

## OTA #15-07 Amend Article 9.37.2, Update Temporary Mobile Food Sale Conditions

### PART 1: DESCRIPTION

Text Amendment, TA #15-07, is a request by the Town of Huntersville to amend Article 9.37.2 of the Zoning Ordinance (see attachment A, Text Amendment Application and attachment B, Proposed Ordinance) to remove the maximum four (4) day per week per location operating restriction on temporary mobile food sales.

### PART 2: BACKGROUND

Temporary mobile food sales are permitted by-right (staff approval) in Town Center (TC), Highway Commercial (HC), Special Purposes (SP), and Corporate Business (CB) zoning districts (see attachment C, Map of Zoning Districts). In these zoning districts, temporary mobile food sales are permitted subject to the conditions found in Article 9.37.2, *Temporary Uses and Structures*, of the Zoning Ordinance (see attachment B, Proposed Ordinance).

Prior to January 2016, temporary mobile food sales were only permitted in the Town Center (TC) and Highway Commercial (HC) zoning districts. However, on January 4, 2016 the Town Board amended the Zoning Ordinance (TA #15-05) to allow temporary mobile food sales as a use permitted by-right in the Special Purpose (SP) and Corporate Business (CB) zoning districts. During the Public Hearing for TA#15-05, the Town Board directed staff to process a text amendment to examine removing the four (4) day per week, per location operating condition found in Article 9.37.2.

Since initially being permitted in Huntersville, temporary mobile food sales have had a limit on the number of days per week, per location they could legally operating. In April 2011, Town Board voted to increase the number of days a temporary mobile food sale unit could operate from two (2) to four (4) days per week plus major holidays, at a specific location. A survey of surrounding communities found that, currently, Huntersville is second in terms of permitted number of days mobile food sales can operate, with an allowance of 216 days per, year per location (see table below).

<u>Community</u>	<u>Number of Days to Operate Per Year, Per Location</u>
Davidson	does not restrict days
<b>Huntersville</b>	<b>216</b>
Charlotte	90*
Cornelius	52
Concord	42

\*City of Charlotte is processing an amendment to their Zoning Ordinance to allow temporary mobile food vending 365 days a year.

The Town of Davidson adopted ordinance language removing the number of operating days in August 2013. According to Charlotte's recent Rezoning Petition, the City proposes to permit mobile food vending 365 consecutive calendar days a year, with the option to renew on an annual basis. Theses amendment show

support for the trend that mobile food vending is growing locally and Zoning Ordinances are changing to keep up with the increasing popularity of mobile food vending.

Huntersville addresses traffic and parking concerns in Article 9.37.2. Furthermore, public health and safety concerns are addressed by the Mecklenburg County Health Department, Mobile Food Services Regulations. Mecklenburg County specifically requires mobile food units be removed from sale site once per day for cleaning, servicing, and restocking supplies (see attachment D, Mecklenburg County Health Department Mobile Food Service Regulations).

This text amendment request was provided to the Lake Norman Economic Development staff for feedback. They support the proposed amendment and did not have an issue removing the four (4) day per week operating condition from Article 9.37.2.

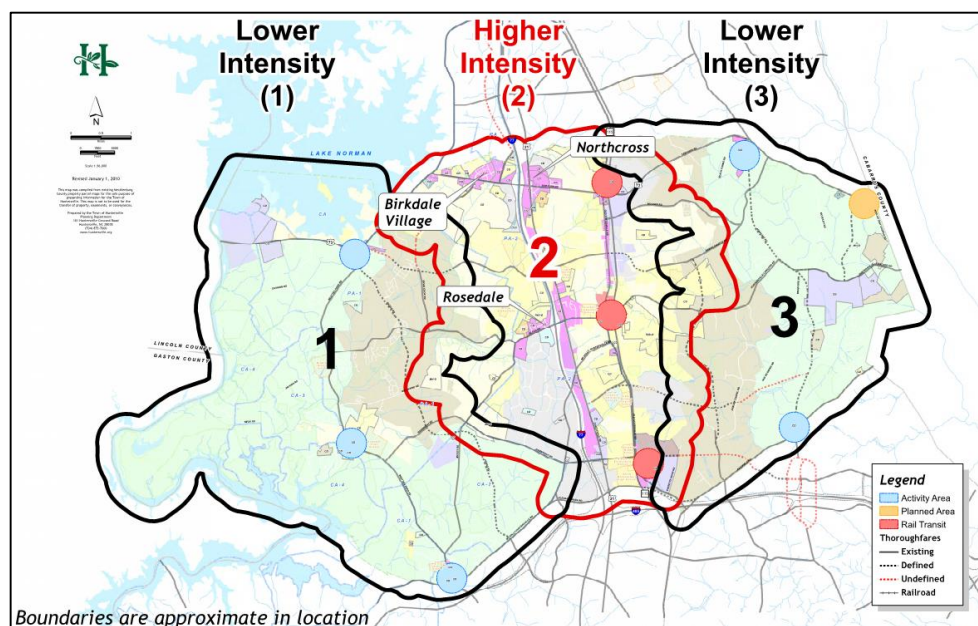
### **PART 3: RELEVANT SECTIONS OF THE HUNTERSVILLE 2030 COMMUNITY PLAN AND APPLICABLE LONG RANGE PLANS**

