

**FINDINGS OF FACT and FINAL ORDER  
TYPE II DESIGN REVIEW**

**DATE:** August 25, 2023

**FILE NO.:** 23-023 DR

**PROJECT NAME:** Sandy Family Restaurant Food Cart

**APPLICANT/OWNER:** Ria Brower

**LOCATION:** 39024 Proctor Blvd.

**LEGAL:** T2S R4E Section 13CA Tax Lot 10600

The above-referenced proposal was reviewed as a Type II Design Review as the food cart is not intended to serve as a permanent food cart pod location. The following exhibits, findings of fact, and conditions (bold text) explain the proposal and the conditions of approval.

**EXHIBITS:**

**Applicant's Submission**

- A. Land Use Application
- B. Site Plan
- C. Pictures of Cart and location

**Additional Documents Submitted by Staff**

- D. Mailing Labels

**Agency Comments:**

- E. Clackamas County Health Department (July 13, 2023)
- F. Public Works (July 28, 2023)
- G. Fire Marshal Comments (Aug 25, 2023)

**Public Comments:**

- H. Kirsten Pitzer, Sandy Community Action Center (August 7, 2023)
- I. Shan Hill, Barlow Trail Vet Clinic (August 8, 2023)

**FINDINGS OF FACT**

1. These findings are based on the applicant's original submittal received on July 13, 2023, with additional items received on July 19, 2023, and July 28, 2023, requesting approval to place a temporary food cart in the parking lot of Sandy Family Restaurant due to a recent fire in the kitchen. The applicant submitted an application, site plan, and pictures of the proposed cart.

2. This food cart proposal was reviewed as a design review, as the temporary structure section of the Municipal Code did not apply to this situation and the food cart is not intended to serve as a permanent food cart pod location. Staff worked with the applicant to come up with a solution to process this request and introduce a fee of \$450 instead of the food cart pod fee of \$1,500 (fee at time of fire). This was a unique circumstance and staff did not want to charge an exorbitant fee to a business at a time of need, for a food cart use that would not be permanent. Due to this situation, staff is now working on a municipal code revision for emergency situations such as what occurred at Sandy Family Restaurant.
3. The land use application was approved “retroactively”, prior to noticing neighboring property owners, due to the urgency of the situation and to help Sandy Family Restaurant stay open for business. The applicant was approved to open once the City’s Public Works Department, Clackamas County Fire District No. 1, and the Clackamas County Health Department provided their approvals.
4. Staff received labels from First American Title for noticing property owners within 500 feet of Sandy Family Restaurant at 39024 Proctor Blvd. Notification of the proposal was mailed on August 3, 2023. Two public comments were received.
  - a. Kirsten Pitzer, Sandy Community Action Center, was very supportive of this application and hopes this endeavor will help the applicant carry on with business. (Exhibit G)
  - b. Shan Hill, Barlow Trail Vet Clinic, was also very supportive and thankful the city approved with urgency and is supportive. (Exhibit H)
5. Agency comments were received from Clackamas County Fire Marshal’s office, Clackamas County Health Department and the City of Sandy’s Public Works Department, as follows:
  - a. On July 13, 2023, staff received an approval letter from Clackamas County Health Department giving the applicant, Ria Brower with Sandy Family Restaurant approval for operating the temporary food cart.
  - b. On July 28, 2023, Matt Degner, Wastewater Supervisor with the City’s Public Works Department, also gave his approval to Sandy Family Restaurant with the understanding that the applicant will clean-out the grease interceptor/wastewater connection every few days. Degner gave the applicant step-by-step directions on how to complete the cleanout.
  - c. On August 25, 2023, staff received an approval email from the Clackamas County Fire Marshal’s office acknowledging and approving the temporary food cart.

Section 17.74.90 – Food and Beverage Carts

6. Section 17.74.90(E) (2) requires that food carts shall not exceed 20 feet in length or greater than 200 square feet. The applicant’s food cart is 8 feet wide by 16 feet in length for a total area of 128 square feet and therefore meets this requirement.
7. Section 17.74.90(E)(3) requires all carts to be placed on a paved surface. The applicant’s food cart is placed in the paved parking lot with approved stormwater facilities. The Development Services Director visited the subject site on July 12 and approved the location of the food cart. **The applicant’s food cart shall remain located on a paved surface and in its current location.**

8. Section 17.74.90(E)(4) requires all carts to be located at least three feet from the public right-of-way or back of sidewalk. **The applicant's food cart shall meet all required setbacks.**
9. Section 17.74.90(E)(12) states the exterior surfaces of all carts shall be clean and free from dents, rust, peeling paint, and deterioration. The applicant's food cart looks to be in great shape and is white with chrome accents.

