

**FINDINGS OF FACT and FINAL ORDER
TYPE I LAND USE DECISION**

DATE: November 12, 2020

FILE NO.: 20-043 CART

PROJECT NAME: Pinto Thai Kitchen

CART OWNER: Thapthanagorn Thanaboonthiwat

PROPERTY OWNER: Jerry Carlson (Sandlandia)

PROPERTY ADDRESS: 38400 Pioneer Blvd

LEGAL DESCRIPTION: T2S R4E Section 13CB Tax Lot 02100

DECISION: Approved subject to conditions of approval

The above-referenced proposal was reviewed as a Type I Food Cart, the following Findings of Fact are adopted supporting approval of the plan in accordance with Chapter 17 of the Sandy Municipal Code.

EXHIBITS:

Applicant's Submission

- A. Land Use Application
- B. Business License Application
- C. Food Cart Pictures
- D. Copy of Clackamas County Health Department License approval (*received 11/10/20*)
- E. Email from Sandy Fire District Fire Marshall's conditional approval (*received 11/10/20*)

Submitted by the City of Sandy

- F. Email from City of Sandy Building Official Terre Gift (*received 11/10/20*)

FINDINGS OF FACT

General

1. These findings are based on the applicant's original submittal received on October 21, 2020 and additional information provided from both the City of Sandy's Fire Marshal and Building Official that was received on November 10, 2020.

2. The subject food cart pod property has a total gross area of approximately 0.26 acres. The site is located east of Bluff Road and south of the existing Shell gas station.
3. The parcel has a Plan Map designation of Commercial and a Zoning Map designation of Central Business District, C-1.
4. The food cart owner of Pinto Thai Kitchen proposes to be located at the food cart pod known as Sandlandia. The proposed food cart pod can accommodate up to 10 food carts and five on-site parking spaces. Onsite amenities include electric and water service for each cart, an onsite portable restroom, a garbage enclosure, and a shared dining tent.
5. Since this food cart is proposed to be located in an approved food cart pod the application is reviewed as a Type I land use application. Notice of the proposal is not required.
6. The City of Sandy's Building Official Terre Gift did an on-site inspection on Tuesday November 10, 2020 (Exhibit F) and has required the following items prior to opening:
 - a) Secure propane tanks to resist seismic forces
 - b) The exhaust from the water heater is not allowed under a roof, and must terminate above the roof (OMSC C503.6.7).
7. Fire Marshal Gary Boyles also did an onsite inspection on Tuesday November 10, 2020 and granted conditional approval (Exhibit E) provided the following items are completed within ten (10) business days (11/24/2020).
 - a) Propane tanks are to be secured to prevent tipping over.
 - b) Hot water heater exhaust needs to be relocated and exhausted horizontally away and out from under the east awning that is constructed with plastic panel roofing.
 - c) Class 2A10BC fire extinguisher to be installed on a hanger or bracket. (OFC 906.7).
 - d) Electrical outlet cover needs to be replaced (OFC 604).

Chapter 17.74.90 Food and Beverage Cart

8. The food cart pod includes sewer and water service, electrical connections, garbage service, restroom facilities, and a common dining tent. **Pinto Thai Kitchen food cart shall hook to existing utilities installed for the food cart pod (including disposal of gray water) and shall have access to garbage service, restrooms, and the dining tent.**
9. Section 17.74.90 (E)(2) requires that food carts shall not exceed 20 feet in length or greater than 200 square feet. Pinto Thai Kitchen food cart is 6 feet wide by 14 feet in length for a total of 84 square feet.
10. Section 17.74.90 (E)(3) requires all carts to be placed on a paved surface. The food cart pod has a paved surface with approved stormwater facilities. **Pinto Thai Kitchen food cart shall be located in a designated food cart area on a paved surface.**
11. Section 17.74.90 (E)(4, 5, and 6) requires carts to be located at least three feet from the public right-of-way or back of sidewalk, at least five feet from other carts, and not

located within 25 feet of an active driveway. **Pinto Thai Kitchen food cart shall meet all required setbacks.**

12. Section 17.74.90 (E)(7) specifies that food carts shall not occupy fire lanes or drive aisles necessary for vehicular circulation or fire/emergency vehicle access. **The Pinto Thai Kitchen food cart shall not be located in fire lanes or drive aisles.**
13. Section 17.74.90 (E)(12) states the exterior surface of the cart shall be clean and free of dents, rust, peeling paint, and deterioration, and windows shall not be cracked or broken. The proposed cart is bright orange with chrome accents. The food cart also has two additional added plastic panel awnings that are supported by wooden structures.
14. Section 17.74.90 (E)(13) requires that each cart shall provide an awning to shelter customers with a minimum clearance of seven feet between the ground and the awning. The original food cart awning on the Pinto Thai Kitchen food cart is eight feet in height. The applicant also installed two other awnings that have plastic panel roofing and are supported by wooden structures. The two additional awnings are ten feet in height. **City staff did not inspect nor approve the added plastic panel awnings for wind load and are thus not liable for any accidents due to how they are secured. City staff recommends a structural engineer or other professional review the awnings for wind load. The City of Sandy's Building Official Terre Gift stated the awning structure is suspect and could fail in a 70-mph wind gust.**
15. Signage is regulated by Chapter 15.32, Sign Code regulations. **All signage requires approval of a City sign permit in compliance with the requirements of Chapter 15.32, Sign Code. Per Section 15.32.080 roof signs are prohibited.**