The following are examples of relevant plans and polices from the 2030 Huntersville Community Plan that may be incorporated into the Board's statement of consistency for approval or denial of the request.

#### **Policy CD-2: Commercial Development Pattern**

Promote a mixed-use development pattern that focuses higher intensity development generally within two miles of the I-77/NC-115 core. Outside the core area, this more intense commercial development pattern shall be focused in identified nodes and centers.

*NOTE: The High Intensity area has a high percentage of parcels zoned for Temporary Mobile Food Sales.*



#### **PART 4: STAFF RECOMMENDATION**

Staff recommends amending Article 9.37.2. *Temporary Uses and Structures* for Temporary Mobile Food Sales, as presented in Attachment B. The recommendation is based on:

Consistency with policy of the Huntersville Community Plan listed above.

Amending temporary mobile food sales conditions offers greater flexibility and added economic activity in the TC, HC, SP, and CB zoning districts.

#### **PART 5: PUBLIC HEARING**

The Public Hearing was held on February 1, 2016. No comments from the public or Town Board members were received.

#### **PART 6: PLANNING BOARD RECOMMENDATION**

The Planning Board heard this text amendment on February 23, 2016 and voted (9-0) to add language to the amendment, as shown in Attachment E (Proposed Ordinance – Planning Board Recommendation), which would require County Health Department permits to be issued prior to zoning permits. Planning Staff contacted Mecklenburg County's Environmental Health Department to understand if Town zoning approval was required before the issuance of Health Department approval for temporary mobile food units, as the Planning Board language would require. Health Department staff indicated zoning approval was not required, but is recommended prior to applying for an Environmental Health Department permit.

In summary, to keep the permitting process as simple as possible, Planning Staff recommends the approval of this request as presented at the Public Hearing (shown in Attachments B Proposed Ordinance – Planning Staff Recommendation).

#### **PART 7: ATTACHMENTS AND ENCLOSURES**

Attachment A: Text Amendment Application

Attachment B: Proposed Ordinance – Planning Staff Recommendation

Attachment C: Map of Zoning Districts

Attachment D: Mecklenburg County Health Department Mobile Food Service Regulations

