

Zoning Bulletin

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by Mass. Gen. L. c. 40A, § 10 will become effective if its holders have substantially relied upon it within that period.

The Background/Facts: Arthur and Irene Stefanidis, trustees of the A & I Trust (the “Stefanidises”), owned a single large lot in the city of Peabody (the “City”), on which there was an existing structure. They divided this parcel into Lot A, the front portion of the parcel containing the structure, and Lot B, the undeveloped portion at the rear of the parcel that did not have street frontage. They reserved an easement in favor of Lot B over the driveway and parking area of Lot A. The Stefanidises subsequently planned to build a two-family house on Lot B. In furtherance of that plan, they applied for a variance from the City’s zoning board of appeals (the “Board”) to allow them to build despite the lack of street frontage. The variance was approved, with certain conditions. The variance was filed in the city clerk’s office on June 23, 2008.

The decision granting the Stefanidises’ variance notified the Stefanidises that they were responsible for recording the variance decision in the county registry of deeds within one year. Pursuant to Massachusetts statutory law—Mass. Gen. L. c. 40A, §§ 10 and 11—the Stefanidises had one year to record and exercise their variance. Specifically, Mass. Gen. L. c. 40A, § 10 provides: “If the rights authorized by a variance are not exercised within one year of the date of grant of such variance such rights shall lapse . . .” Section 11 requires that the variance be recorded before it can “take effect.”

The Stefanidises nonetheless failed to record the variance; apparently they simply forgot to do so. Soon after receiving the variance, the Stefanidises applied for a building permit from the City building commissioner without submitting proof of recording. The building permit issued. The Stefanidises proceeded to obtain a loan for construction, hired a general contractor and supervising architect, and began to clear and prepare the site.

On June 29, 2009, approximately one week after the one-year anniversary of the grant of the Stefanidises’ variance, Mary E. Grady—an occupant of one of the units on Lot A—made a written request to the building commissioner that he revoke the building permit. She argued that the building permit should be revoked on the ground that the Stefanidises had failed to record the variance within one year.

Notified by the building commissioner, the Stefanidises recorded the variance on July 3, 2009, 11 days after the expiration of the one-year lapse period.

The building commissioner denied Grady’s request on the grounds that: the “rights authorized by the variance have been exercised within one year”; work had commenced pursuant to a building permit; and the Stefanidises had complied with the conditions specified in the variance.

Grady appealed and the Board upheld the building commissioner’s denial of the request to revoke the building permit.

Grady then filed a complaint in the Land Court. The Land Court judge determined that the variance had not lapsed because the Stefanidises had taken substantial steps in reliance upon it, and had recorded it within a short period of time after the expiration of the lapse period.

Grady appealed to the Appeals Court. The Supreme Judicial Court of Massachusetts took up the case on its own motion.

Cedar Point Road (the “Cedar Point House”) in the city of Sandusky, Ohio (the “City”). The Cedar Point House was located along a causeway, known as the Cedar Point Chaussee, which connected the City to a peninsula containing the Cedar Point amusement park.

The Cedar Point House was on a lot that was zoned as R1-75. That zone authorized “one-family dwellings” under § 1129.03 of the City’s Codified Ordinance (the “Zoning Ordinances” or the “Zoning Code”). Pursuant to § 1107.01(g)(2) of the Zoning Code, “[d]welling” was defined as a “building designed or occupied exclusively for non-transient residential use (including one-family, two-family, or multifamily buildings).”

Viviano did not reside at the Cedar Point House, but rather rented it for short terms to a series of third parties, who often used it as part of a vacation to the amusement park.

In August 2011, the City issued to Viviano a cease and desist order. The order alleged that Viviano’s rental of the Cedar Point House violated the Zoning Code. Each violation was designated a misdemeanor of the fourth degree, punishable by a \$250 fine, 30 days in jail, or both.

Viviano appealed to the City’s Board of Zoning Appeals (the “BZA”). Referencing §§ 1107.01(g)(2) and 1129.03 of the Zoning Code, the BZA found that “the rental of an entire Dwelling, located in a Residential District on a serial basis is not permitted.”

Viviano again appealed to the Erie County Court of Common Pleas. There his case was consolidated with appeals from several other property owners concerning the BZA’s decision regarding renting properties on the Chaussee.

Viviano argued that the definition of “dwelling” pursuant to § 1107.01(g)(2) of the Zoning Code was unconstitutional under the void-for-vagueness doctrine because it failed to provide property owners with a fair notice of what uses were permitted in the R1-75 zoning district pursuant to § 1129.03 of the Zoning Code. Specifically, Viviano pointed to the use of the conjunction “or” and to the use of the term “non-transient” in § 1107.01(g)(2). Again, § 1107.01(g)(2) defined a “dwelling” as a “building designed *or* occupied exclusively for *non-transient* residential use . . .” (emphasis added).

Viviano contended that the use of the conjunction “or” was disjunctive—meaning that the classifications on either side of “or” were to be read separately. Viviano believed that having a house meet a single listed criteria—in this case, either a building “designed” for “non-transient residential use” or a building “occupied” for non-transient use—was sufficient to satisfy the Zoning Code.

Viviano also contended that the term “non-transient,” which was undefined in the Zoning Code, was ambiguous—potentially encompassing rentals of any time frame and potentially resulting in discriminatory enforcement.

The court agreed with Viviano. Finding there were no material issues of fact in dispute, and deciding the matter on the law alone, the court issued an order granting summary judgment to Viviano.

The City appealed.

DECISION: Affirmed.

Procedure/Open Meetings Law—As a result of large public turnout at public meeting on special use permit, planning board relocates meeting

Opponents of special use permit contend the meeting relocation violated the Open Meetings Law

Citation: *Frigault v. Town of Richfield Planning Bd.*, 107 A.D.3d 1347, 2013 WL 3213803 (3d Dep't 2013)

NEW YORK (06/27/13)—This case addressed the issue of whether a town planning board's relocation of a meeting at which a special use permit was granted violated the Open Meetings Law.

The Background/Facts: In March 2011, Monticello Hills Wind, LLC (the "Applicant") applied to the Town of Richfield Planning Board (the "Board") for a special use permit. The Applicant proposed the construction of six wind turbines and associated facilities (the "Project") on 1,190 acres of land located in the Town of Richfield, Otsego County, New York (the "Town").

The Board evaluated the proposed Project under the State Environmental Quality Review Act ("SEQRA"), held a public hearing, conducted multiple meetings and considered public comments both in support of, and in opposition to, the Project. At a November 22, 2011 meeting, the Board, among other things, granted the Applicant a special use permit.

In regard to the November 22, 2011 meeting, the Board had initially provided proper notice that a Board meeting was scheduled to take place at the Town Hall at 7 p.m. on that date and that the Project would be the focus of the meeting. As a result of the large public turnout at that meeting, the room in the Town Hall was filled in excess of the maximum occupancy limit. The Town attorney announced to those in attendance that the meeting would be relocated to a community room in a church located approximately two blocks away. A note was placed on the door of the Town Hall to inform late attendees of the move, and the meeting commenced approximately one hour after it was scheduled to begin.

Subsequent to the November 22 meeting, a group of local citizens and property owners in the Town (the "Opponents") brought a legal action against the Board. Among other things, the Opponents contended that the Board failed to comply with the Open Meetings Law (Public Officers Law art 7) by relocating the meeting without proper notice.

The Open Meetings Law provides that "[p]ublic notice of the time and place of a meeting scheduled at least one week prior thereto shall be given to the news media and shall be conspicuously posted in one or more designated public locations at least seventy-two hours before such meeting," and "[p]ublic notice of the time and place of every other meeting shall be given, to the

Case Note:

The Opponents had also maintained that the Board had failed to properly notify the County Planning Department of the public hearing or provide it with a "full statement of the proposed action" and all materials on which the Board relied in reaching its negative declaration decision under SEQRA. The Opponents had contended that the Board had violated the Town's Land Use and Building Maintenance Ordinance by failing to provide any explanation or elaboration as to eight enumerated conditions that had to be met for a special permit grant. The appellate court agreed that the Board so failed and violated the Town Law and the Town Ordinance. Accordingly, the court concluded that the Board's resolution granting the special use permit was properly annulled by the Supreme Court.

Nonconforming Use—County says business use is in violation of zoning code

Business operator argues use is a legal, preexisting, nonconforming use, although it was not fully operational at the time of the zoning change

Citation: *King County, Dept. of Development and Environmental Services v. King County*, 2013 WL 3377420 (Wash. 2013)

WASHINGTON (06/27/13)—This case addressed the issue of whether a use was "established" as required by the county zoning ordinance so as to constitute a nonconforming use.

The Background/Facts: Beginning in October 2003, Ronald Shear ("Shear") leased a 10-acre parcel of property (the "Property") in King County, Washington (the "County"), from Jeffrey Spencer. The Property was zoned "agricultural." Shear intended to operate on the Property a business that processed organic materials into animal bedding and fuel. To that end, beginning in October 2003, Shear began bringing equipment and materials onto the Property for later processing. Shear's activities on the Property increased throughout 2004, although no actual "grinding or processing" had begun.

Then, in September 2004, the County amended its zoning code to require permitting for operations such as Shear's, classifying them as "materials processing facilities." Shortly after the zoning change, Shear began actual grinding of organic materials. In response to complaints from a nearby landowner, the County Department of Development and Environmental Services ("DDES") began to investigate Shear's operations. In October 2006, DDES issued an administrative order. Among other things, the order found Shear was operating a materials processing facility in a critical area without a permit.

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In order to determine whether the use of the Property as a materials processing facility existed prior to September 2004, the court had to determine "how the King County Code provisions allow[ed] uses to vest as nonconforming uses." Importantly, the court found that the past-tense form of the word "establish" was used twice in the Code's definition of "nonconforming." The court found that this showed that the use must already be established in order to be considered a nonconforming use.

The court next looked to what was required by the Code for a use to be "established." Again, the Code stated that a use was permanently established when the use "will or has been in continuous operation for a period exceeding sixty days." Again, the hearing examiner had interpreted the term "will" to mean that the County Code expressly recognized that preexisting uses could vest even if not in full operation. The court disagreed. It found that the term "will" spoke to existing established uses that had not been in operation for 60 days but were expected to continue for more than 60 days. A use in operation for less than 60 days was considered a "temporary use." Thus, the court concluded that "will" did not have any bearing on when a nonconforming use was "established" but instead referred to whether uses that were already "established" were considered "permanent" or "temporary."

The court determined that because Shear was not yet processing materials at the time of the September 2004 zoning change, his use as a materials processing facility was not yet established within the meaning of the Code.

Moreover, the court found no language in the County Code that allowed a landowner to create a preexisting use merely by undertaking preparatory steps with a plan to take action at some unknown time in the future. Thus, the court said that allowing some contemplated future use to be considered a "preexisting" use would be contrary to the requirements of the preexisting use doctrine. Accordingly, the court concluded that Shear failed to show his use was established at the time of the zoning change and therefore a vested nonconforming use.

Case Note:

The court said that if Shear had been fully processing the materials for 15 days (prior to the date of the zoning change), his use would have been established within the meaning of the Code and would have been permanent because it eventually would have been in continuous operation for 60 days.

Case Note:

The case also presented the issue of what effect a nonpermitted activity has on a later claim to a preexisting use when a permit was required for the activity asserted as support for a preexisting use. The hearing examiner had also concluded that permits (which had not been obtained) were required for grading that Shear had performed before the Code revisions. The court said that when a landowner utilizes unlawful methods to establish a nonconforming use, that unlawfulness precludes a subsequent finding of a lawful nonconforming use. Thus, the court found that because Shear had not appealed the ruling that permits were required for the grading, he could not meet the required showing that his use lawfully existed.

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conflicts with state law and is void

Citation: *Latinos Unidos Del Valle De Napa y Solano v. County of Napa*, 217 Cal. App. 4th 1160, 159 Cal. Rptr. 3d 284 (1st Dist. 2013)

CALIFORNIA (07/11/13)—This case addressed the issue of whether a county's density bonus ordinance—which required developers to include a higher percentage of affordable housing units than required by the state's Density Bonus Law in order to obtain a density bonus—impermissibly conflicted with the state's Density Bonus Law and was thus void.

