

**CITY COUNCIL
STUDY SESSION AGENDA**



MEDFORD
CITY COUNCIL

June 11, 2020

6:00 P.M.

Prescott Room, Medford Police Station

219 South Ivy, Medford, Oregon

- 1. Charter Review Committee Recommendations**
- 2. Utility Fees for Mobile Food Vendors**
- 3. Park Use Regulations and Food Distribution**

MEMORANDUM

To: Mayor and Council
From: Eric B. Mitton, Deputy City Attorney
Study Session Date: June 11, 2020
Subject: Charter Review Committee recommendation

COUNCIL DIRECTION

Staff is providing Mayor and Council information on the Charter Review Committee's latest recommendations, as well as the status of the Charter Review Committee given the current COVID-19 pandemic.

Staff is seeking direction on whether to proceed with drafting potential ordinances regarding two issues where the Charter Review Committee determined the issues were best suited to ordinance instead of charter amendment.

PRESENTATION OUTLINE

- Presenter: Eric B. Mitton, Deputy City Attorney
- Available consultants: Al Densmore and Greg Jones, Chair and Vice-Chair of the Charter Review Committee

PREVIOUS STUDY SESSIONS AND G-3 MEETINGS ON THE TOPIC

- 08/22/2019 Council Study Session on the Charter Review Process and Charter Review Committee selection criteria
- 12/12/2019 Council Study Session regarding the TLT Charter Review, TLT percentage increase options, and the future TLT change process
- 01/09/2020 Council Study Session to review the Councilors Charter Review Comments
- 01/27/2020 Charter Review Committee meeting with Council Liaisons
- 02/10/2020 Charter Review Committee meeting with Council Liaisons
- 02/27/2020 Council Study Session to provide direction on narrowing Charter Review Committee topics

BACKGROUND

At the February 27, 2020 City Council study session, City Council received an update on Charter Review Committee deliberations to date, and provided direction on the focus of issues referred to the Charter Review Committee. On April 6, 2020, the Charter Review Committee convened via Zoom to discuss the direction provided by City Council on February 27, 2020. After deliberation and discussion, the Committee approved via motion and vote a three-part recommendation.

First, on the mechanism for Council securing an outside attorney if the City Attorney's Office had a conflict of interest, there was some discussion on the issue, focusing on whether an outside attorney could be retained by Council Officers or instead by a majority vote of the whole Council. Ultimately, the Committee declined to recommend a specific mechanism; it was not an issue that would require a charter amendment in either circumstance.

Second, the Charter Review Committee determined that the procedure for filling Council vacancies can and should be clarified via ordinance by City Council.

Finally, the Charter Review Committee recommended that the matter of City Council compensation should be postponed until at least September because of the COVID-19 pandemic. Concerns were raised about moving forward on such an issue during the pandemic's unprecedented economic circumstances. In addition, concerns were raised about how to successfully accomplish public discussion and impact on such an issue given social distancing practices related to the pandemic. Ultimately, the Committee voted to adjourn until at least September and reconvene at that time to address this issue.

EXHIBITS

- None

Thank you,
Eric B. Mitton
Deputy City Attorney



MEMORANDUM

To: Mayor and Council
From: Lorraine Peterson, Accounting Supervisor
Study Session Date: June 11, 2020
Subject: Mobile Food Vendor Utility Fees

COUNCIL DIRECTION

Staff is seeking Mayor and Council direction on charging street, parks and public safety utility fees to mobile food vendors.

PRESENTATION OUTLINE

- Presenter: Lorraine Peterson, Acting Chief Financial Officer

PREVIOUS DISCUSSION ON THE TOPIC

- At the November 7, 2019 Council meeting, staff recommended amending Section 4.763 of Medford's Municipal Code, Determination of Street Utility Fee, to add a new category to the Food section of Table 4.1 that would provide trip-ends for Food Trucks in a Pod. This would allow utility fees to be assessed to mobile food vendors. Council extensively discussed the proposal and expressed concern that rising fees may discourage mobile food vendors; they also questioned if the fees could be added to the business license. Council directed staff to review fee options for mobile food vendors at a study session.

BACKGROUND

The creation of semi-permanent food pods with requirements for utility connections requires, at a minimum, that a sewer utility fee be assessed. Council approved the sewer utility fee at the November 7, 2019 meeting; however, Council did not reach agreement on whether or not street, parks and public safety utility fees should be charged. Currently, mobile food vendors are the only businesses within the City that do not pay utility fees.

At the study session, staff will present the following for discussion:

- Clarification of utility fee vs. tax. Staff will clarify the difference between a utility fee and a tax as those terms were interchanged during the November 7 Council meeting. There are more than 170 tax exempt customers who pay \$1.3 million annually in utility fees.
- Municipal Code requirements for establishment of utility fees. Several sections within the Municipal Code limit utility fees to responsible parties of developed properties. If

utility fees are to be assessed to mobile food vendors, the definition of who is required to pay a utility fee will need to be changed.