Attachment E: Proposed Ordinance – Planning Board Recommendation

**PART 8: STATEMENT OF CONSISTENCY – TA #15-05**

Planning Department	Planning Board	Board of Commissioners
<p><b>APPROVAL:</b> In considering the proposed amendment, TA 15-07, to amend Article 9.37.2 (Temporary Uses and Structures) of the Zoning Ordinance, the Planning Staff recommends approval based on the amendment being consistent with policy CD-2 of the Community Plan.</p> <p>It is reasonable, and in the public interest to amend the Zoning Ordinance because, the amendment provides flexibility to the temporary mobile food sales industry, while providing economic benefit to the Town Center, Highway Commercial, Special Purpose, and Corporate Business Zoning Districts.</p>	<p><b>APPROVAL with Additional Language:</b> In considering the proposed amendment, TA 15-07, to amend Article 9.37.2 (Temporary Uses and Structures) of the Zoning Ordinance, the Planning Board recommends approval based on the amendment being consistent with policy CD-2 of the Community Plan.</p> <p>It is reasonable and in the public interest to amend the Zoning Ordinance because, the amendment provides flexibility to the temporary mobile food sales industry, while providing economic benefit to the Town Center, Highway Commercial, Special Purpose, and Corporate Business Zoning Districts.</p> <p>IN ADDITION, adding language to 9.37.2.f and 9.37.2.h that would require applicants to meet all the requirements of Mecklenburg County's Environmental Health Department's Mobile Food Unit and Push Chart Flow Chart prior to the issuance of Town zoning approval.</p>	<p><b>APPROVAL (as presented or with Planning Board Additional Language) :</b> In considering the proposed amendment, TA 15-07, to amend Article 9.37.2 (Temporary Uses and Structures) of the Zoning Ordinance, the Town Board recommends approval based on the amendment being consistent with <u>(insert applicable plan reference)</u></p> <p>It is reasonable and in the public interest to amend the Zoning Ordinance because...(Explain)</p>
		<p><b>DENIAL:</b> In considering the proposed amendment, TA 15-07, to amend Article 9.37.2 (Temporary Uses and Structures) of the Zoning Ordinance, the Town Board recommends denial based on the amendment being <u>(consistent OR inconsistent)</u> with <u>(insert applicable plan reference)</u>.</p> <p>It is not reasonable and in the public interest to amend the Zoning Ordinance because....(Explain)</p>



# Text Amendment Application

**Incomplete submissions will not be accepted.**

## Applicant Data

Date of Application December 8, 2015  
 Name Town of Huntersville  
 Address 105 Gilead Road, 3rd Floor  
 Phone Number (home) N/A (work) 704-766-2298  
 Email mmiller@Huntersville.org

## Fee

Text Amendment to the Zoning/Subdivision Ordinance Fee \$400.00

## Type of Change

☐ New Addition to text of Zoning Ordinance / Subdivision Ordinance / Other  
☒ Revision/Modification to text of Zoning Ordinance / Subdivision Ordinance / Other

## Description of Change (If possible, please provide a Word document of the proposed text change)

Proposed text amendment will affect the following:

Ordinance: Zoning Article: 9.37 Section: 2, temporary mobile food sales

Current Text: The establishment of temporary mobile food sales are permitted as an accessory use for up to a maximum of four (4) days per week and major holidays upon issuance of a temporary use permit by the Zoning Administrator.

Proposed Text: The establishment of temporary mobile food sales are permitted as an accessory use for up to issuance of a temporary use permit by the Zoning Administrator.

Reason for requested change (attach additional sheets if necessary):

Board directed.

**NOTE: If the proposed text amendment effects property located along Hwy 73; is 2000 feet from an adjoining municipality, and/or the Mountain Island and Lake Norman Watersheds, additional peer review is required.**

## Signatures

I hereby certify that the information presented by me in this application is accurate to the best of my knowledge, information and belief.

Applicant Signature: Meredith M. Nesbitt Date: 12-14-15

## Contact Information

**Town of Huntersville**  
**Planning Department**  
PO Box 664  
Huntersville, NC 28070

Phone:	704-875-7000
Fax:	704-875-6546
Physical Address:	105 Gilead Road, Third Floor
Website:	<a href="http://www.huntersville.org/Departments/Planning.aspx">http://www.huntersville.org/Departments/Planning.aspx</a>

**AN ORDINANCE TO AMEND ARTICLE 9.37.2 *Temporary Uses and Structure*, Establishment of  
Temporary Mobile Food Sales**

Section 1. Be it ordained by the Board of Commissioners of the Town of Huntersville that the Zoning Ordinance is hereby amended as follows:

Article 9.37, Temporary Uses and Structures

.2 The establishment of temporary mobile food sales are permitted as an accessory use ~~for up to a maximum of four (4) days per week and major holidays~~ upon issuance of a temporary use permit by the Zoning Administrator. The following conditions apply.

