

WHITE PAPER

Mobile Food Vendors



City of Spokane Planning and Development Services Department

BACKGROUND

Mobile food vendors have been present and active participants in the Spokane food scene for many years. Spokane's "Pig Out in the Park" is an annual celebration of the mobile food industry which has brought ethnic and traditional food and entertainment to Spokane for over 31 years. Spokane is also home to numerous traditional food truck operators who serve workers in industrial areas and construction sites and also to a handful of enterprising push cart operators offering their goods to passerby's on downtown sidewalks.

To date, Spokane's experience with mobile food vendors has been fairly typical and un-noteworthy. Countywide, the Spokane Regional Health District issues an average of about 80 mobile food unit permits annually. Growing interest in these businesses locally and the phenomenal growth in other northwest cities, including Seattle and Portland, indicate these numbers may increase.

In particular, Portland has by many accounts become the leader of innovation in the "food cart" industry as it has experienced a blossoming of the industry into a major cultural phenomenon fueled in part by the creative, entrepreneurial spirit of the City and the "great recession" which has spurred interest in food carts as a relatively low cost self-employment option.

Other communities experiencing noticeable growth in their food cart industries have reacted with less enthusiasm as the food carts have created both regulatory issues and backlash from the brick and mortar restaurant owners and other small businesses who feel impacted by the mobile vendors. Included in this list are cities like Los Angeles, CA, Buffalo, NY and Boulder, Co.

While Spokane has not yet seen the level of interest in mobile food vendors that has occurred in other cities, given its strong support for vendors vis-a-vis events like "Pig Out in the Park", the growing restaurant scene and interest in neighborhood business revitalization, there has been a swell of interest indicating the possibility for rapid growth of the industry. In that light, an examination of the current policies and regulations affecting the industry, together with recommendations on future policy or regulatory adjustments, is warranted.

The City has an interest in encouraging mobile food vending and the multiple public benefits it can provide but the existing regulations and policies in place today do not sufficiently address the mobile food vendor industry and the types of issues that may arise in Spokane as the local mobile food industry grows. There are some areas where regulations or policies conflict, overlap, or simply can be better crafted to provide a more tailored statement of the City's position on this emerging industry. This paper will examine these areas and offer possible solutions to provide policy and regulations for mobile food vendors on public rights-of-way and private lands.

DEFINITIONS

“Mobile food vending” is a generic term that applies to a fairly broad segment of the food service industry. As the name suggests, the food vendors operate from mobile facilities including everything from a small pushcart on the sidewalk in the downtown area, an ice-cream truck selling treats in residential neighborhoods, a lunch truck parked in an office or industrial park, to the fully self-contained customized trucks and trailers with modern kitchen facilities capable of producing gourmet food and culinary delights.

In the industry, “food carts” are distinguished from “food trucks” in that food carts do not travel under their own power but are either pushed by a human or towed by another vehicle. Those towed by another vehicle are technically licensed vehicles which must meet Department of Transportation (DOT) standards.

FOOD SAFETY

Although “street food” served by mobile food vendors often carries a perception of being less safe or sanitary than food served in traditional restaurants, in Washington State, all mobile food vendors are held to the same standards, permitting and inspection requirements of the Washington State Department of Health and Spokane County Regional Health District as are all other restaurant workers and food vendors. In that regard, the role of addressing food safety issues is largely in the hands of agencies other than the City of Spokane. This paper recognizes that the City has a limited role in this area and yet many of the food safety issues are intertwined with the land use and other issues discussed in this paper. Consequently, when considering changes to policy or regulation, the City must be cognizant of the interplay between its land use and building regulations and other agency regulations that affect the mobile food vendor industry.

Existing food safety requirements include the requirement that all food service employees who handle unwrapped foods or beverages hold a current Washington State Food Handler Permit and that all retail food workers in mobile food establishments must be provided access to approved restroom facilities (including toilets and hand washing facilities with hot and cold, potable running water) if at any one location for more than one hour. The restrooms must be conveniently located (within 200 feet) and accessible during all hours of operation. Food establishments with customer seating for on-premise consumption must provide customer restrooms that are conveniently located and accessible during all hours of operation.

In addition, vehicles (trailers, trucks etc.) that are used for mobile food vending must be constructed to Washington State Department of Labor and Industries standards and inspected prior to operation. All mobile units are also inspected and permitted by the Spokane Regional Health District. Each year the Spokane Regional Health District performs one unannounced inspection of the units to ensure compliance.

MOBILE FOOD VENDING: EXISTING REGULATORY FRAMEWORK

The City of Spokane has few existing regulations specifically addressing mobile food vendors. Spokane’s “itinerant vendor designation” (SMC 10.40.010), which addresses all types of mobile vendors, not just food vendors, provides the most specific regulations, including a special licensing

requirement and regulations regarding the conduct of itinerant vendors. Beyond the specific itinerant vendor regulations, additional regulations that apply to mobile food vendors are more general such as those regulations pertaining to parking within public rights of way, the use of public sidewalks, and the zoning and land use standards that apply to the use and development of private property. For example, when parked along a City street, the same regulations that apply to all other licensed vehicles apply to mobile food vendors as well. Similarly, the City's land-use codes permit mobile food vendors in the same zoning districts in which other food service and restaurant uses are allowed, though the code lacks any specific guidance on how to treat these temporary uses. Further consideration may be needed to address issues particular to mobile food vendors, including permissible hours of operation, spacing requirements, obstructed pathways, and conflicting issues with restaurants, parks, and schools. In addition, which, if any, site development standards should be applied to mobile vendors that operate from private property, especially those who push the line between being a temporary or permanent use of land should be weighed.

OPERATING IN THE PUBLIC RIGHT OF WAY

The "Ten Minute" Rule

One option for mobile food vendors is to operate in the public right of way, vending from a truck or vehicle parked on the street in an on street parking space, or in the case of pushcarts or small trailers, from the sidewalk itself. Presently, under the regulations for itinerant vendors, these mobile food vendors are legally required among other things to "refrain from standing, by person or vehicle, upon any public way more than ten minutes in any one place and to move from a location adjacent to another's place of business or residence when requested by someone in charge of such business or residence." This is fine for itinerant vendors who need to keep moving to reach customers (the "ice cream man" is one example) but is a problem for food vendors that must find a busy sidewalk corner and stay put in order to maximize access to customers.

As with many of the City's regulations, these requirements are enforced on a complaint basis. When a complaint is received at the City, it will be investigated and an appropriate resolution pursued. When involving mobile food vendors, this typically involves requesting the vendor to move or relocate to another location. Most mobile food vendors in downtown Spokane, however, have an established relationship with the adjoining property/business owners and are an accepted part of the street environment with a loyal customer base and complaints are rare.

Often, the vendor/business relationship includes a formal agreement with the business owner to allow the food vendor to use the onsite restroom facilities necessary to comply with the Health District requirements for food worker restrooms. Sometimes an agreement also includes permission for the vendor to place the food cart, truck or trailer on the business owner's property. This could be in a parking lot adjoining the sidewalk or, for smaller carts, in an open plaza fronting onto the sidewalk. This arrangement allows the vendor to legally remain at one location for more than 10 minutes and, if they have an agreement allowing them to use of the business' restrooms, to stay as long as they desire so long as the access to bathrooms remains available. Without such an agreement, a vendor who did not move after ten minutes would be in violation of the rule.

It is not clear what real impact the ten minute rule has; whether through fear of violation it actually restricts the number of mobile food vendors who operate in certain areas of the City (such as the high pedestrian activity areas of the downtown) and whether the number of vendors would increase if this

restriction were to be lifted or eliminated. From the downtown vendor perspective, the ability to operate at a fixed location during most or all of their peak sales period(s) such as the lunch hour is important and critical to their success. It allows them to focus on their food sales during these periods and avoid wasting valuable time moving. It also helps them build a loyal customer base by being at the same place at the same time each day. The ability to do so legally, without fear of being asked to leave, would therefore seem to be valuable. However, there are only a finite number of locations in the downtown and other business districts that are physically suitable for a food vendor to operate on private property adjacent to a sidewalk busy enough to support their business. Moreover, it is questionable whether a public purpose is served through the imposition of the rule in areas like downtown where sidewalk vendors ought to be encouraged rather than discouraged. The opportunity for new mobile food vendors in the downtown and other business districts could be significantly increased by lifting or modifying the ten minute rule. This will be explored elsewhere in this paper.

Too Much of a Good Thing: Popularity Can Have Its Price

Mobile food vendors bring activity to the downtown street environment, activating spaces and bringing interest and variety to the sidewalk scene. Spokane's Municipal Code pedestrian standards encourage a safe, attractive and usable pedestrian circulation system. They are intended to ensure a direct pedestrian connection between the street and buildings on a site. Under most circumstances, the sidewalks of downtown Spokane can easily accommodate a wide range of activities. Occasionally though, the limits are tested. While somewhat isolated, there have been reports of mobile food vendor businesses in the downtown area that attract large crowds resulting in overcrowding the sidewalks. The lines of people waiting to purchase food can cut off and block other pedestrians from traveling safely on the sidewalk. This creates a danger by forcing people onto the busy street to get to their destinations. The concern is even greater for mobile vendors catering to the nighttime crowds around bars and music venues where alcohol is served. Most often these are vendors who vend onto the sidewalk from a food truck or trailer.

Today when a conflict or problem arises, a mobile vendor may be asked to move by the adjoining property owner or by a City police officer. In these instances, the City's itinerant vendor regulation simply states that the vendor must move from that spot. However there is no set amount of distance the vendor is required to move (except presumably that the vendor must move to an area which is not adjoining the property of the business owner). If a vendor refuses to move or question the authority, it then becomes an enforcement problem. Current regulations do not consider how far a vendor should move (ten feet or a thousand?) or the consequences if the vendor refuses to move.

As a recent example, the Parks department has had problems with mobile vendors selling from food trucks parked at a street location very near a city park where Parks Department sponsored free music concerts are taking place. (The street is actually within the park but is technically a public right of way). The mobile vendors are drawn to the crowds attending the event because they represent an opportunity to maximize sales. On the other hand, the Parks Department helps fund the event with concession stand revenues and therefore views the competition as negatively affecting sales and the department's ability to underwrite the events, which in turn jeopardizes its ability to maintain the events. When asked to move, the vendors either move very short distances or simply circle the block and come back a little later. The City should clarify the requirement by adding a standard distance that a vendor must move, such as a lineal measurement or to the next block and stipulate that the vendor may not return to the location without prior approval of the adjoining property owner. The City could also add a prohibition from vending within a set distance from a City Park without prior

approval, or perhaps add additional conditions that require specific enforceable authorization to vend at special events such as the park concerts.

In the downtown and other areas with heavy pedestrian traffic and many sidewalk obstructions such as street trees, benches, sign posts and other amenities, it is important that vendors are aware of and comply with minimum sidewalk clearance standards and locate in areas with sufficient sidewalk room to accommodate crowds and maintain pedestrian safety. They should also be required to be able to recognize and address crowd control issues before they pose health and safety risks. By creating a permit system specifically for mobile vendors operating on public sidewalks or plaza areas, the City can both set standards to address these issues and ensure that clear and understandable educational materials are provided to prospective mobile street food vendors.

OPERATING ON PRIVATE PROPERTY

Some mobile vendors work with private businesses to build off each other's clientele. For example, in the South Perry District, a local convenience store owner has allowed a mobile food vendor to operate from a trailer in the convenience store parking lot. This enables the vendor to meet bathroom access health standards for employees. In exchange, the convenience store owner gets increased traffic to his/her store and could perhaps receive rent payments from the mobile vendor. This proximity can be good for some businesses but not for others. Some restaurant owners, for instance, believe that mobile food vendors, with their lower startup costs and overhead, have an unfair competitive advantage over brick and mortar restaurants and that they may be able to "steal" away customers with lower prices. Food vendor clients may also use parking spaces that were intended for restaurant users.

Additionally, these "transient" businesses have little or no capital investment in the areas where they operate and yet are able to take advantage of the positive business environment created by others through neighborhood business organizations, business improvement districts, site improvements, or other means. Furthermore, since they usually do not fall under city building codes or become subject to design standards, their trucks and trailers do not always meet the same criteria as permanent businesses, leaving some with a perception of lower quality. Here, the City could take a more proactive role by providing courtesy notification to existing recognized neighborhood business district associations or the Downtown Spokane Partnership when the City receives an application from a new mobile food vendor for a specific location in a neighborhood center or downtown. The purpose would not be to create another level of review for the vendors but to establish a line of communication between the business owner and the existing business organization. This courtesy notification could be included as part of the process to obtain a sidewalk food vendor permit as recommended below.

Perhaps the issue which needs the most attention with regard to mobile food vendors operating from private property is how to treat these uses from a land use perspective and whether additional codes are needed to clarify existing regulations.

Today, the City's land use regulations are silent with respect to mobile food vendors. Current policy is to allow mobile food vendors when they operate from an existing improved parking area within an appropriate zone (e.g. commercial or retail) which allows other retail and food service uses. In these instances, the mobile vendors are considered temporary and subordinate uses which do not require additional approval from the City so long as they have the proper business licenses. The City should consider amending the land use standards to add "mobile food vendors" as a limited accessory use

allowed in those zoning categories that also allow retail/service uses, making them subject to certain limitations. The limitations could stipulate that the vendor's vehicle must be located entirely within a legally existing (whether conforming or non-conforming) paved parking lot, that vending directly onto a public sidewalk is subject to the same conditions as if the vendor were located on the public right of way (i.e. a sidewalk vendor permit would be required), and that site plan approval is required for vendors which do not remove their vehicles from the site each day.

Another growing trend is for multiple mobile food vendors to locate on a single site in a group or food cart "pod." With shared amenities such as employee and/or customer restrooms and seating areas, these pods resemble permanent or semi-permanent outdoor food fairs. Similarly, the City's land use regulations should be clarified to stipulate that mobile food vendors may be an approved primary use of property, whether individually or in pods or groups of mobile food vendors. Here, the City should enforce the same land use standards as would be required for the development of the site with a parking area or other similar use, including as appropriate, paving, landscaping, building setbacks and other required site improvements. Given the non-permanent nature of these uses, the City should refrain from prescribing additional development standards unless clearly warranted.

PERMITTING

Currently to operate a business in the City of Spokane, a valid Washington State business registration and a City of Spokane business license are required, both of which must be obtained from Washington State Department of Licensing's Business Licensing Services (<http://bls.dor.wa.gov/file.aspx>). In addition, businesses such as mobile food vendors that fall within the itinerant vendor definition must also separately obtain an Itinerant Vendor permit from the Taxes & Licenses Department. At this time, the Itinerant Vendor permit cannot be processed online at the same time at Business Licensing Services. Costs are \$55 for a 90 days license or \$110 for the full year. The code of conduct for the itinerant vendors includes not using noisy attention attracting devices; agreeing to keep containers and edibles clean and sanitary; not staying in any public way more than ten minutes in one place; and the requirement to move from a location when requested by the Chief of Police. In addition, itinerant vendors need to display a copy of their city license and additional documents showing that they are authorized to sell goods.

As noted above, the ten minute rule is problematic for vendors who need to stay in the same place in order to maximize access to their customers. One solution may be to create a separate license category for sidewalk food vendors, similar to the system adopted by the City of Seattle. Similar to sidewalk cafes and other street encroachments, the City Engineer would issue the license and could include site plan review, sidewalk clearance standards, spacing from existing food serving establishments, limitation on the number of maximum vendors per block face, and other conditions or restrictions imposed as a condition of the license issuance. The license would be applicable to any mobile food vendor who vends onto the public sidewalk, whether the cart, truck or trailer is located in the right of way or on private property and who stays at a given spot for more than ten minutes at a time. So long as the mobile food vendor does not also operate like an itinerant vendor, only the sidewalk food vendor license would be required.

MODEL ORDINANCE

The City of Spokane is not alone in its desire to implement an effective, stream lined approach to regulating and permitting mobile food vendors and can learn from the many other local governments that have addressed these same issues in the past. The Municipal Research and Services Center of

Washington (MRSC) website (<http://www.mrsc.org/subjects/legal/nuisances/peddlers.aspx>) includes a compilation of information about the regulation for Peddlers, Solicitors, Temporary Merchants and Mobile Vendors. Typically, these ordinances contain the following common provisions:

- *License fees*- Imposed yearly or daily basis
- *License application form*- requiring information concerning the proposed location of the activity , the estimated length of the activity, description of merchandise being offered for sale, the hours of operation, and the names of references
- *Background Check*- to check for prior criminal records
- *License revocation*- Conditions for license revocation and appeal process
- *License display*- requiring peddlers and solicitors to have in their possession and to display their license.
- *Temporary Stands*- Standards and conditions for temporary stands
- *Time and place restrictions*- Includes restrictions on hours of conducting business, prohibition where property owners post “No Peddling/Soliciting” signs, and requirements that temporary merchants locate their businesses in compliance with zoning codes
- *Exemptions*- For non-profits, charitable, and religious organizations and for farmers and gardeners selling fruits, vegetables, or other similar farm produce raised, gathered, or produced by such persons

While Spokane’s “itinerant vendor” permit regulations do not necessarily provide all of these elements, they are seen as adequate for most of the vendor types that they cover. The exception is mobile food vendors who frequently run into problems with the ten minute rule and create enforcement issues as identified elsewhere in this paper.

Rather than rewrite the itinerant vendor regulations to make adjustments to make them work for mobile food vendors, a separate license category could be provided to deal with sidewalk food vendors in the downtown and other business areas. This approach has been used successfully in other Washington State cities. For example, the City of Seattle adopted a sidewalk and plaza street food vending ordinance creating a streamlined permit process for street food vendors. The program is administered by the Seattle Department of Transportation which also has produced the forms, application and informational materials for those interested in street food vending business.

CONCLUSION AND SUMMARY OF RECOMMENDATIONS

Mobile food vendors may provide positive contributions to the City’s public streets in a number of ways, including improving public safety by providing eyes-on-the-street and creating pedestrian activity on sidewalks where commercial activity is permitted and encouraged. But the mobile food vending industry is diverse and there are a number of different options for mobile vendors, including everything from a small push cart on the sidewalk to the fully self-contained customized trucks or trailers with modern kitchens facilities.

A well-managed environment for street-food vending offers low-cost culturally-diverse food options, attracts foot traffic to commercial districts, creates a more vibrant retail business climate. It also serves as a low-cost, entry-level business opportunity to help entrepreneurs develop a business track record and build a loyal clientele, and can be a valuable economic point-of-entry for Spokane’s immigrant and refugee communities.

While Spokane's current itinerant vendor regulations do allow mobile food vendors to operate under a variety of business models, its one size fits all approach creates conflict points for vendors that need to stay in one spot for longer periods of time in order to maximize access to customers. The lack of clear, prescriptive standards also creates enforcement problems.

Similarly, for mobile vendors who operate from private property in parking lots or open plaza areas, the rules are unclear. This becomes even more apparent when mobile food vendors are proposed to be clustered onto a site as the primary use.

To accommodate the range of mobile food vendors who may choose to operate within the City, the following general approach is proposed:

- 1) For those vendors who would be a permitted use under the current the "itinerant vendor" regulations, who go from place to place and house to house selling only prepackaged food products and do not remain in one place longer than ten minutes, the regulations will not be changed, except to clarify that a vendor in this category will not be permitted to vend from a public sidewalk or plaza or within a set distance of an existing City Park. When requested by an adjoining property/ or business owner, the vendor must move to the next block or at least 200 feet, whichever is the greater distance.
- 2) For mobile food vendors who vend onto a public sidewalk or plaza, whether or not the cart, truck or trailer they operate from is located on public right of way or private property and who remain in the same location for longer than ten minutes, a new permit category of sidewalk vendor permit should be created. For sidewalk vendors, this new permit will replace the itinerant vendor permit and will be issued by the City Engineer. It could be formatted similarly to the City's current sidewalk café permit and include elements similar to those used in Seattle. The permit would not allow vending from residential zones or where the zoning of the adjoining property prohibits retail or food service uses.
- 3) For vendors who vend from and who contain all operational aspects of their business within the boundaries of private property, the land use codes would be amended to show these as limited uses allowed in all of the zones that currently allow retail and food service uses. When the vendor operates from an existing improved parking lot, no additional permit or site development standards would apply except when the food cart is to be left on the premises for more than 24 hours at a time, a site plan review would be required. An itinerant vendor permit or other license may or may not be required for these vendors.
- 4) For vendors who become the primary use of the site, whether in groups or individually, the land use code should be amended to require improvements consistent with the underlying development standards. At a minimum, this would involve paving with asphalt or other approved hard surfacing, and providing for City standard driveway access, landscaping and storm drainage controls. An itinerant vendor permit or other license may or may not be required for these vendors.
- 5) For vendors who only vend occasionally or at special events, a basic mobile food vendor license could be created.

One option would be to create a "master" mobile food vendor license for the mobile food vendors other than those who operate strictly under the itinerant vendor permits. The vendor could then choose one or more of options two thru five to include on the license. As an example, a vendor could

choose to vend only from a public sidewalk in downtown, in which case his master food vendor permit would follow the approval track through the City Engineer. A vendor with multiple vehicles or locations could choose to vend from a private site for one of the locations and have a basic or special events license for another. In all cases, the license would be revocable subject to appeal to a hearing body such as the City Hearing Examiner.

The permit processes would be reinforced with educational materials to ensure that individuals interested in starting a mobile food vendor business or those with existing businesses could easily gather information relating to the City's standards and requirements as well as those of other agencies involved in the review and approval of food service businesses. Though it is not likely possible to create a one stop shop for all permits and licenses required to start a mobile food vendor business at City Hall, the City can make its part easily understandable and fit logically into the sequencing of approvals necessary for a business to start operations.