DECISION

For the reasons described above the request by Pinto Thai Kitchen food cart owner Thapthanagorn Thanaboonthiwat to locate a food cart in the Sandlandia food cart pod is hereby **approved** as modified by the conditions listed below.

CONDITIONS OF APPROVAL

- A. Prior to receiving a City of Sandy Business License, the applicant shall comply with the following requirements:**
 1. The cart shall hook to existing utilities installed for the food cart pod (including disposal of gray water) and shall have access to garbage service, restrooms, and the dining tent.
 2. The cart shall be located in a designated food cart area on a paved surface.
 3. The cart shall meet all required setbacks and shall not be located in fire lanes or drive aisles.

B. General Conditions of Approval

1. Per Clackamas County Environmental Health (Exhibit D) the public health license has been approved as of 11/11/20.
2. Per City of Sandy Fire Marshal Gary Boyles (Exhibit E) conditional approval to operate has been granted provided the following items shall be mitigated within the next ten (10) business days (11/24/2020) in order to continue to operate and receive final approval.
 - a) Propane tanks are to be secured to prevent tipping over.
 - b) Hot water heater exhaust needs to be relocated and exhausted horizontally away and out from under the east awning that is constructed with plastic panel roofing.
 - c) Class 2A10BC fire extinguisher to be installed on a hanger or bracket. (OFC 906.7).
 - d) Electrical outlet cover needs to be replaced (OFC 604).
3. The City of Sandy's Building Official Terre Gift has required the following items prior to opening (Exhibit F):
 - a) Secure propane tanks to resist seismic forces.
 - b) The exhaust from the water heater is not allowed under a roof, and must terminate above the roof (OMSC C503.6.7).
4. City staff recommends a structural engineer or other professional review the two additional awnings for wind load. The City of Sandy's Building Official Terre Gift stated the awning structures are suspect and could fail in a 70-mph wind gust. City staff did not inspect nor approve the added plastic panel awnings for wind load and are thus not liable for any accidents due to how they are secured.
5. Drive-through uses are not permitted as food carts.
6. Food cart permits are valid for the calendar year in which they are issued and will be renewed through a Type I procedure, except if the use was the subject of a City Code Enforcement action. If an enforcement action occurred, the use shall be reviewed at the time of renewal following the Type II review procedure.
7. This food cart permit shall be subject to revocation by the Director if the application is found to include false information or if the conditions of approval have not been complied with or are not being maintained.
8. Food carts that have not been in use for over 30 days are determined defunct and shall be removed from the private property which they are located.
9. Food carts that have not been in use for over 60 days are determined abandoned and shall be removed in accordance with nuisance regulations as described in Title 8 of the Sandy Municipal Code.

10. All mobile food carts shall be appropriately licensed and approved for operation in Clackamas County as a Class I – IV mobile food cart. Additionally, each food cart shall be inspected by Sandy Fire District No. 72 once per calendar year, as warranted by the Sandy Fire District. Food carts are subject to all applicable city, county, and state regulations.
11. Obtain a sign permit for any requested signage in compliance with the requirements of Chapter 15.32, Sign Code. Per Section 15.32.080 roof signs are prohibited.
12. Carts shall comply with all applicable Oregon Electrical, Mechanical, Plumbing and Structural Codes.
13. Approval of this use may be revoked if conditions of approval are not met. Approval does not grant authority for the unrestricted use of the structure or site. Any use of the site may be prohibited until such time as all required improvements are completed.
14. Any conditions or regulations required by Clackamas County, Sandy Fire District No. 72, or state or federal agencies are hereby made a part of this permit and any violation of these conditions and/or regulations or conditions of this approval will result in the review of this permit and/or revocation.

Rebecca Casey

November 12, 2020

Rebecca Casey

Date

Administrative Assistant

(Signed on behalf of 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 by filing an appeal with the Director within 12 calendar days of notice of the decision. Any person interested in filing an appeal should contact the city to obtain the form, “*Notice of Appeal*”, and Chapter 17.28 of the Sandy Development Code regulating appeals. All applications for an 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:

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 Chapter 17.28.50; and,
5. Payment of required filing fees.