- (a) Trailers, carts and related storage shall be removed by the close of each business day.
- (b) The use may only be located on a lot occupied by a non-residential use.
- (c) The use shall be located a minimum of 15' behind existing road right-of-way, shall not impede the flow of pedestrian traffic, nor shall be located in any required parking space, loading space, or vehicle maneuvering area.
- (d) Off-street parking may be provided in existing parking spaces, as long as they are not part of the required number of spaces for the principal use.
- (e) No signage shall be permitted, except signs that are painted on or applied directly to the mobile food unit.
- (f) All applicable local and state regulations, including, but not limited to, Health Department and Environmental Protection, shall be met.
- (g) All discharge, waste and trash shall be properly disposed of in accordance with the applicable regulations by the close of each day.
- (h) A temporary use permit shall be required and is valid for one year and may be renewed annually.
- (i) At the issuance and renewal of a temporary use permit, the applicant shall supply the Zoning Administrator ~~with a schedule of the days of operation of the business along~~ with permission from the property owner to locate on the property.
- (j) The use shall not create any additional non-conformities on the existing site.

Section 2. That this ordinance shall become effective upon adoption.

PUBLIC HEARING DATE: **February 1, 2016**

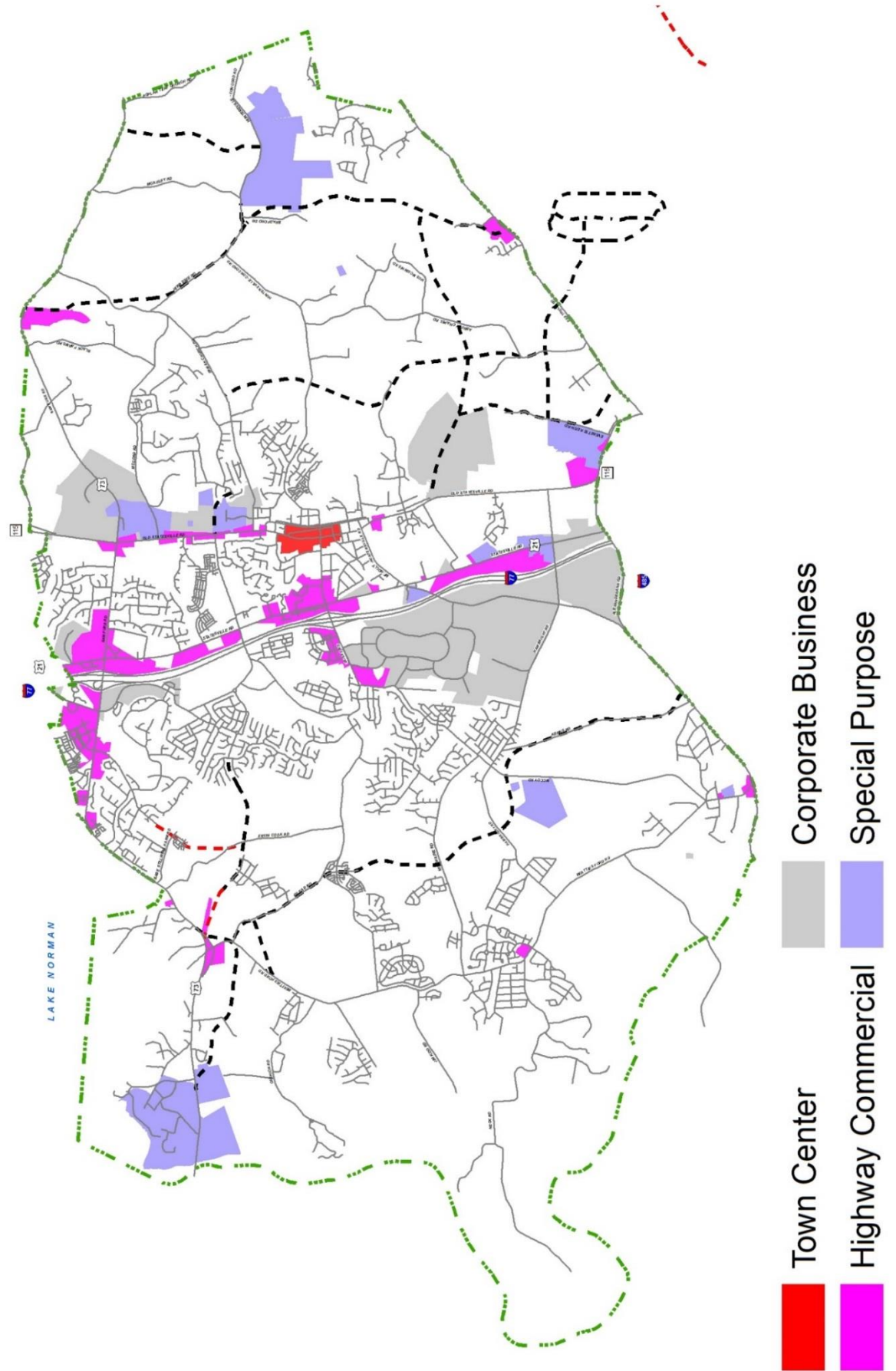
PLANNING BOARD MEETING: **February 23, 2016**