The Background/Facts: In 1979, the California Legislature enacted the Density Bonus Law (Cal. Gov't Code § 65915). The law aims to address the shortage of affordable housing in California. In essence, the law rewards a developer who agrees to build a certain percentage of low-income housing with the opportunity to build more residences than would otherwise be permitted by the applicable local regulations. More specifically, under the Density Bonus Law, when a developer agrees to construct a certain percentage of the units in a housing development for low- or very low-income households, or to construct a senior citizen housing development, the city or county must grant the developer one or more itemized concessions and a "density bonus." The "density bonus" allows the developer to increase the density of the development by a certain percentage above the maximum allowable limit under local zoning law.

The Density Bonus Law required local governments to adopt an ordinance establishing procedures for implementing the directives of the statute. In 2010, Napa County (the "County") amended its ordinance to implement the state Density Bonus Law. Under the county's new density bonus ordinance (the "Ordinance"), the County would provide a developer with density bonuses when the developer "provides target units in addition to" an inclusionary requirement of up to 20% new dwelling units in a residential development project being made available at prices affordable to moderate-income households.

Latinos Unidos Del Valle de Napa y Solano and certain individuals (hereinafter, collectively, "Latinos Unidos") brought a legal action against the County. Among other things, Latinos Unidos alleged that the County's Ordinance conflicted with the state Density Bonus Law. They alleged that the Ordinance impermissibly required the developer to include a higher percentage of affordable units than the Density Bonus Law required in order to obtain a density bonus.

The trial court disagreed, and issued a decision finding in favor of the County.

Latinos Unidos appealed.

DECISION: Judgment of superior court reversed in part.


Variance—Opponent challenges grant of conditional use variance

Opponent contends zoning board erred by not requiring applicant to prove the negative criteria by “the enhanced quality of proofs”


Citation: *TSI East Brunswick, LLC v. Zoning Bd. of Adjustment of Tp. of East Brunswick*, 2013 WL 3802499 (N.J. 2013)

NEW JERSEY (07/23/13)—This case addressed the issue of whether, in considering an application for a conditional use variance (N.J.S.A. 40:55D-70(d)(3)), the applicant must prove the negative criteria by an enhanced quality of proofs.

The Background/Facts: New Vornado/Saddle Brook, LLC (“New Vornado”) owned a large tract of land in East Brunswick, New Jersey (the “Town”). The site was improved with a large shopping center that included a home improvement store, a variety of retail establishments, and one vacant free-standing building. New Vornado sought to convert the vacant building into an LA Fitness health club.

 Under the Town’s zoning ordinance for-profit health club facilities were a conditional use. Thus, the proposed LA Fitness facility had to comply with the relevant conditions established in the zoning ordinance, including a condition that prohibited such a facility from being located within 500 feet of any residence or residential zone. Because New Vornado’s property was within 500 feet of residences, New Vornado filed an application seeking a conditional use variance to enable it to open the LA Fitness facility.

Ultimately, the Town’s Zoning Board granted New Vornado’s application for a conditional use variance.

 TSI East Brunswick, LLC (“TSI”) was the owner and operator of a New York Sports Club, a for-profit health club that was located in a shopping center across the street from New Vornado’s property. After the conditional use variance was granted to New Vornado, TSI commenced a legal action. TSI asserted that the Zoning Board’s conclusions were flawed. Among other things, TSI argued that New Vornado’s application should have been tested against the standards applicable to a use variance, rather than in accordance with those applicable to a conditional use variance. TSI said this was because the condition related to the 500-foot distance effectively prohibited New Vornado from putting the fitness club in its chosen location. TSI also contended that the Zoning Board had erred by not requiring New Vornado to prove the negative criteria by “the enhanced quality of proofs.”

the conditions fixed by the zoning ordinance, the use “is reconcilable with the municipality’s legislative determination that the condition should be imposed on all conditional uses in that zoning district.” In undertaking that analysis, the court explained, the weighing is entirely different from that demanded for a use variance because the governing body has not declared that the use is prohibited but, instead, has elected to permit the use in accordance with certain expressed conditions. Accordingly, the focus of the analysis is on the effect of noncompliance with one of the conditions as it relates to the overall zone plan, said the court.

In other words, said the court, a use variance “proceeds in the context of a use that the governing body has prohibited, whereas [a conditional use variance] proceeds in the context of a use that, if it complies with certain conditions, is permitted.” The court determined that were it to require an enhanced standard of proofs for the negative criteria be applied in the conditional use context, the court would “effectively erase the distinction that a conditional use creates.” “Rather than recognizing that the use is essentially permitted, albeit with conditions, [the court] would be presuming that the use is prohibited unless the conditions are met or are proven in accordance with the standards ordinarily required to secure a use variance.”

Thus, here, the court upheld the Zoning Board’s conclusion that New Vornado was not required to prove the negative criteria by an enhanced quality of proofs. The court found that the Zoning Board properly applied a standard that involved weighing the proofs as to the negative criteria in order to determine whether, notwithstanding the failure of one of the conditions, the proposal was reconcilable with the zone.

See also: *Coventry Square, Inc. v. Westwood Zoning Bd. of Adjustment*, 138 N.J. 285, 650 A.2d 340 (1994).

See also: *Medici v. BPR Co.*, 107 N.J. 1, 526 A.2d 109 (1987).

Maryland Code § 2-404 governs the issuance of permits to construct emissions sources. Section 2-404(b)(1) prohibits the Department from processing an application for a permit until the applicant submits documentation:

- “(i) That demonstrates that the [proposed source] has been approved by the local jurisdiction for all zoning and land use requirements; or
- (ii) That the source meets all applicable zoning and land use requirements.”

In other words, the successful applicant has to show that the project has received approval from the local authority or otherwise satisfies local law.

Thereafter, Dominion filed a zoning application with the Town of Myersville. In August, the Town of Myersville denied Dominion’s zoning application on the grounds that the proposed compressor station was contrary to the local development plan, endangered public health, and posed a nuisance.

On December 20, 2012, FERC issued a certificate of public convenience and necessity for a number of Dominion facilities, including the compressor station in Myersville. With that certificate, Dominion applied to the Department once again for an air quality permit. Its cover letter stated it now satisfied § 2-404(b)(1) because all local zoning and land use requirements had been preempted by FERC’s certificate and were therefore not “applicable.”

The Department refused to proceed with the application because Dominion had “failed to provide the documentation of compliance required by § 2-404(b)(1).”

Dominion subsequently petitioned the United States Court of Appeals, District of Columbia Circuit, for review of the Department’s reasons for refusing to process its application. (The NGA provides for expedited judicial review of federal or state agency action or inaction that deprives a company building a FERC-certified natural gas facility of an authorization it requires to proceed with construction. (See 15 U.S.C.A. § 717r(d).))

In its petition, Dominion argued that the Department acted contrary to law by requiring a demonstration under § 2-404(b)(1) that the proposed compressor station was in compliance with local law. Dominion argued that the NGA preempted that state law requirement to the extent that it called for more from a natural gas facility than did FERC. Alternatively, Dominion asserted that it had in fact complied with the terms of § 2-404(b)(1). Dominion noted that § 2-404(b)(1) requires documentation of compliance with “applicable” local requirements, then argued that local law preempted by a federal law is not “applicable” because the Supremacy Clause bars its enforcement by a state agency. FERC’s certificate preempts all local requirements that

said the court. According to FERC, “state and local regulation[s] [are] preempted by the NGA to the extent they conflict with federal regulation, or would delay the construction and operation of facilities approved by” FERC. The court said that, presented with a FERC certificate that approved Dominion’s compressor station, the Department had to apply that standard to determine which of Myersville’s zoning and land use requirements it preempted, and which remained “applicable” to Dominion’s compressor station.

The court remanded the matter to the Department to make those determinations. Specifically, the court said that the Department must either identify one or more “applicable” (that is, not preempted) zoning or land use requirements with which Dominion had not demonstrated compliance, or it must process Dominion’s application for an air quality permit.

Case Note:

The Department had asserted 11th Amendment immunity to the jurisdiction of the United States District Court of Appeals, District of Columbia, on the ground that it was an agency of the State of Maryland. The court, however, held that Dominion could proceed against the Department’s Secretary under the doctrine of Ex Parte Young, which provides that the 11th Amendment does not bar suits against state officers for prospective relief.

Zoning News from Around the Nation

COLORADO

The Boulder City Council is considering possible zoning ordinance changes that would affect the sale of alcohol near the University of Colorado Boulder. Reportedly, the City Council plans to consider “a set of possible ordinances that could”: restrict new licenses in the area of the University; or ban new liquor licenses within 500 feet of the University; or only allow Beer & Wine licenses, a new license designation, in the 500-foot area. Another option being considered is a change to the zoning and land use codes “to ban certain types of liquor licenses in the Hill business area—for the so-called ‘high impact’ businesses that stay open after 11 p.m. or that serve primarily alcohol rather than food.”

Source: *Boulder Weekly*; www.boulderweekly.com

ILLINOIS

On August 1, Illinois Governor Pat Quinn signed the Compassionate

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AMERICAN PLANNING ASSOCIATION

➔ ISSUE NUMBER 9

PRACTICE FOOD TRUCKS



ASK THE AUTHOR JOIN US ONLINE!

Go online during the month of September to participate in our "Ask the Author" forum, an interactive feature of Zoning Practice. Rodney Arroyo, AICP, and Jill Bahm, AICP, will be available to answer questions about this article. Go to the APA website at www.planning.org and follow the links to the Ask the Author section. From there, just submit your questions about the article using the e-mail link. The authors will reply, and Zoning Practice will post the answers cumulatively on the website for the benefit of all subscribers. This feature will be available for selected issues of Zoning Practice at announced times. After each online discussion is closed, the answers will be saved in an online archive available through the APA Zoning Practice web pages.

About the Authors

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Jill Bahm, AICP, is a principal planner with Clearzoning, Inc. She holds a Master of Urban and Regional Planning degree and has worked in both the public and private sectors as a downtown development authority director, city planner, and real estate marketing professional. Bahm's professional interests include economic development, recreation planning, historic preservation, community participation, and organizational development.

suppliers and owners—will take place in Portland, Oregon.

On the worldwide stage, the World Street Food Congress is the first of its kind to connect and open up fresh ideas and thought leadership in the massive and growing street-food culture and industry throughout the world. This 10-day street-food festival was hosted in Singapore in January 2013 and featured well-known leaders in the food industry (www.wsfcongress.com).

Faced with inquiries from food vendors, many communities turn to their zoning codes, only to discover that mobile food vending isn't really defined and may not be permitted in the way vendors might like. With the approach to regulating mobile vending varying widely in communities, it can be hard to know where to begin when considering if and how to accommodate food trucks.

WHAT IS MOBILE FOOD VENDING?

Regulatory codes for many communities recognize transient merchants—those goods and services provided by a traveling vendor. The typical ice cream truck would be a good example of a transient merchant who is mobile most of the time, stopping only when requested for a few short minutes. Many operators of today's food trucks or carts, however, are seeking more than a few minutes on the street, sidewalk, or parking lot, staying in place for a few hours to serve breakfast, lunch, or dinner. In fact, when they are located on private property, some food trucks may be in one location for days, weeks, or even months. It is important to make a dis-

inction between the food vendors that are more transient in nature, like an ice cream truck, and those that seek to move about less frequently. Both types of uses can offer benefits to the community, and they will each have different potential issues to regulate.

Many mobile food vendors utilize self-driven vehicles that permit easy relocation throughout the community. However, mobile food vending also includes trailers, food kiosks, and food carts. Food kiosks are temporary stands or booths that are typically intended to sell prepared foods, including ice cream, pretzels, and the like. Food kiosks may be found inside a large office building or shopping mall, but may also be secured for outside use. Some communities, like Maui County, Hawaii, allow a variety of products to be sold at a kiosk, provided certain standards are met (§30.08.030). While temporary in structure, food kiosks are often stationary with a defined location. Food carts allow the vendor to sell from outside the moveable unit and are often used to sell fresh fruits and vegetables. Typically, the food in kiosks and carts is prepared elsewhere and kept cold or hot in the unit. The city of New York encourages "green carts" that offer fresh produce in certain areas of the city and has special regulations for these uses (www.nyc.gov/greencarts).

In communities across the U.S., mobile food vendors are seeking permits to start these innovative businesses. They often run into roadblocks at city hall, because while many zoning ordinances include provisions for temporary

uses, most do not contain current definitions for mobile food vending nor do they include any standards that specifically relate to vending and the issues that may arise. The net result in many communities, intentional or unintentional, is a prohibition on mobile food vending.

THE PROS AND CONS OF MOBILE FOOD VENDING

Over the past few years, most of the economy has been struggling and the workforce has been challenged to adapt. With laid-off workers trying to reinvent themselves and new immigrants looking for opportunities, the number of people starting new businesses is rising. Mobile food vending seems, for some, like a low-cost way to wade into the pool of business ownership. There are a number of reasons why communities may elect to sanction mobile food vending:

- **It provides an opportunity to increase jobs and businesses.** The cost of starting a food truck business can start at \$25,000, where a traditional bricks-and-mortar establishment may start at \$300,000, according to the National Restaurant Association (Emergent Research 2012).
- **It offers opportunities to provide food choices where zoning precludes restaurants.** Traditional zoning codes tend to restrict the uses permitted in office and industrial districts, only allowing uses that narrowly meet the intent of those districts. Office and industrial parks, in particular, are often isolated from the rest of the community, requiring employees to drive to retail and restaurant areas. In addition, some communities may not have access to variety of

- Are these mobile units just for food sales, or can other goods be sold as well?
- Does the community want to increase activity?
- How can the zoning ordinance address upkeep and maintenance?
- When can food trucks operate?
- How are visitor parking and circulation accommodated?
- How are these uses reviewed and permitted?
- What do vendors and their customers want or need?
- How is signage for the mobile unit regulated?
- How is the site lit to ensure safety?

Location

It is common to allow mobile food vending in commercial districts, but some communities add industrial districts or specify mixed use districts. Start with the community's comprehensive plan—is there a need or desire to increase activities in specific parts of the community? Are there concerns about the impact of single-purpose districts (especially office and industrial) on connectivity, traffic congestion, and business

In consideration for existing facilities, some communities decide that there should be a minimum distance between mobile units and bricks-and-mortar restaurants. Some communities try to limit the impact on adjacent residential uses through a distance requirement or by restrictions on hours of operation. Planners should test these locational restrictions to ensure that realistic business opportunities exist. El Paso, Texas, repealed its locational requirement of 1,000 feet from bricks-and-mortar establishments following a 2011 lawsuit to provide sufficient opportunities for mobile food vendors (Berk and Leib 2012). Attorneys Robert Frommer and Bert Gall argue that separation from other establishments is not necessary and that food truck regulations should be narrowly tailored to legitimate health, safety, and welfare concerns, not regulate competition (2012).

The American Heart Association has also looked at location issues related to mobile food vending. They report that several communities across the country prohibit mobile food vending within a certain distance of schools (or

nity and often is related to where mobile food vending is permitted. Some communities allow food trucks on public property but prohibit overnight parking. Where on-street parking is at a premium, communities may consider allowing food trucks to utilize public parking spaces for the same duration as other parked vehicles. Chicago requires food trucks to follow posted meter time restrictions, with no more than two hours in one location. In addition, the city also limits mobile food vending to two hours on private property (§4-8).

In contrast, some communities allow food trucks on private property for up to 30 days or more at one location. For example, Grand Rapids allows concession sales for up to 200 consecutive days over 12 calendar months (§5.9.32.K.6).

Regulations like this may impact vendors in terms of the types of food that can be sold and the manner in which they are prepared, especially when preparation is done on-site. Communities may wish to consider whether the allowed duration is reasonable for food vendors as well as adjacent property owners.



➡ This food truck rally in Royal Oak, Michigan, illustrates how a gathering of food trucks can activate an otherwise underutilized space.

retention and recruitment? Are there any areas in the community where the population is underserved by food choices? Planners can take these concerns to the community and invite residents and business owners to share their thoughts on where mobile food vending might be appropriate and desirable.

Some communities make a distinction between vending on public property, which often requires a license but is not regulated by zoning, and private property, which often requires a temporary use permit and is regulated by the zoning ordinance. When permitted on private property, zoning standards should require evidence of property owner approval.

at school release times) to limit the sometimes nutritionally challenged food choices available (2012). Woodland, California, prohibits mobile food vending within 300 feet of a public or private school, but will allow them on school property when approved by the school (§14-15). In a different twist, the Minneapolis Public School System introduced a food truck program this year to offer free nutritious meals to students during the summer months at four different sites in Minneapolis (Martinson 2013).

Duration

The length of time food trucks are permitted to stay in one place varies widely by commu-

Goods Available for Sale

Some communities, like College Station, Texas, are very specific that the goods sold from mobile vending to be food related (§4-20). This is often borne of a desire to start with mobile vending on a limited basis to gauge its impact. As mobile food trucks become more prevalent, surely people will explore the ideas of starting other types of businesses in this format. Communities may wish to consider the questions raised earlier about location and assess whether or not it makes sense to allow other goods in addition to food to be sold in designated areas. For example, Ferndale, Michigan, allows a variety of wares to be sold by a mobile

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table water, requiring mobile food vendors to store their water in an internal tank. The city also requires vendors to be located within 50 feet of an entrance of a primary building, and drive-through service is expressly prohibited (§3.02.01.A(20)). King County, Washington, requires that all mobile food vending in the county be located within 200 feet of a usable restroom (§5.34).

Signage

Some communities use their existing sign regulations, but others tailor standards for mobile units. In Michigan, both Grand Blanc Township (§7.4.9.F) and Kalamazoo (§§25-63–68) allow one sign on the mobile vending unit itself, but do not allow any other signage. This is fairly common. In many cases, the truck itself essentially functions as one big sign with colorful graphics. Additionally, many mobile food vendors now use social media to get out the word regarding the time and place they will set up shop, potentially reducing the need for additional signage beyond that on the unit itself.

Lighting

Lighting is not as commonly addressed as other issues, especially if a mobile food vending unit is located in an existing developed area, but it is likely presumed that other applicable lighting requirements appropriate to the location are to be followed. Consider adjacent uses and the impact of light trespass and glare. For example, Grand Blanc Township requires mobile food vending units to be lit with available site lighting. No additional exterior lighting is allowed unless permitted by the zoning board of appeals upon finding that proposed exterior lighting mounted to the mobile vending unit will not spill over on to adjacent residential uses as measured at the property line (§7.4.9.F.10).

TESTING, FOLLOW-UP, AND ENFORCEMENT

One of the nice things about mobile food vending is that it is really easy for a community to put a toe in the water and test the impact of regulations on mobile food vendors, other community businesses, and the public, and to adjust the regulations

as appropriate. The Metropolitan Government of Nashville-Davidson County, Tennessee, initiated a test phase beginning April 2012 that will provide evaluative data for a successful mobile food vendor program. The program will initially be operated under a temporary permit issued by the Metro Public Works Permit Office for two specified zones, the downtown core and outside of it. Oakland, California, has a pilot program for "Food Vending Group Sites," defined as "the stationary operation of three (3) or more 'mobile food vendors' clustered together on a single private property site, public property site, or within a specific section of public right-of-way" (§5.51).

Before embarking on extensive zoning rewrites, review the suggested considerations with the community to anticipate and plan for appropriate ways to incorporate this use in a reasonable way. Mobile food vending is on the rise all over the country, from urban sites to the suburbs. When regulated appropriately, mobile food vending can bring real benefits to a community, including jobs, new businesses, fresh food, and vitality.

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