



To: Planning Commission
From: Adam Nolan, Planning Services Division
Subject: **2023 Amendment – “Regulating Delivery-Only Businesses of Food and Other Consumables” Application**
Memo Date: February 8, 2023
Meeting Date: February 15, 2023

Action Requested:
Comment and Direction.

Discussion:

At the next meeting on February 15, 2023, staff will provide a briefing on status of the analysis of the staff-initiated application “Regulating Delivery-Only Businesses of Food and Other Consumables” (“Delivery-only” business) for the 2023 Annual Amendment to the [One Tacoma Comprehensive Plan](#) and [Land Use Regulatory Code](#) (“2023 Amendment”). The purpose of the briefing is to seek feedback and direction from the Commission, in anticipation of returning to the Commission on March 1, 2023 to release final draft of staff analysis report for Public Review, in accordance with the requirements of the [Tacoma Municipal Code](#) (TMC), Section 13.02.070.

Attached to facilitate the Commission’s comment and direction is the document “Delivery-Only Businesses - Discussion Outline.”

Project Summary:

The Comprehensive Plan and its elements, as well as development regulations and regulatory procedures that implement the Comprehensive Plan, shall be adopted and amended by ordinance of the City Council following the procedures identified in TMC 13.02.070. Proposed amendments may be considered annually, for which the amendment process shall begin in July of any given year and be completed, with appropriate actions taken by the City Council by the end of June of the following year. The process for the [2023 Amendment](#) began with accepting applications during January-March 2022 and is slated for completion in June 2023.

Prior Action:

- September 7, 2022: Assessment and Determination
- January 4, 2023: Comment and Direction

Staff Contacts:

- Adam Nolan, anolan@cityoftacoma.org

Attachment:

1. Attachment A: Delivery-Only Businesses – Discussion Outline

c. Peter Huffman, Director



Attachment A: Delivery-Only Businesses – Discussion Outline (Draft)

Background

In the discussion outline provided at the January 4, 2023 Planning Commission meeting, Staff explored several potential options to consider in addressing delivery-only businesses, a use currently not classified in the TMC. Staff's preference is to organize Delivery-Only Businesses as a subset use of another use already identified in the TMC, specifically as a subset of the "Retail" use. Since many of the development standards that apply within the zoning code are based on the use classification, defining delivery-only business uses within the broader category of retail means that retail development standards would apply to delivery-only business.

Preferred Code options to address "Delivery Only Businesses"

The Tacoma Pierce County Health Department regulates commercial delivery only kitchens as a "commissary kitchen," including the proposed CloudKitchen in the Lincoln Neighborhood Center. Staff proposes to add commissary kitchens as a subset of "Retail" uses in the Tacoma Municipal Code land use tables. This would mean that commissary kitchens are no longer an unlisted use and would be required to meet "Retail" use and development standards (parking, loading, etc.).

As an additional regulation, "retail" uses, by current definition, do not require an in-person customer component. As a result, other retail uses that are "delivery only" could be permitted on the ground level of commercial or mixed-use building on designated pedestrian streets. Therefore, staff proposes to require an in-person, direct to customer sale component for retail establishment located on a designated pedestrian street.

Proposal: Address as part of Retail Definition (staff preferred)

1. Amendment to Retail Definition:

"Retail." Establishments engaged in retail sales of goods, including, but not limited to, the retail sale of merchandise not specifically listed under another use classification. This classification includes, but is not limited to, department stores, clothing stores, bank branches, furniture stores, pawn shop, pharmacies, and businesses retailing the following goods as examples: toys, hobby materials, food and beverages sales (including catering [and commissary kitchens](#)), hand-crafted items, jewelry, cameras, photographic supplies, electronic equipment, records, sporting goods, kitchen utensils, hardware, appliances, art, antiques, art supplies and services, baseball cards, coins, comics, paint and wallpaper, carpeting and floor covering, medical supplies, office supplies, bicycles, and new automotive parts and accessories (excluding service and installation).

2. Amendment to Retail Ground floor uses on Pedestrian Streets

Insert into "Additional Regulations" in Table 13.06.040 for retail uses within mixed-use districts:

[*Retail uses required to have in-person, direct customer sale component when located on designated pedestrian streets.](#)

Key questions for Planning Commission:

- Does the Commission have concern with defining Commissary Kitchens as part of the retail use category?
- If the approach is to add Commissary Kitchens as part of the retail definition, does the Commission have concerns with commissary kitchens locating on the ground floor of Pedestrian Streets, especially if there is no in-person component?
- Should there be a broader requirement for an in-person, direct to customer component, for retail uses on Pedestrian Streets within Designated Center?
- Are their potential unintended consequences that the Commission would want to see addressed?

Response to Commission Questions and Additional Information

What role does PDS and TPCHD have over food establishments and considerations of delivery-only businesses?

- City of Tacoma Land Use Regulatory Code
 - Regulates what uses are allowed and where, and establishes development standards and permitting requirements.
 - Defines uses such as 'Retail' and 'Eating and drinking establishments' and identifies where these specific uses are permitted as well as specific standards for site and building design.
- Tacoma Pierce County Health Department (TPCHD) - regulates food safety, food establishments (kitchens, restaurants, mobile units, etc.), and operational permitting/oversight.

Conclusion: The City's role in defining and regulating uses does not contradict any TPCHD decision making or standards for permitting business operations that allow for delivery-only businesses.

How does TPCHD define and regulate delivery-only food uses?

TPCHD provided information to Planning staff regarding the health department's application of food-related regulatory code and standards. TPCHD uses definitions and standards established by the Washington State Department of Health and that are detailed in the [Washington State Retail Food Code](#) (WSRFC)(Chapter 246-215 Washington Administrative Code). "Delivery-only business," or other common terms for this use, are not defined in the WSRFC, but appear to fit into the defined category of "Food Establishment," as defined below:

(50) "FOOD ESTABLISHMENT."

(a) FOOD ESTABLISHMENT means an operation that:

(i) Stores, prepares, PACKAGES, serves, and vends FOOD directly to the CONSUMER, or otherwise provides FOOD for human consumption such as a restaurant; satellite or catered feeding location; CATERING OPERATION if the operation provides FOOD directly to a

CONSUMER or to a conveyance used to transport people; market; vending location; conveyance used to transport people; institution; or FOOD bank; and

(ii) **Relinquishes possession of FOOD to a CONSUMER directly, or indirectly through a delivery service such as home delivery or grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.**

(b) FOOD ESTABLISHMENT includes:

(i) An element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is PERMITTED by the REGULATORY AUTHORITY; and

(ii) **An operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the PREMISES;** and regardless of whether there is a charge for the FOOD.

TPCHD noted that they do currently permit and regulate for pickup and delivery-only food establishments. Pick-up and delivery-only food establishments that are permitted by TPCHD must operate out of a permitted commissary kitchen. **The WSRFC defines “Commissary” as “an APPROVED FOOD ESTABLISHMENT where FOOD is stored, prepared, portioned, or PACKAGED for service elsewhere.”**

TPCHD has two levels of permitting for commissary kitchens:

1. The Commissary Kitchen establishment

- Required to obtain a commissary permit that allows you to rent space to other users
- The commissary kitchen itself is not permitted to make food under commissary permit; separate permit required if commissary permit-holder will make food

2. Individual Food Establishments/businesses (commissary users)

- TPCHD permits food establishments that serve food directly to customer
- WSDA permits for wholesale food establishments (selling to someone who will sell the product to someone else)

A commissary kitchen must meet specific requirements in order to obtain a commissary permit and rent space to other users. Generally speaking, the number of vendors that can use a commissary kitchen depends on the equipment available (refrigeration space, food prep sinks, etc.). Commissary kitchens may include a customer waiting area and/or pick-up at the door, but the public is absolutely not allowed to enter the actual kitchen space.

TPCHD-permitted Commissary Kitchens have a range of tenants and uses, including:

- Mobile units (Food trucks) or Caterers - (the majority of users)
- Wholesale (WSDA permit)
- Delivery or pick-up only - (per TPCHD staff, less than 12 food establishments operating out of commissary kitchens with this model)

Planning staff has identified several potential gradations of pick-up/delivery-only food establishment operations in local commissary kitchens, including:

<p>On-demand, customer pick-up and/or delivery-only</p> <p>Example: Potential customer walk-up, call-in, or web-based order options. Food Establishment that utilizes commissary kitchen multiple days of the week and makes food on-demand for customer pick-up and/or delivery.</p>	<p>Order in advance of actual pick-up or delivery date, not on-demand</p> <p>Example: Food establishment utilizing commissary kitchen one day a week and allows pre-ordering for pick up (at commissary kitchen) or local delivery of freshly made or already prepared/frozen meals.</p>	<p>High-volume of pick-up/delivery-only</p> <p>Example: CloudKitchens proposal for up to 20 pick-up/delivery-only restaurants in one building location; on-demand with potential for higher intensity of traffic generation and additional impacts.</p>
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Staff notes that each food establishment may have different protocol on how to order (walk-up, call-in, or web-based options) and receive food, but none support an onsite customer food consumption component.

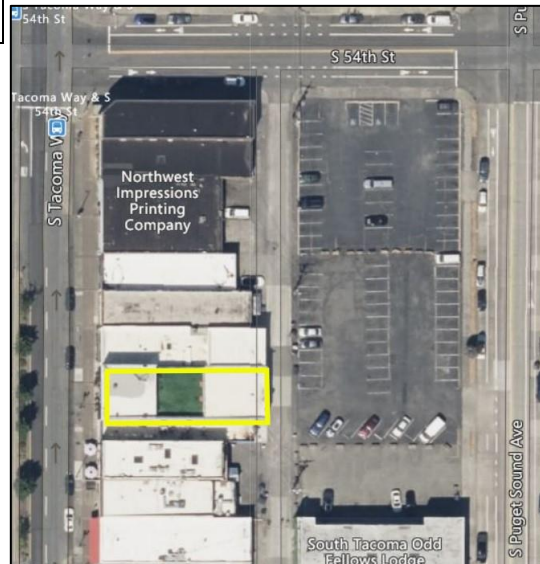
What are some examples of TPCHD-permitted commissary kitchens that house pick-up and/or delivery-only food establishments in Tacoma?

