health jurisdiction and the agency that conducts the inspection program, ^P and
 - (ii) Requirements which are developed by the agency that has animal health jurisdiction and the agency that conducts the inspection program with consideration of factors such as the need for antemortem and postmortem examination by an approved veterinarian or veterinarian's designee; ^P or

- (4) As allowed by law, for field-dressed wild game animals under a routine inspection program that ensures the animals:
 - (a) Receive a postmortem examination by an approved veterinarian or veterinarian's designee, ^P or
 - (b) Are field-dressed and transported according to requirements specified by the agency that has animal health jurisdiction and the agency that conducts the inspection program, ^P and
 - (c) Are processed according to laws governing meat and poultry as determined by the agency that has animal health jurisdiction and the agency that conducts the inspection program. ^P
- (5) Except as specified in ¶¶ (A)(1) through (4) of section 3-201.17,
 - (a) Game meat donated to a charitable organization and inspected by employees of the Oregon Department of Agriculture, Oregon Department of Fish and Wildlife, or State Police as provided for in ORS 619.095 may be served for human consumption by that charitable organization. ^P
 - (b) As used in subparagraph (a) of this section:
 - (i) Charitable organization means the Department of Human Services, Oregon Health Authority, Oregon Youth Authority, Department of Corrections institutions, low-income nutritional centers, public school nutritional centers, senior nutritional centers, state hospitals and other charitable organizations or public institutions approved by the Oregon Department of Fish and Wildlife.
 - (ii) Game meat includes antelope, bighorn sheep, deer, elk, moose and mountain goat.

(B) A game animal may not be received for sale or service if it is a species of wildlife that is listed in 50 CFR 17 Endangered and Threatened Wildlife and Plants.

3-201.18 Outdoor Cooking and Beverage Dispensing.

- (A) Outdoor cooking and beverage dispensing by a food establishment shall be allowed as a part of the operation when conducted on the premises of the food establishment. ^{Pf}
- (B) Enclosure of an outdoor cooking and beverage dispensing operation is not required unless necessary to protect food from contamination. The outdoor cooking and beverage dispensing operation must be designed to protect food, equipment, utensils, single-use articles and other items from contamination when not in operation.
- (C) Outdoor cooking and beverage dispensing operations must be equipped with or located adjacent to a plumbed handwashing sink. Outdoor cooking and beverage dispensing operations that are not permanently constructed may provide a handwashing system that meets the requirements of 5-203.11(C) if approved by the regulatory authority. ^{Pf}
- (D) Outdoor cooking shall be limited to the use of a barbeque, hearth oven, tandoori oven, barbeque pit or other similar cooking equipment. The use of equipment such as flat top grills or griddles, woks, steamtables or other cooking, storage or holding devices is not allowed. ^{Pf}
- (E) Other than cooking food, no preparation, assembly, storage or service of food may be done at the outdoor cooking operation. Non-potentially hazardous (non-TCS) condiments may be dispensed at the outdoor cooking operation. ^{Pf}
- (F) Employees or consumers may be served directly from the outdoor cooking operation if the food is portioned for immediate service. Consumers may not serve themselves from an outdoor cooking operation.
- (G) Outdoor beverage dispensing may include alcoholic and other beverages. Consumers may serve themselves from beverage dispensing equipment that meets the requirements of 4-204.13.
- (H) Outdoor cooking and beverage dispensing operations must be monitored by food service employees.
- (I) Section 3-201.18 does not preclude the service of foods prepared inside the establishment to consumers at outdoor seating areas.

3-202.11 Temperature.

- (A) Except as specified in ¶ (B) of this section, refrigerated, potentially hazardous food (time/temperature control for safety food) shall be at a temperature of 5°C (41°F) or below when received. ^P
- (B) *If a temperature other than 5°C (41°F) for a potentially hazardous food (time/temperature control for safety food) is specified in law governing its distribution, such as laws governing milk and molluscan shellfish, the food may be received at the specified temperature.*
- (C) Raw eggs shall be received in refrigerated equipment that maintains an ambient air temperature of 7°C (45°F) or less. ^P
- (D) Potentially hazardous food (time/temperature control for safety food) that is cooked to a temperature and for a time specified under §§ 3-401.11 - 3-401.13 and received hot shall be at a temperature of 57°C (135°F) or above. ^P
- (E) A food that is labeled frozen and shipped frozen by a food processing plant shall be received frozen. ^{Pf}
- (F) Upon receipt, potentially hazardous food (time/temperature control for safety food) shall be free of evidence of previous temperature abuse. ^{Pf}

3-202.12 Additives.

Food may not contain unapproved food additives or additives that exceed amounts specified in 21 CFR 170-180 relating to food additives, generally recognized as safe or prior sanctioned substances that exceed amounts specified in 21 CFR 181-186, substances that exceed amounts specified in 9 CFR Subpart C Section 424.21(b) Food ingredients and sources of radiation, or pesticide residues that exceed provisions specified in 40 CFR 180 Tolerances for pesticides chemicals in food, and exceptions.^P

3-202.13 Shell Eggs.

Eggs shall be received clean and sound and may not exceed the restricted egg tolerances for U.S. Consumer Grade B as specified in United States Standards, Grades, and Weight Classes for Shell Eggs, AMS 56.200 *et seq.*, administered by the Agricultural Marketing Service of USDA.^P

3-202.14 Eggs and Milk Products, Pasteurized.

(A) Egg products shall be obtained pasteurized.^P

(B) Fluid and dry milk and milk products shall:

(1) Be obtained pasteurized;^P and

(2) Comply with Grade A standards as specified in law.^P

(C) Frozen milk products, such as ice cream, shall be obtained pasteurized as specified in 21 CFR 135 - Frozen desserts.^P

(D) Cheese shall be obtained pasteurized *unless alternative procedures to pasteurization are specified in the CFR, such as 21 CFR 133 - Cheeses and related cheese products, for curing certain cheese varieties.*^P

(E) Raw milk from goats and sheep that is in compliance with the labeling requirements in OAR 603-024-0543 and the standards defined in OAR 603-024-0041 may be sold in licensed Oregon Department of Agriculture establishments.^P

3-202.15 Package Integrity.

Food packages shall be in good condition and protect the integrity of the contents so that the food is not exposed to adulteration or potential contaminants.^{Pf}

3-202.16 Ice.

Ice for use as a food or a cooling medium shall be made from drinking water.^P

3-202.17 Shucked Shellfish, Packaging and Identification.

(A) Raw shucked shellfish shall be obtained in nonreturnable packages which bear a legible label that identifies the:^{Pf}

(1) Name, address, and certification number of the shucker, packer or repacker of the molluscan shellfish;^{Pf} and

(2) The "sell by" or "best if used by" date for packages with a capacity of less than 1.89 L (one-half gallon) or the date shucked for packages with a capacity of 1.89 L (one-half gallon) or more.^{Pf}

(B) A package of raw shucked shellfish that does not bear a label or which bears a label which does not contain all the information as specified under ¶ (A) of this section shall be subject to a hold order, as allowed by law, or seizure and destruction in accordance with 21 CFR Subpart D - Specific Administrative Decisions Regarding Interstate Shipments, Section 1240.60(d) Molluscan shellfish.

3-202.18 Shellstock Identification.

(A) shellstock shall be obtained in containers bearing legible source identification tags or labels that are affixed by the harvester or dealer that depurates, ships, or reships the shellstock, as specified in the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish, and that list:^{Pf}

(1) **[Deleted]**

(2) Except as specified in ¶ (D) of this section, on each dealer's tag or label, the following information in the following order:^{Pf}

(a) The dealer's name and address, and the certification number assigned by the shellfish control authority,^{Pf}

(b) The original shipper's certification number including the abbreviation of the name of the state or country in which the shellfish are harvested,^{Pf}

(c) The same information as specified for a harvester's tag under Subparagraphs (A)(1)(b)-(d) of this section,^{Pf} and

(d) The following statement in bold, capitalized type: "This tag is required to be attached until container is empty and thereafter kept on file for 90 days."^{Pf}

(B) A container of shellstock that does not bear a tag or label or that bears a tag or label that does not contain all the information as specified under ¶ (A) of this section shall be subject to a hold order, as allowed by law, or seizure and destruction in accordance with 21 CFR Subpart D - Specific Administrative Decisions Regarding Interstate Shipments, Section 1240.60(d).

(C) If a place is provided on the harvester's tag or label for a dealer's name, address, and certification number, the dealer's information shall be listed first.

(D) *If the harvester's tag or label is designed to accommodate each dealer's identification as specified under Subparagraphs (A)(2)(a) and (b) of this section, individual dealer tags or labels need not be provided.*

3-202.19 Shellstock, Condition.

When received by a food establishment, shellstock shall be reasonably free of mud, dead shellfish, and shellfish with broken shells. Dead shellfish or shellstock with badly broken shells shall be discarded.

3-202.110 Juice Treated.

Pre-packaged juice shall:

(A) Be obtained from a processor with a HACCP system as specified in 21 CFR Part 120 Hazard Analysis and Critical Control (HACCP) Systems; ^{Pf} and

(B) Be obtained pasteurized or otherwise treated to attain a 5-log reduction of the most resistant microorganism of public health significance as specified in 21 CFR Part 120.24 Process Controls. ^P

3-203.11 Molluscan Shellfish, Original Container.

(A) Except as specified in ¶¶ (B) - (D) of this section, molluscan shellfish may not be removed from the container in which they are received other than immediately before sale or preparation for service.

(B) *For display purposes, shellstock may be removed from the container in which they are received, displayed on drained ice, or held in a display container, and a quantity specified by a consumer may be removed from the display or display container and provided to the consumer if:*

(1) *The source of the shellstock on display is identified as specified under § 3-202.18 and recorded as specified under § 3-203.12; and*

(2) *The shellstock are protected from contamination.*

(C) *Shucked shellfish may be removed from the container in which they were received and held in a display container from which individual servings are dispensed upon a consumer's request if:*

(1) *The labeling information for the shellfish on display as specified under § 3-202.17 is retained and correlated to the date when, or dates during which, the shellfish are sold or served; and*

(2) *The shellfish are protected from contamination.*

(3) *If the establishment serves raw or undercooked shucked molluscan shellfish for immediate consumption, container label information must be maintained in the establishment for 90 days.* ^{Pf}

(D) *Shucked shellfish may be removed from the container in which they were received and repacked in consumer self service containers where allowed by law if:*

(1) *The labeling information for the shellfish is on each consumer self service container as specified under § 3-202.17 and ¶¶ 3-602.11(A) and (B)(1) - (5);*

(2) *The labeling information as specified under § 3-202.17 is retained and correlated with the date when, or dates during which, the shellfish are sold or served;*

(3) *The labeling information and dates specified under Subparagraph (D)(2) of this section are maintained for 90 days; and*

(4) *The shellfish are protected from contamination.*

3-203.12 Shellstock, Maintaining Identification.

(A) Except as specified under Subparagraph (C) (2) of this section, shellstock tags or labels shall remain attached to the container in which the shellstock are received until the container is empty. ^{Pf}

(B) The date when the last shellstock from the container is sold or served shall be recorded on the tag or label. ^{Pf}

(C) The identity of the source of shellstock that are sold or served shall be maintained by retaining shellstock tags or labels for 90 calendar days from the date that is recorded on the tag or label, as specified under ¶ B of this section, by: ^{Pf}

(1) Using an approved record keeping system that keeps the tags or labels in chronological order correlated to the date that is recorded on the tag or label, as specified under ¶ B of this section; ^{Pf} and

(2) If shellstock are removed from its tagged or labeled container:

(a) Preserving source identification by using a record keeping system as specified under Subparagraph (C)(1) of this section, ^{Pf} and

(b) Ensuring that shellstock from one tagged or labeled container are not commingled with shellstock from another container with different certification numbers; different harvest dates; or different growing areas as identified on the tag or label before being ordered by the consumer. ^{Pf}

3-3 PROTECTION FROM CONTAMINATION AFTER RECEIVING

- | | |
|-----------------|--|
| Subparts | 3-301 Preventing Contamination by Employee |
| | 3-302 Preventing Food and Ingredient Contamination |
| | 3-303 Preventing Contamination from Ice Used as a Coolant |
| | 3-304 Preventing Contamination from Equipment, Utensils, and Linens |
| | 3-305 Preventing Contamination from the Premises |
| | 3-306 Preventing Contamination by Consumers |
| | 3-307 Preventing Contamination from Other Sources |

3-301.11 Preventing Contamination from Hands.

(A) Food employees shall wash their hands as specified under §§ 2-301.12 and 2-301.13.

(B) Food employees shall minimize bare hand contact with food and shall use suitable utensils such as deli tissue, spatulas, tongs, single-use gloves, or dispensing equipment.^{P/Pf}

3-301.12 Preventing Contamination when Tasting.

A food employee may not use a utensil more than once to taste food that is to be sold or served.^P

3-302.11 Packaged and Unpackaged Food - Separation, Packaging, and Segregation.

(A) Food shall be protected from cross contamination by:

(1) Except as specified in (1)(c) below, separating raw animal foods during storage, preparation, holding, and display from:

(a) Raw ready-to-eat food including other raw animal food such as fish for sushi or molluscan shellfish, or other raw ready-to-eat food such as fruits and vegetables,^P and

(b) Cooked ready-to-eat food;^P

(c) *Frozen, commercially processed and packaged raw animal food may be stored or displayed with or above frozen, commercially processed and packaged, ready-to-eat food.*

(2) *Except when combined as ingredients*, separating types of raw animal foods from each other such as beef, fish, lamb, pork, and poultry during storage, preparation, holding, and display by:

(a) Using separate equipment for each type,^P or

(b) Arranging each type of food in equipment so that cross contamination of one type with another is prevented,^P and

(c) Preparing each type of food at different times or in separate areas;^P

(3) Cleaning equipment and utensils as specified under ¶ 4-602.11(A) and sanitizing as specified under § 4-703.11;

(4) Except as specified under Subparagraph 3-501.15(B)(2) and in ¶ (B) of this section, storing the food in packages, covered containers, or wrappings;

(5) Cleaning hermetically sealed containers of food of visible soil before opening;

(6) Protecting food containers that are received packaged together in a case or overwrap from cuts when the case or overwrap is opened;

(7) Storing damaged, spoiled, or recalled food being held in the food establishment as specified under § 6-404.11; and

(8) Separating fruits and vegetables, before they are washed as specified under § 3-302.15 from ready-to-eat food.

(B) *Subparagraph (A)(4) of this section does not apply to:*

(1) *Whole, uncut, raw fruits and vegetables and nuts in the shell, that require peeling or hulling before consumption;*

(2) *Primal cuts, quarters, or sides of raw meat or slab bacon that are hung on clean, sanitized hooks or placed on clean, sanitized racks;*

(3) *Whole, uncut, processed meats such as country hams, and smoked or cured sausages that are placed on clean, sanitized racks;*

(4) *Food being cooled as specified under Subparagraph 3-501.15(B)(2); or*

(5) *Shellstock.*

3-302.12 Food Storage Containers, Identified with Common Name of Food.

Except for containers holding food that can be readily and unmistakably recognized such as dry pasta, working containers holding food or food ingredients that are removed from their original packages for use in the food establishment, such as cooking oils, flour, herbs, potato flakes, salt, spices, and sugar shall be identified with the common name of the food.

3-302.13 Pasteurized Eggs, Substitute for Raw Shell Eggs for Certain Recipes.

Pasteurized eggs or egg products shall be substituted for raw shell eggs in the preparation of foods such as Caesar salad, hollandaise or Béarnaise sauce, mayonnaise, meringue, eggnog, ice cream, and egg-fortified beverages that are not: ^P

- (A) Cooked as specified under Subparagraphs 3-401.11(A)(1) or (2);^P or
- (B) Included in Subparagraph 3-401.11(D).^P

3-302.14 Protection from Unapproved Additives.

(A) Food shall be protected from contamination that may result from the addition of, as specified in § 3-202.12:

- (1) Unsafe or unapproved food or color additives;^P and
- (2) Unsafe or unapproved levels of approved food and color additives.^P

(B) A food employee may not:

- (1) Apply sulfiting agents to fresh fruits and vegetables intended for raw consumption or to a food considered to be a good source of vitamin B₁;^P or
- (2) Except for grapes, serve or sell food specified under Subparagraph (B)(1) of this section that is treated with sulfiting agents before receipt by the food establishment.^P

3-302.15 Washing Fruits and Vegetables.

(A) *Except as specified in ¶ (B) of this section and except for whole, raw fruits and vegetables that are intended for washing by the consumer before consumption, raw fruits and vegetables shall be thoroughly washed in water to remove soil and other contaminants before being cut, combined with other ingredients, cooked, served, or offered for human consumption in ready-to-eat form.*

(B) *Fruits and vegetables may be washed by using chemicals as specified under § 7-204.12.*

3-303.11 Ice Used as Exterior Coolant, Prohibited as Ingredient.

After use as a medium for cooling the exterior surfaces of food such as melons or fish, packaged foods such as canned beverages, or cooling coils and tubes of equipment, ice may not be used as food. ^P

3-303.12 Storage or Display of Food in Contact with Water or Ice.

(A) Packaged food may not be stored in direct contact with ice or water if the food is subject to the entry of water because of the nature of its packaging, wrapping, or container or its positioning in the ice or water.

(B) Except as specified in ¶¶ (C) and (D) of this section, unpackaged food may not be stored in direct contact with undrained ice.

(C) *Whole, raw fruits or vegetables; cut, raw vegetables such as celery or carrot sticks or cut potatoes; and tofu may be immersed in ice or water.*

(D) *Raw poultry and raw fish that are received immersed in ice in shipping containers may remain in that condition while in storage awaiting preparation, display, service, or sale.*

3-304.11 Food Contact with Equipment and Utensils.

Food shall only contact surfaces of:

(A) Equipment and utensils that are cleaned as specified under Part 4-6 of this Code and sanitized as specified under Part 4-7 of this Code; ^P or

(B) Single-service and single-use articles. ^P

3-304.12 In-Use Utensils, Between-Use Storage.

During pauses in food preparation or dispensing, food preparation and dispensing utensils shall be stored:

(A) Except as specified under ¶ (B) of this section, in the food with their handles above the top of the food and the container;

(B) In food that is not potentially hazardous (time/temperature control for safety food) with their handles above the top of the food within containers or equipment that can be closed, such as bins of sugar, flour, or cinnamon;

(C) On a clean portion of the food preparation table or cooking equipment only if the in-use utensil and the food-contact surface of the food preparation table or cooking equipment are cleaned and sanitized at a frequency specified under §§ 4-602.11 and 4-702.11;

(D) In running water of sufficient velocity to flush particulates to the drain, if used with moist food such as ice cream or mashed potatoes;

(E) In a clean, protected location if the utensils, such as ice scoops, are used only with a food that is not potentially hazardous (time/temperature control for safety food); or

- (F) In a container of water if the container is cleaned at a frequency specified under Subparagraph 4-602.11(D)(7); and
- (1) The water is maintained at a temperature of 135 degrees Fahrenheit or above; or
 - (2) At 41 degrees Fahrenheit or less.

3-304.13 Linens and Napkins, Use Limitation.

Linens and napkins may not be used in contact with food unless they are used to line a container for the service of foods and the linens and napkins are replaced each time the container is refilled for a new consumer.

3-304.14 Wiping Cloths, Use Limitation.

- (A) Cloths in-use for wiping food spills from tableware and carry-out containers that occur as food is being served shall be:
- (1) Maintained dry; and
 - (2) Used for no other purpose.
- (B) Cloths in-use for wiping counters and other equipment surfaces shall be:
- (1) Held between uses in a chemical sanitizer solution at a concentration specified under § 4-501.114; and
 - (2) Laundered daily as specified under ¶ 4-802.11(D).
- (C) Cloths in-use for wiping surfaces in contact with raw animal foods shall be kept separate from cloths used for other purposes.
- (D) Dry wiping cloths and the chemical sanitizing solutions specified in Subparagraph (B)(1) of this section in which wet wiping cloths are held between uses shall be free of food debris and visible soil.
- (E) Containers of chemical sanitizing solutions specified in Subparagraph (B)(1) of this section in which wet wiping cloths are held between uses shall be stored off the floor and used in a manner that prevents contamination of food, equipment, utensils, linens, single-service, or single-use articles.
- (F) Single-use disposable sanitizer wipes shall be used in accordance with EPA-approved manufacturer's label use instructions.

3-304.15 Gloves, Use Limitation.

- (A) If used, single-use gloves shall be used for only one task such as working with ready-to-eat food or with raw animal food, used for no other purpose, and discarded when damaged or soiled, or when interruptions occur in the operation.^P
- (B) Except as specified in ¶ (C) of this section, slash-resistant gloves that are used to protect the hands during operations requiring cutting shall be used in direct contact only with food that is subsequently cooked as specified under Part 3-4 such as frozen food or a primal cut of meat.
- (C) Slash-resistant gloves may be used with ready-to-eat food that will not be subsequently cooked if the slash-resistant gloves have a smooth, durable, and nonabsorbent outer surface; or if the slash-resistant gloves are covered with a smooth, durable, nonabsorbent glove, or a single-use glove.
- (D) Cloth gloves may not be used in direct contact with food unless the food is subsequently cooked as required under Part 3-4 such as frozen food or a primal cut of meat.
- (E) The use of latex gloves in food service establishments is prohibited.

3-304.16 Using Clean Tableware for Second Portions and Refills.

- (A) Except for refilling a consumer's drinking cup or container without contact between the pouring utensil and the lip-contact area of the drinking cup or container, food employees may not use tableware, including single-service articles, soiled by the consumer, to provide second portions or refills.
- (B) Except as specified in ¶ (C) of this section, self-service consumers may not be allowed to use soiled tableware, including single-service articles, to obtain additional food from the display and serving equipment.
- (C) Drinking cups and containers may be reused by self-service consumers if refilling is a contamination-free process as specified under ¶¶ 4-204.13(A), (B), and (D).

3-304.17 Refilling Returnables.

- (A) Except as specified in paragraph (C) of this section, a take-home food container returned to a food establishment may not be refilled at a food establishment with a potentially hazardous food (time/temperature control for safety food).
- (B) Except as specified in paragraph (C) of this section, a take-home food container refilled with non-potentially hazardous (non-TCS) food shall be cleaned as specified under paragraph 4-603.17(B).
- (C) Notwithstanding paragraphs (A) and (B) of this section, personal take-out beverage containers, such as thermally insulated bottles, non-spill coffee cups, and promotional beverage glasses, may be refilled by employees or the consumer with a beverage that is a potentially hazardous food (time/temperature control for safety food) if refilling is a contamination-free process as specified under paragraphs 4-204.13(A), (B), and (D).

3-305.11 Food Storage.

(A) Except as specified in ¶¶ (B) and (C) of this section, food shall be protected from contamination by storing the food:

- (1) In a clean, dry location;
- (2) Where it is not exposed to splash, dust, or other contamination; and
- (3) At least 15 cm (6 inches) above the floor.

(B) Food in packages and working containers may be stored less than 15 cm (6 inches) above the floor on case lot handling equipment as specified under § 4-204.122.

(C) Pressurized beverage containers, cased food in waterproof containers such as bottles or cans, and milk containers in plastic crates may be stored on a floor that is clean and not exposed to floor moisture.

3-305.12 Food Storage, Prohibited Areas.

Food may not be stored:

- (A) In locker rooms;
- (B) In toilet rooms;
- (C) In dressing rooms;
- (D) In garbage rooms;
- (E) In mechanical rooms;
- (F) Under sewer lines that are not shielded to intercept potential drips;
- (G) Under leaking water lines, including leaking automatic fire sprinkler heads, or under lines on which water has condensed;
- (H) Under open stairwells; or
- (I) Under other sources of contamination.

3-305.13 Vended Potentially Hazardous Food, Original Container.

Potentially hazardous food (time/temperature control for safety food) dispensed through a vending machine shall be in the package in which it was placed at the food establishment or food processing plant at which it was prepared.

3-305.14 Food Preparation.

During preparation, unpackaged food shall be protected from environmental sources of contamination.

3-306.11 Food Display.

Except for nuts in the shell and whole, raw fruits and vegetables that are intended for hulling, peeling, or washing by the consumer before consumption, food on display shall be protected from contamination by the use of packaging; counter, service line, or salad bar food guards; display cases; or other effective means.^{Pf}

3-306.12 Condiments, Protection.

(A) Condiments shall be protected from contamination by being kept in dispensers that are designed to provide protection, protected food displays provided with the proper utensils, original containers designed for dispensing, or individual packages or portions.^{Pf}

(B) Condiments at a vending machine location shall be in individual packages or provided in dispensers that are filled at an approved location, such as the food establishment that provides food to the vending machine location, a food processing plant that is regulated by the agency that has jurisdiction over the operation, or a properly equipped facility that is located on the site of the vending machine location.^{Pf}

3-306.13 Consumer Self Service Operations.

(A) Raw, unpackaged animal food, such as beef, lamb, pork, poultry, and fish may not be offered for consumer self-service. ^P
This paragraph does not apply to:

- (1) Consumer self-service of ready-to-eat foods at buffets or salad bars that serve foods such as sushi or raw shellfish;*
- (2) Ready-to-cook individual portions for immediate cooking and consumption on the premises such as consumer-cooked meats or consumer-selected ingredients for Mongolian barbecue; or*
- (3) Raw, frozen, shell-on shrimp, or lobster.*

(B) Consumer self-service operations for ready-to-eat foods shall be provided with suitable utensils or effective dispensing methods that protect the food from contamination. ^{Pf}

(C) Consumer self-service operations such as buffets and salad bars shall be monitored by food employees trained in safe operating procedures. ^{Pf}

3-306.14 Returned Food and Reservice of Food.

(A) Except as specified in ¶ (B) of this section, after being served or sold and in the possession of a consumer, food that is unused or returned by the consumer may not be offered as food for human consumption.^P

(B) Except as specified under ¶ 3-801.11(G), a container of food that is not potentially hazardous may be transferred from one consumer to another if:

- (1) The food is dispensed so that it is protected from contamination and the container is closed between uses, such as a narrow-neck bottle containing catsup, steak sauce, or wine; or
- (2) The food, such as crackers, salt, or pepper, is in an unopened original package and is maintained in sound condition.

3-307.11 Miscellaneous Sources of Contamination.

Food shall be protected from contamination that may result from a factor or source not specified under Subparts 3-301 - 3-306.

3-307.12 Protection from Contamination, Use of Private Vehicles for Food Deliveries.

(A) Private vehicles may be used for food deliveries if the food is packaged so that it is protected from contamination under Part 3-3, and adequate means are provided for maintaining proper food temperatures under §3-501.16.

(B) Private vehicles shall not be used in any activity that is incompatible with safe and sanitary transportation of food.

3-4 DESTRUCTION OF ORGANISMS OF PUBLIC HEALTH CONCERN

- Subparts 3-401 Cooking**
- 3-402 Freezing**
- 3-403 Reheating**

3-401.11 Raw Animal Foods.

(A) Except as specified under ¶ (B) and in ¶¶ (C) and (D) of this section, raw animal foods such as eggs, fish, meat, poultry, and foods containing these raw animal foods, shall be cooked to heat all parts of the food to a temperature and for a time that complies with one of the following methods based on the food that is being cooked:

- (1) 63°C (145°F) or above for 15 seconds for: ^P
 - (a) Raw eggs that are broken and prepared in response to a consumer's order and for immediate service, ^P and
 - (b) Except as specified under Subparagraphs (A)(2) and (A)(3) and ¶ (B), and in ¶ (C) of this section, fish and meat including game animals commercially raised for food as specified under Subparagraph 3-201.17(A)(1) and game animals under a voluntary inspection program as specified under Subparagraph 3-201.17(A)(2); ^P
- (2) 68°C (155°F) for 15 seconds or the temperature specified in the following chart that corresponds to the holding time for ratites, mechanically tenderized, and injected meats; the following if they are comminuted: fish, meat, game animals commercially raised for food as specified under Subparagraph 3-201.17(A)(1), and game animals under a voluntary inspection program as specified under Subparagraph 3-201.17(A)(2); and raw eggs that are not prepared as specified under Subparagraph (A)(1)(a) of this section: ^P

Minimum Temperature °C (°F)	Minimum Time
63 (145)	3 minutes
66 (150)	1 minute
70 (158)	< 1 second instantaneous)

;or

- (3) 74°C (165°F) or above for 15 seconds for poultry, baluts, wild game animals as specified under Subparagraphs 3-201.17(A)(3) and (4), stuffed fish, stuffed meat, stuffed pasta, stuffed poultry, stuffed ratites, or stuffing containing fish, meat, poultry, or ratites. ^P

(B) Whole meat roasts including beef, corned beef, lamb, pork, and cured pork roasts such as ham shall be cooked:

(1) In an oven that is preheated to the temperature specified for the roast's weight in the following chart and that is held at that temperature: ^{Pf}

Oven Type	Oven Temperature Based on Roast Weight	
	Less than 4.5 kg (10 lbs)	4.5 kg (10 lbs) or More
Still Dry	177°C (350°F) or more	121°C (250°F) or more
Convection	163°C (325°F) or more	121°C (250°F) or more
High Humidity ¹	121°C (250°F) or less	121°C (250°F) or less

¹ Relative humidity greater than 90% for at least 1 hour as measured in the cooking chamber or exit of the oven; or in a moisture-impermeable bag that provides 100% humidity.

;and

(2) As specified in the following chart, to heat all parts of the food to a temperature and for the holding time that corresponds to that temperature: ^P

Temperature °C (°F)	Time ¹ in Minutes	Temperature °C (°F)	Time ¹ in Seconds
54.4 (130)	112	63.9 (147)	134
55.0 (131)	89	65.0 (149)	85
56.1 (133)	56	66.1 (151)	54
57.2 (135)	36	67.2 (153)	34
57.8 (136)	28	68.3 (155)	22
58.9 (138)	18	69.4 (157)	14
60.0 (140)	12	70.0 (158)	0
61.1 (142)	8		
62.2 (144)	5		
62.8 (145)	4		

¹ Holding time may include postoven heat rise.

(C) A raw or undercooked whole-muscle, intact beef steak may be served or offered for sale in a ready-to-eat form if:

- (1) The food establishment serves a population that is not a highly susceptible population,
- (2) The steak is labeled to indicate that it meets the definition of "whole-muscle, intact beef" as specified under ¶ 3-201.11(E), and
- (3) The steak is cooked on both the top and bottom to a surface temperature of 63°C (145°F) or above and a cooked color change is achieved on all external surfaces.

(D) A raw animal food such as raw egg, raw fish, raw-marinated fish, raw molluscan shellfish, or steak tartare; or a partially cooked food such as lightly cooked fish, soft cooked eggs, or rare meat other than whole-muscle, intact beef steaks as specified in ¶ (C) of this section, may be served or offered for sale upon consumer request or selection in a ready-to-eat form if:

- (1) As specified under ¶¶ 3-801.11(C)(1) and (2), the food establishment serves a population that is not a highly susceptible population;
- (2) The food, if served or offered for service by consumer selection from a children's menu, does not contain comminuted meat; ^{Pf} and
- (3) The consumer is informed as specified under § 3-603.11 that to ensure its safety, the food should be cooked as specified under ¶ (A) or (B) of this section; or
- (4) The regulatory authority grants a variance from ¶ (A) or (B) of this section as specified in § 8-103.10 based on a HACCP plan that:
 - (a) Is submitted by the permit holder and approved as specified under § 8-103.11,
 - (b) Documents scientific data or other information showing that a lesser time and temperature regimen results in a safe food, and
 - (c) Verifies that equipment and procedures for food preparation and training of food employees at the food establishment meet the conditions of the variance.