PLANNING BOARD RECOMMENDATION: **Approval, with additional language**

TOWN BOARD DECISION:



# Map of Zoning Districts Allowing Temporary Mobile Food Sales







## MECKLENBURG COUNTY Health Department

### Mobile Food Service Regulations

#### 15A NCAC 18A .2670 GENERAL REQUIREMENTS FOR PUSHCARTS AND MOBILE FOOD UNITS

- a) A permit shall be issued by the regulatory authority that inspects the commissary from which a pushcart or mobile food unit is to operate, if the regulatory authority determines that the pushcart or mobile food unit complies with the rules of this Section. The permit shall be maintained on the pushcart or mobile food unit and made available to the regulatory authority upon request.
- b) The regulatory authority that issues the permit shall be provided by the permit holder a list of counties and locations where each pushcart or mobile food unit will operate.
- c) Prior to initiating food service operations in a particular county, the pushcart or mobile food unit permit holder shall provide the regulatory authority in each county in which food service operations are proposed a list of locations where they will operate. Such lists must be kept current.
- d) Pushcarts or mobile food units shall operate in conjunction with a permitted commissary and shall report at least daily to the commissary for supplies, cleaning, and servicing. Facilities, in compliance with this Section, shall be provided at the commissary for storage of all supplies. The pushcart shall also be stored in an area that protects it from dirt, debris, vermin, and other contamination. Water faucets used to supply water for pushcarts or mobile food units shall be protected to prevent contact with chemicals, splash, and other sources of contamination. Solid waste storage and liquid waste disposal facilities must also be provided on the commissary premises.
- e) All food shall be obtained from sources that comply with Chapter 3 of the Food Code as amended by Rule .2653 of this Section.
- f) All potentially hazardous food (time/temperature control for safety food) shall be maintained at temperatures as required in Chapter 3 of the Food Code as amended by Rule .2653. A metal stem-type thermometer accurate to 1°C (2°F) shall be available to check food temperatures.
- g) Single service articles shall be used for serving customers. Single-service articles shall be purchased in sanitary containers, shall be stored therein in a clean, dry place until used, and shall be handled in a manner to prevent contamination.
- h) All garbage and other solid waste shall be stored and disposed in an approved manner.
- i) Employees shall wear effective hair restraints, clean outer clothing, and maintain good hygienic practices as specified in Part 2-4 of the Food Code as amended by Rule .2652 of this Section.
- j) Employees shall comply with the requirements in Subpart 2-201 of the Food Code as amended by Rule .2652 of this Section.
- k) Equipment and utensils shall meet the requirements in Parts 4-1 and 4-2 of the Food Code as amended by Rule .2654 of this Section.
- l) The pushcart or mobile food unit shall be kept clean and free of flies, roaches, rodents, and other vermin.

#### 15A NCAC 18A .2671 SPECIFIC REQUIREMENTS FOR PUSHCARTS

- (a) Only hot dogs shall be prepared, handled, or served from a pushcart; however, food which has been prepared, pre-portioned, and individually pre-wrapped at a food establishment or commissary may be served from a pushcart.
- (b) Food and utensils on the pushcart exposed to the public or to dust or insects shall be protected by glass, or otherwise, on the front, top, and ends, and exposed only as much as may be necessary to permit the handling and serving of food.

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- (c) Toilet facilities, handwashing sinks, and running water are not required. Single-service towels are required.
- (d) All pre-wrapped potentially hazardous food (time/temperature control for safety food) shall be maintained at temperatures as required in Chapter 3 of the Food Code as amended by Rule .2653 of this Section or as labeled on the food item. Each pre-wrapped food item shall contain the name of the food establishment at which it was prepared, the name of the food item, and the time and date of expiration. The wrapper shall enclose the food at all times but sealing is not required.
- (e) Pre-portioned, individually pre-wrapped food that remains after the specified time period has elapsed shall not be sold for human consumption.
- (f) Pushcarts shall not be provided with seating facilities.
- (g) Pushcarts shall not be used for consumer self-service.