Gourmet Niche – 7104 6 th Ave	
Zoning	NCX
Space size	~33300 SF
Pickup/Delivery-Only - (1-2 businesses) Order in advance of actual pick-up or delivery date, not on-demand	
Other Food Est.	<ul style="list-style-type: none"> • Catering (2 businesses) • Mobile Unit (2 businesses) • Wholesale (WSDA-permitted) (7 businesses)
Other	<ul style="list-style-type: none"> • Located designated Core Pedestrian Street • Designated Loading space; Parking lot (shared with other businesses)



Image/Map 1. Gourmet Niche commissary kitchen, 7104 6th Ave

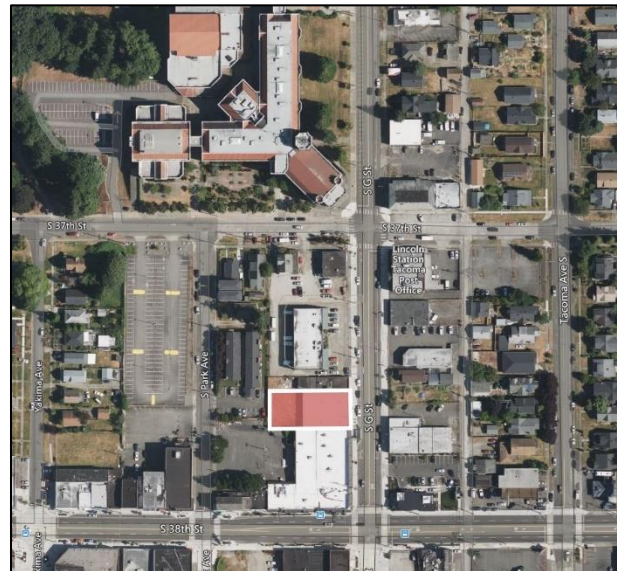
Edison Square – 5415 South Tacoma Way	
Zoning	NCX-STGPD
Space size	~850 SF
Pickup/Delivery-only - (2 businesses) On-demand customer pick-up and/or delivery-only	
Other	<ul style="list-style-type: none"> • Catering (1 business)
Food Est.	<ul style="list-style-type: none"> • Mobile Unit (1 business)
Other	<ul style="list-style-type: none"> • Located designated Core Pedestrian Street • Loading, designated pick-up parking spots, and shared parking lot located in alleyway rear of building



Image/Map 2. Edison Square commissary kitchen space, 5415 South Tacoma Way

What are some characteristics of the CloudKitchens proposal (former Lincoln Hardware site)?

CloudKitchens – 3726 South G St. (Proposed)	
Zoning	NCX
Space size	~6750 SF
Proposal - To alter existing building to include up to twenty separate kitchens that would prepare food to be delivered to the consumer through third-party delivery companies.	
Other	<ul style="list-style-type: none"> • Located on designated Pedestrian Street



Image/Map 3. CloudKitchens proposed site, 3726 South G Street

Staff notes that since delivery-only business uses are a relatively new model, trip generation considerations are an emerging data issue. Analysis by the Public Works - Traffic Engineering Division included in the Director’s Determination found that the proposed use exceeded expected traffic behavior for a permitted use in the district and must abide by specific conditions of operation.

What are the City’s standards concerning designated Pedestrian Streets, especially since the three delivery-only business examples provided above are sited on Pedestrian Streets?

TMC 13.06.010 identifies designated Pedestrian Streets in the city and further states:

Pedestrian streets are considered key streets in the development and utilization of Tacoma’s mixed-use centers, due to pedestrian use, traffic volumes, transit connections, and/or visibility. They are designated for use with certain provisions in the mixed-use zoning regulations, including use restrictions and design requirements, such as increased transparency, weather

protection and street furniture standards. In some centers, these “pedestrian streets” and/or portions thereof are further designated as “core pedestrian streets” for use with certain additional provisions. The “core pedestrian streets” are a subset of the “pedestrian streets,” and thus, those provisions that apply to Designated Pedestrian Streets are permissive of uses that generate customer and pedestrian traffic.

Use Restrictions: Pedestrian street restrictions include a limitation on residential uses, limits on the location and function of drive-throughs, and prohibition of assembly facilities. In general, uses which are permitted are required to have a public-facing component (e.g., office or service area) at sidewalk level. Less-public uses are directed away from the pedestrian streets or to upper floors.

Off-Street Parking Requirements: Mixed-use centers broadly require reduced overall off-street parking than uses located in other zoning districts. Parking requirements are typically based on the building square footage for commercial uses. In NCX and CCX Districts, the first 3,000 square feet of commercial space are exempt from off-street parking requirements. In addition, uses within X-Districts and located on a pedestrian street are exempt from on-street parking.