#### Chapter 17.90 – Design Standards

10. Section 17.90.90 pertains to submission requirements for a Type II Design Review application. The applicant provided staff with the appropriate submission documents as required by the Director, including mailing labels. The Type II Design Review procedure allows the Director to grant or deny the Design Review request. The location of the temporary food cart in the parking lot of the Sandy Family Restaurant is considered a temporary site improvement to the parking lot in accordance with Section 17.90.10 (A)(5).
11. While the standards of Chapter 17.90 were not specifically required as the food cart is not permanent, the Director did make sure that the proposal to temporarily locate a food cart at 39024 Proctor Blvd. would not violate any of the provisions in Section 17.90.00 (D). The Development Services Director visited the subject site on July 12 and approved the location of the food cart to make sure the parking lot would remain safe, to make sure that utility lines would be hidden from Proctor Blvd., and to make sure that access for restaurant employees would be safe and well designed.
12. In accordance with Section 17.90.110 (J)(1) exterior storage of merchandise and materials, except as specially authorized as a permitted accessory use, is prohibited. **If the applicant desires to store any merchandise or materials outside of the building at 39024 Proctor Blvd. for use at the food cart it shall be screened from view from the public right-of-way and the design of the screen shall be approved by Planning Division staff.**

#### DECISION

The applicant's request for a Type II Design Review for a temporary food cart placed in the parking lot at Sandy Family Restaurant located at 39024 Proctor Blvd., due to a fire in their kitchen, is hereby **approved** as modified by the conditions listed below.

#### CONDITIONS OF APPROVAL

1. The applicant is permitted to use the foot food cart at 39024 Proctor Blvd. (Sandy Family Restaurant) for 365 days from the issuance of this final order, while the applicant's kitchen is being repaired due to the kitchen fire on June 29, 2023.
2. The cart shall hook to existing utilities at Sandy Family Restaurant. The applicant received approval on the wastewater connection from Public Works and received a minor label permit for their electrical hook-up. Per the approval of Public Works Wastewater Supervisor Matt Degner, the applicant needs to clean the grease interceptor every few days as stated in the

step-by-step directions provided.

3. The applicant shall provide at least one unobstructed ADA parking space.
4. The food cart shall remain located on a designated paved surface, shall meet all required setbacks, and shall not be located in fire lanes or drive aisles.
5. If the applicant desires to store any merchandise or materials outside of the building at 39024 Proctor Blvd. for use at the food cart it shall be screened from view from the public right-of-way and the design of the screen shall be approved by Planning Division staff.
6. The City may revoke this Type II Design Review if conditions of approval are not met. Approval does not grant authority for the unrestricted use of the structure or site.



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Kelly O'Neill Jr.  
Development Services Director

### **RIGHT OF APPEAL**

A decision on a land use proposal or permit may be appealed to the Planning Commission by an affected party with standings by filing an appeal with the Director within twelve (12) days of notice of the decision. The notice of appeal shall indicate the nature of the interpretation that is being appealed and the matter at issue will be a determination of the appropriateness of the interpretation of the requirements of the Code.

An application for an appeal shall contain at least the following:

1. An identification of the decision sought to be reviewed, including the date of the decision;
2. A statement of the interest of the person seeking review and that he/she was a party to the initial proceedings;
3. The specific grounds relied upon for review;
4. If de novo review or review by additional testimony and other evidence is requested, a statement relating the request to the factors listed in Section 17.28.50;
5. Payment of required filing fees. Payment of required filing fees is jurisdictional and must accompany an appeal at the time it is filed;
6. The name and mailing address of the person or entity appealing the decision; and
7. List and two sets of mailing labels for property owners within 300 feet of the subject property (for appeal of a Type I decision), 500 feet of the subject property for appeal of a Type II, III, or IV decision, or 1,000 feet for appeal of an annexation request. The property owner list and labels shall be obtained from a Title Company no more than seven days prior to submitting the appeal.