3-401.12 Microwave Cooking.

Raw animal foods cooked in a microwave oven shall be:

- (A) Rotated or stirred throughout or midway during cooking to compensate for uneven distribution of heat;
- (B) Covered to retain surface moisture;
- (C) Heated to a temperature of at least 74°C (165°F) in all parts of the food;^P and
- (D) Allowed to stand covered for 2 minutes after cooking to obtain temperature equilibrium.

3-401.13 Plant Food Cooking for Hot Holding.

Fruits and vegetables that are cooked for hot holding shall be cooked to a temperature of 57°C (135°F).^{Pf}

3-401.14 Non-Continuous Cooking of Raw Animal Foods.

Raw animal foods that are cooked using a non-continuous cooking process shall be:

- (A) Subject to an initial heating process that is no longer than sixty minutes in duration;^P
- (B) Immediately after initial heating, cooled according to the time and temperature parameters specified for cooked Potentially Hazardous food (Time /Temperature Control for Safety Food) under ¶ 3-501.14(A);^P
- (C) After cooling, held frozen or cold, as specified for Potentially Hazardous food (Time/Temperature Control for Safety Food) under ¶ 3-501.16(A)(2);^P
- (D) Prior to sale or service, cooked using a process that heats all parts of the food to a temperature and for a time that complies with one of the methods based upon the food being cooked as specified in 3-401.11.^P
- (E) Cooled according to the time and temperature parameters specified for cooked Potentially Hazardous food (Time /Temperature Control for Safety Food) under ¶ 3-501.14(A) if not either hot held as specified under ¶3-501.16(A), served immediately, or held using time as a public health control as specified under § 3-501.19 after complete cooking;^P and
- (F) Prepared and stored according to written procedures that:
 - (1) Have obtained prior approval from the regulatory authority;^{Pf}
 - (2) Are maintained in the food establishment and are available to the regulatory authority upon request;^{Pf}
 - (3) Describe how the requirements specified under ¶ (A)-(E) of this Section are to be monitored and documented by the permit holder and the corrective actions to be taken if the requirements are not met;^{Pf}
 - (4) Describe how the foods, after initial heating, but prior to complete cooking, are to be marked or otherwise identified as foods that must be cooked as specified under ¶ (D) of this section prior to being offered for sale or service;^{Pf} and
 - (5) Describe how foods, after initial heating but prior to cooking as specified in paragraph (D) of section 3-401.14, are to be separated from ready-to-eat foods as specified under 3-302.11(A).^{Pf}

3-402.11 Parasite Destruction.

(A) Except as specified in ¶ (B) of this section, before service or sale in ready-to-eat form, raw, raw-marinated, partially cooked, or marinated-partially cooked fish shall be:

- (1) Frozen and stored at a temperature of -20°C (-4°F) or below for a minimum of 168 hours (7 days) in a freezer;^P
- (2) Frozen at -35°C (-31°F) or below until solid and stored at -35°C (-31°F) or below for a minimum of 15 hours;^P or
- (3) Frozen at -35°C (-31°F) or below until solid and stored at -20°C (-4°F) or below for a minimum of 24 hours.^P

(B) Paragraph (A) of this section does not apply to:

- (1) Molluscan Shellfish;
- (2) Tuna of the species *Thunnus alalunga*, *Thunnus albacares* (Yellowfin tuna), *Thunnus atlanticus*, *Thunnus maccoyii* (Bluefin tuna, Southern), *Thunnus obesus* (Bigeye tuna), or *Thunnus thynnus* (Bluefin tuna, Northern), or fish species that are listed in the FDA Fish and Fisheries Products Hazards and Control Guidance, Potential Species-Related & Process Related Hazards and parasites are not a hazard; or
- (3) Aquacultured fish, such as salmon, that
 - (a) If raised in open water, are raised in net-pens, or
 - (b) Are raised in land-based operations such as ponds or tanks; and
 - (c) Are fed formulated feed, such as pellets that contains no live parasites infective to the aquacultured fish.
- (4) Fish eggs that have been removed from skein and rinsed.

3-402.12 Records, Creation and Retention.

(A) Except as specified in paragraphs 3-402.11(B) and 3-402.12(B), if raw, raw-marinated, partially cooked, or marinated-partially cooked fish are served or sold in ready-to-eat form, the person in charge shall identify each batch by name and date, measure the freezing temperature once per day, and record the temperature and time to which the fish are subjected and shall retain the records at the food establishment in chronological order for 90 calendar days beyond the time of service or sale of the fish.^{Pf}

(B) If the fish are frozen by a supplier, a written agreement or statement from the supplier stipulating that the fish supplied are frozen to a temperature and for a time specified under section 3-402.11 may substitute for the records specified under paragraph (A) of section 3-402.12.^{Pf}

(1) Each invoice received from the supplier shall state the specific fish by species that have been frozen to meet the requirements for parasite destruction specified under section 3-402.11.^{Pf}

(2) The written agreement or statement from the supplier must be updated at least once per year.^{Pf}

(C) If raw, raw-marinated, partially cooked, or marinated-partially cooked fish are served or sold in ready-to-eat form, and the fish are raised and fed as specified in Subparagraph 3-402.11(B)(3), a written agreement or statement from the supplier or aquaculturist stipulating that the fish were raised and fed as specified in Subparagraph 3-402.11(B)(3) shall be obtained by the person in charge and retained in the records of the food establishment for 90 calendar days beyond the time of service or sale of the fish.^{Pf}

3-403.10 Preparation for Immediate Service.

Cooked and refrigerated food that is prepared for immediate service in response to an individual consumer order, such as a roast beef sandwich au jus, may be served at any temperature.

3-403.11 Reheating for Hot Holding.

(A) Except as specified under ¶¶ (B) and (C) and in ¶ (E) of this section, potentially hazardous food (time/temperature control for safety food) that is cooked, cooled, and reheated for hot holding shall be reheated so that all parts of the food reach a temperature of at least 74°C (165°F) for 15 seconds.^P

(B) Except as specified under ¶ (C) of this section, potentially hazardous food (time/temperature control for safety food) reheated in a microwave oven for hot holding shall be reheated so that all parts of the food reach a temperature of at least 74°C (165°F) and the food is rotated or stirred, covered, and allowed to stand covered for 2 minutes after reheating.^P

(C) Ready-to-eat food taken from a commercially processed, hermetically sealed container, or from an intact package from a food processing plant that is inspected by the food regulatory authority that has jurisdiction over the plant, shall be heated to a temperature of at least 57°C (135°F) for hot holding.^P

(D) Reheating for hot holding as specified under ¶¶ (A) - (C) of this section shall be done rapidly and the time the food is between 5°C (41°F) and the temperatures specified under ¶¶ (A) - (C) of this section may not exceed 2 hours.^P

(E) *Remaining unsliced portions of meat roasts that are cooked as specified under ¶ 3-401.11(B) may be reheated for hot holding using the oven parameters and minimum time and temperature conditions specified under ¶ 3-401.11(B).*

3-404.11 Treating Juice.

Juice packaged in a food establishment shall be:

(A) Treated under a HACCP plan as specified in ¶¶ 8-201.14(B) - (E) to attain a 5-log reduction, which is equal to a 99.999% reduction, of the most resistant microorganism of public health significance;^P or

(B) Labeled, if not treated to yield a 5-log reduction of the most resistant microorganism of public health significance:^{Pf}

(1) As specified under § 3-602.11,^{Pf} and

(2) As specified in 21 CFR 101.17(g) Food labeling, warning, notice, and safe handling statements, juices that have not been specifically processed to prevent, reduce, or eliminate the presence of pathogens with the following, "WARNING: This product has not been pasteurized and, therefore, may contain harmful bacteria that can cause serious illness in children, the elderly, and persons with weakened immune systems."^{Pf}

3-5 LIMITATION OF GROWTH OF ORGANISMS OF PUBLIC HEALTH CONCERN

Subparts 3-501 Temperature and Time Control

3-502 Specialized Processing Methods

3-501.11 Frozen Food.

Stored frozen foods shall be maintained frozen.

3-501.12 Potentially Hazardous Food.

Frozen potentially hazardous food (time/temperature control for safety food) that is slacked to moderate the temperature shall be held:

(A) Under refrigeration that maintains the food temperature at 5°C (41°F) or less; or

(B) At any temperature if the food remains frozen.

3-501.13 Thawing.

Except as specified in ¶ (D) of this section, potentially hazardous food (time/temperature control for safety food) shall be thawed:

- (A) Under refrigeration that maintains the food temperature at 5°C (41°F) or less; or
- (B) Completely submerged under running water:
 - (1) At a water temperature of 21°C (70°F) or below,
 - (2) With sufficient water velocity to agitate and float off loose particles in an overflow, and
 - (3) For a period of time that does not allow thawed portions of ready-to-eat food to rise above 5°C (41°F), or
 - (4) For a period of time that does not allow thawed portions of a raw animal food requiring cooking as specified under ¶ 3-401.11(A) or (B) to be above 5°C (41°F), for more than 4 hours including:
 - (a) The time the food is exposed to the running water and the time needed for preparation for cooking, or
 - (b) The time it takes under refrigeration to lower the food temperature to 5°C (41°F);
- (C) As part of a cooking process if the food that is frozen is:
 - (1) Cooked as specified under ¶ 3-401.11(A) or (B) or § 3-401.12, or
 - (2) Thawed in a microwave oven and immediately transferred to conventional cooking equipment, with no interruption in the process; or
- (D) *Using any procedure if a portion of frozen ready-to-eat food is thawed and prepared for immediate service in response to an individual consumer's order.*

3-501.14 Cooling. .

- (A) Cooked potentially hazardous food (time/temperature control for safety food) shall be cooled:
 - (1) Within 2 hours from 57°C (135°F) to 21°C (70°F);^P and
 - (2) Within a total of 6 hours from 57°C (135°F) to 5°C (41°F) or less.^P
- (B) Potentially hazardous food (time/temperature control for safety food) shall be cooled within 4 hours to 5°C (41°F) or less if prepared from ingredients at ambient temperature, such as reconstituted foods and canned tuna.^P
- (C) Except as specified under ¶ (D) of this section, a potentially hazardous food (time/temperature control for safety food) received in compliance with laws allowing a temperature above 5°C (41°F) during shipment from the supplier as specified in ¶ 3-202.11(B), shall be cooled within 4 hours to 5°C (41°F) or less.^P
- (D) Raw eggs shall be received as specified under ¶ 3-202.11(C) and immediately placed in refrigerated equipment that maintains an ambient air temperature of 7°C (45°F) or less.^P

3-501.15 Cooling Methods.

- (A) Cooling shall be accomplished in accordance with the time and temperature criteria specified under § 3-501.14 by using one or more of the following methods based on the type of food being cooled:
 - (1) Placing the food in shallow pans;^{Pf}
 - (2) Separating the food into smaller or thinner portions;^{Pf}
 - (3) Using rapid cooling equipment;^{Pf}
 - (4) Stirring the food in a container placed in an ice water bath;^{Pf}
 - (5) Using containers that facilitate heat transfer;^{Pf}
 - (6) Adding ice as an ingredient;^{Pf} or
 - (7) Other effective methods.^{Pf}
- (B) When placed in cooling or cold holding equipment, food containers in which food is being cooled shall be:
 - (1) Arranged in the equipment to provide maximum heat transfer through the container walls;^{Pf} and
 - (2) Loosely covered, or uncovered if protected from overhead contamination as specified under Subparagraph 3-305.11(A)(2), during the cooling period to facilitate heat transfer from the surface of the food.^{Pf}
- (C) For mobile food units: Mobile food units may not cool potentially hazardous foods (TCS) unless they comply with one of the following conditions:
 - (1) The food is cooled in a licensed commissary that meets the requirements of OAR 333-150-0000;^{Pf}
 - (2) Commercial refrigeration equipment is provided on the unit that is capable of cooling foods in accordance with section 3-501.14;^{Pf} or
 - (3) Written cooling procedures are prepared in advance by the operator and approved by the regulatory authority prior to conducting cooling on the unit. The person in charge shall maintain cooling logs and record temperature measurements to document that food is cooled in accordance with section 3-501.14. The logs must be maintained on the unit for 90 days and be available for inspection upon request.^{Pf}
 - (4) Units licensed prior to February 1, 2020 must meet this requirement by July 1, 2020.^{Pf}¶

3-501.16 Potentially Hazardous Food, Hot and Cold Holding.

(A) Except during preparation, cooking, or cooling, or when time is used as the public health control as specified under §3-501.19, and except as specified under ¶ (B) and in ¶ (C) of this section, potentially hazardous food (time/temperature control for safety food) shall be maintained:

- (1) At 57°C (135°F) or above, except that roasts cooked to a temperature and for a time specified in ¶ 3-401.11(B) or reheated as specified in ¶ 3-403.11(E) may be held at a temperature of 54°C (130°F) or above; ^P or
- (2) At 5°C (41°F) or less. ^P

(B) Eggs that have not been treated to destroy all viable *Salmonellae* shall be stored in refrigerated equipment that maintains an ambient air temperature of 7°C (45°F) or less. ^P

(C) Potentially hazardous food (time/temperature control for safety food) in a homogenous liquid form may be maintained outside of the temperature control requirements, as specified under ¶ (A) of this section, while contained within specially designed equipment that complies with the design and construction requirements as specified under ¶ 4-204.13(E).

3-501.17 Ready-to-Eat, Potentially Hazardous Food, Date Marking.

(A) Except when packaging food using a reduced oxygen packaging method as specified under section 3-502.12, and except as specified in paragraphs (D) and (E) of section 3-501.17, refrigerated, ready-to-eat food (time/temperature control for safety food) prepared and held in a food establishment for more than 24 hours shall be clearly marked to indicate the date or day by which the food shall be consumed on premises, sold, or discarded when held at a temperature of 5 degrees Celsius (41 degrees Fahrenheit) or less for a maximum of seven days. The day of preparation shall count as Day 1. ^{Pf}

(B) Except as specified in ¶¶ (D) - (F) of this section, refrigerated, ready-to-eat, potentially hazardous food (time/temperature control for safety food) prepared and packaged by a food processing plant shall be clearly marked, at the time the original container is opened in a food establishment and if the food is held for more than 24 hours, to indicate the date or day by which the food shall be consumed on the premises, sold, or discarded, based on the temperature and time combinations specified in ¶ (A) of this section and: ^{Pf}

- (1) The day the original container is opened in the food establishment shall be counted as Day 1; ^{Pf} and
- (2) The day or date marked by the food establishment may not exceed a manufacturer's use-by date if the manufacturer determined the use-by date based on food safety. ^{Pf}

(C) A refrigerated, ready-to-eat, potentially hazardous food (time/temperature control for safety food) ingredient or a portion of a refrigerated, ready-to-eat, potentially hazardous food (time/temperature control for safety food) that is subsequently combined with additional ingredients or portions of food shall retain the date marking of the earliest-prepared or first-prepared ingredient. ^{Pf}

(D) A date marking system that meets the criteria stated in ¶¶ (A) and (B) of this section may include:

- (1) Using a method approved by the regulatory authority for refrigerated, ready-to-eat potentially hazardous food (time/temperature control for safety food) that is frequently rewrapped, such as lunchmeat or a roast, or for which date marking is impractical, such as soft serve mix or milk in a dispensing machine;
- (2) Marking the date or day of preparation, with a procedure to discard the food on or before the last date or day by which the food must be consumed on the premises, sold, or discarded as specified under ¶ (A) of this section;
- (3) Marking the date or day the original container is opened in a food establishment, with a procedure to discard the food on or before the last date or day by which the food must be consumed on the premises, sold, or discarded as specified under ¶ (B) of this section; or
- (4) Using calendar dates, days of the week, color-coded marks, or other effective marking methods, provided that the marking system is disclosed to the regulatory authority upon request.

(E) Paragraphs (A) and (B) of this section do not apply to individual meal portions served or repackaged for sale from a bulk container upon a consumer's request.

(F) Paragraph (B) of this section does not apply to the following foods prepared and packaged by a food processing plant inspected by a regulatory authority:

- (1) Deli salads, such as ham salad, seafood salad, chicken salad, egg salad, pasta salad, potato salad, and macaroni salad, manufactured in accordance with 21 CFR 110 Current good manufacturing practice in manufacturing, packing, or holding human food;
- (2) Hard cheeses containing not more than 39% moisture as defined in 21 CFR 133 Cheeses and related cheese products, such as cheddar, gruyere, parmesan and reggiano, and romano;
- (3) Semi-soft cheeses containing more than 39% moisture, but not more than 50% moisture, as defined in 21 CFR 133 Cheeses and related cheese products, such as blue, edam, gorgonzola, gouda, and monterey jack;
- (4) Cultured dairy products as defined in 21 CFR 131 Milk and cream, such as yogurt, sour cream, and buttermilk;
- (5) Preserved fish products, such as pickled herring and dried or salted cod, and other acidified fish products defined in 21 CFR 114 Acidified foods;

- (6) Shelf stable, dry fermented sausages, such as pepperoni and Genoa salami that are not labeled "Keep Refrigerated" as specified in 9 CFR 317 Labeling, marking devices, and containers, and which retain the original casing on the product; and
- (7) Shelf stable salt-cured products such as prosciutto and Parma (ham) that are not labeled "Keep Refrigerated" as specified in 9 CFR 317 Labeling, marking devices, and containers.

3-501.18 Ready-to-Eat, Potentially Hazardous Food, Disposition.

- (A) A food specified in ¶ 3-501.17(A) or (B) shall be discarded if it:
 - (1) Exceeds the temperature and time combination specified in ¶ 3-501.17(A), except time that the product is frozen; ^P
 - (2) Is in a container or package that does not bear a date or day; ^P or
 - (3) Is appropriately marked with a date or day that exceeds a temperature and time combination as specified in ¶ 3-501.17(A). ^P
- (B) Refrigerated, ready-to-eat, potentially hazardous food (time/temperature control for safety food) prepared in a food establishment and dispensed through a vending machine with an automatic shutoff control shall be discarded if it exceeds a temperature and time combination as specified in ¶ 3-501.17(A). ^P

3-501.19 Time as a Public Health Control.

- (A) Except as specified under ¶ (D) of this section, if time without temperature control is used as the public health control for a working supply of potentially hazardous food (time/temperature control for safety food) before cooking, or for ready-to-eat potentially hazardous food (time/temperature control for safety food) that is displayed or held for sale or service:
 - (1) Written procedures shall be prepared in advance, maintained in the food establishment and made available to the regulatory authority upon request that specify: ^{Pf}
 - (a) Methods of compliance with Subparagraphs (B)(1) -(3) or C)(1)-(5) of this section; ^{Pf} and
 - (b) Methods of compliance with § 3-501.14 for food that is prepared, cooked, and refrigerated before time is used as a public health control. ^{Pf}
- (B) If time without temperature control is used as the public health control up to a maximum of 4 hours:
 - (1) The food shall have an initial temperature of 5°C (41°F) or less when removed from cold holding temperature control, or 57°C (135°F) or greater when removed from hot holding temperature control; ^P
 - (2) The food shall be marked or otherwise identified to indicate the time that is 4 hours past the point in time when the food is removed from temperature control; ^{Pf}
 - (3) The food shall be cooked and served, served at any temperature if ready-to-eat, or discarded, within 4 hours from the point in time when the food is removed from temperature control; ^P and
 - (4) The food in unmarked containers or packages, or marked to exceed a 4-hour limit shall be discarded. ^P
- (C) If time without temperature control is used as the public health control up to a maximum of 6 hours:
 - (1) The food shall have an initial temperature of 5°C (41°F) or less when removed from temperature control and the food temperature may not exceed 21°C (70°F) within a maximum time period of 6 hours; ^P
 - (2) The food shall be monitored to ensure the warmest portion of the food does not exceed 21°C (70°F) during the 6-hour period, *unless an ambient air temperature is maintained that ensures the food does not exceed 21°C (70°F) during the 6-hour holding period;* ^{Pf}
 - (3) The food shall be marked or otherwise identified to indicate: ^{Pf}
 - (a) The time when the food is removed from 5°C (41°F) or less cold holding temperature control, ^{Pf} and
 - (b) The time that is 6 hours past the point in time when the food is removed from cold holding temperature control; ^{Pf}
 - (4) The food shall be:
 - (a) Discarded if the temperature of the food exceeds 21°C (70°F), ^P or
 - (b) Cooked and served, served at any temperature if ready-to-eat, or discarded within a maximum of 6 hours from the point in time when the food is removed from 5°C (41°F) or less cold holding temperature control; ^P and
 - (5) The food in unmarked containers or packages, or marked with a time that exceeds the 6-hour limit shall be discarded. ^P
- (D) A food establishment that serves a highly susceptible population may not use time as specified under ¶¶ (A), (B) or (C) of this section as the public health control for raw eggs.

3-502.11 Variance Requirement.

A food establishment shall obtain a variance from the regulatory authority as specified in § 8-103.10 and under § 8-103.11 before: ^{Pf}

- (A) Smoking food as a method of food preservation rather than as a method of flavor enhancement; ^{Pf}
- (B) Curing food; ^{Pf}

- (C) Using food additives or adding components such as vinegar: ^{Pf}
 - (1) As a method of food preservation rather than as a method of flavor enhancement, ^{Pf} or
 - (2) To render a food so that it is not potentially hazardous (time/temperature control of safety food); ^{Pf}
- (D) Packaging food using a reduced oxygen packaging method *except where the growth of and toxin formation by **Clostridium botulinum** and the growth of **Listeria monocytogenes** are controlled as specified under § 3-502.12;* ^{Pf}
- (E) Operating a molluscan shellfish life-support system display tank used to store or display shellfish that are offered for human consumption; ^{Pf}
- (F) Custom processing animals that are for personal use as food and not for sale or service in a food establishment; ^{Pf}
- (G) Preparing food by another method that is determined by the regulatory authority to require a variance; ^{Pf} or
- (H) Sprouting seeds or beans. ^{Pf}
- (I) Except as allowed under OAR 333-162-0030(3), mobile food units may not conduct activities that require a variance unless those activities occur in a licensed restaurant or commissary that meets the applicable requirements of OAR 333-150-0000. ^{Pf}

3-502.12 Reduced Oxygen Packaging, Criteria.

- (A) Except for a food establishment that obtains a variance as specified under § 3-502.11, a food establishment that packages potentially hazardous food (time/temperature control for safety food) using a reduced oxygen packaging method shall control the growth and toxin formation of **Clostridium botulinum** and the growth of **Listeria monocytogenes**. ^P
- (B) A food establishment that packages potentially hazardous food (time/temperature control for safety food) using a reduced oxygen packaging method shall have a HACCP plan that contains the information specified under ¶ 8-201.14(D) and that: ^{Pf}
 - (1) Identifies the food to be packaged; ^{Pf}
 - (2) Except as specified under ¶¶ (C) - (E) of this section, requires that the packaged food shall be maintained at 5°C (41°F) or less and meet at least one of the following criteria: ^{Pf}
 - (a) Has an a_w of 0.91 or less, ^{Pf}
 - (b) Has a pH of 4.6 or less, ^{Pf}
 - (c) Is a meat or poultry product cured at a food processing plant regulated by the USDA using substances specified in 9 CFR 424.21, Use of food ingredients and sources of radiation, and is received in an intact package, ^{Pf} or
 - (d) Is a food with a high level of competing organisms such as raw meat, raw poultry, or raw vegetables; ^{Pf}
 - (3) Describes how the package shall be prominently and conspicuously labeled on the principal display panel in bold type on a contrasting background, with instructions to: ^{Pf}
 - (a) Maintain the food at 5°C (41°F) or below, ^{Pf} and
 - (b) Discard the food if within 14 calendar days of its packaging it is not served for on-premises consumption, or consumed if served or sold for off-premises consumption; ^{Pf}
 - (4) Limits the refrigerated shelf life to no more than 14 calendar days from packaging to consumption, except the time the product is maintained frozen, or the original manufacturer's "sell by" or "use by" date, whichever occurs first; ^P
 - (5) Includes operational procedures that:
 - (a) Minimize contacting ready-to-eat food with bare hands as specified under ¶ 3-301.11(B), ^{Pf}
 - (b) Identify a designated work area and the method by which: ^{Pf}
 - (i) Physical barriers or methods of separation of raw foods and ready-to-eat foods minimize cross contamination, ^{Pf} and
 - (ii) Access to the processing equipment is limited to responsible trained personnel familiar with the potential hazards of the operation, ^{Pf} and
 - (c) Delineate cleaning and sanitization procedures for food-contact surfaces; ^{Pf} and
 - (6) Describes the training program that ensures that the individual responsible for the reduced oxygen packaging operation understands the: ^{Pf}
 - (a) Concepts required for a safe operation, ^{Pf}
 - (b) Equipment and facilities, ^{Pf} and
 - (c) Procedures specified under Subparagraph (B)(5) of this section and ¶ 8-201.14(D). ^{Pf}
- (C) *Except for fish that is frozen before, during, and after packaging*, a food establishment may not package fish using a reduced oxygen packaging method. ^P
- (D) Except as specified under ¶ (C) of this section, a food establishment that packages food using a cook-chill or sous vide process shall:
 - (1) Implement a HACCP plan that contains the information as specified under ¶ 8-201.14(D); ^{Pf}
 - (2) Ensure the food is:
 - (a) Prepared and consumed on the premises, or prepared and consumed off the premises but within the same business entity with no distribution or sale of the packaged product to another business entity or the consumer, ^{Pf}
 - (b) Cooked to heat all parts of the food to a temperature and for a time as specified under § 3-401.11, ^P
 - (c) Protected from contamination before and after cooking as specified under Parts 3-3 and 3-4, ^P

- (d) Placed in a package with an oxygen barrier and sealed before cooking, or placed in a package and sealed immediately after cooking and before reaching a temperature below 57°C (135°F),^P
- (e) Cooled to 5°C (41°F) in the sealed package or bag as specified under § 3-501.14 and subsequently:^P
 - (i) Cooled to 1°C (34°F) within 48 hours of reaching 5°C (41°F) and held at that temperature until consumed or discarded within 30 days after the date of packaging;^P
 - (ii) Cooled to 1°C (34°F) within 48 hours of reaching 5°C (41°F), removed from refrigeration equipment that maintains a 1°C (34°F) food temperature and then held at 5°C (41°F) or less for no more than 72 hours, at which time the food must be consumed or discarded;^P
 - (iii) Cooled to 3°C (38°F) or less within 24 hours of reaching 5°C (41°F) and held there for no more than 72 hours from packaging, at which time the food must be consumed or discarded;^P or
 - (iv) Held frozen with no shelf life restriction while frozen until consumed or used.^P
- (f) Held in a refrigeration unit that is equipped with an electronic system that continuously monitors time and temperature and is visually examined for proper operation twice daily,^{Pf}
- (g) If transported off-site to a satellite location of the same business entity, equipped with verifiable electronic monitoring devices to ensure that times and temperatures are monitored during transportation,^{Pf} and
- (h) Labeled with the product name and the date packaged;^{Pf} and
- (3) Maintain the records required to confirm that cooling and cold holding refrigeration time/temperature parameters are required as part of the HACCP plan and:
 - (a) Make such records available to the regulatory authority upon request,^{Pf} and
 - (b) Hold such records for at least 6 months;^{Pf} and
- (4) Implement written operational procedures as specified under Subparagraph (B)(5) of this section and a training program as specified under Subparagraph (B)(6) of this section.^{Pf}
- (E) A food establishment that packages cheese using a reduced oxygen packaging method shall:
 - (1) Limit the cheeses packaged to those that are commercially manufactured in a food processing plant with no ingredients added in the food establishment and that meet the Standards of Identity as specified in 21 CFR 133.150 Hard cheeses, 21 CFR 133.169 Pasteurized process cheese or 21 CFR 133.187 Semisoft cheeses;^P
 - (2) Have a HACCP plan that contains the information specified under ¶ 8-201.14(D) and as specified under ¶¶ (B)(1), (B)(3)(a), (B)(5) and (B)(6) of this section;^{Pf}
 - (3) Labels the package on the principal display panel with a "use by" date that does not exceed 30 days from its packaging or the original manufacturer's "sell by" or "use by" date, whichever occurs first;^{Pf} and
 - (4) Discards the reduced oxygen packaged cheese if it is not sold for off-premises consumption or consumed within 30 calendar days of its packaging.^{Pf}

3-6 FOOD IDENTITY, PRESENTATION, AND ON-PREMISES LABELING

Subparts 3-601 Accurate Representation

3-602 Labeling

3-603 Consumer Advisory

3-601.11 Standards of Identity.

Packaged food shall comply with standard of identity requirements in 21 CFR 131-169 and 9 CFR 319 Definitions and Standards of Identity or Composition, and the general requirements in 21 CFR 130 - Food Standards: General and 9 CFR 319 Subpart A - General.

3-601.12 Honestly Presented.

- (A) Food shall be offered for human consumption in a way that does not mislead or misinform the consumer.
- (B) Food or color additives, colored overwraps, or lights may not be used to misrepresent the true appearance, color, or quality of a food.

3-602.11 Food Labels.

- (A) Food packaged in a food establishment, shall be labeled as specified in law, including 21 CFR 101 - Food labeling, and 9 CFR 317 Labeling, marking devices, and containers.
- (B) Label information shall include:
 - (1) The common name of the food, or absent a common name, an adequately descriptive identity statement;
 - (2) If made from two or more ingredients, a list of ingredients in descending order of predominance by weight, including a declaration of artificial color or flavor and chemical preservatives, if contained in the food;

- (3) An accurate declaration of the quantity of contents;
 - (4) The name and place of business of the manufacturer, packer, or distributor; and
 - (5) The name of the food source for each major food allergen contained in the food unless the food source is already part of the common or usual name of the respective ingredient (Effective January 1, 2006).^{Pf}
 - (6) Except as exempted in the Federal Food, Drug, and Cosmetic Act § 403(Q)(3) - (5), nutrition labeling as specified in 21 CFR 101 - Food Labeling and 9 CFR 317 Subpart B Nutrition Labeling.
 - (7) For any salmonid fish containing canthaxanthin as a color additive, the labeling of the bulk fish container, including a list of ingredients, displayed on the retail container or by other written means, such as a counter card, that discloses the use of canthaxanthin.
- (C) Bulk food that is available for consumer self-dispensing shall be prominently labeled with the following information in plain view of the consumer:
- (1) The manufacturer's or processor's label that was provided with the food; or
 - (2) A card, sign, or other method of notification that includes the information specified under Subparagraphs (B)(1), (2), and (5) of this section.
- (D) *Bulk, unpackaged foods such as bakery products and unpackaged foods that are portioned to consumer specification need not be labeled if:*
- (1) *A health, nutrient content, or other claim is not made;*
 - (2) *There are no state or local laws requiring labeling; and*
 - (3) *The food is manufactured or prepared on the premises of the food establishment or at another food establishment or a food processing plant that is owned by the same person and is regulated by the food regulatory agency that has jurisdiction.*

3-602.12 Other Forms of Information.

- (A) If required by law, consumer warnings shall be provided.
- (B) Food establishment or manufacturers' dating information on foods may not be concealed or altered.

3-603.11 Consumption of Animal Foods that are Raw, Undercooked, or Not Otherwise Processed to Eliminate Pathogens.

- (A) Except as specified in ¶ 3-401.11(C) and Subparagraph 3-401.11(D)(4) and under ¶ 3-801.11(C), if an animal food such as beef, eggs, fish, lamb, milk, pork, poultry, or shellfish is served or sold raw, undercooked, or without otherwise being processed to eliminate pathogens, either in ready-to-eat form or as an ingredient in another ready-to-eat food, the permit holder shall inform consumers of the significantly increased risk of consuming such foods by way of a disclosure and reminder, as specified in ¶¶ (B) and (C) of this section using brochures, deli case or menu advisories, label statements, table tents, placards, or other effective written means.^{Pf}
- (B) Disclosure shall include:
- (1) A description of the animal-derived foods, such as "oysters on the half shell (raw oysters)," "raw-egg Caesar salad," and "hamburgers (can be cooked to order)";^{Pf} or
 - (2) Identification of the animal-derived foods by asterisking them to a footnote that states that the items are served raw or undercooked, or contain (or may contain) raw or undercooked ingredients.^{Pf}
 - (3) Food service establishments that serve predominantly raw foods may disclose those items that are not served raw or do not require cooking before consumption.^{Pf}
- (C) Reminder shall include asterisking the animal-derived foods requiring disclosure to a footnote that states:
- (1) Regarding the safety of these items, written information is available upon request;^{Pf}
 - (2) Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness;^{Pf} or
 - (3) Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness, especially if you have certain medical conditions.^{Pf}

3-7 CONTAMINATED FOOD
Subpart 3-701 Disposition

3-701.11 Discarding or Reconditioning Unsafe, Adulterated, or Contaminated Food.

- (A) A food that is unsafe, adulterated, or not honestly presented as specified under § 3-101.11 shall be discarded or reconditioned according to an approved procedure.^P
- (B) Food that is not from an approved source as specified under §§ 3-201.11 - .17 shall be discarded.^P
- (C) Ready-to-eat food that may have been contaminated by an employee who has been restricted or excluded as specified under § 2-201.12 shall be discarded.^P

- (D) Food that is contaminated by food employees, consumers, or other persons through contact with their hands, bodily discharges, such as nasal or oral discharges, or other means shall be discarded. ^P
- (E) Potentially hazardous foods (TCS) that have been kept at temperatures above 41 degrees Fahrenheit or below 135 degrees Fahrenheit for more than four hours shall be discarded. ^P

3-8 SPECIAL REQUIREMENTS FOR HIGHLY SUSCEPTIBLE POPULATIONS

Subpart 3-801 Additional Safeguards

3-801.11 Pasteurized Foods, Prohibited Reservice, and Prohibited Food.

In a food establishment that serves a highly susceptible population:

- (A) The following criteria apply to juice:
- (1) For the purposes of this paragraph only, children who are age 9 or less and receive food in a school, day care setting, or similar facility that provides custodial care are included as highly susceptible populations;
 - (2) Prepackaged juice or a prepackaged beverage containing juice, that bears a warning label as specified in 21 CFR, 101.17(g) Food labeling, warning, notice, and safe handling statements, Juices that have not been specifically processed to prevent, reduce, or eliminate the presence of pathogens, or a packaged juice or beverage containing juice, that bears a warning label as specified under ¶ 3-404.11(B) may not be served or offered for sale; ^P and
 - (3) Unpackaged juice that is prepared on the premises for service or sale in a ready-to-eat form shall be processed under a HACCP plan that contains the information specified under ¶¶ 8-201.14(B) - (E) and as specified in 21 CFR Part 120 – Hazard Analysis and Critical Control Point (HACCP) Systems, Subpart B Pathogen Reduction, 120.24 Process controls. ^P
- (B) Pasteurized eggs or egg products shall be substituted for raw eggs in the preparation of: ^P
- (1) Foods such as Caesar salad, hollandaise or Béarnaise sauce, mayonnaise, meringue, eggnog, ice cream, and egg-fortified beverages, ^P and
 - (2) Except as specified in ¶ (F) of this section, recipes in which more than one egg is broken and the eggs are combined; ^P
- (C) The following foods may not be served or offered for sale in a ready-to-eat form: ^P
- (1) Raw animal foods such as raw fish, raw-marinated fish, raw molluscan shellfish, and steak tartare, ^P
 - (2) A partially cooked animal food such as lightly cooked fish, rare meat, soft-cooked eggs that are made from raw eggs, and meringue; ^P and
 - (3) Raw seed sprouts. ^P
- (D) Food employees may not contact ready-to-eat food as specified under ¶¶ 3-301.11(B). ^P
- (E) Time only, as the public health control as specified under ¶ 3-501.19(D), may not be used for raw eggs. ^P
- (F) *Subparagraph (B)(2) of this section does not apply if:*
- (1) *The raw eggs are combined immediately before cooking for one consumer's serving at a single meal, cooked as specified under Subparagraph 3-401.11(A)(1), and served immediately, such as an omelet, soufflé, or scrambled eggs;*
 - (2) *The raw eggs are combined as an ingredient immediately before baking and the eggs are thoroughly cooked to a ready-to-eat form, such as a cake, muffin, or bread; or*
 - (3) *The preparation of the food is conducted under a HACCP plan that:*
 - (a) *Identifies the food to be prepared,*
 - (b) *Prohibits contacting ready-to-eat food with bare hands,*
 - (c) *Includes specifications and practices that ensure:*
 - (i) *Salmonella Enteritidis growth is controlled before and after cooking, and*
 - (ii) *Salmonella Enteritidis is destroyed by cooking the eggs according to the temperature and time specified in Subparagraph 3-401.11(A)(2),*
 - (d) *Contains the information specified under ¶ 8-201.14(D) including procedures that:*
 - (i) *Control cross contamination of ready-to-eat food with raw eggs, and*
 - (ii) *Delineate cleaning and sanitization procedures for food-contact surfaces, and*
 - (e) *Describes the training program that ensures that the food employee responsible for the preparation of the food understands the procedures to be used.*
- (G) Except as specified in paragraph (H) of this section, food may be re-served as specified under Subparagraph 3-306.14(B)(1) and (2).
- (H) *Food may not be re-served under the following conditions:*
- (1) *Any food served to patients or clients who are under contact precautions in medical isolation or quarantine, or protective environment isolation may not be re-served to others outside.*
 - (2) *Packages of food from any patients, clients, or other consumers should not be re-served to persons in protective environment isolation.*

Chapter 4 Equipment, Utensils, and Linens

Parts

- 4-1 MATERIALS FOR CONSTRUCTION AND REPAIR
- 4-2 DESIGN AND CONSTRUCTION
- 4-3 NUMBERS AND CAPACITIES
- 4-4 LOCATION AND INSTALLATION
- 4-5 MAINTENANCE AND OPERATION
- 4-6 CLEANING OF EQUIPMENT AND UTENSILS
- 4-7 SANITIZATION OF EQUIPMENT AND UTENSILS
- 4-8 LAUNDERING
- 4-9 PROTECTION OF CLEAN ITEMS

4-1 MATERIALS FOR CONSTRUCTION AND REPAIR

- Subparts 4-101 Multiuse
- 4-102 Single-Service and Single-Use

4-101.11 Characteristics.

Materials that are used in the construction of utensils and food-contact surfaces of equipment may not allow the migration of deleterious substances or impart colors, odors, or tastes to food and under normal use conditions shall be: ^P

- (A) Safe;^P
- (B) Durable, corrosion-resistant, and nonabsorbent;
- (C) Sufficient in weight and thickness to withstand repeated warewashing;
- (D) Finished to have a smooth, easily cleanable surface; and
- (E) Resistant to pitting, chipping, crazing, scratching, scoring, distortion, and decomposition.

4-101.12 Cast Iron, Use Limitation.

(A) Except as specified in ¶¶ (B) and (C) of this section, cast iron may not be used for utensils or food-contact surfaces of equipment.

(B) *Cast iron may be used as a surface for cooking.*

(C) *Cast iron may be used in utensils for serving food if the utensils are used only as part of an uninterrupted process from cooking through service.*

4-101.13 Lead, Use Limitation.

(A) Ceramic, china, and crystal utensils, and decorative utensils such as hand painted ceramic or china that are used in contact with food shall be lead-free or contain levels of lead not exceeding the limits of the following utensil categories: ^P

Utensil Category	Ceramic Article Description	Maximum Lead mg/L
Beverage Mugs, Cups, Pitchers	Coffee Mugs	0.5
Large Hollowware (excluding pitchers)	Bowls ≥ 1.1 Liter (1.16 Quart)	1
Small Hollowware (excluding cups & mugs)	Bowls < 1.1 Liter (1.16 Quart)	2.0
Flat Tableware	Plates, Saucers	3.0

(B) Pewter alloys containing lead in excess of 0.05% may not be used as a food-contact surface. ^P

(C) Solder and flux containing lead in excess of 0.2% may not be used as a food-contact surface.

4-101.14 Copper, Use Limitation.

(A) Except as specified in ¶ (B) of this section, copper and copper alloys such as brass may not be used in contact with a food that has a pH below 6 such as vinegar, fruit juice, or wine or for a fitting or tubing installed between a backflow prevention device and a carbonator.^P

(B) *Copper and copper alloys may be used in contact with beer brewing ingredients that have a pH below 6 in the pre-fermentation and fermentation steps of a beer brewing operation such as a brewpub or microbrewery.*

4-101.15 Galvanized Metal, Use Limitation.

Galvanized metal may not be used for utensils or food-contact surfaces of equipment that are used in contact with acidic food.^P

4-101.16 Sponges, Use Limitation.

Sponges may not be used in contact with cleaned and sanitized or in-use food-contact surfaces.

4-101.17 Wood, Use Limitation.

(A) Except as specified in ¶¶ (B), (C), (D) and (E) of this section, wood and wood wicker may not be used as a food-contact surface.

(B) *Hard maple or an equivalently hard, close-grained wood may be used for:*

(1) *Cutting boards; cutting blocks; bakers' tables; and utensils such as rolling pins, doughnut dowels, salad bowls, and chopsticks; and*

(2) *Wooden paddles used in confectionery operations for pressure scraping kettles when manually preparing confections at a temperature of 110°C (230°F) or above.*

(C) *Whole, uncut, raw fruits and vegetables, and nuts in the shell may be kept in the wood shipping containers in which they were received, until the fruits, vegetables, or nuts are used.*

(D) *If the nature of the food requires removal of rinds, peels, husks, or shells before consumption, the whole, uncut, raw food may be kept in:*

(1) *Untreated wood containers; or*

(2) *Treated wood containers if the containers are treated with a preservative that meets the requirements specified in 21 CFR 178.3800 Preservatives for wood.*

(E) *Untreated wood planks, such as cedar, may be used as a cooking surface for grilling or baking.*

4-101.18 Nonstick Coatings, Use Limitation.

Multiuse kitchenware such as frying pans, griddles, sauce pans, cookie sheets, and waffle bakers that have a perfluorocarbon resin coating shall be used with nonscoring or nonscratching utensils and cleaning aids.

4-101.19 Nonfood-Contact Surfaces.

Nonfood-contact surfaces of equipment that are exposed to splash, spillage, or other food soiling or that require frequent cleaning shall be constructed of a corrosion-resistant, nonabsorbent, and smooth material.

4-102.11 Characteristics.

Materials that are used to make single-service and single-use articles:

(A) May not:

(1) Allow the migration of deleterious substances,^P or

(2) Impart colors, odors, or tastes to food; and

(B) Shall be:

(1) Safe,^P and

(2) Clean.

4.2 DESIGN AND CONSTRUCTION

- Subparts**
- 4-201 Durability and Strength**
- 4-202 Cleanability**
- 4-203 Accuracy**
- 4-204 Functionality**
- 4-205 Acceptability**

4-201.11 Equipment and Utensils.

Equipment and utensils shall be designed and constructed to be durable and to retain their characteristic qualities under normal use conditions.

4-201.12 Food Temperature Measuring Devices.

Food temperature measuring devices may not have sensors or stems constructed of glass, except that thermometers with glass sensors or stems that are encased in a shatterproof coating such as candy thermometers may be used.^P

4-202.11 Food-Contact Surfaces.

(A) Multiuse food-contact surfaces shall be:

- (1) Smooth; ^{Pf}
- (2) Free of breaks, open seams, cracks, chips, inclusions, pits, and similar imperfections; ^{Pf}
- (3) Free of sharp internal angles, corners, and crevices; ^{Pf}
- (4) Finished to have smooth welds and joints; ^{Pf} and
- (5) Except as specified in ¶ (B) of this section, accessible for cleaning and inspection by one of the following methods:
 - (a) Without being disassembled, ^{Pf}
 - (b) By disassembling without the use of tools, ^{Pf} or
 - (c) By easy disassembling with the use of handheld tools commonly available to maintenance and cleaning personnel such as screwdrivers, pliers, open-end wrenches, and Allen wrenches. ^{Pf}

(B) *Subparagraph (A)(5) of this section does not apply to cooking oil storage tanks, distribution lines for cooking oils, or beverage syrup lines or tubes.*

4-202.12 CIP Equipment.

(A) CIP equipment shall meet the characteristics specified under § 4-202.11 and shall be designed and constructed so that:

- (1) Cleaning and sanitizing solutions circulate throughout a fixed system and contact all interior food-contact surfaces, ^{Pf} and
- (2) The system is self-draining or capable of being completely drained of cleaning and sanitizing solutions; and

(B) CIP equipment that is not designed to be disassembled for cleaning shall be designed with inspection access points to ensure that all interior food-contact surfaces throughout the fixed system are being effectively cleaned.

4-202.13 "V" Threads, Use Limitation.

Except for hot oil cooking or filtering equipment, "V" type threads may not be used on food-contact surfaces.

4-202.14 Hot Oil Filtering Equipment.

Hot oil filtering equipment shall meet the characteristics specified under §§ 4-202.11 or 4-202.12 and shall be readily accessible for filter replacement and cleaning of the filter.

4-202.15 Can Openers.

Cutting or piercing parts of can openers shall be readily removable for cleaning and for replacement.

4-202.16 Nonfood-Contact Surfaces.

Nonfood-contact surfaces shall be free of unnecessary ledges, projections, and crevices, and designed and constructed to allow easy cleaning and to facilitate maintenance.

4-202.17 Kick Plates, Removable.

Kick plates shall be designed so that the areas behind them are accessible for inspection and cleaning by being:

- (A) Removable by one of the methods specified under Subparagraph 4-202.11(A)(5) or capable of being rotated open; and
- (B) Removable or capable of being rotated open without unlocking equipment doors.

4-202.18 Ventilation Hood Systems, Filters.

Filters or other grease extracting equipment shall be designed to be readily removable for cleaning and replacement if not designed to be cleaned in place.

4-203.11 Temperature Measuring Devices, Food.

(A) Food temperature measuring devices that are scaled only in Celsius or dually scaled in Celsius and Fahrenheit shall be accurate to $\pm 1^{\circ}\text{C}$ in the intended range of use.^{Pf}

(B) Food temperature measuring devices that are scaled only in Fahrenheit shall be accurate to $\pm 2^{\circ}\text{F}$ in the intended range of use.^{Pf}

4-203.12 Temperature Measuring Devices, Ambient Air and Water.

(A) Ambient air and water temperature measuring devices that are scaled in Celsius or dually scaled in Celsius and Fahrenheit shall be designed to be easily readable and accurate to $\pm 1.5^{\circ}\text{C}$ in the intended range of use.^{Pf}

(B) Ambient air and water temperature measuring devices that are scaled only in Fahrenheit shall be accurate to $\pm 3^{\circ}\text{F}$ in the intended range of use.^{Pf}

4-203.13 Pressure Measuring Devices, Mechanical Warewashing Equipment.

Pressure measuring devices that display the pressures in the water supply line for the fresh hot water sanitizing rinse shall have increments of 7 kilopascals (1 pound per square inch) or smaller and shall be accurate to ± 14 kilopascals (± 2 pounds per square inch) in the range indicated on the manufacturer's data plate.

4-204.11 Ventilation Hood Systems, Drip Prevention.

Exhaust ventilation hood systems in food preparation and warewashing areas including components such as hoods, fans, guards, and ducting shall be designed to prevent grease or condensation from draining or dripping onto food, equipment, utensils, linens, and single-service and single-use articles.

4-204.12 Equipment Openings, Closures and Deflectors.

(A) A cover or lid for equipment shall overlap the opening and be sloped to drain.

(B) An opening located within the top of a unit of equipment that is designed for use with a cover or lid shall be flanged upward at least 5 millimeters (two-tenths of an inch).

(C) Except as specified under ¶ (D) of this section, fixed piping, temperature measuring devices, rotary shafts, and other parts extending into equipment shall be provided with a watertight joint at the point where the item enters the equipment.

(D) If a watertight joint is not provided:

- (1) The piping, temperature measuring devices, rotary shafts, and other parts extending through the openings shall be equipped with an apron designed to deflect condensation, drips, and dust from openings into the food; and
- (2) The opening shall be flanged as specified under ¶ (B) of this section.

4-204.13 Dispensing Equipment, Protection of Equipment and Food.

In equipment that dispenses or vends liquid food or ice in unpackaged form:

(A) The delivery tube, chute, orifice, and splash surfaces directly above the container receiving the food shall be designed in a manner, such as with barriers, baffles, or drip aprons, so that drips from condensation and splash are diverted from the opening of the container receiving the food;

(B) The delivery tube, chute, and orifice shall be protected from manual contact such as by being recessed;

(C) The delivery tube or chute and orifice of equipment used to vend liquid food or ice in unpackaged form to self-service consumers shall be designed so that the delivery tube or chute and orifice are protected from dust, insects, rodents, and other contamination by a self-closing door if the equipment is:

- (1) Located in an outside area that does not otherwise afford the protection of an enclosure against the rain, windblown debris, insects, rodents, and other contaminants that are present in the environment, or
- (2) Available for self-service during hours when it is not under the full-time supervision of a food employee; and

(D) The dispensing equipment actuating lever or mechanism and filling device of consumer self-service beverage dispensing equipment shall be designed to prevent contact with the lip-contact surface of glasses or cups that are refilled.

(E) Dispensing equipment in which potentially hazardous food (time/temperature control for safety food) in a homogenous liquid form is maintained outside of the temperature control requirements as specified under ¶ 3-501.16(A) shall:

- (1) Be specifically designed and equipped to maintain the commercial sterility of aseptically packaged food in a homogenous liquid form for a specified duration from the time of opening the packaging within the equipment;^P and
- (2) Conform to the requirements for this equipment as specified in *NSF/ANSI 18-2006- Manual Food and Beverage Dispensing equipment.*^P

4-204.14 Vending Machine, Vending Stage Closure.

The dispensing compartment of a vending machine including a machine that is designed to vend prepackaged snack food that is not potentially hazardous (time/temperature control for safety food) shall be equipped with a self-closing door or cover if the machine is:

- (A) Located in an outside area that does not otherwise afford the protection of an enclosure against the rain, windblown debris, insects, rodents, and other contaminants that are present in the environment; or
- (B) Available for self-service during hours when it is not under the full-time supervision of a food employee.

4-204.15 Bearings and Gear Boxes, Leakproof.

Equipment containing bearings and gears that require lubricants shall be designed and constructed so that the lubricant cannot leak, drip, or be forced into food or onto food-contact surfaces.

4-204.16 Beverage Tubing, Separation.

Except for cold plates that are constructed integrally with an ice storage bin, beverage tubing and cold-plate beverage cooling devices may not be installed in contact with stored ice.

4-204.17 Ice Units, Separation of Drains.

Liquid waste drain lines may not pass through an ice machine or ice storage bin.

4-204.18 Condenser Unit, Separation.

If a condenser unit is an integral component of equipment, the condenser unit shall be separated from the food and food storage space by a dustproof barrier.

4-204.19 Can Openers on Vending Machines.

Cutting or piercing parts of can openers on vending machines shall be protected from manual contact, dust, insects, rodents, and other contamination.

4-204.110 Molluscan Shellfish Tanks.

(A) Except as specified under ¶ (B) of this section, molluscan shellfish life support system display tanks may not be used to store or display shellfish that are offered for human consumption and shall be conspicuously marked so that it is obvious to the consumer that the shellfish are for display only. ^P

(B) Molluscan shellfish life-support system display tanks that are used to store or display shellfish that are offered for human consumption shall be operated and maintained in accordance with a variance granted by the regulatory authority as specified in § 8-103.10 and a HACCP plan that: ^{Pf}

- (1) Is submitted by the permit holder and approved as specified under § 8-103.11;^{Pf} and
- (2) Ensures that:
 - (a) Water used with fish other than molluscan shellfish does not flow into the molluscan tank, ^{Pf}
 - (b) The safety and quality of the shellfish as they were received are not compromised by the use of the tank, ^{Pf} and
 - (c) The identity of the source of the shellstock is retained as specified under § 3-203.12. ^{Pf}

4-204.111 Vending Machines, Automatic Shutoff.

(A) A machine vending potentially hazardous food (time/temperature control for safety food) shall have an automatic control that prevents the machine from vending food:

- (1) If there is a power failure, mechanical failure, or other condition that results in an internal machine temperature that cannot maintain food temperatures as specified under Chapter 3; ^P and
- (2) If a condition specified under Subparagraph (A)(1) of this section occurs, until the machine is serviced and restocked with food that has been maintained at temperatures specified under Chapter 3. ^P

(B) When the automatic shutoff within a machine vending potentially hazardous food (time/temperature control for safety food) is activated:

- (1) In a refrigerated vending machine, the ambient air temperature may not exceed 5°C (41°F) for more than 30 minutes immediately after the machine is filled, serviced, or restocked;^P or
- (2) In a hot holding vending machine, the ambient air temperature may not be less than 57°C (135°F) for more than 120 minutes immediately after the machine is filled, serviced, or restocked. ^P

4-204.112 Temperature Measuring Devices.

(A) In a mechanically refrigerated or hot food storage unit, the sensor of a temperature measuring device shall be located to measure the air temperature or a simulated product temperature in the warmest part of a mechanically refrigerated unit and in the coolest part of a hot food storage unit.

(B) Except as specified in ¶ (C) of this section, cold or hot holding equipment used for potentially hazardous food (time/temperature control for safety food) shall be designed to include and shall be equipped with at least one integral or permanently affixed temperature measuring device that is located to allow easy viewing of the device's temperature display.

(C) *Paragraph (B) of this section does not apply to equipment for which the placement of a temperature measuring device is not a practical means for measuring the ambient air surrounding the food because of the design, type, and use of the equipment, such as calrod units, heat lamps, cold plates, bain-maries, steam tables, insulated food transport containers, and salad bars.*

(D) Temperature measuring devices shall be designed to be easily readable.

(E) Food temperature measuring devices and water temperature measuring devices on warewashing machines shall have a numerical scale, printed record, or digital readout in increments no greater than 1°C or 2°F in the intended range of use.^{Pf}

4-204.113 Warewashing Machine, Data Plate Operating Specifications.

A warewashing machine shall be provided with an easily accessible and readable data plate affixed to the machine by the manufacturer that indicates the machine's design and operating specifications including the:

(A) Temperatures required for washing, rinsing, and sanitizing;

(B) Pressure required for the fresh water sanitizing rinse unless the machine is designed to use only a pumped sanitizing rinse; and

(C) Conveyor speed for conveyor machines or cycle time for stationary rack machines.

4-204.114 Warewashing Machines, Internal Baffles.

Warewashing machine wash and rinse tanks shall be equipped with baffles, curtains, or other means to minimize internal cross contamination of the solutions in wash and rinse tanks.

4-204.115 Warewashing Machines, Temperature Measuring Devices.

A warewashing machine shall be equipped with a temperature-measuring device that indicates the temperature of the water:

(A) In each wash and rinse tank;^{Pf} and

(B) As the water enters the hot water sanitizing final rinse manifold or in the chemical sanitizing solution tank.^{Pf}

4-204.116 Manual Warewashing Equipment, Heaters and Baskets.

If hot water is used for sanitization in manual warewashing operations, the sanitizing compartment of the sink shall be:

(A) Designed with an integral heating device that is capable of maintaining water at a temperature not less than 77°C (171°F);^{Pf} and

(B) Provided with a rack or basket to allow complete immersion of equipment and utensils into the hot water.^{Pf}

4-204.117 Warewashing Machines, Sanitizer Level Indicator.

A warewashing machine that is installed after adoption of this Code by the regulatory authority, shall be equipped to:

(A) Automatically dispense detergents and sanitizers;^{Pf} and

(B) Incorporate a visual means to verify that detergents and sanitizers are delivered or a visual or audible alarm to signal if the detergents and sanitizers are not delivered to the respective washing and sanitizing cycles.^{Pf}

4-204.118 Warewashing Machines, Flow Pressure Device.

(A) Warewashing machines that provide a fresh hot water sanitizing rinse shall be equipped with a pressure gauge or similar device such as a transducer that measures and displays the water pressure in the supply line immediately before entering the warewashing machine; and

(B) If the flow pressure measuring device is upstream of the fresh hot water sanitizing rinse control valve, the device shall be mounted in a 6.4 millimeter or one-fourth inch Iron Pipe Size (IPS) valve.

(C) Paragraphs (A) and (B) of this section do not apply to a machine that uses only a pumped or recirculated sanitizing rinse.

4-204.119 Warewashing Sinks and Drainboards, Self-Draining.

Sinks and drainboards of warewashing sinks and machines shall be self-draining.

4-204.120 Equipment Compartments, Drainage.

Equipment compartments that are subject to accumulation of moisture due to conditions such as condensation, food or beverage drip, or water from melting ice shall be sloped to an outlet that allows complete draining.

4-204.121 Vending Machines, Liquid Waste Products.

(A) Vending machines designed to store beverages that are packaged in containers made from paper products shall be equipped with diversion devices and retention pans or drains for container leakage.

(B) Vending machines that dispense liquid food in bulk shall be:

- (1) Provided with an internally mounted waste receptacle for the collection of drip, spillage, overflow, or other internal wastes; and
- (2) Equipped with an automatic shutoff device that will place the machine out of operation before the waste receptacle overflows.

(C) Shutoff devices specified under Subparagraph (B)(2) of this section shall prevent water or liquid food from continuously running if there is a failure of a flow control device in the water or liquid food system or waste accumulation that could lead to overflow of the waste receptacle.

4-204.122 Case Lot Handling Apparatuses, Moveability.

Apparatuses, such as dollies, pallets, racks, and skids used to store and transport large quantities of packaged foods received from a supplier in a cased or overwrapped lot, shall be designed to be moved by hand or by conveniently available equipment such as hand trucks and forklifts.

4-204.123 Vending Machine Doors and Openings.

(A) Vending machine doors and access opening covers to food and container storage spaces shall be tight-fitting so that the space along the entire interface between the doors or covers and the cabinet of the machine, if the doors or covers are in a closed position, is no greater than 1.5 millimeters or one-sixteenth inch by:

- (1) Being covered with louvers, screens, or materials that provide an equivalent opening of not greater than 1.5 millimeters or one-sixteenth inch. Screening of 12 or more mesh to 2.5 centimeters (12 mesh to 1 inch) meets this requirement;
- (2) Being effectively gasketed;
- (3) Having interface surfaces that are at least 13 millimeters or one-half inch wide; or
- (4) Jambs or surfaces used to form an L-shaped entry path to the interface.

(B) Vending machine service connection openings through an exterior wall of a machine shall be closed by sealants, clamps, or grommets so that the openings are no larger than 1.5 millimeters or one-sixteenth inch.

4-205.10 Food Equipment, Certification and Classification.

Food equipment that is certified or classified for sanitation by an American National Standards Institute (ANSI)-accredited certification program will be deemed to comply with Parts 4-1 and 4-2 of this chapter.

4-3 NUMBERS AND CAPACITIES

Subparts 4-301 Equipment

4-302 Utensils, Temperature Measuring and Testing Devices

4-301.11 Cooling, Heating, and Holding Capacities.

Equipment for cooling and heating food, and holding cold and hot food, shall be sufficient in number and capacity to provide food temperatures as specified under Chapter 3.^{Pf}

4-301.12 Manual Warewashing, Sink Compartment Requirements.

(A) Except as specified in ¶¶ (C) and (F) of this section, a sink with at least 3 compartments shall be provided for manually washing, rinsing, and sanitizing equipment and utensils.

(B) Sink compartments shall be large enough to accommodate immersion of the largest equipment and utensils. If equipment or utensils are too large for the warewashing sink, a warewashing machine or alternative equipment as specified in ¶ (C) of this section shall be used.

(C) Alternative manual warewashing equipment may be used when there are special cleaning needs or constraints and its use is approved. Alternative manual warewashing equipment may include:

- (1) High-pressure detergent sprayers;
- (2) Low- or line-pressure spray detergent foamers;
- (3) Other task-specific cleaning equipment;
- (4) Brushes or other implements; or
- (5) **[Deleted]**
- (6) Receptacles that substitute for the compartments of a multicompartment sink.

(D) **[Deleted]**

(E) **[Deleted]**

(F) *A commercial warewashing machine is allowed in lieu of a manual warewashing sink as required in this section.*

(G) For mobile food units:

- (1) Class I, II and III mobile food units are not required to provide warewashing facilities on the unit, if adequate facilities exist at the commissary.^{Pf}
- (2) Multiple or disposable utensils may be used for food handling on the unit. There shall be at the beginning of each day's business a sufficient supply of clean utensils necessary to properly prepare, assemble, or dispense the food. For mobile food units that do not have a warewashing sink on the unit, this supply shall consist of at least one of each type of utensil for every two hours of operation. If the unit operates less than four hours in a day, the unit shall provide a minimum of two sets of each type of utensil. Utensils shall not be used if they become contaminated.^{Pf}
- (3) Class IV mobile food units must provide a sink with at least three compartments.^{Pf}
- (4) A Class II or III mobile food unit that is designed with a small three compartment sink that not be used for warewashing is not required to remove the sink from the unit.

(H) Temporary food establishments are not required to provide warewashing facilities on the premises if multiple utensils are provided as specified in subparagraph (G)(2) of section 4-301.12 and the operator uses a licensed restaurant or commissary as a base of operation.^{Pf}

4-301.13 Drainboards.

Drainboards, utensil racks, or tables large enough to accommodate all soiled and cleaned items that may accumulate during hours of operation shall be provided for necessary utensil holding before cleaning and after sanitizing.

4-301.14 Ventilation Hood Systems, Adequacy.

Ventilation hood systems and devices shall be sufficient in number and capacity to prevent grease or condensation from collecting on walls and ceilings. For mobile food units, violations of this section shall be considered a priority foundation item.

4-301.15 Clothes Washers and Dryers.

(A) Except as specified in ¶ (B) of this section, if work clothes or linens are laundered on the premises, a mechanical clothes washer and dryer shall be provided and used.

(B) If on-premises laundering is limited to wiping cloths intended to be used moist, or wiping cloths are air-dried as specified under § 4-901.12, a mechanical clothes washer and dryer need not be provided.

4-302.11 Utensils, Consumer Self-Service.

A food dispensing utensil shall be available for each container displayed at a consumer self-service unit such as a buffet or salad bar.^{Pf}

4-302.12 Food Temperature Measuring Devices.

(A) Food temperature measuring devices shall be provided and readily accessible for use in ensuring attainment and maintenance of food temperatures as specified under Chapter 3. ^{Pf}

(B) A temperature measuring device with a suitable small-diameter probe that is designed to measure the temperature of thin masses shall be provided and readily accessible to accurately measure the temperature in thin foods such as meat patties and fish filets. ^{Pf}

4-302.13 Temperature Measuring Devices, Manual Warewashing.

In manual warewashing operations, a temperature measuring device shall be provided and readily accessible for frequently measuring the washing and sanitizing temperatures.

4-302.14 Sanitizing Solutions, Testing Devices.

A test kit or other device that accurately measures the concentration in mg/L of sanitizing solutions shall be provided.^{Pf}

4-4 LOCATION AND INSTALLATION

- Subparts 4-401 Location**
- 4-402 Installation**

4-401.11 Equipment, Clothes Washers and Dryers, and Storage Cabinets, Contamination Prevention.

(A) Except as specified in ¶ (B) of this section, equipment, a cabinet used for the storage of food, or a cabinet that is used to store cleaned and sanitized equipment, utensils, laundered linens, and single-service and single-use articles may not be located:

- (1) In locker rooms;
- (2) In toilet rooms;
- (3) In garbage rooms;
- (4) In mechanical rooms;
- (5) Under sewer lines that are not shielded to intercept potential drips;
- (6) Under leaking water lines including leaking automatic fire sprinkler heads or under lines on which water has condensed;
- (7) Under open stairwells; or
- (8) Under other sources of contamination.

(B) *A storage cabinet used for linens or single-service or single-use articles may be stored in a locker room.*

(C) If a mechanical clothes washer or dryer is provided, it shall be located so that the washer or dryer is protected from contamination and only where there is no exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

4-402.11 Fixed Equipment, Spacing or Sealing.

(A) Equipment that is fixed because it is not easily movable shall be installed so that it is:

- (1) Spaced to allow access for cleaning along the sides, behind, and above the equipment;
- (2) Spaced from adjoining equipment, walls, and ceilings a distance of not more than 1 millimeter or one thirty-second inch; or
- (3) Sealed to adjoining equipment or walls, if the equipment is exposed to spillage or seepage.

(B) Counter-mounted equipment that is not easily movable shall be installed to allow cleaning of the equipment and areas underneath and around the equipment by being:

- (1) Sealed; or
- (2) Elevated on legs as specified under ¶ 4-402.12(D).

4-402.12 Fixed Equipment, Elevation or Sealing.

(A) Except as specified in ¶¶ (B) and (C) of this section, floor-mounted equipment that is not easily movable shall be sealed to the floor or elevated on legs that provide at least a 15 centimeter (6 inch) clearance between the floor and the equipment.

(B) *If no part of the floor under the floor-mounted equipment is more than 15 centimeters (6 inches) from the point of cleaning access, the clearance space may be only 10 centimeters (4 inches).*

(C) *This section does not apply to display shelving units, display refrigeration units, and display freezer units located in the consumer shopping areas of a retail food store, if the floor under the units is maintained clean.*

(D) Except as specified in ¶ (E) of this section, counter-mounted equipment that is not easily movable shall be elevated on legs that provide at least a 10 centimeter (4 inch) clearance between the table and the equipment.

(E) *The clearance space between the table and counter-mounted equipment may be:*

- (1) *7.5 centimeters (3 inches) if the horizontal distance of the table top under the equipment is no more than 50 centimeters (20 inches) from the point of access for cleaning; or*
- (2) *5 centimeters (2 inches) if the horizontal distance of the table top under the equipment is no more than 7.5 centimeters (3 inches) from the point of access for cleaning*

4-5 MAINTENANCE AND OPERATION

Subparts 4-501 Equipment

4-502 Utensils and Temperature and Pressure Measuring Devices

4-501.11 Good Repair and Proper Adjustment.

(A) Equipment shall be maintained in a state of repair and condition that meets the requirements specified under Parts 4-1 and 4-2.

(B) Equipment components such as doors, seals, hinges, fasteners, and kick plates shall be kept intact, tight, and adjusted in accordance with manufacturer's specifications.

(C) Cutting or piercing parts of can openers shall be kept sharp to minimize the creation of metal fragments that can contaminate food when the container is opened.

4-501.12 Cutting Surfaces.

Surfaces such as cutting blocks and boards that are subject to scratching and scoring shall be resurfaced if they can no longer be effectively cleaned and sanitized, or discarded if they are not capable of being resurfaced.

4-501.13 Microwave Ovens.

Microwave ovens shall meet the safety standards specified in 21 CFR 1030.10 Microwave ovens.

4-501.14 Warewashing Equipment, Cleaning Frequency.

A warewashing machine; the compartments of sinks, basins, or other receptacles used for washing and rinsing equipment, utensils, or raw foods, or laundering wiping cloths; and drainboards or other equipment used to substitute for drainboards as specified under § 4-301.13 shall be cleaned:

(A) Before use;

(B) Throughout the day at a frequency necessary to prevent recontamination of equipment and utensils and to ensure that the equipment performs its intended function; and

(C) If used, at least every 24 hours.

4-501.15 Warewashing Machines, Manufacturers' Operating Instructions.

(A) A warewashing machine and its auxiliary components shall be operated in accordance with the machine's data plate and other manufacturer's instructions.

(B) A warewashing machine's conveyor speed or automatic cycle times shall be maintained accurately timed in accordance with manufacturer's specifications.

4-501.16 Warewashing Sinks, Use Limitation.

(A) A warewashing sink may not be used for handwashing as specified under § 2-301.15.

(B) If a warewashing sink is used to wash wiping cloths, wash produce, or thaw food, the sink shall be cleaned as specified under § 4-501.14 before and after each time it is used to wash wiping cloths or wash produce or thaw food. Sinks used to wash or thaw food shall be sanitized as specified under Part 4-7 before and after using the sink to wash produce or thaw food.

4-501.17 Warewashing Equipment, Cleaning Agents.

When used for warewashing, the wash compartment of a sink, mechanical warewasher, or wash receptacle of alternative manual warewashing equipment as specified in ¶ 4-301.12(C), shall contain a wash solution of soap, detergent, acid cleaner, alkaline cleaner, degreaser, abrasive cleaner, or other cleaning agent according to the cleaning agent manufacturer's label instructions. ^{Pf}

4-501.18 Warewashing Equipment, Clean Solutions.

The wash, rinse, and sanitize solutions shall be maintained clean.

4-501.19 Manual Warewashing Equipment, Wash Solution Temperature.

The temperature of the wash solution in manual warewashing equipment shall be maintained at not less than 43°C (110°F) or the temperature specified on the cleaning agent manufacturer's label instructions. ^{Pf}

4-501.110 Mechanical Warewashing Equipment, Wash Solution Temperature.

(A) The temperature of the wash solution in spray type warewashers that use hot water to sanitize may not be less than:

- (1) For a stationary rack, single temperature machine, 74°C (165°F);^{Pf}
- (2) For a stationary rack, dual temperature machine, 66°C (150°F); ^{Pf}
- (3) For a single tank, conveyor, dual temperature machine, 71°C (160°F);^{Pf} or
- (4) For a multitank, conveyor, multitemperature machine, 66°C (150°F).^{Pf}

(B) The temperature of the wash solution in spray-type warewashers that use chemicals to sanitize may not be less than 49°C (120°F). ^{Pf}

4-501.111 Manual Warewashing Equipment, Hot Water Sanitization Temperatures.

If immersion in hot water is used for sanitizing in a manual operation, the temperature of the water shall be maintained at 77°C (171°F) or above. ^P

4-501.112 Mechanical Warewashing Equipment, Hot Water Sanitization Temperatures.

(A) Except as specified in ¶ (B) of this section, in a mechanical operation, the temperature of the fresh hot water sanitizing rinse as it enters the manifold may not be more than 90°C (194°F), or less than: ^{Pf}

- (1) For a stationary rack, single temperature machine, 74°C (165°F);^{Pf} or
- (2) For all other machines, 82°C (180°F). ^{Pf}

(B) *The maximum temperature specified under ¶ (A) of this section, does not apply to the high pressure and temperature systems with wand-type, hand-held, spraying devices used for the in-place cleaning and sanitizing of equipment such as meat saws.*

4-501.113 Mechanical Warewashing Equipment, Sanitization Pressure.

The flow pressure of the fresh hot water sanitizing rinse in a warewashing machine, as measured in the water line immediately downstream or upstream from the fresh hot water sanitizing rinse control valve, shall be within the range specified on the machine manufacturer's data plate and may not be less than 35 kilopascals (5 pounds per square inch) or more than 200 kilopascals (30 pounds per square inch).

4-501.114 Manual and Mechanical Warewashing Equipment, Chemical Sanitization - Temperature, pH, Concentration, and Hardness.

A chemical sanitizer used in a sanitizing solution for a manual or mechanical operation at contact times specified under ¶ 4-703.11(C) shall meet the criteria specified under § 7-204.11 Sanitizers, Criteria, shall be used in accordance with the EPA-registered label use instructions, and shall be used as follows ^P:

(A) A chlorine solution shall have a minimum temperature based on the concentration and pH of the solution as listed in the following chart; ^P

Concentration Range	Minimum Temperature	
	pH 10 or less °C (°F)	pH 8 or less °C (°F)
mg/L		
25 - 49	49 (120)	49 (120)
50 - 99	38 (100)	24 (75)
100	13 (55)	13 (55)

(B) An iodine solution shall have a:

- (1) Minimum temperature of 20°C (68°F), ^P
- (2) pH of 5.0 or less or a pH no higher than the level for which the manufacturer specifies the solution is effective, ^P and
- (3) Concentration between 12.5 mg/L and 25 mg/L; ^P

(C) A quaternary ammonium compound solution shall:

- (1) Have a minimum temperature of 24°C (75°F), ^P
- (2) Have a concentration as specified under § 7-204.11 and as indicated by the manufacturer's use directions included in the labeling, ^P and
- (3) Be used only in water with 500 mg/L hardness or less or in water having a hardness no greater than specified by the EPA-registered label use instructions; ^P

(D) If another solution of a chemical specified under ¶¶ (A) - (C) of this section is used, the permit holder shall demonstrate to the regulatory authority that the solution achieves sanitization and the use of the solution shall be approved;^P or
(E) If a chemical sanitizer other than chlorine, iodine, or a quaternary ammonium compound is used, it shall be applied in accordance with the EPA-registered label use instructions.^P

4-501.115 Manual Warewashing Equipment, Chemical Sanitization Using Detergent-Sanitizers. [Deleted]

4-501.116 Warewashing Equipment, Determining Chemical Sanitizer Concentration.
Concentration of the sanitizing solution shall be accurately determined by using a test kit or other device.^{Pf}

4-502.11 Good Repair and Calibration.

(A) Utensils shall be maintained in a state of repair or condition that complies with the requirements specified under Parts 4-1 and 4-2 or shall be discarded.

(B) Food temperature measuring devices shall be calibrated in accordance with manufacturer's specifications as necessary to ensure their accuracy.^{Pf}

(C) Ambient air temperature, water pressure, and water temperature measuring devices shall be maintained in good repair and be accurate within the intended range of use.

4-502.12 Single-Service and Single-Use Articles, Required Use.

A food establishment without facilities specified under Parts 4-6 and 4-7 for cleaning and sanitizing kitchenware and tableware shall provide only single-use kitchenware, single-service articles, and single-use articles for use by food employees and single-service articles for use by consumers.^P

4-502.13 Single-Service and Single-Use Articles, Use Limitation.

(A) Single-service and single-use articles may not be reused.

(B) The bulk milk container dispensing tube shall be cut on the diagonal leaving no more than one inch protruding from the chilled dispensing head.

(C) (1) A food or beverage provider or convenience store may not provide a single-use plastic straw to a consumer unless the consumer specifically requests the single-use plastic straw.

(2) A food and beverage facility may offer a single-use plastic straw to a consumer seated in or on a vehicle.

(3) A convenience store may leave single-use straws in an unattended location if they do not have space in a location attended by employees.

(4) A convenience store may sell or offer single-use straws for sale in bulk or unconnected with a sale or provision of food or a beverage.

4-502.14 Shells, Use Limitation.

Mollusk and crustacea shells may not be used more than once as serving containers.

4-6 CLEANING OF EQUIPMENT AND UTENSILS

Subparts	4-601 Objective
	4-602 Frequency
	4-603 Methods

4-601.11 Equipment, Food-Contact Surfaces, Nonfood-Contact Surfaces, and Utensils.

(A) Equipment food-contact surfaces and utensils shall be clean to sight and touch.^{Pf}

(B) The food-contact surfaces of cooking equipment and pans shall be kept free of encrusted grease deposits and other soil accumulations.

(C) Nonfood-contact surfaces of equipment shall be kept free of an accumulation of dust, dirt, food residue, and other debris.

4-602.11 Equipment Food-Contact Surfaces and Utensils.

(A) Equipment food-contact surfaces and utensils shall be cleaned:

- (1) Except as specified in ¶ (B) of this section, before each use with a different type of raw animal food such as beef, fish, lamb, pork, or poultry; ^P
- (2) Each time there is a change from working with raw foods to working with ready-to-eat foods; ^P
- (3) Between uses with raw fruits and vegetables and with potentially hazardous food (time/temperature control for safety food); ^P
- (4) Before using or storing a food temperature measuring device; ^P and
- (5) At any time during the operation when contamination may have occurred. ^P

(B) *Subparagraph (A)(1) of this section does not apply if the food-contact surface or utensil is in contact with a succession of different raw animal foods each requiring a higher cooking temperature as specified under § 3-401.11 than the previous food, such as preparing raw fish followed by cutting raw poultry on the same cutting board.*

(C) Except as specified in ¶ (D) of this section, if used with potentially hazardous food (time/temperature control for safety food), equipment food-contact surfaces and utensils shall be cleaned throughout the day at least every 4 hours. ^P

(D) *Surfaces of utensils and equipment contacting potentially hazardous food (time/temperature control for safety food) may be cleaned less frequently than every 4 hours if:*

- (1) *In storage, containers of potentially hazardous food (time/temperature control for safety food) and their contents are maintained at temperatures specified under Chapter 3 and the containers are cleaned when they are empty;*
- (2) *Utensils and equipment are used to prepare food in a refrigerated room or area that is maintained at one of the temperatures in the following chart and:*
 - (a) *The utensils and equipment are cleaned at the frequency in the following chart that corresponds to the temperature; and*

Temperature	Cleaning Frequency
5.0°C (41°F) or less	24 hours
>5.0°C - 7.2°C (>41°F - 45°F)	20 hours
>7.2°C - 10.0°C (>45°F - 50°F)	16 hours
>10.0°C - 12.8°C (>50°F - 55°F)	10 hours

(b) *The cleaning frequency based on the ambient temperature of the refrigerated room or area is documented in the food establishment.*

(3) *Containers in serving situations such as salad bars, delis, and cafeteria lines hold ready-to-eat potentially hazardous food (time/temperature control for safety food) that is maintained at the temperatures specified under Chapter 3, are intermittently combined with additional supplies of the same food that is at the required temperature, and the containers are cleaned at least every 24 hours;*

(4) *Temperature measuring devices are maintained in contact with food, such as when left in a container of deli food or in a roast, held at temperatures specified under Chapter 3;*

(5) *Equipment is used for storage of packaged consumer or unpackaged food such as a reach-in refrigerator and the equipment is cleaned at a frequency necessary to preclude accumulation of soil residues;*

(6) *The cleaning schedule is approved based on consideration of:*

- (a) *Characteristics of the equipment and its use,*
- (b) *The type of food involved,*
- (c) *The amount of food residue accumulation, and*
- (d) *The temperature at which the food is maintained during the operation and the potential for the rapid and progressive multiplication of pathogenic or toxigenic microorganisms that are capable of causing foodborne disease; or*

(7) *In-use utensils are intermittently stored in a container of water in which the water is maintained at 57°C (135°F) or more or 5°F (41°F) or less and the utensils and container are cleaned at least every 24 hours or at a frequency necessary to preclude accumulation of soil residues.*

(E) *Except when dry cleaning methods are used as specified under § 4-603.11, surfaces of utensils and equipment contacting food that is not potentially hazardous (time/temperature control for safety food) shall be cleaned:*

- (1) *At any time when contamination may have occurred;*
- (2) *At least every 24 hours for iced tea dispensers and consumer self-service utensils such as tongs, scoops, or ladles;*

- (3) Before restocking consumer self-service equipment and utensils such as condiment dispensers and display containers; and
- (4) In equipment such as ice bins and beverage dispensing nozzles and enclosed components of equipment such as ice makers, cooking oil storage tanks and distribution lines, beverage and syrup dispensing lines or tubes, coffee bean grinders, and water vending equipment:
 - (a) At a frequency specified by the manufacturer, or
 - (b) Absent manufacturer specifications, at a frequency necessary to preclude accumulation of soil or mold.

4-602.12 Cooking and Baking Equipment.

- (A) The food-contact surfaces of cooking and baking equipment shall be cleaned at least every 24 hours. This section does not apply to hot oil cooking and filtering equipment if it is cleaned as specified in Subparagraph 4-602.11(D)(6).
- (B) The cavities and door seals of microwave ovens shall be cleaned at least every 24 hours by using the manufacturer's recommended cleaning procedure.

4-602.13 Nonfood-Contact Surfaces.

Nonfood-contact surfaces of equipment shall be cleaned at a frequency necessary to preclude accumulation of soil residues.

4-603.11 Dry Cleaning.

- (A) If used, dry cleaning methods such as brushing, scraping, and vacuuming shall contact only surfaces that are soiled with dry food residues that are not potentially hazardous (time/temperature control for safety food).
- (B) Cleaning equipment used in dry cleaning food-contact surfaces may not be used for any other purpose.

4-603.12 Precleaning.

- (A) Food debris on equipment and utensils shall be scrapped over a waste disposal unit or garbage receptacle or shall be removed in a warewashing machine with a prewash cycle.
- (B) If necessary for effective cleaning, utensils and equipment shall be preflushed, presoaked, or scrubbed with abrasives.

4-603.13 Loading of Soiled Items, Warewashing Machines.

Soiled items to be cleaned in a warewashing machine shall be loaded into racks, trays, or baskets or onto conveyors in a position that:

- (A) Exposes the items to the unobstructed spray from all cycles; and
- (B) Allows the items to drain.

4-603.14 Wet Cleaning.

- (A) Equipment food-contact surfaces and utensils shall be effectively washed to remove or completely loosen soils by using the manual or mechanical means necessary such as the application of detergents containing wetting agents and emulsifiers; acid, alkaline, or abrasive cleaners; hot water; brushes; scouring pads; high-pressure sprays; or ultrasonic devices.
- (B) The washing procedures selected shall be based on the type and purpose of the equipment or utensil, and on the type of soil to be removed.

4-603.15 Washing, Procedures for Alternative Manual Warewashing Equipment.

If washing in sink compartments or a warewashing machine is impractical such as when the equipment is fixed or the utensils are too large, washing shall be done by using alternative manual warewashing equipment as specified in ¶ 4-301.12(C) in accordance with the following procedures:

- (A) Equipment shall be disassembled as necessary to allow access of the detergent solution to all parts;
- (B) Equipment components and utensils shall be scrapped or rough cleaned to remove food particle accumulation; and
- (C) Equipment and utensils shall be washed as specified under ¶ 4-603.14(A).

4-603.16 Rinsing Procedures.

Washed utensils and equipment shall be rinsed so that abrasives are removed and cleaning chemicals are removed or diluted through the use of water by using one of the following procedures:

- (A) Use of a distinct, separate water rinse after washing and before sanitizing if using:
 - (1) A 3-compartment sink,
 - (2) Alternative manual warewashing equipment equivalent to a 3-compartment sink as specified in ¶ 4-301.12(C), or
 - (3) A 3-step washing, rinsing, and sanitizing procedure in a warewashing system for CIP equipment;
- (B) [Deleted]

(C) [Deleted]

(D) If using a warewashing machine that does not recycle the sanitizing solution as specified under ¶ (E) of this section, or alternative manual warewashing equipment such as sprayers, use of a nondistinct water rinse that is:

- (1) Integrated in the application of the sanitizing solution, and
- (2) Wasted immediately after each application; or

(E) If using a warewashing machine that recycles the sanitizing solution for use in the next wash cycle, use of a nondistinct water rinse that is integrated in the application of the sanitizing solution.

4-603.17 Returnables, Cleaning for Refilling.

(A) Except as specified in ¶¶ (B) and (C) of this section, returned empty containers intended for cleaning and refilling with food shall be cleaned and refilled in a regulated food processing plant. ^P

(B) *A food-specific container for beverages may be refilled at a food establishment if:*

- (1) *The design of the container and of the rinsing equipment and the nature of the beverage, when considered together, allow effective cleaning at home or in the food establishment;*
- (2) *Facilities for rinsing before refilling returned containers with fresh, hot water that is under pressure and not recirculated are provided as part of the dispensing system;*
- (3) *The consumer-owned container returned to the food establishment for refilling is refilled for sale or service only to the same consumer; and*
- (4) *The container is refilled by:*
 - (a) *An employee of the food establishment, or*
 - (b) *The owner of the container if the beverage system includes a contamination-free transfer process that cannot be bypassed by the container owner.*

(C) *Consumer-owned containers that are not food-specific may be filled at a water vending machine or system.*

4-7 SANITIZATION OF EQUIPMENT AND UTENSILS

Subparts	4-701 Objective
	4-702 Frequency
	4-703 Methods

4-701.10 Food-Contact Surfaces and Utensils.

Equipment food-contact surfaces and utensils shall be sanitized.

4-702.11 Before Use After Cleaning.

Utensils and food-contact surfaces of equipment shall be sanitized before use after cleaning. ^P

4-703.11 Hot Water and Chemical.

After being cleaned, equipment food-contact surfaces and utensils shall be sanitized in:

(A) Hot water manual operations by immersion for at least 30 seconds and as specified under § 4-501.111; ^P

(B) Hot water mechanical operations by being cycled through equipment that is set up as specified under §§ 4-501.15, 4-501.112, and 4-501.113 and achieving a utensil surface temperature of 71°C (160°F) as measured by an irreversible registering temperature indicator; ^P or

(C) Chemical manual or mechanical operations, including the application of sanitizing chemicals by immersion, manual swabbing, brushing, or pressure spraying methods, using a solution as specified under § 4-501.114. Contact times shall be consistent with those on EPA-registered label use instructions by providing:

- (1) Except as specified under Subparagraph (C)(2) of this section, a contact time of at least 10 seconds for a chlorine solution specified under ¶ 4-501.114(A), ^P
- (2) A contact time of at least 7 seconds for a chlorine solution of 50 mg/L that has a pH of 10 or less and a temperature of at least 38°C (100°F) or a pH of 8 or less and a temperature of at least 24°C (75°F), ^P
- (3) A contact time of at least 30 seconds for other chemical sanitizing solutions, ^P or
- (4) A contact time used in relationship with a combination of temperature, concentration, and pH that, when evaluated for efficacy, yields sanitization as defined in Subparagraph 1-201.10(B). ^P

4-8 LAUNDERING

Subparts	4-801 Objective
	4-802 Frequency
	4-803 Methods

4-801.11 Clean Linens.

Clean linens shall be free from food residues and other soiling matter.

4-802.11 Specifications.

(A) Linens that do not come in direct contact with food shall be laundered between operations if they become wet, sticky, or visibly soiled.

(B) Cloth gloves used as specified in ¶ 3-304.15(D) shall be laundered before being used with a different type of raw animal food such as beef, fish, lamb, pork or poultry.

(C) Linens and napkins that are used as specified under § 3-304.13 and cloth napkins shall be laundered between each use.

(D) Wet wiping cloths shall be laundered daily.

(E) Dry wiping cloths shall be laundered as necessary to prevent contamination of food and clean serving utensils.

4-803.11 Storage of Soiled Linens.

Soiled linens shall be kept in clean, nonabsorbent receptacles or clean, washable laundry bags and stored and transported to prevent contamination of food, clean equipment, clean utensils, and single-service and single-use articles.

4-803.12 Mechanical Washing.

(A) Except as specified in ¶ (B) of this section, linens shall be mechanically washed.

(B) In food establishments in which only wiping cloths are laundered as specified in ¶ 4-301.15(B), the wiping cloths may be laundered in a mechanical washer, sink designated only for laundering wiping cloths, or a warewashing or food preparation sink that is cleaned as specified under § 4-501.14.

4-803.13 Use of Laundry Facilities.

(A) Except as specified in ¶ (B) of this section, laundry facilities on the premises of a food establishment shall be used only for the washing and drying of items used in the operation of the establishment.

(B) Separate laundry facilities located on the premises for the purpose of general laundering such as for institutions providing boarding and lodging may also be used for laundering food establishment items.

4-9 PROTECTION OF CLEAN ITEMS

Subparts	4-901 Drying
	4-902 Lubricating and Reassembling
	4-903 Storing
	4-904 Handling

4-901.11 Equipment and Utensils, Air-Drying Required.

After cleaning and sanitizing, equipment and utensils:

(A) Shall be air-dried or used after adequate draining as specified in the first paragraph of 40 CFR 180.940 Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (food-contact surface sanitizing solutions), before contact with food; and

(B) May not be cloth dried *except that utensils that have been air-dried may be polished with cloths that are maintained clean and dry.*

4-901.12 Wiping Cloths, Air-Drying Locations.

Wiping cloths laundered in a food establishment that does not have a mechanical clothes dryer as specified in ¶ 4-301.15(B) shall be air-dried in a location and in a manner that prevents contamination of food, equipment, utensils, linens, and single-service and single-use articles and the wiping cloths. *This section does not apply if wiping cloths are stored after laundering in a sanitizing solution as specified under § 4-501.114.*

4-902.11 Food-Contact Surfaces.

Lubricants as specified under section 7-205.11 shall be applied to food-contact surfaces that require lubrication in a manner that does not contaminate food-contact surfaces.

4-902.12 Equipment.

Equipment shall be reassembled so that food-contact surfaces are not contaminated.

4-903.11 Equipment, Utensils, Linens, and Single-Service and Single-Use Articles.

(A) Except as specified in ¶ (D) of this section, cleaned equipment and utensils, laundered linens, and single-service and single-use articles shall be stored:

- (1) In a clean, dry location;
- (2) Where they are not exposed to splash, dust, or other contamination; and
- (3) At least 15 cm (6 inches) above the floor.

(B) Clean equipment and utensils shall be stored as specified under ¶ (A) of this section and shall be stored:

- (1) In a self-draining position that allows air drying; and
- (2) Covered or inverted.

(C) Single-service and single-use articles shall be stored as specified under ¶ (A) of this section and shall be kept in the original protective package or stored by using other means that afford protection from contamination until used.

(D) *Items that are kept in closed packages may be stored less than 15 cm (6 inches) above the floor on dollies, pallets, racks, and skids that are designed as specified under § 4-204.122.*

4-903.12 Prohibitions.

(A) Except as specified in ¶ (B) of this section, cleaned and sanitized equipment, utensils, laundered linens, and single-service and single-use articles may not be stored:

- (1) In locker rooms;
- (2) In toilet rooms;
- (3) In garbage rooms;
- (4) In mechanical rooms;
- (5) Under sewer lines that are not shielded to intercept potential drips;
- (6) Under leaking water lines including leaking automatic fire sprinkler heads or under lines on which water has condensed;
- (7) Under open stairwells; or
- (8) Under other sources of contamination.

(B) *Laundered linens and single-service and single-use articles that are packaged or in a facility such as a cabinet may be stored in a locker room.*

4-904.11 Kitchenware and Tableware.

(A) Single-service and single-use articles and cleaned and sanitized utensils shall be handled, displayed, and dispensed so that contamination of food- and lip-contact surfaces is prevented.

(B) Knives, forks, and spoons that are not prewrapped shall be presented so that only the handles are touched by employees and by consumers if consumer self-service is provided.

(C) Except as specified under ¶ (B) of this section, single-service articles that are intended for food- or lip-contact shall be furnished for consumer self-service with the original individual wrapper intact or from an approved dispenser.

4-904.12 Soiled and Clean Tableware.

Soiled tableware shall be removed from consumer eating and drinking areas and handled so that clean tableware is not contaminated.

4-904.13 Preset Tableware.

(A) Except as specified in ¶ (B) of this section, tableware that is preset shall be protected from contamination by being wrapped, covered, or inverted.

(B) *Preset tableware may be exposed if:*

- (1) *Unused settings are removed when a consumer is seated; or*
- (2) *Settings not removed when a consumer is seated are cleaned and sanitized before further use.*

4-904.14 Rinsing Equipment and Utensils after Cleaning and Sanitizing.

After being cleaned and sanitized, equipment and utensils shall not be rinsed before air drying or use unless:

(A) The rinse is applied directly from a potable water supply by a warewashing machine that is maintained and operated as specified under Subparts 4-204 and 4-501; and

(B) The rinse is applied only after the equipment and utensils have been sanitized by the application of hot water or by the application of a chemical sanitizer solution whose EPA-registered label use instructions call for rinsing off the sanitizer after it is applied in a commercial warewashing machine.

Chapter 5
Water, Plumbing and Waste

Parts

5-1 WATER

5-2 PLUMBING SYSTEM

5-3 MOBILE WATER TANK AND MOBILE FOOD ESTABLISHMENT WATER TANK

5-4 SEWAGE, OTHER LIQUID WASTE, AND RAINWATER

5-5 REFUSE, RECYCLABLES, AND RETURNABLES

5-1 WATER

- Subparts**
- 5-101 Source**
- 5-102 Quality**
- 5-103 Quantity and Availability**
- 5-104 Distribution, Delivery, and Retention**

5-101.11 Approved System.

Drinking water shall be obtained from an approved source that is:

(A) A public water system;^P or

(B) A nonpublic water system that is constructed, maintained, and operated according to law.^P

5-101.12 System Flushing and Disinfection.

A drinking water system shall be flushed and disinfected before being placed in service after construction, repair, or modification and after an emergency situation, such as a flood, that may introduce contaminants to the system.^P

5-101.13 Bottled Drinking Water.

Bottled drinking water used or sold in a food establishment shall be obtained from approved sources in accordance with 21 CFR 129 - Processing and Bottling of Bottled drinking water.^P

5-102.11 Standards.

Except as specified under section 5-102.12 (A), water from a public water system shall meet 40 CFR 141 – National Primary Drinking Water Regulations and OAR chapter 333, division 061.^P The following drinking water standards apply to licensed food establishments that are not regulated under OAR chapter 333, division 061:

(A) General Sampling Requirements:

- (1) All samples required by this rule must be analyzed and collected as prescribed by OAR 333-061-0036(1)(a) and (b).^P
- (2) All samples required by this rule must be analyzed by a laboratory accredited by the Oregon Environmental Laboratory Accreditation Program (ORELAP) and must be handled and documented in accordance with ORELAP standards.^P
- (3) Samples submitted to laboratories for analysis shall be clearly identified with the name of the water system, facility license number, sampling date, time, sample location identifying the sample tap, the name of the person collecting the sample and whether it is a routine or a repeat sample.^P

- (a) Routine: These are samples collected from established sampling locations within a water system at specified frequencies to satisfy monitoring requirements as prescribed in this rule;^P
- (b) Repeat: These are samples collected as a follow-up to a routine sample that is positive for coliform bacteria or that exceeds the maximum contaminant level for nitrate as specified in OAR 333-061-0030(1);^P
- (4) Reporting: All sample results must be submitted to the regulatory authority by the 10th of the month following the end of the applicable sampling period.^P
- (5) The regulatory authority may collect additional samples to determine compliance with applicable requirements of these rules.^P
- (B) Sampling for coliform bacteria:
 - (1) For seasonal establishments, one sample must be collected prior to the operational period of the facility and each subsequent calendar quarter while open to the public. A minimum of two samples shall be required for coliform, regardless of length of operation.^P
 - (2) For year round facilities, facilities utilizing surface water sources must collect one sample every month. Facilities utilizing groundwater sources must collect one sample every calendar quarter.^P
 - (3) Domestic kitchens licensed by the Oregon Department of Agriculture must test annually for coliform bacteria. If water is a major ingredient of the product, then additional water testing may be required by the regulatory authority, not to exceed the standards listed in this rule.
- (C) Sampling for chemicals:
 - (1) Every facility must collect one arsenic sample before beginning operation for the first time. This requirement does not apply to facilities that were previously regulated under OAR chapter 333, division 061 and that have sampling results from samples collected prior to January 1, 2003.^P
 - (2) Every facility must collect one nitrate sample every year while open to the public.^P
- (D) Additional sampling may be required for coliform bacteria, arsenic, or nitrate at the discretion of the regulatory authority. It is the responsibility of the operator to correct any problems or deficiencies and to assure that water provided to the public does not present a risk to public health.^P
- (E) MCL Violations: An item is not considered a violation until confirmed by a second sample collected within 24 hours. For coliform bacteria, four repeat samples must be collected within 24 hours of the original positive sample.^P
 - (1) Total coliform: Facilities must report samples positive for total coliform to the regulatory authority within 24 hours of being notified of the sample results.^P
 - (2) Fecal coliform: Facilities must report samples positive for E. coli to the regulatory authority within 24 hours of being notified of the sample results.^P
 - (a) Facilities must publish public notification for this potential acute health risk as prescribed by OAR 333-061-0042.^P
 - (b) An alternative procedure approved by the regulatory authority must be in place before serving the public.^P
 - (3) Facilities must report samples that exceed the MCL for nitrate as specified in OAR 333-061-0030(1) to the regulatory authority within at least 24 hours.^P
 - (a) Public notification is required.^P
 - (b) Bottled water must be provided to the public upon request.^P
- (F) Public Notice: All public notification must be posted conspicuously on site and must include:
 - (1) A description of the violation or situation of concern;^P
 - (2) Corrective actions taken to improve water quality;^P
 - (3) Any potential adverse health effects;^P
 - (4) The population at risk;^P
 - (5) The alternative measures in place to provide safe drinking water.^P
- (G) Surface Water Sources: New facilities with surface water sources not regulated under OAR chapter 333, division 061 shall not be licensable after January 1, 2005. Facilities existing prior to January 1, 2005 in compliance with OAR 333-061-0032 may continue to operate.^P
- (H) Plan Review: All new facilities that are not regulated by OAR 333-061 must submit plans to the regulatory authority for review prior to operation. Existing facilities must submit plans to the regulatory authority for review prior to construction or major modification of the system. Systems regulated prior to January 1, 2003 by OAR chapter 333, division 061 are not required to re-submit plans. Plan review must be conducted in accordance with the procedures specified in OAR 333-061-0060.^P

5-102.12 Nondrinking Water.

- (A) A nondrinking water supply shall be used only if its use is approved.^P
- (B) Nondrinking water shall be used only for nonculinary purposes such as air conditioning, nonfood equipment cooling, and fire protection.^P

5-102.13 Sampling.

Except when used as specified under § 5-102.12, water from a nonpublic water system shall be sampled and tested at least annually and as required by state water quality regulations.^{Pf}

5-102.14 Sample Report.

The most recent sample report for the nonpublic water system shall be retained on file in the food establishment or the report shall be maintained as specified by state water quality regulations.

5-103.11 Capacity.

- (A) The water source and system shall be of sufficient capacity to meet the peak water demands of the food establishment.^{Pf}
- (B) Hot water generation and distribution systems shall be sufficient to meet the peak hot water demands throughout the food establishment.^{Pf}
- (C) Hot and cold or tempered water must be provided at all handwashing sinks in the establishment.^{Pf}

5-103.12 Pressure.

Water under pressure shall be provided to all fixtures, equipment, and nonfood equipment that are required to use water except that water supplied as specified under §§ 5-104.12(A) and (B) to a temporary food establishment or in response to a temporary interruption of a water supply need not be under pressure.^{Pf}

5-104.11 System.

Water shall be received from the source through the use of:

- (A) An approved public water main;^{Pf} or
- (B) One or more of the following that shall be constructed, maintained, and operated according to law:^{Pf}
 - (1) Nonpublic water main, water pumps, pipes, hoses, connections, and other appurtenances,^{Pf}
 - (2) Water transport vehicles,^{Pf} and
 - (3) Water containers.^{Pf}

5-104.12 Alternative Water Supply.

(A) Water meeting the requirements specified under Subparts 5-101, 5-102, and 5-103 shall be made available for a mobile facility, for a temporary food establishment without a permanent water supply, and for a food establishment with a temporary interruption of its water supply through:

- (1) A supply of containers of commercially bottled drinking water;^{Pf}
- (2) One or more closed portable water containers;^{Pf}
- (3) An enclosed vehicular water tank;^{Pf}
- (4) An on-premises water storage tank;^{Pf} or
- (5) Piping, tubing, or hoses connected to an adjacent approved source.^{Pf}

(B) If approved by the local public health authority, water for single-event temporary food establishments without a public water supply may be obtained from a well that has been tested for coliform bacteria within 60 days prior to the event. The local public health authority may require additional testing or an evaluation of the well and premises as part of the approval process. Sampling, reporting and correction of MCL violations shall be in accordance with the applicable provisions of 5-102.11.^{Pf}

(C) The regulatory authority may grant a temporary variance from requirements of subparts 5-101, 5-102, and 5-103 of the 2009 FDA Food Code by continuing or re-issuing previously issued permits where:

- (1) Failure to comply with the code requirements is due to a failure of a community, municipal or public utility water supply system to meet the regulatory authority's requirements;
- (2) The regulatory authority is satisfied that necessary remedial action is ongoing or reasonably imminent in connection with such water supply system; and
- (3) Continuance or re-issuance of the permit is conditional upon the carrying out of such remedial action and the provision of such other measures by the certificate or license holder which will in the judgment of the regulatory authority afford reasonable interim protection to the public health including, but not limited to, adequate warnings to public and personnel as to the safety of the water delivered to the premises from the distribution system and notice of measures to avoid use or consumption of such water or to render it safe for consumption; adequate warnings as to the need for supervision of children and others needing supervision against use of such water; provision of alternative potable water and adequate notification as to its availability; and measures to avoid the use and the availability of water on the premises.^{Pf}

5-2 PLUMBING SYSTEM

Subparts	5-201	Materials
	5-202	Design, Construction, and Installation
	5-203	Numbers and Capacities
	5-204	Location and Placement
	5-205	Operation and Maintenance

5-201.11 Approved.

(A) A plumbing system and hoses conveying water shall be constructed and repaired with approved materials according to law.^P

(B) A water filter shall be made of safe materials.^P

5-202.11 Approved System and Cleanable Fixtures.

(A) A plumbing system shall be designed, constructed, and installed according to law.^P

(B) A plumbing fixture such as a handwashing sink, toilet, or urinal shall be easily cleanable.

5-202.12 Handwashing Facility, Installation.

(A) A handwashing sink shall be equipped to provide water at a temperature of at least 38°C (100°F) through a mixing valve or combination faucet.^{Pf}

(B) A steam mixing valve may not be used at a handwashing sink.

(C) A self-closing, slow-closing, or metering faucet shall provide a flow of water for at least 15 seconds without the need to reactivate the faucet.

(D) An automatic handwashing facility shall be installed in accordance with manufacturer's instructions.

5-202.13 Backflow Prevention, Air Gap.

An air gap between the water supply inlet and the flood level rim of the plumbing fixture, equipment, or nonfood equipment shall be at least twice the diameter of the water supply inlet and may not be less than 25 mm (1 inch).^P

5-202.14 Backflow Prevention Device, Design Standard.

A backflow or backsiphonage prevention device installed on a water supply system shall meet American Society of Sanitary Engineering (A.S.S.E.) standards for construction, installation, maintenance, inspection, and testing for that specific application and type of device.^P

5-202.15 Conditioning Device, Design.

A water filter, screen, and other water conditioning device installed on water lines shall be designed to facilitate disassembly for periodic servicing and cleaning. A water filter element shall be of the replaceable type.

5-203.11 Handwashing Facilities.

(A) Except as specified in ¶¶ (B), (C), (D) and (E) of this section, at least 1 handwashing sink or the number of handwashing sinks necessary for their convenient use by employees in areas specified under § 5-204.11, shall be provided. Food establishments opened prior to July 1, 1965 are exempt from this requirement provided that employees can meet the requirements under §§ 2-301.12 and 2-301.13.^{Pf}

(B) If approved and capable of removing the types of soils encountered in the food operations involved, automatic handwashing facilities may be substituted for handwashing sinks in a food establishment that has at least one handwashing sink.

(C) An adequate number of handwashing stations shall be provided for each temporary food establishment to include:

(1) A minimum of one enclosed container that has a minimum water capacity of five gallons;^{Pf}

(2) A spigot that can be opened to provide a constant flow of water;^{Pf}

(3) Soap;^{Pf}

(4) Water;^{Pf}

(5) Paper towels;^{Pf} and

(6) A collection container for wastewater with a minimum capacity of five gallons.^{Pf}

(D) Class II, III and IV mobile food units must provide a handwashing sink;

(E) Outdoor cooking and beverage dispensing operations must be equipped with or located adjacent to a plumbed handwashing sink. Outdoor cooking and beverage dispensing operations that are not permanently constructed may provide a handwashing system that meets the requirements of paragraph 5-203.11(C) if approved by the regulatory authority.^{Pf}

5-203.12 Toilets and Urinals.

- (A) Except as specified in ¶ (B) of this section, toilet facilities shall be installed according to ORS 455.010 through 455.895 (2010 Oregon Structure Specialty Code) for the number of toilets.^{Pf}
- (B) *Food establishments with occupancy of 15 or less to include both employees and patrons may have only one toilet fixture and adjacent sink on the premises.*
- (C) Mobile food units shall provide toilet facilities as provided for in § 6-402.11.^{Pf}

5-203.13 Service Sink.

- (A) At least 1 service sink or 1 curbed cleaning facility equipped with a floor drain shall be provided and conveniently located for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water and similar liquid waste.
- (B) Toilets and urinals may not be used as a service sink for the disposal of mop water and similar liquid waste.
- (C) For mobile food units, if wet mopping is used as a method for cleaning the floor, then a separate sink must be provided in the unit for cleaning mops and cleaning tools and for the disposal of mop water or similar liquid wastes.

5-203.14 Backflow Prevention Device, When Required.

- A plumbing system shall be installed to preclude backflow of a solid, liquid, or gas contaminant into the water supply system at each point of use at the food establishment, including on a hose bibb if a hose is attached or on a hose bibb if a hose is not attached and backflow prevention is required by law, by:
- (A) Providing an air gap as specified under § 5-202.13;^P or
 - (B) Installing an approved backflow prevention device as specified under § 5-202.14.^P

5-203.15 Backflow Prevention Device, Carbonator.

- (A) If not provided with an air gap as specified under § 5-202.13, a dual check valve with an intermediate vent preceded by a screen of not less than 100 mesh to 25.4 mm (100 mesh to 1 inch) shall be installed upstream from a carbonating device and downstream from any copper in the water supply line.^P
- (B) *A dual check valve attached to the carbonator need not be of the vented type if an air gap or vented backflow prevention device has been otherwise provided as specified under ¶ (A) of this section.*

5-204.11 Handwashing Facilities.

- A handwashing facility shall be located:
- (A) To allow convenient use by employees in food preparation, food dispensing, and warewashing areas;^{Pf} and
 - (B) In, or immediately adjacent to, toilet rooms.^{Pf}

5-204.12 Backflow Prevention Device, Location.

A backflow prevention device shall be located so that it may be serviced and maintained.

5-204.13 Conditioning Device, Location.

A water filter, screen, and other water conditioning device installed on water lines shall be located to facilitate disassembly for periodic servicing and cleaning.

5-205.11 Using a Handwashing Facility.

- (A) A handwashing facility shall be maintained so that it is accessible at all times for employee use.^{Pf}
- (B) A handwashing facility may not be used for purposes other than handwashing.^{Pf}
- (C) An automatic handwashing facility shall be used in accordance with manufacturer's instructions.^{Pf}

5-205.12 Prohibiting a Cross Connection.

(A) A person may not create a cross connection by connecting a pipe or conduit between the drinking water system and a nondrinking water system or a water system of unknown quality.^P

(B) The piping of a nondrinking water system shall be durably identified so that it is readily distinguishable from piping that carries drinking water.^{Pf}

5-205.13 Scheduling Inspection and Service for a Water System Device.

A device such as a water treatment device or backflow preventer shall be scheduled for inspection and service, in accordance with manufacturer's instructions and as necessary to prevent device failure based on local water conditions, and records demonstrating inspection and service shall be maintained by the person in charge.^{Pf}

5-205.14 Water Reservoir of Fogging Devices, Cleaning.

(A) A reservoir that is used to supply water to a device such as a produce fogger shall be:

- (1) Maintained in accordance with manufacturer's specifications; ^P and
- (2) Cleaned in accordance with manufacturer's specifications or according to the procedures specified under ¶ (B) of this section, whichever is more stringent. ^P

(B) Cleaning procedures shall include at least the following steps and shall be conducted at least once a week:

- (1) Draining and complete disassembly of the water and aerosol contact parts; ^P
- (2) Brush-cleaning the reservoir, aerosol tubing, and discharge nozzles with a suitable detergent solution; ^P
- (3) Flushing the complete system with water to remove the detergent solution and particulate accumulation; ^P and
- (4) Rinsing by immersing, spraying, or swabbing the reservoir, aerosol tubing, and discharge nozzles with at least 50 mg/L hypochlorite solution. ^P

5-205.15 System Maintained in Good Repair.

A plumbing system shall be:

- (A) Repaired according to law;^P and
- (B) Maintained in good repair.

5-3 MOBILE WATER TANK AND MOBILE FOOD ESTABLISHMENT WATER TANK

Subparts	5-301 Materials
	5-302 Design and Construction
	5-303 Numbers and Capacities
	5-304 Operation and Maintenance
	5-305 Water System Requirements

5-301.11 Approved.

Materials that are used in the construction of a mobile water tank, Mobile food unit water tank, and appurtenances shall be:

- (A) Safe;^P
- (B) Durable, corrosion-resistant, and nonabsorbent; and
- (C) Finished to have a smooth, easily cleanable surface.

5-302.11 Enclosed System, Sloped to Drain.

A mobile water tank shall be:

- (A) Enclosed from the filling inlet to the discharge outlet; and
- (B) Sloped to an outlet that allows complete drainage of the tank.

5-302.12 Inspection and Cleaning Port, Protected and Secured.

If a water tank is designed with an access port for inspection and cleaning, the opening shall be in the top of the tank and:

- (A) Flanged upward at least 13 mm (one-half inch); and
- (B) Equipped with a port cover assembly that is:
 - (1) Provided with a gasket and a device for securing the cover in place, and
 - (2) Flanged to overlap the opening and sloped to drain.

5-302.13 "V" Type Threads, Use Limitation.

A fitting with "V" type threads on a water tank inlet or outlet shall be allowed only when a hose is permanently attached.

5-302.14 Tank Vent, Protected.

If provided, a water tank vent shall terminate in a downward direction and shall be covered with:

- (A) 16 mesh to 25.4 mm (16 mesh to 1 inch) screen or equivalent when the vent is in a protected area; or
- (B) A protective filter when the vent is in an area that is not protected from windblown dirt and debris.

5-302.15 Inlet and Outlet, Sloped to Drain.

(A) A water tank and its inlet and outlet shall be sloped to drain.

(B) A water tank inlet shall be positioned so that it is protected from contaminants such as waste discharge, road dust, oil, or grease.

5-302.16 Hose, Construction and Identification.

A food grade hose shall be used for conveying drinking water from a water tank and shall be:

- (A) Safe;^P
- (B) Durable, corrosion-resistant, and nonabsorbent;
- (C) Resistant to pitting, chipping, crazing, scratching, scoring, distortion, and decomposition;
- (D) Finished with a smooth interior surface; and
- (E) Clearly and durably identified as to its use if not permanently attached.

5-303.11 Filter, Compressed Air.

A filter that does not pass oil or oil vapors shall be installed in the air supply line between the compressor and drinking water system when compressed air is used to pressurize the water tank system. ^P

5-303.12 Protective Cover or Device.

A cap and keeper chain, closed cabinet, closed storage tube, or other approved protective cover or device shall be provided for a water inlet, outlet, and hose.

5-303.13 Mobile Food Establishment Tank Inlet.

A mobile food establishment's water tank inlet shall be:

- (A) 19.1 mm (three-fourths inch) in inner diameter or less; and
- (B) Provided with a hose connection of a size or type that will prevent its use for any other service.

5-304.11 System Flushing and Sanitization.

A water tank, pump, and hoses shall be flushed and sanitized before being placed in service after construction, repair, modification, and periods of nonuse. ^P

5-304.12 Using a Pump and Hoses, Backflow Prevention.

A person shall operate a water tank, pump, and hoses so that backflow and other contamination of the water supply are prevented.

5-304.13 Protecting Inlet, Outlet, and Hose Fitting.

If not in use, a water tank and hose inlet and outlet fitting shall be protected using a cover or device as specified under § 5-303.12.

5-304.14 Tank, Pump, and Hoses, Dedication.

(A) Except as specified in ¶ (B) of this section, a water tank, pump, and hoses used for conveying drinking water shall be used for no other purpose. ^P

(B) *Water tanks, pumps, and hoses approved for liquid foods may be used for conveying drinking water if they are cleaned and sanitized before they are used to convey water.*

5-304.15 Water Tank Cleaning.

(A) The potable water tanks of a mobile food unit shall be designed to be accessible and translucent so that the cleanliness can be determined through a visual inspection. Mobile food units licensed prior to February 1, 2020 do not have to meet this requirement.

(B) The potable and waste water tanks must be cleaned at least every six months or as recommended by the manufacturer.

5-305.11 Water System Requirements.

(A) A Class IV mobile food unit must have a potable water system of sufficient capacity to furnish enough hot and cold water for food preparation, warewashing, and handwashing, and the requirements of these rules. This supply must consist of a minimum of five gallons of water for handwashing and 30 gallons or twice the volume of the three-compartment sink, whichever is greater, of water for warewashing.^P

(B) Class II and III mobile food units must have a water supply that provides sufficient water for food preparation, handwashing, warewashing or any other requirements as set forth in these rules. If warewashing is conducted on the unit, a minimum of 30 gallons or twice the volume of the three-compartment sink, whichever is greater, of water must be dedicated for this purpose. A minimum of five gallons of water must be provided for handwashing.^P

(C) All mobile food units must be designed with integral potable and waste water tanks on board the unit. A mobile unit may connect to water and sewer if it is available at the operating location, however, the tanks must remain on the unit at all times. A mobile food unit may not connect to a fresh water system without also connecting to an approved sewer system. A mobile food unit licensed prior to February 1, 2020 in which the water tanks and associated plumbing have been removed prior to that date is not required to reinstall the water system if the unit is connected to an approved water and sewer system.^{Pf}

(D) Mobile food units that utilize potable and waste water storage tanks that are not integral to the unit must discontinue the use of these tanks by January 1, 2023.^{Pf}

(E) When calculating the potable water supply tank capacity as required in this section, the volume of the hot water heater may not be included.

(F) All sinks must provide water under pressure of at least 20 PSI or provide for a continuous flow and may not use gravity as the sole means to create the pressure. Units licensed prior to February 1, 2020 are not required to meet this standard if hands can be effectively washed as required.^{Pf}

5-4 SEWAGE, OTHER LIQUID WASTE, AND RAINWATER

- Subparts 5-401 Mobile Holding Tank**
- 5-402 Retention, Drainage, and Delivery**
- 5-403 Disposal Facility**

5-401.11 Capacity and Drainage.

A sewage holding tank in a mobile food establishment shall be:

(A) Sized 15 percent larger in capacity than the water supply tank; and

(B) Sloped to a drain that is 25 mm (1 inch) in inner diameter or greater, equipped with a shut-off valve.

(C) For a mobile food unit selling only beverages, such as coffee, espresso, or soda, and where most of the potable water supply is used in the product, the waste water retention tank may be at least one half the volume of the potable water storage tank. This determination must be made by the regulatory authority.

5-402.10 Establishment Drainage System.

Food establishment drainage systems, including grease traps, that convey sewage shall be designed and installed as specified under ¶ 5-202.11(A).

5-402.11 Backflow Prevention.

(A) Except as specified in ¶¶ (B), (C), and (D) of this section, a direct connection may not exist between the sewage system and a drain originating from equipment in which food, portable equipment, or utensils are placed. ^P

(B) *Paragraph (A) of this section does not apply to floor drains that originate in refrigerated spaces that are constructed as an integral part of the building.*

(C) *If allowed by law, a warewashing machine may have a direct connection between its waste outlet and a floor drain when the machine is located within 1.5 m (5 feet) of a trapped floor drain and the machine outlet is connected to the inlet side of a properly vented floor drain trap.*

(D) *If allowed by law, a warewashing or culinary sink may have a direct connection.*

5-402.12 Grease Trap.

If used, a grease trap shall be located to be easily accessible for cleaning.

5-402.13 Conveying Sewage.

Sewage shall be conveyed to the point of disposal through an approved sanitary sewage system or other system, including use of sewage transport vehicles, waste retention tanks, pumps, pipes, hoses, and connections that are constructed, maintained, and operated according to law.^P

5-402.14 Removing Mobile Food Establishment Wastes.

Sewage and other liquid wastes shall be removed from a mobile food establishment at an approved waste servicing area or by a sewage transport vehicle in such a way that a public health hazard or nuisance is not created.^{Pf}

(A) Mobile food units that generate only gray water liquid wastes may hand-carry those wastes to a specific disposal location approved by the regulatory authority.

(B) The waste transport container must be designed and intended to hold and transport gray water without leaks or spills and have a capacity no greater than 20 gallons.^{Pf}

5-402.15 Flushing a Waste Retention Tank.

A tank for liquid waste retention shall be thoroughly flushed and drained in a sanitary manner during the servicing operation.

5-403.11 Approved Sewage Disposal System.

Sewage shall be disposed through an approved facility that is:

(A) A public sewage treatment plant;^P or

(B) An individual sewage disposal system that is sized, constructed, maintained, and operated according to law.^P

5-403.12 Other Liquid Wastes and Rainwater.

Condensate drainage and other nonsewage liquids and rainwater shall be drained from point of discharge to disposal according to law.

5-5 REFUSE, RECYCLABLES, AND RETURNABLES

- Subparts**
- 5-501 Facilities on the Premises**
- 5-502 Removal**
- 5-503 Facilities for Disposal and Recycling**

5-501.10 Indoor Storage Area.

If located within the food establishment, a storage area for refuse, recyclables, and returnables shall meet the requirements specified under §§ 6-101.11, 6-201.11 - 6-201.18, 6-202.15, and 6-202.16.

5-501.11 Outdoor Storage Surface.

An outdoor storage surface for refuse, recyclables, and returnables shall be constructed of nonabsorbent material such as concrete or asphalt and shall be smooth, durable, and sloped to drain.

5-501.12 Outdoor Enclosure.

If used, an outdoor enclosure for refuse, recyclables, and returnables shall be constructed of durable and cleanable materials.

5-501.13 Receptacles.

(A) Except as specified in ¶ (B) of this section, receptacles and waste handling units for refuse, recyclables, and returnables and for use with materials containing food residue shall be durable, cleanable, insect- and rodent-resistant, leakproof, and nonabsorbent.

(B) Plastic bags and wet strength paper bags may be used to line receptacles for storage inside the food establishment, or within closed outside receptacles.

5-501.14 Receptacles in Vending Machines.

Except for a receptacle for beverage bottle crown closures, a refuse receptacle may not be located within a vending machine,

5-501.15 Outside Receptacles.

(A) Receptacles and waste handling units for refuse, recyclables, and returnables used with materials containing food residue and used outside the food establishment shall be designed and constructed to have tight-fitting lids, doors, or covers.
(B) Receptacles and waste handling units for refuse and recyclables such as an on-site compactor shall be installed so that accumulation of debris and insect and rodent attraction and harborage are minimized and effective cleaning is facilitated around and, if the unit is not installed flush with the base pad, under the unit.

5-501.16 Storage Areas, Rooms, and Receptacles, Capacity and Availability.

(A) An inside storage room and area and outside storage area and enclosure, and receptacles shall be of sufficient capacity to hold refuse, recyclables, and returnables that accumulate.
(B) A receptacle shall be provided in each area of the food establishment or premises where refuse is generated or commonly discarded, or where recyclables or returnables are placed.
(C) If disposable towels are used at handwashing lavatories, a waste receptacle shall be located at each sink or group of adjacent lavatories.

5-501.17 Toilet Room Receptacle, Covered.

A toilet room used by females shall be provided with a covered receptacle for sanitary napkins.

5-501.18 Cleaning Implements and Supplies.

(A) Except as specified in ¶ (B) of this section, suitable cleaning implements and supplies such as high pressure pumps, hot water, steam, and detergent shall be provided as necessary for effective cleaning of receptacles and waste handling units for refuse, recyclables, and returnables.
(B) *If approved, off-premises-based cleaning services may be used if on-premises cleaning implements and supplies are not provided.*

5-501.19 Storage Areas, Redeeming Machines, Receptacles and Waste Handling Units, Location.

(A) An area designated for refuse, recyclables, returnables, and, except as specified in ¶ (B) of this section, a redeeming machine for recyclables or returnables shall be located so that it is separate from food, equipment, utensils, linens, and single-service and single-use articles and a public health hazard or nuisance is not created.
(B) *A redeeming machine may be located in the packaged food storage area or consumer area of a food establishment if food, equipment, utensils, linens, and single-service and single-use articles are not subject to contamination from the machines and a public health hazard or nuisance is not created.*
(C) The location of receptacles and waste handling units for refuse, recyclables, and returnables may not create a public health hazard or nuisance or interfere with the cleaning of adjacent space.

5-501.110 Storing Refuse, Recyclables, and Returnables.

Refuse, recyclables, and returnables shall be stored in receptacles or waste handling units so that they are inaccessible to insects and rodents.

5-501.111 Areas, Enclosures, and Receptacles, Good Repair.

Storage areas, enclosures, and receptacles for refuse, recyclables, and returnables shall be maintained in good repair.

5-501.112 Outside Storage Prohibitions.

(A) Except as specified in ¶ (B) of this section, refuse receptacles not meeting the requirements specified under ¶ 5-501.13(A) such as receptacles that are not rodent-resistant, unprotected plastic bags and paper bags, or baled units that contain materials with food residue may not be stored outside.
(B) *Cardboard or other packaging material that does not contain food residues and that is awaiting regularly scheduled delivery to a recycling or disposal site may be stored outside without being in a covered receptacle if it is stored so that it does not create a rodent harborage problem.*

5-501.113 Covering Receptacles.

Receptacles and waste handling units for refuse, recyclables, and returnables shall be kept covered:

- (A) Inside the food establishment if the receptacles and units:
 - (1) Contain food residue and are not in continuous use; or
 - (2) After they are filled; and
- (B) With tight-fitting lids or doors if kept outside the food establishment.

5-501.114 Using Drain Plugs.

Drains in receptacles and waste handling units for refuse, recyclables, and returnables shall have drain plugs in place.

5-501.115 Maintaining Refuse Areas and Enclosures.

A storage area and enclosure for refuse, recyclables, or returnables shall be maintained free of unnecessary items, as specified under § 6-501.114, and clean.

5-501.116 Cleaning Receptacles.

- (A) Receptacles and waste handling units for refuse, recyclables, and returnables shall be thoroughly cleaned in a way that does not contaminate food, equipment, utensils, linens, or single-service and single-use articles, and waste water shall be disposed of as specified under § 5-402.13.
- (B) Soiled receptacles and waste handling units for refuse, recyclables, and returnables shall be cleaned at a frequency necessary to prevent them from developing a buildup of soil or becoming attractants for insects and rodents.

5-502.11 Frequency.

Refuse, recyclables, and returnables shall be removed from the premises at a frequency that will minimize the development of objectionable odors and other conditions that attract or harbor insects and rodents.

5-502.12 Receptacles or Vehicles.

Refuse, recyclables, and returnables shall be removed from the premises by way of:

- (A) Portable receptacles that are constructed and maintained according to law; or
- (B) A transport vehicle that is constructed, maintained, and operated according to law.

5-503.11 Community or Individual Facility.

Solid waste not disposed of through the sewage system such as through grinders and pulpers shall be recycled or disposed of in an approved public or private community recycling or refuse facility; or solid waste shall be disposed of in an individual refuse facility such as a landfill or incinerator which is sized, constructed, maintained, and operated according to law.

Chapter 6 Physical Facilities

Parts

- 6-1 MATERIALS FOR CONSTRUCTION AND REPAIR**
- 6-2 DESIGN, CONSTRUCTION, AND INSTALLATION**
- 6-3 NUMBERS AND CAPACITIES**
- 6-4 LOCATION AND PLACEMENT**
- 6-5 MAINTENANCE AND OPERATION**

6-1 MATERIALS FOR CONSTRUCTION AND REPAIR

- Subparts 6-101 Indoor Areas**
- 6-102 Outdoor Areas**

6-101.11 Surface Characteristics.

(A) Except as specified in ¶ (B) of this section, materials for indoor floor, wall, and ceiling surfaces under conditions of normal use shall be:

- (1) Smooth, durable, and easily cleanable for areas where food establishment operations are conducted;
- (2) Closely woven and easily cleanable carpet for carpeted areas; and
- (3) Nonabsorbent for areas subject to moisture such as food preparation areas, walk-in refrigerators, warewashing areas, toilet rooms, mobile food establishment servicing areas, and areas subject to flushing or spray cleaning methods.

(B) *In a temporary food establishment:*

- (1) *If graded to drain, a floor may be concrete, machine-laid asphalt, or dirt or gravel if it is covered with mats, removable platforms, duckboards, or other suitable approved materials that are effectively treated to control dust and mud; and*
- (2) *Walls and ceilings may be constructed of a material that protects the interior from the weather and windblown dust and debris. Benevolent meal sites as defined in 1-201.10(B) are exempt from the requirement to provide ceilings or overhead protection.*

6-102.11 Surface Characteristics.

(A) The outdoor walking and driving areas shall be surfaced with concrete, asphalt, or gravel or other materials that have been effectively treated to minimize dust, facilitate maintenance, and prevent muddy conditions.

(B) Exterior surfaces of buildings and mobile food establishments shall be of weather-resistant materials and shall comply with law.

(C) Outdoor storage areas for refuse, recyclables, or returnables shall be of materials specified under §§ 5-501.11 and 5-501.12.

6-2 DESIGN, CONSTRUCTION, AND INSTALLATION

- Subparts 6-201 Cleanability**
- 6-202 Functionality**

6-201.11 Floors, Walls, and Ceilings.

Except as specified under § 6-201.14, and except for anti-slip floor coverings or applications that may be used for safety reasons, floors, floor coverings, walls, wall coverings, and ceilings shall be designed, constructed, and installed so they are smooth and easily cleanable,

6-201.12 Floors, Walls, and Ceilings, Utility Lines.

(A) Utility service lines and pipes may not be unnecessarily exposed.

(B) Exposed utility service lines and pipes shall be installed so they do not obstruct or prevent cleaning of the floors, walls, or ceilings.

(C) Exposed horizontal utility service lines and pipes may not be installed on the floor.

6-201.13 Floor and Wall Junctures, Coved, and Enclosed or Sealed.

(A) In food establishments in which cleaning methods other than water flushing are used for cleaning floors, the floor and wall junctures shall be coved and closed to no larger than 1 mm (one thirty-second inch).

(B) The floors in food establishments in which water flush cleaning methods are used shall be provided with drains and be graded to drain, and the floor and wall junctures shall be coved and sealed.

6-201.14 Floor Carpeting, Restrictions and Installation.

(A) A floor covering such as carpeting or similar material may not be installed as a floor covering in food preparation areas, walk-in refrigerators, warewashing areas, toilet room areas where handwashing lavatories, toilets, and urinals are located, refuse storage rooms, or other areas where the floor is subject to moisture, flushing, or spray cleaning methods.

(B) If carpeting is installed as a floor covering in areas other than those specified under ¶ (A) of this section, it shall be:

- (1) Securely attached to the floor with a durable mastic, by using a stretch and tack method, or by another method; and
- (2) Installed tightly against the wall under the coving or installed away from the wall with a space between the carpet and the wall and with the edges of the carpet secured by metal stripping or some other means.

6-201.15 Floor Covering, Mats and Duckboards.

Mats and duckboards shall be designed to be removable and easily cleanable.

6-201.16 Wall and Ceiling Coverings and Coatings.

(A) Wall and ceiling covering materials shall be attached so that they are easily cleanable.

(B) Except in areas used only for dry storage, concrete, porous blocks, or bricks used for indoor wall construction shall be finished and sealed to provide a smooth, nonabsorbent, easily cleanable surface.

6-201.17 Walls and Ceilings, Attachments.

(A) Except as specified in ¶ (B) of this section, attachments to walls and ceilings such as light fixtures, mechanical room ventilation system components, vent covers, wall mounted fans, decorative items, and other attachments shall be easily cleanable.

(B) In a consumer area, wall and ceiling surfaces and decorative items and attachments that are provided for ambiance need not meet this requirement if they are kept clean.

6-201.18 Walls and Ceilings, Studs, Joists, and Rafters.

Except for temporary food establishments, studs, joists, and rafters may not be exposed in areas subject to moisture.

6-202.11 Light Bulbs, Protective Shielding.

(A) Except as specified in ¶ (B) of this section, light bulbs shall be shielded, coated, or otherwise shatter-resistant in areas where there is exposed food; clean equipment, utensils, and linens; or unwrapped single-service and single-use articles.

(B) Shielded, coated, or otherwise shatter-resistant bulbs need not be used in areas used only for storing food in unopened packages, if:

- (1) The integrity of the packages cannot be affected by broken glass falling onto them; and*
- (2) The packages are capable of being cleaned of debris from broken bulbs before the packages are opened.*

(C) An infrared or other heat lamp shall be protected against breakage by a shield surrounding and extending beyond the bulb so that only the face of the bulb is exposed.

6-202.12 Heating, Ventilating, Air Conditioning System Vents.

Heating, ventilating, and air conditioning systems shall be designed and installed so that make-up air intake and exhaust vents do not cause contamination of food, food-contact surfaces, equipment, or utensils.

6-202.13 Insect Control Devices, Design and Installation.

(A) Insect control devices that are used to electrocute or stun flying insects shall be designed to retain the insect within the device.

(B) Insect control devices shall be installed so that:

- (1) The devices are not located over a food preparation area; and
- (2) Dead insects and insect fragments are prevented from being impelled onto or falling on exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

6-202.14 Toilet Rooms, Enclosed.

Except where a toilet room is located outside a food establishment and does not open directly into the food establishment such as a toilet room that is provided by the management of a shopping mall, a toilet room located on the premises shall be completely enclosed and provided with a tight-fitting and self-closing door.

6-202.15 Outer Openings, Protected.

(A) Except as specified in ¶¶ (B), (C), and (E) and under ¶ (D) of this section, outer openings of a food establishment shall be protected against the entry of insects and rodents by:

- (1) Filling or closing holes and other gaps along floors, walls, and ceilings;
- (2) Closed, tight-fitting windows; and
- (3) Solid, self-closing, tight-fitting doors.

(B) *Paragraph (A) of this section does not apply if a food establishment opens into a larger structure, such as a mall, airport, or office building, or into an attached structure, such as a porch, and the outer openings from the larger or attached structure are protected against the entry of insects and rodents.*

(C) *Exterior doors used as exits need not be self-closing if they are:*

- (1) *Solid and tight-fitting;*
- (2) *Designated for use only when an emergency exists, by the fire protection authority that has jurisdiction over the food establishment; and*
- (3) *Limited-use so they are not used for entrance or exit from the building for purposes other than the designated emergency exit use.*

(D) Except as specified in ¶¶ (B) and (E) of this section, if the windows or doors of a food establishment, or of a larger structure within which a food establishment is located, are kept open for ventilation or other purposes or a temporary food establishment is not provided with windows and doors as specified under ¶ (A) of this section, the openings shall be protected against the entry of insects and rodents by:

- (1) 16 mesh to 25.4 mm (16 mesh to 1 inch) screens;
- (2) Properly designed and installed air curtains to control flying insects; or
- (3) Other effective means.

(E) Paragraph (D) of section 6-202.15 does not apply:

- (1) If flying insects or other pests are absent due to the location of the establishment, the weather, or other limiting condition; and
- (2) The establishment develops a pest management plan to control the presence of flying insects or other pests. The pest management plan must be approved by the regulatory authority prior to implementation.^{Pf}

6-202.16 Exterior Walls and Roofs, Protective Barrier.

Perimeter walls and roofs of a food establishment shall effectively protect the establishment from the weather and the entry of insects, rodents, and other animals.

6-202.17 Outdoor Food Vending Areas, Overhead Protection.

Except for machines that vend canned beverages, if located outside, a machine used to vend food shall be provided with overhead protection.

6-202.18 Outdoor Servicing Areas, Overhead Protection.

Except for areas used only for the loading of water or the discharge of sewage and other liquid waste, through the use of a closed system of hoses, servicing areas shall be provided with overhead protection.

6-202.19 Outdoor Walking and Driving Surfaces, Graded to Drain.

Exterior walking and driving surfaces shall be graded to drain if required by law.

6-202.110 Outdoor Refuse Areas, Curbed and Graded to Drain.

Outdoor refuse areas shall be constructed in accordance with law and shall be designed and maintained to prevent the accumulation of liquid waste that results from the refuse and from cleaning the area and waste receptacles.

6-202.111 Private Homes and Living or Sleeping Quarters, Use Prohibition.

Except under a domestic kitchen license issued by the Oregon Department of Agriculture, a private home, a room used as living or sleeping quarters, or an area directly opening into a room used as living or sleeping quarters may not be used for conducting food establishment operations.^P

6-202.112 Living or Sleeping Quarters, Separation.

Living or sleeping quarters located on the premises of a food establishment such as those provided for lodging registration clerks or resident managers shall be separated from rooms and areas used for food establishment operations by complete partitioning and solid self-closing doors.

6.3 NUMBERS AND CAPACITIES

- Subparts 6-301 Handwashing Sinks**
- 6-302 Toilets and Urinals**
- 6-303 Lighting**
- 6-304 Ventilation**
- 6-305 Dressing Areas and Lockers**
- 6-306 Service Sinks**

6-301.10 Minimum Number.

Handwashing facilities shall be provided as specified under § 5-203.11.

6-301.11 Handwashing Cleanser, Availability.

Each handwashing sink or group of 2 adjacent handwashing sinks shall be provided with a supply of hand cleaning liquid, powder, or bar soap. ^{Pf}

6-301.12 Hand Drying Provision.

Each handwashing sink or group of adjacent handwashing sinks shall be provided with:

- (A) Individual, disposable towels; ^{Pf}
- (B) A continuous towel system that supplies the user with a clean towel; ^{Pf} or
- (C) A heated-air hand drying device; ^{Pf} or
- (D) A hand drying device that employs an air-knife system that delivers high velocity, pressurized air at ambient temperatures. ^{Pf}

6-301.13 Handwashing Aids and Devices, Use Restrictions.

A sink used for food preparation or utensil washing, or a service sink or curbed cleaning facility used for the disposal of mop water or similar wastes, may not be provided with the handwashing aids and devices required for a handwashing sink as specified under §§ 6-301.11 and 6-301.12 and ¶ 5-501.16(C).

6-301.14 Handwashing Signage.

A sign or poster that notifies food employees to wash their hands shall be provided at all handwashing sinks used by food employees and shall be clearly visible to food employees.

6-301.20 Disposable Towels, Waste Receptacle.

A handwashing sink or group of adjacent handwashing sinks that is provided with disposable towels shall be provided with a waste receptacle as specified under ¶ 5-501.16(C).

6-302.10 Minimum Number.

Toilets and urinals shall be provided as specified under § 5-203.12.

6-302.11 Toilet Tissue, Availability.

A supply of toilet tissue shall be available at each toilet. ^{Pf}

6-303.11 Intensity.

The light intensity shall be:

- (A) At least 108 lux (10 foot candles) at a distance of 75 cm (30 inches) above the floor, in walk-in refrigeration units and dry food storage areas and in other areas and rooms during periods of cleaning;

(B) At least 215 lux (20 foot candles):

- (1) At a surface where food is provided for consumer self-service such as buffets and salad bars or where fresh produce or packaged foods are sold or offered for consumption,
- (2) Inside equipment such as reach-in and under-counter refrigerators; and
- (3) At a distance of 75 cm (30 inches) above the floor in areas used for handwashing, warewashing, and equipment and utensil storage, and in toilet rooms; and

(C) At least 540 lux (50 foot candles) at a surface where a food employee is working with food or working with utensils or equipment such as knives, slicers, grinders, or saws where employee safety is a factor.

6-304.11 Mechanical.

If necessary to keep rooms free of excessive heat, steam, condensation, vapors, obnoxious odors, smoke, and fumes, mechanical ventilation of sufficient capacity shall be provided. For mobile food units, violations of this section shall be considered a priority foundation item.

6-305.11 Designation.

(A) Dressing rooms or dressing areas shall be designated if employees routinely change their clothes in the establishment.

(B) Lockers or other suitable facilities shall be provided for the orderly storage of employees' clothing and other possessions.

6-306.10 Availability.

A service sink or curbed cleaning facility shall be provided as specified under § 5-203.13(A).

6-4 LOCATION AND PLACEMENT

- | | |
|-----------------|---|
| Subparts | 6-401 Handwashing Sinks |
| | 6-402 Toilet Rooms |
| | 6-403 Employee Accommodations |
| | 6-404 Distressed Merchandise |
| | 6-405 Refuse, Recyclables, and Returnables |

6-401.10 Conveniently Located.

Handwashing sinks shall be conveniently located as specified under § 5-204.11.

6-402.11 Convenience and Accessibility.

(A) Except for ¶¶ (B) through (F) of this section, toilet rooms shall be conveniently located and accessible to employees during all hours of operation and shall be an integral part of the building.

(B) A food service establishment may be approved without an integral toilet room under the following conditions:

- (1) An integral toilet room is not required by law; and
- (2) A toilet room is located within 500 feet of the food establishment; and
- (3) A written agreement is in place that allows the use of the toilet room; or
- (4) The food service establishment is located in an outdoor mall or shopping center.

(C) Toilet facilities for the customer are required only in establishments constructed or extensively remodeled after May 11, 1974,

(D) Food establishments limited to drive-in or handout service are not required to provide toilet rooms facilities for the customer.

(E) For mobile food units:

- (1) On board toilet facilities are not applicable to most mobile food units. If the unit is not so equipped, then the mobile food unit must operate within one-quarter mile or a five-minute walk of an accessible restroom facility. New mobile food units first licensed on or after February 1, 2020 must be located within 500 feet of an accessible restroom. Mobile food units that operate on a designated route, that do not stop at a fixed location for more than two hours during the workday or are operating in conjunction with an event are exempt from this subparagraph.
- (2) Mobile food units that do not provide on board restroom facilities must have restroom facilities that shall be accessible to employees during all hours of operation. The restroom facilities must have a handwashing system that meets the requirements of sections 5-202.12, 6-301.11, 6-301.12, 6-301.20 and 6-302.11. Employees may use a restroom located in a private home or a portable toilet to satisfy this requirement.

(F) Food service establishments that are constructed in or adjacent to a single family residence are not required to provide a separate restroom for employees, if a restroom in the residence is available during all hours of operation. The restroom facility must meet the requirements of sections 5-202.12, 6-301.11, 6-301.12, 6-301.20 and 6-302.11.

6-403.11 Designated Areas.

(A) Areas designated for employees to eat, drink, and use tobacco shall be located so that food, equipment, linens, and single-service and single-use articles are protected from contamination.

(B) Lockers or other suitable facilities shall be located in a designated room or area where contamination of food, equipment, utensils, linens, and single-service and single-use articles cannot occur.

6-404.11 Segregation and Location.

Products that are held by the permit holder for credit, redemption, or return to the distributor, such as damaged, spoiled, or recalled products, shall be segregated and held in designated areas that are separated from food, equipment, utensils, linens, and single-service and single-use articles.^{Pf}

6-405.10 Receptacles, Waste Handling Units, and Designated Storage Areas.

Units, receptacles, and areas designated for storage of refuse and recyclable and returnable containers shall be located as specified under § 5-501.19.

6-5 MAINTENANCE AND OPERATION

Subpart 6-501 Premises, Structures, Attachments, and Fixtures - Methods

6-501.11 Repairing.

Physical facilities shall be maintained in good repair.

6-501.12 Cleaning, Frequency and Restrictions.

(A) Physical facilities shall be cleaned as often as necessary to keep them clean.

(B) *Except for cleaning that is necessary due to a spill or other accident*, cleaning shall be done during periods when the least amount of food is exposed such as after closing.

6-501.13 Cleaning Floors, Dustless Methods.

(A) Except as specified in ¶ (B) of this section, only dustless methods of cleaning shall be used, such as wet cleaning, vacuum cleaning, mopping with treated dust mops, or sweeping using a broom and dust-arresting compounds.

(B) *Spills or drippage on floors that occur between normal floor cleaning times may be cleaned:*

(1) Without the use of dust-arresting compounds; and

(2) In the case of liquid spills or drippage, with the use of a small amount of absorbent compound such as sawdust or diatomaceous earth applied immediately before spot cleaning.

6-501.14 Cleaning Ventilation Systems, Nuisance and Discharge Prohibition.

(A) Intake and exhaust air ducts shall be cleaned and filters changed so they are not a source of contamination by dust, dirt, and other materials.

(B) If vented to the outside, ventilation systems may not create a public health hazard or nuisance or unlawful discharge.

6-501.15 Cleaning Maintenance Tools, Preventing Contamination.

Food preparation sinks, handwashing sinks, and warewashing equipment may not be used for the cleaning of maintenance tools, the preparation or holding of maintenance materials, or the disposal of mop water and similar liquid wastes.^{Pf}

6-501.16 Drying Mops.

After use, mops shall be placed in a position that allows them to air-dry without soiling walls, equipment, or supplies.

6-501.17 Absorbent Materials on Floors, Use Limitation.

Except as specified in ¶ 6-501.13(B), sawdust, wood shavings, granular salt, baked clay, diatomaceous earth, or similar materials may not be used on floors.

6-501.18 Cleaning of Plumbing Fixtures

Plumbing fixtures such as handwashing sinks, toilets, and urinals shall be cleaned as often as necessary to keep them clean.

6-501.19 Closing Toilet Room Doors.

Except during cleaning and maintenance operations, toilet room doors as specified under § 6-202.14 shall be kept closed.

6-501.110 Using Dressing Rooms and Lockers.

(A) Dressing rooms shall be used by employees if the employees regularly change their clothes in the establishment.

(B) Lockers or other suitable facilities shall be used for the orderly storage of employee clothing and other possessions.

6-501.111 Controlling Pests.

The premises shall be maintained free of insects, rodents, and other pests.^{Pf} The presence of insects, rodents, and other pests shall be controlled to minimize their presence on the premises by:

(A) Routinely inspecting incoming shipments of food and supplies;

(B) Routinely inspecting the premises for evidence of pests;

(C) Using methods, if pests are found, such as trapping devices or other means of pest control as specified under §§ 7-202.12, 7-206.12, and 7-206.13;^{Pf} and

(D) Eliminating harborage conditions.

6-501.112 Removing Dead or Trapped Birds, Insects, Rodents, and Other Pests.

Dead or trapped birds, insects, rodents, and other pests shall be removed from control devices and the premises at a frequency that prevents their accumulation, decomposition, or the attraction of pests.

6-501.113 Storing Maintenance Tools.

Maintenance tools such as brooms, mops, vacuum cleaners, and similar items shall be:

(A) Stored so they do not contaminate food, equipment, utensils, linens, and single-service and single-use articles; and

(B) Stored in an orderly manner that facilitates cleaning the area used for storing the maintenance tools.

6-501.114 Maintaining Premises, Unnecessary Items and Litter.

The premises shall be free of:

(A) Items that are unnecessary to the operation or maintenance of the establishment such as equipment that is nonfunctional or no longer used; and

(B) Litter.

6-501.115 Prohibiting Animals.

(A) Except as specified in ¶ (B), (C), (D) and (E) of this section, live animals may not be allowed on the premises of a food establishment.^{Pf}

(B) A food establishment shall permit the use of a service animal by an individual with a disability on its premises unless the service animal poses a direct threat to the health and safety of others.

(1) For purposes of section 6-501.115 the term “direct threat” means a significant risk to the health or safety of others that cannot be eliminated by modification of policies, practices, or procedures or by provision of auxiliary aids or services.

(2) In determining whether a service animal poses a direct threat to the health or safety of others, a food establishment must make an individualized assessment, based on reasonable judgment that relies on the best available objective evidence, to ascertain: The nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk.

(3) A food establishment may ask an individual with a disability to remove a service animal from the premises if:

(a) The animal is out of control and the animal’s handler does not take effective action to control it; or

(b) The animal is not housebroken.

(C) Live animals may be allowed in the following situations if the contamination of food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles can not result:

(1) Edible fish or decorative fish in aquariums, shellfish or crustacea on ice or under refrigeration, and shellfish and crustacean in display tank systems;

(2) Patrol dogs accompanying police or security officers in offices and dining, sales, and storage areas, and sentry dogs running loose in outside fenced areas;

- (3) *Pets in the common dining areas of group residences at times other than during meals if:*
- (a) *Effective partitioning and self-closing doors separate the commons from food storage or food preparation areas,*
 - (b) *Condiments, equipment, and utensils are stored in enclosed cabinets or removed from the common dining areas when pets are present, and*
 - (c) *Dining areas including tables, countertops, and similar surfaces are effectively cleaned before the next meal service; and*
 - (d) *In areas that are not used for food preparation, storage, sales, display, or dining, in which there are caged animals or animals that are similarly restricted, such as in a variety store that sells pets or a tourist park that displays animals.*
- (4) *In areas that are not used for food preparation, storage, sales, display, or dining, in which there are caged animals or animals that are similarly restricted, such as in a variety store that sells pets or a tourist park that displays animals.*
- (D) *Live or dead fish bait may be stored if contamination of food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles cannot result.*
- (E) Pet dogs may be allowed in outside seating areas of a food establishment under the following conditions:
- (1) The food establishment prepares written procedures that include:
 - (a) A diagram of the outdoor area to be designated as available to consumers with pet dogs;^{Pf}
 - (b) The establishment's procedure for assuring that employees do not touch, pet or otherwise handle pet dogs and for immediately cleaning accidents involving dog waste. The procedure must also describe the location of materials and equipment necessary to clean up accidents involving dog waste;^{Pf} and
 - (c) The establishment's procedure for notifying employees and consumers of the requirements of this paragraph.^{Pf}
 - (2) Pet dogs may not come into contact with serving dishes, utensils and tableware. Pet dogs are also not allowed on chairs, tables and other furnishings.^{Pf}
 - (3) Employees and consumers may not provide food to pet dogs.^{Pf}
 - (4) Pet dogs must be on a leash and under control of the consumer at all times.^{Pf}
 - (5) At no time may pet dogs be permitted to travel through the indoor or non-designated outdoor portions of the food establishment.^{Pf}

Chapter 7
Poisonous or Toxic Materials

Parts

- 7-1 LABELING AND IDENTIFICATION**
- 7-2 OPERATIONAL SUPPLIES AND APPLICATIONS**
- 7-3 STOCK AND RETAIL SALE**

7-1 LABELING AND IDENTIFICATION

- Subparts 7-101 Original Containers**
- 7-102 Working Containers**

7-101.11 Identifying Information, Prominence.

Containers of poisonous or toxic materials and personal care items shall bear a legible manufacturer's label.^{Pf}

7-102.11 Common Name.

Working containers used for storing poisonous or toxic materials such as cleaners and sanitizers taken from bulk supplies shall be clearly and individually identified with the common name of the material.^{Pf}

7-2 OPERATIONAL SUPPLIES AND APPLICATIONS

- Subparts 7-201 Storage**
- 7-202 Presence and Use**
- 7-203 Container Prohibitions**
- 7-204 Chemicals**
- 7-205 Lubricants**
- 7-206 Pesticides**
- 7-207 Medicines**
- 7-208 First Aid Supplies**
- 7-209 Other Personal Care Items**

7-201.11 Separation.

Poisonous or toxic materials shall be stored so they cannot contaminate food, equipment, utensils, linens, and single-service and single-use articles by:

- (A) Separating the poisonous or toxic materials by spacing or partitioning;^P and
- (B) Locating the poisonous or toxic materials in an area that is not above food, equipment, utensils, linens, and single-service or single-use articles. *This paragraph does not apply to equipment and utensil cleaners and sanitizers that are stored in warewashing areas for availability and convenience if the materials are stored to prevent contamination of food, equipment, utensils, linens, and single-service and single-use articles.*^P

7-202.11 Restriction.

(A) Only those poisonous or toxic materials that are required for the operation and maintenance of a food establishment, such as for the cleaning and sanitizing of equipment and utensils and the control of insects and rodents, shall be allowed in a food establishment.^{Pf}

(B) *Paragraph (A) of this section does not apply to packaged poisonous or toxic materials that are for retail sale.*

7-202.12 Conditions of Use.

Poisonous or toxic materials shall be:

(A) Used according to:

- (1) Law and this Code,
- (2) Manufacturer's use directions included in labeling, and, for a pesticide, manufacturer's label instructions that state that use is allowed in a food establishment,^P
- (3) The conditions of certification, if certification is required, for use of the pest control materials,^P and
- (4) Additional conditions that may be established by the regulatory authority;^P and

(B) Applied so that:

- (1) A hazard to employees or other persons is not constituted,^P and
- (2) Contamination including toxic residues due to drip, drain, fog, splash or spray on food, equipment, utensils, linens, and single-service and single-use articles is prevented, and for a restricted use pesticide, this is achieved by:^P
 - (a) Removing the items,^P
 - (b) Covering the items with impermeable covers,^P or
 - (c) Taking other appropriate preventive actions,^P and
 - (d) Cleaning and sanitizing equipment and utensils after the application.^P

(C) A restricted use pesticide shall be applied only by an applicator certified as defined in 7 USC 136 Definitions, (e) Certified Applicator, of the Federal Insecticide, Fungicide, and Rodenticide Act, or a person under the direct supervision of a certified applicator.^{Pf}

7-203.11 Poisonous or Toxic Material Containers.

A container previously used to store poisonous or toxic materials may not be used to store, transport, or dispense food.^P

7-204.11 Sanitizers, Criteria.

Chemical sanitizers and other chemical antimicrobials applied to food-contact surfaces shall meet the requirements specified in 40 CFR 180.940 Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (food-contact surface sanitizing solutions).^P

7-204.12 Chemicals for Washing Fruits and Vegetables, Criteria.

(A) Chemicals used to wash or peel raw, whole fruits and vegetables shall meet the requirements specified in 21 CFR 173.315 Chemicals used in washing or to assist in the peeling of fruits and vegetables.^P

(B) Ozone as an antimicrobial agent used in the treatment, storage, and processing of fruits and vegetables in a food establishment shall meet the requirements specified in 21 CFR 173.368 Ozone.

7-204.13 Boiler Water Additives, Criteria.

Chemicals used as boiler water additives shall meet the requirements specified in 21 CFR 173.310 Boiler Water Additives.^P

7-204.14 Drying Agents, Criteria.

Drying agents used in conjunction with sanitization shall:

(A) Contain only components that are listed as one of the following:

- (1) Generally recognized as safe for use in food as specified in 21 CFR 182 - Substances Generally Recognized as Safe, or 21 CFR 184 - Direct Food Substances Affirmed as Generally Recognized as Safe,^P
- (2) Generally recognized as safe for the intended use as specified in 21 CFR 186 - Indirect Food Substances Affirmed as Generally Recognized as Safe,^P
- (3) Approved for use as a drying agent under a prior sanction specified in 21 CFR 181 - Prior-Sanctioned Food Ingredients,^P
- (4) Specifically regulated as an indirect food additive for use as a drying agent as specified in 21 CFR Parts 175-178,^P or
- (5) Approved for use as a drying agent under the threshold of regulation process established by 21 CFR 170.39 Threshold of regulation for substances used in food-contact articles;^P and

(B) When sanitization is with chemicals, the approval required under Subparagraph (A)(3) or (A)(5) of this section or the regulation as an indirect food additive required under Subparagraph (A)(4) of this section, shall be specifically for use with chemical sanitizing solutions.^P

7-205.11 Incidental Food Contact, Criteria.

Lubricants shall meet the requirements specified in 21 CFR 178.3570 Lubricants with incidental food contact, if they are used on food-contact surfaces, on bearings and gears located on or within food-contact surfaces, or on bearings and gears that are located so that lubricants may leak, drip, or be forced into food or onto food-contact surfaces.^P

7-206.11 Restricted Use Pesticides, Criteria.

Restricted use pesticides specified under ¶ 7-202.12(C) shall meet the requirements specified in 40 CFR 152 Subpart I - Classification of Pesticides.^P

7-206.12 Rodent Bait Stations.

Rodent bait shall be contained in a covered, tamper-resistant bait station. ^P

7-206.13 Tracking Powders, Pest Control and Monitoring.

(A) Except as specified in ¶ (B) of this section, a tracking powder pesticide may not be used in a food establishment. ^P

(B) If used, a nontoxic tracking powder such as talcum or flour may not contaminate food, equipment, utensils, linens, and single-service and single-use articles.

7-207.11 Restriction and Storage.

(A) *Except for medicines that are stored or displayed for retail sale*, only those medicines that are necessary for the health of employees shall be allowed in a food establishment. ^{Pf}

(B) Medicines that are in a food establishment for the employees' use shall be labeled as specified under § 7-101.11 and located to prevent the contamination of food, equipment, utensils, linens, and single-service and single-use articles. ^P

7-207.12 Refrigerated Medicines, Storage.

Medicines belonging to employees or to children in a day care center that require refrigeration and are stored in a food refrigerator shall be:

(A) Stored in a package or container and kept inside a covered, leakproof container that is identified as a container for the storage of medicines;^P and

(B) Located so they are inaccessible to children. ^P

7-208.11 Storage.

First aid supplies that are in a food establishment for the employees' use shall be:

(A) Labeled as specified under § 7-101.11;^{Pf} and

(B) Stored in a kit or a container that is located to prevent the contamination of food, equipment, utensils, and linens, and single-service and single-use articles.^P

7-209.11 Storage.

Except as specified under §§ 7-207.12 and 7-208.11, employees shall store their personal care items in facilities as specified under ¶ 6-305.11(B).

7-3 STOCK AND RETAIL SALE

Subpart 7-301 Storage and Display

7-301.11 Separation.

Poisonous or toxic materials shall be stored and displayed for retail sale so they cannot contaminate food, equipment, utensils, linens, and single-service and single-use articles by:

(A) Separating the poisonous or toxic materials by spacing or partitioning;^P and

(B) Locating the poisonous or toxic materials in an area that is not above food, equipment, utensils, linens, and single-service or single-use articles.^P

Chapter 8 Compliance and Enforcement

Parts

- 8-1 CODE APPLICABILITY**
- 8-2 PLAN SUBMISSION AND APPROVAL**
- 8-3 PERMIT TO OPERATE**
- 8-4 INSPECTION AND CORRECTION OF VIOLATIONS**
- 8-5 PREVENTION OF FOODBORNE DISEASE TRANSMISSION BY EMPLOYEES**
- 8-6 CONSTITUTIONAL PROTECTION**
- 8-7 NOTICES**
- 8-8 REMEDIES**

8-1 CODE APPLICABILITY

- Subparts 8-101 Use for Intended Purpose**
- 8-102 Additional Requirements**
- 8-103 Variances**

8-101.10 Public Health Protection.

(A) The regulatory authority shall apply this Code to promote its underlying purpose, as specified in § 1-102.10, of safeguarding public health and ensuring that food is safe, unadulterated, and honestly presented when offered to the consumer.

(B) In enforcing the provisions of this Code, the regulatory authority shall assess existing facilities or equipment that were in use before the effective date of this Code based on the following considerations:

- (1) Whether the facilities or equipment are in good repair and capable of being maintained in a sanitary condition;
- (2) Whether food-contact surfaces comply with Subpart 4-101;
- (3) Whether the capacities of cooling, heating, and holding equipment are sufficient to comply with § 4-301.11; and
- (4) The existence of a documented agreement with the permit holder that the facilities or equipment will be replaced as specified under ¶ 8-304.11(G).

(C) Plans submitted shall be reviewed and commented on by an environmental health specialist registered in accordance with ORS chapter 700.

8-102.10 Preventing Health Hazards, Provision for Conditions Not Addressed.

(A) If necessary to protect against public health hazards or nuisances, the regulatory authority may impose specific requirements in addition to the requirements contained in this Code that are authorized by law.

(B) The regulatory authority shall document the conditions that necessitate the imposition of additional requirements and the underlying public health rationale. The documentation shall be provided to the permit applicant or permit holder and a copy shall be maintained in the regulatory authority's file for the food establishment.

8-103.10 Modifications and Waivers.

(A) The Department may grant a variance from requirements of this code as follows:

- (1) Where it is demonstrated to the satisfaction of the Department that strict compliance with the rule may be highly burdensome or impractical due to special condition or cause;
- (2) Where the public or private interest in the granting of the variance is found by the Department to clearly outweigh the interest of the application of uniform rules; and
- (3) Where such alternative measures are provided which in the opinion of the Department will provide adequate public health and safety protection.

(B) Such variance authority is not conferred upon any Local Public Health Authority notwithstanding contractual authority in administration and enforcement of the food service statutes and rules;

(C) The applicant must complete the required application, pay the required fee and include all necessary information to support the variance request, which may include, but is not limited to, required testing, challenge data and research results;

- (D) If a variance is granted, the regulatory authority shall retain the information specified under § 8-103.11 in its records for the food establishment;
- (E) The Department shall review variances at least triennially;
- (F) Revocation or denial of the variance request shall be subject to the appeal process provided under ORS chapter 183.

8-103.11 Documentation of Proposed Variance and Justification.

Before a variance from a requirement of this Code is approved, the information that shall be provided by the person requesting the variance and retained in the regulatory authority's file on the food establishment includes:

- (A) A statement of the proposed variance of the Code requirement citing relevant Code section numbers;^{Pf}
- (B) An analysis of the rationale for how the potential public health hazards and nuisances addressed by the relevant Code sections will be alternatively addressed by the proposal;^{Pf} and
- (C) A HACCP plan if required as specified under ¶ 8-201.13(A) that includes the information specified under § 8-201.14 as it is relevant to the variance requested.^{Pf}
- (D) If required by the regulatory authority, provide documentation that a recognized process authority has reviewed the variance request and approved the process. Any necessary or required training or documentation must be successfully completed prior to variance approval.^{Pf}

8-103.12 Conformance with Approved Procedures.

If the regulatory authority grants a variance as specified in § 8-103.10, or a HACCP plan is otherwise required as specified under § 8-201.13, the permit holder shall:

- (A) Comply with the HACCP plans and procedures that are submitted as specified under § 8-201.14 and approved as a basis for the modification or waiver;^P and
- (B) Maintain and provide to the regulatory authority, upon request, records specified under ¶¶ 8-201.14(D) and (E) that demonstrate that the following are routinely employed;
 - (1) Procedures for monitoring critical control points,^{Pf}
 - (2) Monitoring of the critical control points,^{Pf}
 - (3) Verification of the effectiveness of an operation or process,^{Pf} and
 - (4) Necessary corrective actions if there is failure at a critical control point.^{Pf}

8-2 PLAN SUBMISSION AND APPROVAL

- Subparts 8-201 Facility and Operating Plans**
- 8-202 Confidentiality**
- 8-203 Construction Inspection and Approval**

8-201.11 When Plans Are Required.

A permit applicant or permit holder shall submit to the regulatory authority properly prepared plans and specifications for review and approval before:

- (A) The construction of a food establishment;^{Pf}
- (B) The conversion of an existing structure for use as a food establishment;^{Pf} or
- (C) The remodeling of a food establishment or a change of type of food establishment or food operation as specified under ¶ 8-302.14(C) if the regulatory authority determines that plans and specifications are necessary to ensure compliance with this Code.^{Pf}
- (D) Notwithstanding paragraphs (A) through (C) of this section, vending machines having the sanitary approval of the National Automatic Merchandizing Association shall be exempt from the requirement to submit plans for review and approval.

8-201.12 Contents of the Plans and Specifications.

The plans and specifications for a food establishment, including a food establishment specified under § 8-201.13, shall include, as required by the regulatory authority based on the type of operation, type of food preparation, and foods prepared, the following information to demonstrate conformance with Code provisions:

- (A) Intended menu;
- (B) Anticipated volume of food to be stored, prepared, and sold or served;
- (C) Proposed layout, mechanical schematics, construction materials, and finish schedules;
- (D) Proposed equipment types, manufacturers, model numbers, locations, dimensions, performance capacities, and installation specifications;

- (E) Evidence that standard procedures that ensure compliance with the requirements of this Code are developed or are being developed; and
- (F) Other information that may be required by the regulatory authority for the proper review of the proposed construction, conversion or modification, and procedures for operating a food establishment.

8-201.13 When a HACCP Plan is Required.

- (A) Before engaging in an activity that requires a HACCP plan, a permit applicant or permit holder shall submit to the regulatory authority for approval a properly prepared HACCP plan as specified under § 8-201.14 and the relevant provisions of this Code if:
- (1) Submission of a HACCP plan is required according to law;
 - (2) A variance is required as specified under subparagraph 3-401.11(D)(4), section 3-502.11, or paragraph 4-204.110(B); or
 - (3) The regulatory authority determines that a food preparation or processing method requires a variance based on a plan submittal specified under § 8-201.12, an inspectional finding, or a variance request.
- (B) A permit applicant or permit holder shall have a properly prepared HACCP plan as specified under § 3-502.12.

8-201.14 Contents of a HACCP Plan.

- For a food establishment that is required under § 8-201.13 to have a HACCP plan, the plan and specifications shall indicate:
- (A) A categorization of the types of potentially hazardous foods (time/temperature control for safety foods) that are specified in the menu such as soups and sauces, salads, and bulk, solid foods such as meat roasts, or of other foods that are specified by the regulatory authority; ^{Pf}
- (B) A flow diagram by specific food or category type identifying critical control points and providing information on the following:
- (1) Ingredients, materials, and equipment used in the preparation of that food, ^{Pf} and
 - (2) Formulations or recipes that delineate methods and procedural control measures that address the food safety concerns involved; ^{Pf}
- (C) Food employee and supervisory training plan that addresses the food safety issues of concern; ^{Pf}
- (D) A statement of standard operating procedures for the plan under consideration including clearly identifying:
- (1) Each critical control point, ^{Pf}
 - (2) The critical limits for each critical control point, ^{Pf}
 - (3) The method and frequency for monitoring and controlling each critical control point by the food employee designated by the person in charge, ^{Pf}
 - (4) The method and frequency for the person in charge to routinely verify that the food employee is following standard operating procedures and monitoring critical control points, ^{Pf}
 - (5) Action to be taken by the person in charge if the critical limits for each critical control point are not met, ^{Pf} and
 - (6) Records to be maintained by the person in charge to demonstrate that the HACCP plan is properly operated and managed; ^{Pf} and
- (E) Additional scientific data or other information, as required by the regulatory authority, supporting the determination that food safety is not compromised by the proposal. ^{Pf}

8-202.10 Trade Secrets.

The regulatory authority shall treat as confidential in accordance with law, information that meets the criteria specified in law for a trade secret and is contained on inspection report forms and in the plans and specifications submitted as specified under §§ 8-201.12 and 8-201.14.

8-203.10 Preoperational Inspections.

The regulatory authority shall conduct one or more preoperational inspections to verify that the food establishment is constructed and equipped in accordance with the approved plans and approved modifications of those plans, has established standard operating procedures as specified under ¶ 8-201.12(E), and is in compliance with law and this Code.

8-3 PERMIT TO OPERATE

- Subparts 8-301 Requirement**
- 8-302 Application Procedure**
- 8-303 Issuance**
- 8-304 Conditions of Retention**

8-301.11 Prerequisite for Operation.

A person may not operate a food establishment without a valid permit to operate issued by the regulatory authority.

8-302.11 Submission 30 Calendar Days Before Proposed Opening. [Deleted]

8-302.12 Form of Submission.

A person desiring to operate a food establishment shall submit to the regulatory authority a written application for a permit on a form provided by the regulatory authority.

8-302.13 Qualifications and Responsibilities of Applicants.

To qualify for a permit, an applicant shall:

- (A) Be an owner of the food establishment or an officer of the legal ownership;
- (B) Comply with the requirements of this Code;
- (C) As specified under § 8-402.11, agree to allow access to the food establishment and to provide required information; and
- (D) Pay the applicable permit fees at the time the application is submitted.

8-302.14 Contents of the Application.

The application shall include:

- (A) The name, mailing address, telephone number, and signature of the person applying for the permit and the name, mailing address, and location of the food establishment;
- (B) Information specifying whether the food establishment is owned by an association, corporation, individual, partnership, or other legal entity;
- (C) A statement specifying whether the food establishment:
 - (1) Is mobile or stationary and temporary or permanent, and
 - (2) Is an operation that includes one or more of the following:
 - (a) Prepares, offers for sale, or serves potentially hazardous food:
 - (i) Only to order upon a consumer's request,
 - (ii) In advance in quantities based on projected consumer demand and discards food that is not sold or served at an approved frequency, or
 - (iii) Using time as the public health control as specified under § 3-501.19,
 - (b) Prepares potentially hazardous food in advance using a food preparation method that involves two or more steps which may include combining potentially hazardous ingredients; cooking; cooling; reheating; hot or cold holding; freezing; or thawing,
 - (c) Prepares food as specified under Subparagraph (C)(2)(b) of this section for delivery to and consumption at a location off the premises of the food establishment where it is prepared,
 - (d) Prepares food as specified under Subparagraph (C)(2)(b) of this section for service to a highly susceptible population,
 - (e) Prepares only food that is not potentially hazardous, or
 - (f) Does not prepare, but offers for sale only prepackaged food that is not potentially hazardous;
- (D) The name, title, address, and telephone number of the person directly responsible for the food establishment;
- (E) **[Deleted]**
- (F) The names, titles, and addresses of:
 - (1) The persons comprising the legal ownership as specified under ¶ (B) of this section including the owners and officers, and
 - (2) The local resident agent if one is required based on the type of legal ownership;

- (G) A statement signed by the applicant that:
 - (1) Attests to the accuracy of the information provided in the application, and
 - (2) Affirms that the applicant will:
 - (a) Comply with this Code, and
 - (b) Allow the regulatory authority access to the establishment as specified under § 8-402.11 and to the records specified under §§ 3-203.12 and 5-205.13 and Subparagraph 8-201.14(D)(6); and
- (H) Other information required by the regulatory authority.

8-303.10 New, Converted, or Remodeled Establishments.

For food establishments that are required to submit plans as specified under § 8-201.11 the regulatory authority shall issue a permit to the applicant after:

- (A) A properly completed application is submitted;
- (B) The required fee is submitted;
- (C) The required plans, specifications, and information are reviewed and approved; and
- (D) A preoperational inspection as specified in § 8-203.10 shows that the establishment is built or remodeled in accordance with the approved plans and specifications and that the establishment is in compliance with this Code.

8-303.20 Existing Establishments, Permit Renewal, and Change of Ownership.

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

8-303.30 Denial of Application for Permit, Notice.

If an application for a permit to operate is denied, the regulatory authority shall provide the applicant with a notice that includes:

- (A) The specific reasons and Code citations for the permit denial;
- (B) The actions, if any, that the applicant must take to qualify for a permit; and
- (C) Advisement of the applicant's right of appeal and the process and time frames for appeal that are provided under ORS chapter 183.

8-304.10 Responsibilities of the Regulatory Authority.

(A) At the time a permit is first issued, the regulatory authority shall provide to the permit holder information on how to obtain a copy of this Code so that the permit holder is notified of the compliance requirements and the conditions of retention, as specified under § 8-304.11, that are applicable to the permit.

(B) Failure to provide the information specified in ¶ (A) of this section does not prevent the regulatory authority from taking authorized action or seeking remedies if the permit holder fails to comply with this Code or an order, warning, or directive of the regulatory authority.

8-304.11 Responsibilities of the Permit Holder.

Upon acceptance of the permit issued by the regulatory authority, the permit holder in order to retain the permit shall:

- (A) Post the permit in a location in the food establishment that is conspicuous to consumers;
- (B) Comply with the provisions of this Code including the conditions of a granted variance as specified under § 8-103.12, and approved plans as specified under § 8-201.12;
- (C) If a food establishment is required under § 8-201.13 to operate under a HACCP plan, comply with the plan as specified under § 8-103.12;
- (D) Immediately contact the regulatory authority to report an illness of an employee as specified under § 2-201.11(B);
- (E) Immediately discontinue operations and notify the regulatory authority if an imminent health hazard may exist as specified under § 8-404.11;
- (F) Allow representatives of the regulatory authority access to the food establishment as specified under § 8-402.11;
- (G) Replace existing facilities and equipment specified in § 8-101.10 with facilities and equipment that comply with this Code if:
 - (1) The regulatory authority directs the replacement because the facilities and equipment constitute a public health hazard or nuisance or no longer comply with the criteria upon which the facilities and equipment were accepted,
 - (2) The regulatory authority directs the replacement to meet current code requirements after the food establishment has been closed for a minimum of six consecutive months. This provision also applies to mobile food units that were licensed prior to February 1, 2020, or
 - (3) The facilities and equipment are replaced in the normal course of operation;

- (H) Comply with directives of the regulatory authority including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives issued by the regulatory authority in regard to the permit holder's food establishment or in response to community emergencies;
- (I) Accept notices issued and served by the regulatory authority as may be authorized under ORS chapter 183 and chapter 624; and
- (J) Be subject to the administrative, civil, injunctive, and criminal remedies as may be authorized under ORS chapter 183 and chapter 624.

8-304.20 Permits Not Transferable.

A permit may not be transferred from one person to another person, from one food establishment to another, or from one type of operation to another if the food operation changes from the type of operation specified in the application as specified under ¶ 8-302.14(C) and the change in operation is not approved.

8-4 INSPECTION AND CORRECTION OF VIOLATIONS

- Subparts**
- 8-401 Frequency**
- 8-402 Access**
- 8-403 Report of Findings**
- 8-404 Imminent Health Hazard**
- 8-405 Priority and Priority Foundation Items**

8-401.10 Establishing Inspection Interval.

(A) Except as specified in ¶¶ (B) and (C) of this section, the regulatory authority shall inspect a food establishment at least once every 6 months.

(B) ~~[Deleted]~~

(C) For temporary food establishments:

- (1) Except for Subparagraph (C)(2) of this section, the regulatory authority shall inspect at least once during the operation of a temporary food establishment.
- (2) For benevolent single-event temporary food establishments, the regulatory authority shall either:
 - (a) Inspect, or
 - (b) Provide a consultation.

8-401.20 Performance- and Risk-Based. [Deleted]

8-402.10 Competency of Inspectors.

An authorized representative of the regulatory authority who inspects a food establishment or conducts plan review for compliance with this Code shall have the knowledge, skills, and ability to adequately perform the required duties.

8-402.11 Allowed at Reasonable Times after Due Notice.

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

8-402.20 Refusal, Notification of Right to Access, and Final Request for Access.

If a person denies access to the regulatory authority, the regulatory authority shall:

- (A) Inform the person that:
 - (1) The permit holder is required to allow access to the regulatory authority as specified under § 8-402.11 of this Code,
 - (2) Access is a condition of the acceptance and retention of a food establishment permit to operate as specified under ¶ 8-304.11(F), and
- (B) Make a final request for access.

8-402.30 Refusal, Reporting.

If after the regulatory authority presents credentials and provides notice as specified under § 8-402.11, explains the authority upon which access is requested, and makes a final request for access as specified in § 8-402.20, the person in charge continues to refuse access, the regulatory authority shall provide details of the denial of access on an inspection report form.

8-402.40 Inspection Order to Gain Access. [Deleted]

8-403.10 Documenting Information and Observations.

The regulatory authority shall document on an inspection report form:

- (A) Administrative information about the food establishment's legal identity, street and mailing addresses, type of establishment and operation as specified under ¶ 8-302.14(C), inspection date, and employee food handler certificates; and
- (B) Specific factual observations of violative conditions or other deviations from this Code that require correction by the permit holder including:

- (1) Failure of the person in charge to demonstrate the knowledge of foodborne illness prevention, application of HACCP principles, and the requirements of this Code specified under § 2-102.11,
- (2) Failure of food employees and the person in charge to demonstrate their knowledge of their responsibility to report a disease or medical condition as specified under §§ 2-201.11,
- (3) Nonconformance with priority items or priority foundation items of this Code,
- (4) Failure of the appropriate food employees to demonstrate their knowledge of, and ability to perform in accordance with, the procedural, monitoring, verification, and corrective action practices required by the regulatory authority as specified under § 8-103.12,
- (5) Failure of the person in charge to provide records required by the regulatory authority for determining conformance with a HACCP plan as specified under Subparagraph 8-201.14(D)(6), and
- (6) Nonconformance with critical limits of a HACCP plan.

8-403.20 Specifying Time Frame for Corrections.

The regulatory authority shall specify on the inspection report form the time frame for correction of the violations as specified under §§ 8-404.11, and 8-405.11.

8-403.30 Issuing Report and Obtaining Acknowledgment of Receipt.

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

8-403.40 Refusal to Sign Acknowledgment.

The regulatory authority shall:

- (A) Inform a person who declines to sign an acknowledgment of receipt of inspectional findings as specified in § 8-403.30 that:
 - (1) An acknowledgment of receipt is not an agreement with findings,
 - (2) Refusal to sign an acknowledgment of receipt will not affect the permit holder's obligation to correct the violations noted in the inspection report within the time frames specified, and
 - (3) A refusal to sign an acknowledgment of receipt is noted in the inspection report and conveyed to the regulatory authority's historical record for the food establishment; and
- (B) Make a final request that the person in charge sign an acknowledgment receipt of inspectional findings.

8-403.50 Public Information.

Except as specified in § 8-202.10, the regulatory authority shall treat the inspection report as a public document and shall make it available for disclosure to a person who requests it as provided in law.

8-404.11 Ceasing Operations and Reporting.

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

8-404.12 Resumption of Operations.

If operations are discontinued as specified under § 8-404.11 or otherwise according to law, the permit holder shall obtain approval from the regulatory authority before resuming operations.

8-405.11 Timely Correction.

(A) Except as specified in ¶ (B) of this section, a permit holder shall at the time of inspection correct a violation of a priority item or priority foundation item of this Code and implement corrective actions for a HACCP plan provision that is not in compliance with its critical limit.^{Pf}

(B) Considering the nature of the potential hazard involved and the complexity of the corrective action needed, the regulatory authority may agree to or specify a longer time frame, not to exceed 14 calendar days after the inspection, for the permit holder to correct violations of a priority item or priority foundation item or HACCP plan deviations.

8-405.20 Verification and Documentation of Correction.

(A) After observing at the time of inspection a correction of a violation of a priority or priority foundation item or HACCP plan deviation, the regulatory authority shall enter the violation and information about the corrective action on the inspection report.

(B) As specified under ¶ 8-405.11(B), after receiving notification that the permit holder has corrected a violation of a priority item or a priority foundation item or HACCP plan deviation, or at the end of the specified period of time, the regulatory authority shall verify correction of the violation, document the information on an inspection report, and enter the report in the regulatory authority's records.

8-406.11 Time Frame for Correction. [Deleted]

8-5 PREVENTION OF FOODBORNE DISEASE TRANSMISSION BY EMPLOYEES

Subpart 8-501 Investigation and Control

8-501.10 Obtaining Information: Personal History of Illness, Medical Examination, and Specimen Analysis.

The regulatory authority shall act when it has reasonable cause to believe that a food employee or conditional employee has possibly transmitted disease; may be infected with a disease in a communicable form that is transmissible through food; may be a carrier of infectious agents that cause a disease that is transmissible through food; or is affected with a boil, an infected wound, or acute respiratory infection, by:

(A) Securing a confidential medical history of the employee or conditional employee suspected of transmitting disease or making other investigations as deemed appropriate; and

(B) Requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected food employee and conditional employee.

8-501.20 Restriction or Exclusion of Food Employee, or Summary Suspension of Permit.

Based on the findings of an investigation related to a food employee or conditional employee who is suspected of being infected or diseased, the regulatory authority may issue an order to the suspected food employee, conditional employee or permit holder instituting one or more of the following control measures:

(A) Restricting the food employee or conditional employee;

(B) Excluding the food employee or conditional employee; or

(C) Closing the food establishment by summarily suspending a permit to operate as may be provided under ORS chapter 624.

8-501.30 Restriction or Exclusion Order: Warning or Hearing Not Required, Information Required in Order.

Based on the findings of the investigation as specified in § 8-501.10 and to control disease transmission, the regulatory authority may issue an order of restriction or exclusion to a suspected food employee or the permit holder without prior warning, notice of a hearing, or a hearing if the order:

(A) States the reasons for the restriction or exclusion that is ordered;

(B) States the evidence that the food employee or permit holder shall provide in order to demonstrate that the reasons for the restriction or exclusion are eliminated;

(C) States that the suspected food employee or the permit holder may request an appeal hearing by submitting a timely request as provided under ORS chapter 183; and

(D) Provides the name and address of the regulatory authority representative to whom a request for an appeal hearing may be made.

**DEPARTMENT OF HUMAN SERVICES
DIVISION 157
INSPECTION AND LICENSING PROCEDURE
RESTAURANTS AND BED AND BREAKFAST FACILITIES**

333-157-0000 Inspection Form Procedures

- (1) The Local Public Health Authority shall document violations observed during any sanitation inspection by including the following information on the form approved by the Authority:
 - (a) The number of the related item on the Inspection Form;
 - (b) The point value associated with the item including penalty additions;
 - (c) Oregon Administrative Rule or Oregon Revised Statute number violated; and
 - (d) A brief statement of the specific problem and required corrections.
- (2) Calculation of Points:
 - (a) Three point priority foundation items shall be given an additional three point weight when a repeat violation is observed;
 - (b) Five point priority items shall be given an additional five point weight when a repeat violation is observed;
 - (c) Additional points shall accumulate and be added to the value of uncorrected items that are repeat violations;
 - (d) Each three point priority foundation item can accumulate to six points.
 - (e) Each five point priority item can accumulate to 10 points.
- (3) Violations creating a potential danger to public health shall be recorded as in section (1) of this rule and shall specify:
 - (a) Any alternative procedure as may be approved, the time limit for its use, and that the alternative procedure must be implemented immediately; and
 - (b) The corrections to be made and the time limit by which the corrections shall be made. In the case where an alternative procedure has not been approved, the time limit by which the correction must be made shall be within but not to exceed 14 days.
- (4) Violations creating an imminent or present danger to public health shall be recorded as required in sections (1) and (3) of this rule except when no alternative procedure is approved, the correction shall be required immediately.
- (5) If a restaurant obtains a sanitation score of less than 70 upon an unannounced complete inspection, the operator or person in charge shall be notified by a statement on the inspection form that the restaurant shall be closed, if the score of another complete inspection conducted within 30 days is not 70 or above.
- (6) Violations creating a significantly increased risk for foodborne illness shall require a recheck inspection if found on consecutive complete inspections, and for the purposes of enforcement shall be considered uncorrected.
- (7) If a restaurant is ordered closed, the closure order as designated by the Authority shall be attached to the inspection form and delivered to the operator or person in charge.

333-157-0010 Approved Alternative Procedures

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

333-157-0020 Public Notice of Restaurant Sanitation

- (1) The notice of restaurant sanitation shall be based upon the sanitation score calculated on the inspection form at the end of each unannounced complete inspection and shall be posted at a customary entrance to the establishment. If, upon recheck inspection, any priority item or priority foundation item violation listed on the inspection form is not corrected within the designated time limit, the notice of restaurant sanitation posted at the end of the unannounced complete inspection shall be removed, the notice of closure posted, and closure action taken.
- (2) A notice of restaurant sanitation that states that the establishment "Complied with the Acceptable Sanitation Standards" shall be assigned to a restaurant that obtains a sanitation score of 70 or more in an unannounced complete inspection provided all priority item and priority foundation item violations have been corrected or remedied by approved alternative procedures. Upon recheck inspection, any uncorrected priority item and priority foundation item violations shall cause the notice of restaurant sanitation to be removed, the notice of closure to be posted, and closure action taken.

(3) A notice of restaurant sanitation that states that the establishment "Failed to Comply with the Acceptable Sanitation Standards" shall be assigned to a restaurant that obtains a sanitation score of less than 70 in an unannounced complete inspection provided all priority item and priority foundation item violations have been corrected or remedied by approved alternative procedures. Such a notice of restaurant sanitation shall remain until the facility is closed or until a sanitation score of 70 or more is obtained upon another inspection conducted within 30 days.

333-157-0025 Communication and Compliance Protocols

Communication and compliance protocols will be provided by the Assistant Director to operators of non-complying food service facilities. This communication will convey current and potential compliance actions, and will include the appropriate use of correspondence, meetings, and officials notices.

333-157-0027 Increased Inspection Schedule

(1) Any restaurant that fails to obtain a minimum acceptable sanitation score of 70 or more for two consecutive, unannounced semi-annual inspections shall be subject to an increased inspection schedule.

(2) Except as provided in section (4) of this rule, this schedule will consist of one complete unannounced inspection a quarter (three month period) as well as any re-check inspections required. This inspection schedule shall begin in the quarter immediately following the second consecutive score of less than 70.

(3) The increased inspection schedule will revert to semi-annual inspections after the facility has obtained four (4) consecutive scores of 70 or above.

(4) At the Assistant Director's option, one of the four required inspections may be an inspection using Hazard Analysis and Critical Control Point (HACCP) principles, as defined in these rules. HACCP based inspections may be announced.

Participation by a restaurant in a HACCP-based inspection shall be the equivalent of a score of 70 or above for the purposes of this rule.

(5) The inspecting agency may assess a fee for each quarterly inspection required under this rule of up to one-half of the annual licensing fee otherwise assessable to the restaurant.

333-157-0030 Closure of Restaurants

(1) If the Administrator closes a restaurant, a statement by the Authority ordering closure and specifying the reasons therefore, and signed by the Administrator, shall be attached to the inspection form and delivered to the operator or person in charge:

(a) When a restaurant is closed, the Administrator shall post the notice of closure at a customary entrance;

(b) No person except the Administrator shall remove or alter this notice;

(c) No person shall operate a restaurant that has been closed.

(2) If a violation which creates an imminent or present danger to public health is not corrected immediately or an approved alternative procedure is not initiated immediately by the operator, the restaurant shall be closed.

(3) If a violation which creates a potential danger to public health has not been corrected within the designated time limit, the restaurant shall be closed.

(4) When a restaurant has been closed because a priority item and priority foundation item violation(s) has not been corrected, it may be reopened after 24 hours if:

(a) A recheck inspection by the Administrator confirms that all priority item and priority foundation item violations have been corrected; and

(b) A closure dismissal order designated by the Authority is delivered to the operator or person in charge; and

(c) The closed sign previously posted is removed by the Administrator;

(d) A restaurant may be reopened earlier than 24 hours following a voluntary meeting attended by the restaurant operator or person in charge, the Administrator, and the inspecting Environmental Health Specialist, at which the provisions of subsections (4)(a) through (c) of this section are demonstrated to be met;

(e) A restaurant closed and reopened as described in this subsection shall be assigned a notice of restaurant sanitation based on the sanitation score of the unannounced complete inspection which identified the priority item and priority foundation item violations causing the closure.

(5) If a restaurant has obtained a sanitation score of less than 70 on two consecutive complete inspections conducted within 30 days as described in OAR 333-157-0000(5), it shall be closed.

(6) When a restaurant has been closed for failure to obtain a minimum acceptable sanitation score of 70 or more, it may be reopened after 24 hours if:

(a) The operator submits a written plan of correction, specifying the corrections to be made and time limits for their completion, which would achieve a sanitation score of 80 points by the next semi-annual inspection; and

(b) The plan of correction is approved by the Administrator; and

(c) A complete inspection after the restaurant has been closed produces a sanitation score of 70 or more.

(d) A closure dismissal order designated by the Authority is delivered to the operator or person in charge; and

- (e) The closed sign previously posted is removed by the Administrator;
 - (f) A restaurant may be reopened earlier than 24 hours following a voluntary meeting attended by the restaurant operator or person in charge, the Administrator, and the inspecting Environmental Health Specialist, at which the provision of subsections (6)(a) through (e) of this section are demonstrated to be met;
 - (g) A restaurant closed and reopened as described in this subsection shall be assigned a notice of restaurant sanitation based on the sanitation score of the complete inspection performed while the restaurant was closed.
- (7) Appeals of closures are contested cases pursuant to ORS chapter 183.
- (8) Operators whose facilities have been closed for failure to obtain a minimum acceptable sanitation score of 70 or more, or for failure to correct repeat priority item and priority foundation item violations must agree in writing, as part of reopening the restaurant, to:
- (a) Enroll in and successfully complete an approved food manager training course; or
 - (b) In the event that an extraordinary situation exists whereby an approved food manager training course is not available to the operator, the Administrator shall make provision for an alternative type of food manager training using criteria approved by the Authority.

333-157-0040 Display of Public Notice of Restaurant Sanitation

It shall be unlawful for any restaurant to display a Public Notice of Restaurant Sanitation other than the one awarded by the Administrator. It shall be unlawful for anyone except the Administrator to post, change, remove, or deface a Public Notice of Restaurant Sanitation.

333-157-0045 Civil Penalties

- (1) The Authority or a Local Public Health Authority may impose civil penalties on any person for the following willful violations:
- (a) Operation of a restaurant, bed and breakfast facility or vending machine without a current license to do so from the Authority or the Local Public Health Authority;
 - (b) Failure to cease operation of a restaurant, bed and breakfast facility or vending machine that has been closed due to uncorrected priority item violations. This authority shall be limited to those priority item violations identified as creating an imminent or present danger to public health and defined in OAR 333-150-0000 Section 1-201.10.
- (2) For the purposes of section (1) of this rule, the term 'willful' means intentional or deliberate.
- (3) The maximum civil penalty for each of the violations listed in section (1) of this rule is \$500 per day of violation.
- (4) Civil penalties shall be imposed in the manner provided by ORS chapter 183 or the equivalent.

333-157-0070 Licensing

Any license issued by the Authority pursuant to ORS chapter 624 shall expire and may be reinstated on December 31 of each year; except for temporary restaurant licenses issued pursuant to ORS 624.082, 624.084 and 624.086.

333-157-0073 Temporary Restaurant Definitions

- (1) "Intermittent temporary restaurant" means an establishment:
- (a) That operates temporarily at a specific location in connection with multiple public gatherings, entertainment events, food product promotions or other events, at least two of which are arranged for by different oversight organizations; and
 - (b) Where food is prepared or served for consumption by the public.
- (2) "Operational review" means the examination of a plan of operation for an establishment in order to ensure that the proposed operation conforms with applicable sanitation standards.
- (3) "Oversight organization" means an entity responsible for organizing, managing or otherwise arranging for a public gathering, entertainment event, food product promotion or other event, including but not limited to ensuring the availability of water, sewer and sanitation services.
- (4) "Seasonal temporary restaurant" means an establishment:
- (a) That operates at a specific location in connection with multiple public gatherings, entertainment events, food product promotions or other events that are arranged for by the same oversight organization; and
 - (b) Where food is prepared or served for consumption by the public.
- (5) "Single-event temporary restaurant" means an establishment:
- (a) That operates in connection with a single public gathering, entertainment event, food product promotion or other event; and
 - (b) Where food is prepared or served for consumption by the public.

(6) “Substantial menu alteration” means a change of menu that increases the complexity of the menu of a seasonal temporary restaurant and intermittent temporary restaurant operation. For purposes of these rules, an increase in complexity occurs when the menu moves from:

- (a) Service of ready-to-eat foods that requires no further preparation or cooking; to
- (b) Foods that are prepared or cooked on-site and served directly to the consumer that day; to
- (c) Foods that must be prepared in the operation in advance and reheated or cooled over the course of multiple days of operation.

333-157-0077 Temporary Restaurant Licensing and Inspection

- (1) A person may not operate a single-event, intermittent or seasonal temporary restaurant without first procuring a license to do so from the Local Public Health Authority.
- (2) (a) Application for an intermittent or seasonal temporary restaurant license shall be in writing in the form prescribed by the Authority and shall contain the name and address of the applicant, the specific location of the intermittent or seasonal temporary restaurant, a description of the public gatherings, entertainment events, food product promotions or other events to be served by the intermittent or seasonal temporary restaurant, an operational review and any other information the Authority may require. In addition to the application the applicant for an intermittent or seasonal temporary restaurant license shall pay to the Local Public Health Authority the appropriate license fee under ORS 624.490.
(b) The Local Public Health Authority shall issue a license to a benevolent organization to operate a single-event temporary restaurant if the benevolent organization has notified the Local Public Health Authority orally or in writing that the benevolent organization intends to operate a single-event temporary restaurant. A Local Public Health Authority may not charge a benevolent organization a license fee or inspection fee for a single-event temporary restaurant.
- (3) (a) Intermittent and seasonal temporary restaurants must complete and submit an operational plan for review by the Local Public Health Authority prior to obtaining a license and operation of the establishment.
(b) Intermittent and seasonal temporary restaurants that do not complete an operational plan prior to operation may operate under one or more single-event temporary licenses until the operational plan can be completed and approved.
(c) After the operational plan has been completed by the Local Public Health Authority, another operational plan is not required for subsequent licenses, unless deemed necessary by the Local Public Health Authority.
- (4) The single-event, intermittent or seasonal temporary restaurant license shall be posted in a conspicuous place on the premises of the licensee.
- (5) An intermittent temporary restaurant license shall expire 30 days after issuance.
- (6) A seasonal temporary restaurant license shall expire 90 days after issuance.
- (7) A single-event temporary restaurant license shall terminate 30 days after issuance unless within 30 days the single-event temporary restaurant is discontinued or moved from the specific location for which the license was issued.
- (8) An intermittent or seasonal temporary license shall terminate immediately if:
 - (a) The intermittent or seasonal temporary restaurant prepares or serves food for consumption by the public that is not in connection with a public gathering, entertainment event, food product promotion or other event held by an oversight organization;
 - (b) The location of the intermittent or seasonal temporary restaurant changes; or
 - (c) The menu is substantially altered as defined by OAR 333-157-0073(6).
 - (d) If a licensed operation undergoes a substantial menu alteration, then a new license and completed operational plan is required.
- (9) If the license of an intermittent or seasonal temporary restaurant is terminated under section (8) of this rule, the intermittent or seasonal temporary restaurant may reapply for a license in accordance with section (2) of this rule.
- (10) The Local Public Health Authority may suspend, deny or revoke a single-event, intermittent or seasonal temporary restaurant license if it appears, after a reasonable time has been given for correction of a sanitation violation, that the applicant does not meet applicable minimum sanitation standards as described in ORS 624.010 through 624.121 or in OAR 333-150-0000. Any suspension, denial or revocation action shall be taken in accordance with ORS Chapter 183.
- (11) The Local Public Health Authority may conduct a reinspection of a seasonal or intermittent temporary restaurant if a priority item or priority foundation item violation is uncorrected and a separate follow-up visit is necessary to determine compliance.
- (12) A seasonal or intermittent temporary restaurant that has uncorrected priority item and priority foundation item violations and for which an alternative procedure has not been approved shall be closed in accordance with ORS 624.096.
- (13) The renewal of a single-event, intermittent or seasonal temporary restaurant license shall be in accordance with section (2) of this rule.

333-157-0080 Fees

(1) Fees for eating and drinking establishments and other food service activities subject to ORS chapter 624 shall be as specified in ORS chapter 624.

(2) Any restaurant providing food or beverage solely to children, elderly persons, indigent or other needy populations shall not be required to pay a restaurant license fee to the Authority if such restaurant is:

(a) Operated by a benevolent organization as defined in ORS 624.015; and

(b) The patrons or recipients are not required to pay the full cost of the food or beverage.

(3) A restaurant that meets the criteria in section (2) of this rule must still obtain a restaurant license and must comply with OAR 333-150-0000.

**DEPARTMENT OF HUMAN SERVICES
DIVISION 158
COMBINATION FOOD SERVICE FACILITIES**

Combination Facilities Engaged in Activities Subject to Regulation by the Oregon Department of
Agriculture and by the Oregon Health Authority

333-158-0000 Licensing and Inspections

The licensing of combination facilities shall be the responsibility of either the Authority or the Oregon Department of Agriculture in accordance with the following criteria:

- (1) The establishments subject to these rules are those combination facilities as defined in OAR 333-150-0000 1-201.10(B).
- (2) A determination shall be made for each firm covered in OAR 333-150-0000 1-201.10(B) as to which agency shall inspect and license. The determination shall be based upon which agency has statutory responsibility and authority for the predominant activities of the firm.
- (3) In those instances where it is determined that either a full or limited service restaurant or other activity for which the Authority has authority, is predominant, the Authority shall perform the inspectional and licensing responsibilities to the exclusion of the Oregon Department of Agriculture.
- (4) In those instances where it is determined that the bakery, retail grocery, food processing or other activities for which the Oregon Department of Agriculture has authority, is predominant, the Oregon Department of Agriculture shall perform the inspectional and licensing responsibilities to the exclusion of the Authority.
- (5) The determination of the predominant activity at any combination facility subject to this agreement shall be made first by the field Environmental Health Specialists. If agreement is not reached, then it shall be referred to program supervisors of the Local Public Health Authority, and the Oregon Department of Agriculture for a determination of predominant activity. If an agreement is not reached among the Local Public Health Authority and the Oregon Department of Agriculture, or if a licensed facility disagrees with the determination, the matter may be appealed to an arbitration panel composed of the Administrator of the Food and Dairy Division (or appointee), the Administrator of the Center for Health Protection (or appointee), and one representative each from the Conference of Local Health Officials, an association representing the restaurant industry and an association representing the retail grocery industry. The decision of this panel shall be final except as provided in section (6) of this rule.
- (6) Any licensee wishing to contest the determination of predominance by agencies may produce records of gross annual sales to support the protest and be heard by the Local Public Health Authority in accordance with ORS chapter 183.
- (7) Notwithstanding sections (2) through (6) of this rule, if the Local Public Health Authority and the Oregon Department of Agriculture agree that the complexity rather than the predominance of food processing activities should determine the regulating agency, inspectional and licensing responsibilities may be transferred to the Oregon Department of Agriculture to the exclusion of the Local Public Health Authority.

333-158-0010 Applicability of Rules

- (1) Any facility licensed and inspected by the Authority, pursuant to OAR 333-158-0000 through 333-158-0030, shall be subject to the applicable rules under OAR Chapter 333 of the Authority for all activities subject to ORS Chapter 624. The facility shall also be subject to the applicable statutes and rules under ORS 616 and 625, and OAR 603-021-0010, 603-021-0015, 603-021-0021, 603-021-0022, 603-021-0025, 603-021-0612, 603-025-0010 through 603-025-0040, 603-025-0080 through 603-025-0190 and 603-025-0220 of the Oregon Department of Agriculture, which are hereby adopted by reference.
- (2) Any facility licensed and inspected by the Oregon Department of Agriculture, pursuant to OAR 333-158-0000 through 333-158-0030, shall be subject to the applicable rules under OAR Chapter 603 of the Oregon Department of Agriculture for all activities subject to statutes administered by the Oregon Department of Agriculture and ORS Chapter 624.

333-158-0020 Licenses and Permits

Licenses and permits issued pursuant to these rules shall be subject to the statutes of the licensing and inspecting agency, including fees and legal remedies, and shall be deemed to satisfy the licensing statutes of the other agency.

333-158-0030 Periodic Review

At least annual re-evaluations of predominance shall be made by the regulating agencies and changes in jurisdiction shall be made where indicated.

**OREGON HEALTH AUTHORITY
DIVISION 160
DESTRUCTION OF FOOD UNFIT FOR HUMAN CONSUMPTION**

333-160-0000 Destruction and Embargo of Mishandled, Adulterated or Spoiled Food and Beverage

Whenever the Authority finds food or beverage for which there is probable cause to believe is adulterated, mishandled, spoiled, or otherwise potentially dangerous to health, the Authority shall immediately notify the person in charge that the product is hazardous; and shall request immediate destruction of the product. If the person in charge agrees, the food or beverage shall be destroyed or removed in a manner specified by the Authority:

(1) If the person in charge will not agree to destruction, an embargo order shall be placed on the food or beverage. The order shall include:

- (a) A statement of the reasons for the embargo;
- (b) A description of the products, their location and the amount of product embargoed;
- (c) The date and time of day when the order is issued, and the signature of the inspecting Environmental Health Specialist.

(2) The product shall be marked, sealed, isolated, and otherwise identified as required by the Authority to ensure that it remains off sale and is not moved prior to final disposition of the embargo.

(3) After placement of an embargo order, samples may be taken for testing by the Authority.

(4) If the order of embargo does not include a notice of hearing; within 48 hours of the placement of an embargo, the person in charge shall be notified in writing that a hearing on the embargo order will be held if requested in writing within ten (10) days of the delivery of the notice.

(5) If a hearing is requested, it shall be held in accordance with ORS 183 and the model rules of the Attorney General for contested cases.

(6) If no hearing is requested as provided in section (4) of this rule, a default order for destruction shall be issued to the person in charge.

(7) Destruction or removal of embargoed product shall be done only under the direct supervision of the Authority.

Denaturation may be required where it is necessary to render the product unpalatable or to identify it as unfit for human consumption.

(8) Violation of any embargo or destruction order or removal of any product under embargo is grounds for closure of the facility, revocation or denial of license or criminal penalties provided under ORS 624.990.

**DEPARTMENT OF HUMAN SERVICES
DIVISION 162
MOBILE FOOD UNITS, COMMISSARIES AND WAREHOUSES**

333-162-0020 Mobile Food Units, General Requirements

- (1) Mobile food units shall comply with the applicable requirements in OAR 333-150-0000 and these rules. The Authority may impose additional requirements to protect against health hazards related to the conduct of the mobile food unit operation and may prohibit the sale of potentially hazardous food.
- (2) There are four types of mobile food units:
- (a) Class I. These mobile food units can serve only intact, packaged foods and non-potentially hazardous beverages. No preparation or assembly of foods or beverages may take place on the unit. Non-potentially hazardous beverages must be provided from covered urns or dispenser heads only. No dispensed ice is allowed;
 - (b) Class II. These mobile food units may serve foods allowed under Class I and provide hot and cold holding display areas from which unpackaged foods are displayed. Self-service by customers of unpackaged foods is not allowed. Preparation, assembly or cooking of foods is not allowed on the unit;
 - (c) Class III. These mobile food units may serve any food item allowed under Class I and II mobile food units, and may cook, prepare and assemble food items on the unit. However, cooking and service of raw animal foods on the unit is not allowed;
 - (d) Class IV. These mobile food units may serve a full menu.
- (3) Mobile food units must be maintained and operated as originally designed and approved during the plan review process. Units licensed prior to February 1, 2020 must meet this requirement by January 1, 2023.^{Pf}
- (4) (a) Mobile food units must be designed and constructed to move as a single piece. Mobile food units may not consist of multiple components that are assembled at the operating location. The requirement applies to mobile food units designed, constructed or extensively remodeled after February 1, 2020.
- (b) Notwithstanding subsection (4)(a) of this rule, a mobile food unit that must be assembled at the operating location because the unit will be in a building or structure that prevents the unit from being moved in one piece may be allowed if the assembly is part of the initial licensing process. Examples of this include a unit located in the upper floors of a high-rise building that cannot be transported through the front entrance or in an elevator.
- (5) Notwithstanding OAR 333-150-0000 Section 5-305.11 (D) and subsections (a) and (b) of this section, all operations and equipment shall be an integral part of the mobile food unit. A mobile food unit may use folding shelves or small tables that are integral to the unit for display of non-potentially hazardous condiments and customer single use articles. The shelves or small tables must be designed and installed so that they do not impede the mobility of the unit when retracted.^{Pf}
- (a) A Class IV mobile food unit may use one cooking unit that is not integral to the mobile food unit. The cooking unit may only be used under the following conditions:^{Pf}
- (i) The cooking unit must be limited to the used of a barbecue, smoker, hearth oven or similar cooking device that can be transported in conjunction with the mobile food unit. The use of equipment such as flat-top grills, griddles, woks, steamtables, stovetops, ovens or other cooking, storage or holding devices is not allowed;^{Pf}
 - (ii) It must be located adjacent to the mobile food unit;^{Pf}
 - (iii) The cooking unit may only be used for cooking and not for processing, portioning, preparation, or assembly of food;^{Pf} and
 - (iv) A handwashing system shall be provided adjacent to the cooking unit as specified in OAR 333-150-0000 section 5-203.11(C)^{Pf}.
- (b) Mobile food units may display packaged, non-potentially hazardous food items, such as cans of soda or bags of chips, off the unit if they are limited to what could be sold during a typical meal period.
- (6) Mobile food unit operators may provide seating for customers if a readily accessible restroom and sufficient refuse containers with lids or covers are provided. The restroom must have a handwashing facility that provides hot and cold running water and meets the requirements of OAR 333-150-0000 §§ 6-301.11, 6-301.12, 6-301.20 and 6-302.11.
- (7) Auxiliary storage may be provided if it is limited to impervious, nonabsorbent and covered containers that are stored and located in a manner to preclude contamination or infestation. Overhead protection may be required if necessary, to protect auxiliary storage for contamination.^{Pf}
- (a) Auxiliary storage must be limited to items necessary for that day's operation and must be moved from outside the unit and stored inside the unit or at a licensed warehouse or commissary during hours the unit is not in operation.^{Pf}
- (b) No self-service, assembly or preparation activities may occur from auxiliary storage containers. Auxiliary storage may not be used as a substitute for hot and cold holding facilities on the mobile food unit.^{Pf}

- (c) Refrigerators or freezers used for auxiliary storage may not be placed outside of the unit and must be located inside a licensed commissary or warehouse. An ice merchandiser that is used to store packaged ice from a commercial source may be allowed if the ice merchandiser is licensed as a warehouse and secured when the unit is not in operation.^{Pf ¶}
- (d) Units licensed prior to February 1, 2020 must meet the requirements of section (7) by January 1, 2023.^{Pf}

333-162-0030 Mobile Unit Operation, General

- (1) Mobile food units must remain mobile at all times during operation. The wheels must be functional and appropriate for the type of unit not be removed from the unit at the operating location. A removable tongue may be allowed if the tongue can be removed with the use of only simple tools and the tools are available on the unit at all times. Units licensed prior to February 1, 2020 in which the wheels, axels and associated equipment were removed prior to that date are not required to meet this requirement.^{Pf}
- (2) A mobile food unit may not be used in lieu of a properly designed and constructed kitchen for a restaurant or other food service establishment.^P
- (3) Catering and Delivery:
 - (a) Except as provided in subsection (c) of this section, a mobile food unit that does not have a licensed restaurant or commissary as a base of operation may not provide catering services or sell food wholesale.^{P ¶}
 - (b) Mobile food units must sell or dispense food directly from the point of sale on the unit to the ultimate consumer.^{Pf}
 - (c) A mobile food unit that does not have a licensed restaurant or commissary as a base of operation may provide catering services if:^P
 - (i) The unit is equipped with commercial-grade refrigeration equipment that meets or is the equivalent to the requirements of OAR 333-150-0000 Section 4-205.10;
 - (ii) The unit has obtained a variance from the Oregon Health Authority; and
 - (iii) The unit provides only single-use articles for use by consumers.
 - (d) *Mobile food units may utilize third-party delivery services and offer online ordering through the Internet.*

333-162-0036 Mobile Food Units Operating as Single-Event Temporary Restaurants

A licensed mobile food unit operating as a single-event temporary restaurant as specified under ORS 624.650 may utilize off-unit tables and display areas for non-potentially hazardous foods and dispensed beverages, condiments, and single-service articles such as napkins and utensils. The unit may also utilize off-unit freezers if the food is maintained frozen as required in OAR 333-150-0000 Section 3-501.11. The off-unit tables and display areas allowed under this rule may not be used to conduct activities such as food preparation, assembly or cooking. The display or dispensing of potentially hazardous foods is not allowed.

333-162-0040 Base of Operation

- (1) Mobile food units and vending machines shall operate from a licensed restaurant, commissary or warehouse.^P
- (2) If a mobile food unit sells only packaged goods, a warehouse may be accepted in lieu of a commissary.
- (3) Notwithstanding section (1) of this rule, self-contained mobile food units may not be required to have a base of operation if the unit contains all the equipment and utensils necessary to assure the following:
 - (a) Maintaining proper hot and cold food temperatures during storage and transit;
 - (b) Providing adequate facilities for cooling and reheating of foods;
 - (c) Providing adequate handwashing facilities;
 - (d) Providing adequate warewashing facilities and assuring proper cleaning and sanitizing of the unit;
 - (e) Obtaining food and water from approved sources;
 - (f) Sanitary removal of waste water and garbage at approved locations.
- (4) The ability to operate without a base of operation shall be determined by the regulatory authority.
- (5) A mobile food unit may not serve as a commissary or warehouse for another mobile food unit.
- (6) A private home kitchen or a home kitchen licensed by the Oregon Department of Agriculture may not be used as a commissary.

333-162-0050 Exceptions

Class I mobile food units need not comply with the requirements of the rules pertaining to the necessity of water and sewage systems nor to those requirements pertaining to the cleaning and sanitization of equipment and utensils.

333-162-0280 Food Transportation, General

(1) During transportation, food and food utensils shall be kept in covered containers or completely wrapped or packaged to be protected from contamination. Foods in original individual packages do not need to be overwrapped or covered if the original package is sealed.

(2) Food shall be maintained at required temperatures at all times during transport. Mobile food units that do not maintain food at temperatures required in OAR 333-150-0000 §3-501.16 may be required to provide an on-board power source, such as a battery or generator, to assure maintenance of food at proper temperatures during transit.

(3) After February 1, 2020, mobile food units that serve a complex menu and have never been licensed in Oregon may not utilize cold plates that do not have an associated power source, such as a battery, generator or propane tank, as the sole means for temperature control.

(4) Transport vehicles shall not be used in activities incompatible with safe and sanitary food service operations.

333-162-0470 Compressed Gas Bottles

Compressed gas bottles shall be fastened securely to a wall or stationary object at all times and in such a manner as to prevent damage to the valve mechanism.

333-162-0680 Exterior and Overhead Protection

(1) Mobile food units must be secured and protected from contamination when not in operation. This exterior protection may consist of moving the unit to an enclosed location, closing all exterior openings or covering the unit in a secure fashion. Units licensed prior to February 1, 2020 must meet this requirement by January 1, 2023.^{Pf}

(2) Overhead protection shall be provided for mobile food units that are operated outdoors and where food is not covered at all times. The overhead protection may consist of, but not be limited to, roofing, ceilings, awnings, or umbrellas. Overhead protection is not required for cooking units that have a lid or covering that will protect foods from contamination. The overhead protection must be easily cleanable.

333-162-0930 Commissaries

(1) The commissary or other fixed food service establishment used as a base of operation for mobile food units or pushcarts shall be constructed and operated in compliance with the requirements of OAR 333-150-0000.

(2) Notwithstanding section (1) of this rule, commissaries which are constructed in or adjacent to a single family residence are not required to provide a separate restroom, if a restroom in the residence is available at all times during operation of the commissary. The restroom facility must meet the requirements of OAR 333-150-0000.

333-162-0940 Warehouses

(1) A licensed warehouse may be used only for the storage of unopened packaged foods, single-service articles, utensils and equipment. All other activities are prohibited.^{Pf}

(2) A warehouse may not be used for the following activities:

- (a) Cooling or storage of foods that have been prepared on a mobile food unit;
- (b) Preparation, assembly, portioning, handling or service of unpackaged foods; and
- (c) Ice making or warewashing;

(3) Activities prohibited in a warehouse in this section must be conducted in a licensed restaurant or commissary.

(4) Warehouses shall be required to meet only those rules necessary to prevent the contamination of stored foods, single-service articles, utensils and equipment. In general, warehouses shall be exempt from the rules relating to finished walls, ceilings or storage bases, light colored surfaces, restrooms, lavatories and utility facilities, provided foods are protected from contamination from dust, insects, rodents, flooding, drainage, or other contaminants.

(5) An ice merchandiser that is used to store packaged ice from a commercial source may be allowed if the ice merchandiser is licensed as a warehouse and secured when the unit is not in operation.

(6) The Assistant Director may impose additional requirements as deemed necessary to prevent the contamination of stored foods, single-service articles, utensils, and equipment.

(7) A warehouse licensed prior to February 1, 2020 that is not in compliance with the provisions of this rule must meet these requirements by January 1, 2023.

INSPECTION AND LICENSING PROCEDURES MOBILE FOOD UNITS, COMMISSARIES AND WAREHOUSES

333-162-0880 Licensing Procedure

- (1) All procedures shall be in accordance with ORS Chapter 624 in the licensure of mobile food units, commissaries and warehouses. Any license issued by the Authority pursuant to ORS 624.320 shall expire and may be reinstated on December 31 of each year.
- (2) A permanent license number shall be assigned each operator of mobile food units by the regulatory authority.
- (3) Each mobile food unit shall be clearly marked with the licensee's name or a distinctive identifying symbol. The lettering shall be at least 2 inches in height and of a color contrasting with the background color. If a symbol is used, it shall be at least 12 inches in diameter or of an equivalent size. An accurate scale drawing or photograph of the symbol shall be filed with the regulatory authority.
- (4) Each mobile food unit shall be clearly marked with a number for purposes of identifying each unit on inspection reports and other communications.
- (5) Stored units are not subject to licensure.
- (6) All vehicles used as mobile food units shall be kept in good repair and in a sanitary condition while in use.
- (7) The license shall be posted in the mobile food unit in public view.

333-162-0890 Inspection and Enforcement Procedures

Mobile food units shall comply with the inspection and enforcement procedures in OAR 333-157-0000, 333-157-0010, 333-157-0020, 333-157-0025, 333-157-0027, 333-157-0030 and 333-157-0040.

333-162-0900 Posting of Inspection Report

One copy of the most recent inspection report shall be in the mobile unit at all times. One copy of the inspection report shall be posted by the Assistant Director upon an inside wall of the commissary or warehouse. The inspection report shall not be defaced or removed by any person except the Assistant Director.

333-162-0920 Plan Review

- (1) Newly constructed or extensively remodeled mobile food units, commissaries and warehouses must undergo plan review and a pre-operational inspection. Mobile food units that have been modified after plan review approval or licensing may be required to revert to the design and construction that was initially approved if required by the regulatory authority. Mobile food units having the sanitary approval of a recognized qualified, independent testing laboratory, or approved by the Authority may be accepted without the submission of plans.^{Pf}
- (2) Approval from the Administrator to operate after the plan review process does not preclude obtaining required permits or approvals from other agencies or jurisdictions of concern.
- (3) Mobile food unit operators must obtain approval from the Administrator to add to or change menu items served from the mobile food unit;^P
- (4) Mobile food units that operate on a fixed route must provide an itinerary to the regulatory authority prior to licensure and at the beginning of each licensing period. Mobile food units operating at a specific or multiple locations shall provide a list of all locations to the regulatory authority.

333-162-0950 Memorandum of Commissary or Warehouse Usage/Verification

A Memorandum of Commissary or Warehouse Usage/Verification shall be on file with the Administrator for mobile units using a licensed food service facility as a commissary or warehouse. This memorandum shall be on a form approved by the Authority, and be updated at least once per year.

333-162-1005 Civil Penalties

(1) The Authority or a local public health authority may impose civil penalties on any person for the following willful violations:

(a) Operation of a mobile food unit, commissary, or warehouse without a current license to do so from the Authority or local public health authority;

(b) Failure to cease operation of a mobile food unit, commissary, or warehouse that has been closed due to uncorrected priority item violations. This authority shall be limited to those priority item violations identified as creating an imminent or present danger to public health and defined in OAR 333-150-0000 Section 1-201.10(B).

(2) For the purposes of section (1) of this rule, the term 'willful' means intentional or deliberate.

(3) The maximum civil penalty for each of the violations listed in section (1) of this rule is \$500 per day of violation.

(4) Civil penalties shall be imposed in the manner provided by ORS chapter 183 or the equivalent.

ANNEX



Food Employee Interview
Preventing Disease Transmission through Food by Infected Food Employees

The purpose of this interview is to inform conditional employees and food employees to advise the person in charge of past and current conditions described so that the person in charge can take appropriate steps to preclude the transmission of foodborne illness.

Conditional or Food Employee Name (please print): _____

Address: _____

Telephone Daytime: _____ **Evening:** _____

Are you suffering from any of the following symptoms **today**? (Circle One) If yes, date of onset

Diarrhea	Yes/No	_____
Vomiting	Yes/No	_____
Jaundice (yellowing of skin or eyes)	Yes/No	_____
Sore throat with fever	Yes/No	_____
Infected cuts, wounds, or lesions containing pus on the hand, wrist, or other exposed body part	Yes/No	_____

In the Past: Have you ever been diagnosed as being ill with **Norovirus, typhoid fever (*Salmonella Typhi*), shigellosis (*Shigella spp. infection*), *Escherichia coli* 0157:H7, or hepatitis A virus?**.....**Yes/No**
If yes, what was the date of diagnosis? _____

History of Exposure to Foodborne Pathogens:

1. Have you been exposed to or suspected of causing any confirmed disease outbreak of Norovirus, typhoid fever, shigellosis, *E. coli* 0157:H7, or hepatitis A?.....**Yes/No**
2. Do you have a household member diagnosed with Norovirus, typhoid fever, shigellosis, *E. coli* 0157:H7, or hepatitis A?.....**Yes/No**
3. Do you have a household member attending or working in a setting experiencing a confirmed disease outbreak of Norovirus, typhoid fever, shigellosis, *E.coli* 0157:H7, or hepatitis A?.....**Yes/No**

Name, Address, and Telephone Number of your Health Practitioner or Doctor

Name: _____ **Telephone Number:** _____

Address: _____

Signature of Conditional or Food Employee: _____ **Date:** _____

Signature of Person in Charge: _____ **Date:** _____



Food Employee Reporting Agreement
Preventing Disease Transmission through Food by Infected Food Employees

The purpose of this agreement is to inform food employees of their responsibility to notify the person in charge when they experience any of the conditions listed below so that the person in charge can take appropriate steps to preclude the transmission of foodborne illness.

I AGREE TO REPORT TO THE PERSON IN CHARGE:

Any onset of the following symptoms, either while at work or outside of work, including the date symptoms began:

1. Diarrhea
2. Vomiting
3. Jaundice (yellowing of skin or eyes)
4. Sore throat with fever
5. Infected cuts or wounds, or lesions containing pus on the hand, wrist, or other exposed body part

Future Medical Diagnosis:

Whenever diagnosed as being ill with **Norovirus, typhoid fever (*Salmonella Typhi*), shigellosis (*Shigella* spp. infection), *Escherichia coli* 0157:H7 or other EHEC/STEC infection, or hepatitis A virus**

Future Exposure to Foodborne Pathogens:

1. Exposure to or suspicion of causing any confirmed disease outbreak of Norovirus, typhoid fever, shigellosis, *E. coli* 0157:H7 or other EHEC/STEC infection, or hepatitis A
2. A household member diagnosed with Norovirus, typhoid fever, shigellosis, *E. coli* 0157:H7, or hepatitis A
3. A household member attending or working in a setting experiencing a confirmed disease outbreak of Norovirus, typhoid fever, shigellosis, *E. coli* 0157:H7, or hepatitis A

I have read (or had explained to me) and understand the requirements concerning my responsibilities under the Food Code and this agreement to comply with:

1. Reporting requirements specified above involving symptoms, diagnoses, and exposure specified;
2. Work restrictions or exclusions that are imposed upon me; and
3. Good hygienic practices

I understand that failure to comply with the terms of this agreement could lead to action by the food establishment or the food regulatory authority that may jeopardize my employment and may involve legal action against me.

(Please print)

Food Employee Name: _____ **Signature:** _____ **Date:** _____

Person in Charge: _____ **Signature:** _____ **Date:** _____

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Link to 2021 State of Oregon Plumbing Specialty Code

See Chapter 10 Traps and Interceptors

<https://epubs.iapmo.org/2021/OPC/>



City Council Staff Report

Meeting Date: April 20, 2022

To: Honorable Mayor Hodson and City Council

From: Joseph Lindsay, City Attorney/Assistant City Administrator

Agenda Item: Sergeant-at-arms at Council Meetings

Summary

Now that the City Council is coming back to in-person meetings, there has been some interest and discussion in the potential enforcement of decorum at council meetings. In the December 2018, (most recent) Policies and Operating Guidelines for members of the Canby City Council, Section 7 states that:

“The Chief of Police (or representative) shall act as ex-officio sergeant-at-arms of the Council. The Chief of Police shall carry out all orders and instructions of the Mayor for the purpose of maintaining order and decorum in the Council Chambers.”

For most meetings in the past, the presence of the Chief of Police or a representative have been limited to specific instances or occasions where a potential threat or perceived potential rowdy crowd was expected. As the meetings are moving from zoom to in-person, this is a moment to decide whether or not to have a more active police (or other) presence in the meetings.

Options

1. Ask for the police to be present in the chambers for an entire meeting.
2. Ask for police presence for a specified portion of a meeting (i.e. public comment)
3. Have a specific police representative on speed dial for the night of the meetings.
4. Potentially hire our court bailiff to be present for the meetings.

Recommendation

Staff recommends that Council come to a consensus on whether an in-person police (or other) presence is necessary for the entire meeting or whether an on-call speed-dial is sufficient unless there is a specific threat or large crowd.