- Discussion on whether or not utility fees should be assessed through the Business License process. A question was raised if the utility fees could be attached to the business license. While it is possible to do that, there are several issues that would need to be resolved, including the following.
 - It would raise the amount of the business license from \$100 to \$426.24; this would be a large expense to pay all at once.
 - Enforcement could be an issue if a customer paying online only paid the business license item and did not pay the utility line item.
 - If a business closed, the utility refund would need to be manually calculated and generated.
 - If a customer makes a partial payment, decisions would need to be made on how to allocate it – to the business license first or prorated amongst all charges.
 - Customer questions about utility fees would need to be referred to Utility Billing staff as they are most knowledgeable about the fees.
- Survey results of other cities' fees assessed to mobile food vendors. Staff surveyed six cities to determine if they charge utility fees to mobile food vendors. Most do not; Corvallis charges a \$100 "Infrastructure Impact fee" that goes to Public Works as part of the business license. Beaverton charges Transportation, Park, Storm Drain and Sewer SDCs if the food truck is in a pod. Bend, Hillsboro, Portland and Salem do not charge utility fees because the food truck is not connected to water. Only customers connected to water pay utility fees.
- Staff Recommendation. Staff recommends assessing street, public safety and parks utility fees to mobile food vendors. All businesses within the City pay utility fees with the exception of mobile food vendors. These vendors consume utility services – they drive the streets, as do their customers, Police and Fire will respond to emergencies and they should bear the same responsibility for City beautification and livability as all its citizens.

If Council determines that utility fees should be assessed to mobile food vendors, staff will present relevant Municipal Code changes at a future Council meeting.

EXHIBITS

- None

Thank you,
Lorraine Peterson
Accounting Supervisor



MEMORANDUM

To: Mayor and Council
From: Eric B. Mitton, Deputy City Attorney
Study Session Date: June 11, 2020
Subject: Park Regulation Update

COUNCIL DIRECTION

Staff is seeking Mayor and Council direction on proposed Code changes related to addressing litter and conduct issues in City parks, as well as an enforcement mechanism for existing park rules.

PRESENTATION OUTLINE

- Presenter: Eric B. Mitton, Deputy City Attorney
- Available for questions: Rich Rosenthal, Director of Parks, Recreation and Facilities; and Scott Clauson, Chief of Police

PREVIOUS STUDY SESSIONS AND G-3 MEETINGS ON THE TOPIC

- In May 2019, Council directed staff to research the steps necessary to address issues associated with food distribution in City parks, including measures to keep pedestrian rights-of-way clear of obstructions and to ensure that trash generated by food distribution activities is disposed of properly.
- In September 2019, G3 meetings were held where staff of the City Attorney's Office presented some of the legal framework surrounding such potential regulation.

BACKGROUND

Food Distribution

Many local nonprofits provide valuable social services in supporting and caring for the local homeless community, and the City of Medford appreciates the valuable services that these organizations provide. At the same time, some concerns have been raised about litter

accumulation and blocked bicycle paths that are sometimes associated with food distribution in City parks.

Case law is clear that feeding homeless individuals in public parks is protected under the First Amendment. Case law is also clear that any regulations related to charitable food distribution must also apply to other similar activities in City parks, such as birthday parties and other celebratory events.

In light of this case law guidance, City staff has attempted to craft regulations that would specifically target the identified concerns regarding litter accumulation and blocked pathways, without prohibiting or unduly interfering with either charitable or celebratory food distribution. As such, a new code provision requiring that people providing food (whether in conjunction with a birthday party or charitable activities) are responsible for ensuring that the trash associated with the event is placed into trash receptacles at the end of the event. In order to ensure that organizers do not have the impossible task of predicting what guests may do with litter after leaving the park, a requirement that food distributed in a park must be consumed within that park was included. This ensures that charitable food distribution in a park does not contribute to litter accumulation in campsites all along the greenway.

Food carts and concession stands are exempted from this rule because they are ongoing commercial activity that do not have the same dynamic that a short-term large-scale free distribution doe (whether it be a birthday party or charitable event). Furthermore, if repeat problems arise surrounding a particular concession stand or food cart within a park, the City has leverage in those circumstances to address the concerns that the City does not have with celebratory or charitable events that fall beneath the special event permit threshold.

The regulations would also require that queues of individuals waiting for food, or groups of individuals consuming food, not block multi-use paths or sidewalks within the park.

Queues and seating should be arranged to not interfere with other park users. This would be equally true for celebratory events like birthday parties and charitable food distribution.

If Council is amenable to these rules, staff would recommend reaching out to some of the community groups involved in charitable food distribution to find out if these litter and queuing regulations are easily accommodated, or could be easily accommodated with certain modifications.

The Houston Model

At the September G3, staff had presented a framework used by the City of Houston, Texas where groups distributing food voluntarily pledged to a certain code of conduct regarding trash receptacles, food quality, sanitation, and other best practices issues. City staff are supportive on voluntarily working with our community partners on assisting and advising

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on these matters. However, City staff does not feel that codifying those cooperative efforts offers any benefit over simply reaching out to community partners. In terms of cooperation with community partners like city officials did in Houston, staff recommends updates from and direction to staff on the City's ongoing informal efforts to coordinate with community partners, instead of amending the Medford Municipal Code.

Other Park Regulations

Finally, staff is simultaneously advancing two other parks regulation matters that will assist Parks and Police staff in maintaining order in city parks. First, staff is offering is a code amendment addressing hours of parks closure. A code provision already exists on this matter but does not reflect the unique hours of Prescott Park; this amendment would address Prescott Park's unique hours, allowing citations for remaining in that park after its closure.

Second, staff is offering a code provision allowing a non-criminal citation for knowing violation of parks rules, such as unleashed dogs outside of designated areas, vehicles on grass, unpermitted vending, and uninsured barbeques. The "knowing" requirement in practice will in most cases require that an individual be warned before being cited. As such, this code provision should not result in unpleasant surprises for good-faith actions by individuals unaware of park rules. However, in situations of flagrant or repeat offenses, the current list of "park rules" available on the Parks & Recreation website are challenging to enforce without an express enforcement mechanism within the Medford Municipal Code.

EXHIBITS

- Proposed code changes

Thank you,
Eric B. Mitton
Deputy City Attorney

Park Regulation Update
Exhibit: proposed code changes

5.255 Hours of Park Closure [amending existing code section]

(1) **Except as set forth below, ~~No~~ no person shall be in Prescott Park, any other city public park, the I.O.O.F./Eastwood Cemetery or vehicle parking area of those parks or cemetery at any time between the hours of 10:30 p.m. and 6 a.m. This section shall not apply to:**

- (a) Pedestrians crossing the Mini Park or Library Park on a paved path;
- (b) Participants or spectators of an athletic contest in park areas lit by park flood lights for those contests;
- (c) Persons attending a scheduled event in a park or park building designated for community recreation or instruction; and
- (d) City employees or other government employees during the course of official activities.

(2) Between March 1 and October 31, no person shall be in Prescott Park at any time between the hours of 9:00 pm and 7:30 am (on Mondays through Fridays) or 7:00 am (on Saturdays and Sundays). Between November 1 and February 28, no person shall be in Prescott Park at any time between 5:00 pm and 8:00 am. This section shall not apply to:

- (a) Persons attending a scheduled event in a park or park building designated for community recreation or instruction; and
- (b) City employees or other government employees during the course of official activities.

(2)(3) Violation of this section constitutes a violation.

5.266 Disorderly Food Distribution in Parks [adding new code section]

(1) Purpose. Distribution of food in parks for celebratory or charitable purposes is not prohibited and, when conducted properly, is harmonious with other users of city parks. Disorderly events, however, can contribute substantially to litter in parks and surrounding areas or to obstruction of park paths, negatively impacting the usability of city parks.

(2) Applicability. This section governs food distribution to ten or more people. If an event organizer obtains a special event permit from the City Manager's Office, the terms of that special event permit may supersede these requirements. A food cart or concession stand licensed by the City of Medford is not subject to this section.

(3) A person distributing food in a city park to ten or more persons may not allow recipients to take the distributed food outside of that park; food distributed in a park must be consumed in the park where it is distributed.

(4) A person distributing food in a city park to ten or more persons must ensure that trash associated with the food distribution is gathered and placed into trash receptacles and may not allow trash associated with the food distribution to remain uncollected.

(5) A person distributing food in a city park to ten or more persons must ensure that the food distribution operation (including tables and trailers), the waiting queues of food recipients, and recipients consuming food (whether sitting or standing), do not block or obstruct traffic on multi-use paths, bicycle paths, sidewalks, or trails within the park.

(6) Violation of this section by a person distributing food constitutes a violation.

5.267 Knowing Violation of Parks Rules [adding new code section]

(1) The Parks and Recreation Department may promulgate and update rules of conduct for parks of the City of Medford ("Parks Rules") and shall publish said rules on its website. Except as otherwise set forth in this chapter, violation of Parks Rules is a violation enforceable through this section.

(2) No person shall knowingly violate Parks Rules while in a city park.

(3) Violation of this section constitutes a violation.