#### **15A NCAC 18A .2672 SPECIFIC REQUIREMENTS FOR MOBILE FOOD UNITS**

- (a) A mobile food unit shall be constructed and arranged so that food, drink, utensils, and equipment will not be exposed to insects, dust, and other contamination. Protection against flies and other insects shall be provided by screening or by effective use of fans. Where food or griddles are exposed to the public or to dust or insects, they shall be protected by glass, or otherwise, on the front, top, and ends, and exposed only as much as may be necessary to permit the handling and serving of food.
- (b) A mobile food unit shall have a potable water system under pressure. The system shall furnish hot and cold water for all food preparation, utensil cleaning, and handwashing. The water inlet shall be located so that it will not be contaminated by waste discharge, road dust, oil, or grease and it shall be kept capped unless being filled.
- (c) Water heating facilities shall be provided.
- (d) A handwashing sink with hot and cold water, combination supply faucet, soap, and single-service towels shall be provided.
- (e) At least a one-compartment sink shall be provided. The sink shall be of sufficient size to submerge, wash, rinse, and sanitize utensils and shall have splashback protection. Drainboards shall be provided as specified in Section 4-301.13 of the Food Code as amended by Rule .2654 to accommodate the drying of washed utensils. However, in cases where no food is prepared on the mobile food unit and all utensils are effectively cleaned at the commissary, the equipment sink is not required.
- (f) Sewage disposal must be provided either by means of an approved sewage disposal system or approved sewage storage tanks. Sewage storage tanks must be maintained in a manner so as not to create a health hazard or nuisance and to prevent contamination of food or water supply. Toilets are not required on the unit. Liquid waste that results from the operation of a mobile food unit shall be disposed in an approved sewage disposal system or stored in a permanently installed sewage storage tank that is of at least 15 percent larger capacity than the water supply tank. Liquid waste shall not be discharged from the sewage storage tank when the mobile food unit is in motion. All connections on the vehicle for servicing mobile food unit waste disposal facilities shall be of a different size or type than those used for supplying potable water to the mobile food unit. The waste connection shall be located lower than the water inlet connection to preclude contamination of the potable water system.
- (g) A servicing area shall be established at a commissary for the mobile food unit. Potable water servicing equipment shall be installed, stored, and handled to protect the water and equipment from contamination. The mobile food unit's sewage storage tank shall be flushed and drained during servicing operation. All sewage shall be discharged to an approved sewage disposal system in accordance with 15A NCAC 18A .1900 or 15A NCAC 02H .0200.

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- (a) Trailers, carts and related storage shall be removed by the close of each business day.
- (b) The use may only be located on a lot occupied by a non-residential use.
- (c) The use shall be located a minimum of 15' behind existing road right-of-way, shall not impede the flow of pedestrian traffic, nor shall be located in any required parking space, loading space, or vehicle maneuvering area.
- (d) Off-street parking may be provided in existing parking spaces, as long as they are not part of the required number of spaces for the principal use.
- (e) No signage shall be permitted, except signs that are painted on or applied directly to the mobile food unit.
- (f) All applicable local and state regulations, including, but not limited to, Health Department, Environmental Health, and Environmental Protection, shall be met.
- (g) All discharge, waste and trash shall be properly disposed of in accordance with the applicable regulations by the close of each day.
- (h) A temporary use permit shall be required and is valid for one year and may be renewed annually. Prior to the issuing a temporary use permit all appropriate approvals, as provided in the Mecklenburg County Environmental Health Department's Mobile Food Unit and Push Cart Flow Chart, shall be provided to the Planning Department.
- (i) At the issuance and renewal of a temporary use permit, the applicant shall supply the Zoning Administrator ~~with a schedule of the days of operation of the business along~~ with permission from the property owner to locate on the property.
- (j) The use shall not create any additional non-conformities on the existing site.

Section 2. That this ordinance shall become effective upon adoption.

PUBLIC HEARING DATE: **February 1, 2016**

PLANNING BOARD MEETING: **February 23, 2016**

PLANNING BOARD RECOMMENDATION: **Approval, with additional language**

TOWN BOARD DECISION: