# Transient and Informal: Negotiating Temporary Use in Portland, Chicago and Detroit

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## *Abstract*

*Using the framework of the Tragedy of the Anticommons and informality this paper explores how some actors have attempted to navigate the complicated tangle of intersecting and contradictory property rights and regulatory regimes in the US and ambiguous position of temporary uses within these spaces. Using this framework, three examples – food carts in Portland, Oregon, neighborhood markets in Chicago, Illinois, and pop-up shops in Detroit, Michigan – are used to highlight specific challenges faced in trying to negotiate informality and the complicated task of navigating local land use regulations, retail markets and political environments to successfully create viable activities that contribute to revitalization.*

*The paper demonstrates that temporary uses can be valuable contributors to revitalization and emphasizes the importance of for providing an avenue within planning for temporary uses. However, these cases also reveal some of the potential drawbacks of temporary uses including entrenchment of these uses frustrating attempts to develop permanent uses (Portland), cooptation of temporary uses crowding out small entrepreneurs (Chicago) and transition of temporary uses to permanent uses requiring substantial time and skill (Detroit). They also reinforce that the process of formalizing informal uses can be a new avenue for the exercise of power and the reallocation of resources.*

## 1. Introduction

Over the past ten years, there has been a growing interest in the potential for temporary uses as a flexible response to vacant lots and storefronts and a tool for encouraging revitalization. This paper attempts to expand understanding of the temporary uses by using the framework and literature of the Tragedy of the Anticommons and informality to explore how temporary uses have emerged as a potential solution to the tangled array of overlapping property rights and regulatory regimes that have limited the redevelopment, rehabilitation or reuse of underutilized properties.

This paper begins with an explanation of the concept of the anticommons and an analysis of underuse and stalled revitalization using this lens. Particular emphasis is placed on the underlying logic of US planning and regulatory regimes in both hindering the development of temporary uses and providing spaces for their creation. This framework is then used to examine how actors have attempted to navigate the ambiguous position of temporary uses within local planning regimes through the presentation of three examples: food carts in Portland, Oregon, pop-up retail in Chicago, Illinois, and pop-up shops in Detroit, Michigan. These examples are used to highlight specific challenges faced in trying to negotiate the complicated task of navigating local land use regulations, retail markets and political environments and informality to successfully create viable activities that contribute to revitalization.

## 2. The Tragedy of the Anticommons

The concept of the anticommons was developed by Michael Heller in 1998, building on a concept introduced by Frank Michelman in 1982. Conceptually, the Tragedy of the Anticommons was described as symmetrical tragedy to the Tragedy of the Commons. The Tragedy of the Commons scenario describes a situation where too many actors hold the right to use a particular resource and lack the right to exclude others with the same right from using that resource. Behaving rationally, each individual actor will maximize their use of the shared resource even if this results in overuse of the resource to the point of its destruction (Hardin 1968). Typically cited examples of tragedy of the commons scenarios are overgrazing, overfishing or climate change (Heller 2008). In contrast, an anticommons exists where every individual in a society has the right to exclude all others from the use of a given resource; that resource can only be used only with unanimous consent of all members of the society. As a result, the resource is prone to underuse, sometimes to the point of being unused altogether (Heller 1998).

As a thought experiment, the Tragedy of the Anticommons was fascinating, but not terribly useful as it was nearly impossible to identify a real-world example of this type of anticommons. Building off this initial concept, Heller (1998, 2008) elaborated a situation where not everyone, but instead a limited number of actors possess the right of exclusion. In effect, no actors have privilege of use, each actor requires the cooperation or permission of others to use the resource. Using the case of post-Communist Russia, Heller used the anticommons to explain the proliferation of both empty storefronts and informal street kiosks. In this case, four main actors possessed overlapping rights to commercial storefronts: owners, users, investors and regulators. Without the cooperation of each actor, the storefront would remain empty. In contrast, operating an informal street kiosk was comparatively simple as it only required the assent of only two actors (Heller 1998).

Heller's original (1998) and more recent (2008, 2013) analysis of the problem of anticommons has focused primarily on property rights, that "wasteful underuse can arise when ownership rights and regulatory controls are too fragmented" (Heller 2013, 10). Others have emphasized the problem of coordinating and assembling those rights (Schulz, Parisi, and Depoorter 2003, Fennell 2009). Fennell (2009) describes the anticommons as being primarily a problem of assembly. Assembling the fragmentary rights held by different actors into a single whole requires incurring transaction costs (often from simply finding out with whom one must negotiate) and overcoming strategic holdout behavior. The more actors that are involved in this process, the more difficult it becomes as "misreadings and miscalculations become more likely…and mundane transaction costs associated with identifying and communicating with the other parties rise as well" (Fennell 2009, 14).

## 3. Anticommons, Planning and Real Estate Development

The literature on the anticommons suggests, and I argue here, that real estate development is particularly vulnerable to this dilemma as it is more prevalent in situations where vertical exclusionary rights exist, where there are few substitute goods, where projection of future value is difficult and where goods are "lumpy" (Schulz, Parisi, and Depoorter 2003, Fennell 2009). Each of these is present in real estate development. Real estate development in the US often requires navigating multiple layers of hierarchical, sequential review and permitting often involving multiple levels of government, increasing transaction costs and coordination difficulties. As each individual property is essentially unique and the exact same building on a different parcel is not a perfect substitute, real estate is particularly prone to strategic holdout behavior.[2] Real estate typically has a very long usable life compared to other goods, potentially lasting through multiple economic cycles and multiple changes in consumer preference making miscalculations of its most efficient use and potential value more likely. Finally, while certain financial instruments can spread the return on a real estate development out over a longer period of time, real estate development is inherently lumpy, potentially increasing holdout behavior.

My argument here is that, while Heller's example was of post-Communist Russia, the situation occurring in many US cities with regard to redevelopment can be described as an anticommons scenario. The abundance of vacant lots, abandoned buildings and empty storefronts in some locations may not be simply the result of a lack of market demand for goods, services or real estate. Instead, an anticommons exists where the participation of too many actors is necessary to successfully redevelop, reuse or revitalize these properties. Property owners and government regulators both have direct rights to exclude, while financiers and users may possess actual or defacto rights of exclusion. "Strategic" positioning by these actors and high transaction costs associated with assembling their cooperation may prove too substantial a barrier. This argument is implicit in much of the literature on temporary uses that advocates using temporary uses where permanent development is infeasible or "the realisation of the future function is delayed for various possible reasons, including planning processes, financial complications or unexpected technical issues" (De Smet 2013, 2).

As with Heller's original case, the successful execution of a real estate redevelopment in the US typically requires the cooperation of property owners, investors, regulators and users. The interests and behavior of each can impede redevelopment. Property owners will seek to maximize the rent they can extract from a property. In doing so, they may misread the market, overvaluing their property and/or setting rents too high for users, particularly new, start-up businesses. Based on these assumptions, they may choose to hold out with the hope that they will eventually be able to secure their asking price/rent. This problem was particularly pronounced during the recent Great Recession when many property owners retained unrealistic expectations about their properties based on the previous market. Property owners may also be constrained in their ability to vary their expectations by equity partners or an existing mortgage that requires a specific return. In many cases the desire to bring in a tenant to glean some rent was overridden by the need to generate a specific net operating income and a fear of extending a long-term lease cutting off the ability to sign a more lucrative tenant.

[2] This is essentially the argument made to support the use of eminent domain to facilitate redevelopment in the US, a practice most recently upheld by the US Supreme Court in 2006 in *Kelo v. City of New London*.

While they are not always involved, most redevelopment projects in the US require the participation of lenders and/or equity partners, giving them real or defacto rights of exclusion. Lenders and equity partners will demand certain benchmarks be met in order to extend financing, benchmarks that may be difficult to meet in redevelopment projects, particularly those in weak markets. Lenders or equity partners may also be most familiar with specific markets and/or product types and less willing to extend financing to projects outside their ken. Adding to the level of difficulty, lending standards in the US tightened during the Great Recession and individual lenders judgment about the suitability of a project was restricted, making it more difficult to undertake a redevelopment of a vacant site or renovation of an outmoded space. Lenders are also often involved in financing the users of redevelopment sites. New, start-up businesses may be seeking to enter a new market unfamiliar to lenders and may lack the proven track record to secure the necessary financing to start their business. In both cases, the transaction costs associated with identify, negotiating and securing financing may be prohibitive.

Users may also possess real or defacto rights of exclusion. They may demand certain types of spaces or they may only be capable of paying only a certain level of rent. These may not match those required by the property owner. Users may also have long-term leases that afford them veto power over redevelopment proposals. Users without leases might also make claims on the space, citing squatters rights or using popular appeals to support their claims.

Planners and regulators can also complicate the ability to quickly or easily revitalize vacant space. Regulations including zoning and building codes are designed to promote order and efficiency and to protect health and safety. Obtaining approval to redevelop or rehabilitate a property involves processing fees, document requirements, staff reviews and on-site inspections which can impose substantial transaction costs. In simple cases, it may only be necessary to seek a Certificate of Occupancy verifying a user is allowed to occupy a space. However, redevelopment of a site, substantial renovations or tenant improvements, or a change in use[3] can trigger a more comprehensive review. As previously mentioned, the approval process is often multi-layered with applicants needing to satisfy multiple regulators reviewing the proposals compliance typically in sequence (i.e., zoning approval is required before seeking building approval). In many cases, additional reviews such as environmental reviews are required or public incentives are sought which may involve interaction with an additional level of government or quasi-governmental agency. In many cases, the specific actors within these agencies tasked with reviewing proposals do not have the authority to deviate from the specific standards set forth in plans and codes. Finally, plans and regulations in the US tend to focus on the long-term use of a site. These long-term projections can lead to miscalculations or disagreements about the most efficient or equitable use resulting in holdout behavior.

## 4. Anticommons, Informality, and Temporary Use

The role of plans and regulations in creating an anticommons situation bears additional exploration, particularly as it relates to temporary uses. The literature on temporary uses includes extensive discussions of how these uses can provide solutions to many of the problems presented above. Temporary retail can allow both businesses and property owners to test the viability of the relationship. It provides the property owner with cash flow from a vacant property or storefront without having to invest in significant tenant improvements or impede the opportunity to secure a more lucrative permanent user. It allows the business owner the opportunity to demonstrate the market for the business

[3] Change in use reviews are required for changes from one use class to another such as from office to retail, but may also be triggered by changes within a category if the uses are not considered sufficiently similar. For example, a change in use review would not be required for a change from a millinery to a flower shop, but would be for a change from a bank to a boutique or from retail to restaurant.

to justify sales forecasts and lending requests. Filling vacant spaces can also help create a brand and image for a neighborhood and build community, building a market for businesses and raising property values. They can temporarily activate a space and create visible changes in an underutilized building, lot or block while increase foot traffic and eyes on the street, increasing perceptions of safety (Temel and Hydn 2006, Overmeyer 2007, Oswalt, Overmeyer, and Misselwitz 2009, Blumner 2006). In essence, temporary uses temporarily resolve an anticommons by providing incentives to avoid strategic holdout behavior (e.g., property owners holding out for the most lucrative user) and reducing transaction costs (e.g., legal costs associated with lease negotiations).

Conversely, public sector plans and regulations and bureaucratic inflexibility in applying these regulations are often cited as being as much an impediment to temporary uses as permanent. One group advocating for more temporary and interim uses in Cleveland acknowledges that actors might find it simpler to act illegally than to try to conform to plans and codes, encouraging actors to “do your best to follow all the rules and keep everything by the book, but you make compromises and take short-cuts when absolutely necessary” (Pop Up City 2014, 1). It is not surprising that public sector regulation would prove to be the key veto preventing temporary uses as in using this to address an anticommons, public sector actors face an awkward problem. While there certainly are benefits to the public sector from allowing temporary uses, doing so undermines a fundamental justification for the plans and codes they are enforcing.

The most common types of plans and regulations governing real estate development in the US, comprehensive plans, zoning ordinances and building codes, are all predicated on identifying long-term, permanent uses for sites. Comprehensive plans present a community’s vision of where their town will be and what it will look like 20, 30 or even 50 years in the future. The long-term nature of these plans serves several purposes. First, comprehensive plans are intended to provide a guide for capital improvements expenditures. The long time frame of these plans is intended to better match the time horizons for large capital improvement projects and to insure that capital expenditures are made in a way that best supports future growth. Second, it provides a guide for property owners, investors, business and residents on intended future growth allowing them to calibrate their own plans and investments to match. Zoning ordinances, like the plans on which they are (usually) based, present a snapshot of the pattern of permanent uses that are desired, or at least acceptable. Both also represent significant built consensus. Building codes are also designed around insuring the safety of permanent buildings and improvements.

When temporary or transient uses are addressed, the regulations governing them are more often than not designed to discourage or prevent these activities as undesirable impediments to reaching the desired end state. Many zoning codes contain no specific protocols for temporary uses. Others contain provisions only for specific temporary uses such as construction staging areas or seasonal Christmas tree sales. And when addressed, local codes, as Portland’s Zoning Code does, will often explicitly state that temporary uses have “no inherent rights within the zone in which they locate” (Portland Zoning Code 2012, 296-1).

The problem facing public sector regulators is that public sector plans and regulations are not intended to promote temporary uses or facilitate immediate, flexible responses to changes in demand. Rather, they are to provide certainty. Allowing alternative uses of sites, even temporarily, undermines one of the most important bases upon which the plans and regulations are built. Comprehensive plans and zoning ordinances are inflexible and, unless regularly monitored and updated, largely static instruments that are not responsive to short-term changes. Yet part of their strength comes precisely from this lack of flexibility. Early arguments in favor of zoning made this case explicitly,

> "With a city entirely zoned, they [realtors] could assure purchasers of residential property that their neighborhoods would never be encroached upon by business, while on the other hand, zoning would give business property a touch of monopoly value. Accordingly the signs went up on vacant lots: "zoned for business," or "zoned for apartments," with the definite implication that such action on the part of the public authorities had resulted in giving the property a higher and more assured value than it would otherwise have"

Changing plans or regulations or granting exceptions too often would undermine this confidence and devalue the consensus represented by a plan. Returning to the anticommons framework, planners and regulators have a very strong incentive to engage in strategic holdout behavior and not encourage temporary or long-term uses that deviate from the agreed to permanent use.

This dilemma may explain why observers of temporary uses have noted a tendency for temporary uses to seek out informal spaces and solutions. While some temporary uses have engaged in illegal activities, many have sought out the "spaces of exception" created by regulatory regimes (Roy 2005, Porter 2011). A widely cited example of this is Park(ing) Day where groups pay parking meters and then temporarily turn the parking spaces into miniature parks. While turning a parking space into a park is not strictly permitted, neither is it specifically prohibited. The silence of most plans and zoning ordinances on temporary uses creates an opportunity (and challenge) by situating them in an ambiguous position. They are not the permanent uses formally allowed to exist, but they are not specifically excluded either. Rather, they are informal uses that exist outside the bounds of, or within the unregulated spaces created by, the normal planning regime.

Many temporary uses exist, at least initially, in these informal spaces. This position is often seen as a challenge requiring revision to local plans and policies to formalize. Formalization of these informal uses is typically dictated by powerful interests (Gebhardt 2013). Returning to Heller (1998, 641),

> "existing rights-holders, including local government agencies and the private actors who have invested in reliance on the current property regime, may cling tenaciously to their rights. Many now have plausible claims that their rights have vested, and redefining rights to bundle them more sensibly would amount to a compensable taking of their property."

The tendency toward informality also appears in the solutions that have been devised and advocated to respond to the constraints imposed by planning and regulatory regimes. Rather than deviations from existing plans and regulations, solutions focus on lowering transaction costs through informal activities and policies such as dedicated staff to provide technical support and facilitate permit applications, permitting and licensing templates, site inventories of spaces for temporary use, and informal coordination across government departments and agencies (Blumner 2006, Overmeyer 2007, Haydn and Temel 2006).

## 5. Case Studies

The following section presents three case studies that each highlight an aspect of temporary uses and their relationship to the anticommons and informality. The first case, food carts in Portland, Oregon, examines the ambiguous and informal space often occupied by temporary uses and the ways in which allowing these uses can lead to their entrenchment. The second case, pop-up retail in Chicago, Illinois, discusses the potential role of large institutional actors in facilitating temporary uses and the ramifications of introducing these actors as an intermediary. The last case, pop-up retail in Detroit, Michigan, explores the emergence of an active program to use temporary uses to revitalize neighborhood commercial districts and the difficulties of translating between the temporary and the permanent.

### *5.1 Food Carts in Portland, Oregon*

Unlike many cities, Portland has long allowed street vending and street food. Hot dog carts, catering trucks and coffee carts were fairly common activities by the mid-1990s. All foodservice businesses in Portland were and are regulated by the Multnomah County Environmental Health Department. Food carts must obtain a license from this department and are subject to semi-annual inspections. Up until 1997, mobile food vendors were not allowed to prepare food on-board. Instead, food had to be prepared at a commissary to which the mobile unit had to return every evening. Rule changes in 1997 allowed food to be prepared on-board and units to remain parked in a single location provided they remained capable of moving. These changes, and the relatively low cost of obtaining a license, facilitated growth in licensed mobile food vendors in the County from under 100 in 1997 to over 300 in 2000 and nearly 800 in 2013 (Multnomah County Health Department 2014).

While these rule changes allowed more freedom for food carts to operate, they initially occupied a legally ambiguous state under City of Portland codes. Food carts operating in the public right-of-way are regulated by the Portland Bureau of Transportation and are subject to elaborate and detailed rules regarding location, design, and hours of operation (Portland Municipal Code Section 17.26). However, no such regulations existed to govern food carts operating on private property. These food carts occupied an informal space left by the regulatory regime as they were neither explicitly allowed, nor explicitly prohibited by Portland's codes or regulations.

Interest in food carts swelled during the Great Recession amongst both entrepreneurs (many of whom had lost and/or were unable to find employment) looking to start an inexpensive business and property owners searching for a way to secure some return on underused property. This growing interest put pressure on the city planners to develop a formal approach for regulating the operation of food carts on private property. Rather than create a new ordinance and set of regulations, city planners chose to reinterpret existing code. Food carts would be allowed to operate on private property in non-residential zones. As long as they were less than 16 feet in length and had a working axle and wheels allowing them to be moved at any point, they were considered commercial vehicles and were exempt from most zoning and building codes. Food carts could not have any permanent structures – awnings or canopies could not touch the ground – and had to be fully self-contained – they could not have plumbing facilities. Carts with electrical service needed to pass an electrical inspection and were allowed a single A-board sign that needed to be approved under the sign ordinance (signs on the carts themselves were exempt) (City of Portland 2014). In addition, these policies are generally enforced on a complaint basis meaning that, if no one complains about an infraction such as the addition of permanent structures to a food cart, the City will generally overlook them.

As a result of the regulatory regime adopted by the city, Portland's food carts have clustered into food cart pods on private parcels throughout the city. This spatial arrangement is quite different from other major US cities and has contributed to the positive regard. Portland's food carts are now widely known for creating highly eclectic environments both aesthetically and gastronomically. Low barriers to entry are touted for allowing small entrepreneurs entry into the market and for encouraging experimentation. Portland's food cart pods each have their own identity which is often associated with the neighborhood within which they reside. Downtown pods typically lack amenities, while many neighborhood pods have tents, seating and restrooms. The pods have created activity on numerous formerly vacant lots or along the edges of parking lots[4]. While estimates of the total impact vary, food carts have also had a positive effect on tourism.

[4] This is enhanced by Portland's general walkability. Portland's city blocks measure 200 feet by 200 feet, approximately one-quarter the size of a block in most other US cities.

The development of food cart pods on private property has allowed the development of a unique food cart culture marked by diversity and longevity. While the long-term, stationary nature of Portland's food carts is an important element of their success, this has also resulted in the entrenchment of these temporary uses. Portland's real estate market has recovered from the Great Recession and there is significant demand for land for development.[5] Over the last year development proposals were announced for two long-running food cart pods. The resulting outpouring of support led to the rescinding of one of the proposals. The property owner of a third pod received an unsolicited bid for his property, but rejected it in favor of keeping the food cart pod. One of the first and best-known of these pods is located on a prominent parking lot near the center of downtown. While this parking lot has long been identified as a prime development site and falls within an area with the most permissive zoning in the city, the owner of the parking lot has expressed no interest in developing it further. The guaranteed return from the food carts and the potential negative reaction to the carts removal outweighs any potential return from a new development.

### *5.2 Pop-Up Retail in Chicago*

The Hyde Park neighborhood of Chicago has long been regarded as an island of relative affluence amongst a sea of poverty. Located on the south side of Chicago in the heart of what used to be known as the black belt (Burgess 1925), the neighborhood is home to two large institutions, the University of Chicago and the Museum of Science and Industry, and managed to retain a strong black middle class presence while surrounding neighborhoods did not. However, despite a potentially strong retail market, the neighborhood experienced a long period of commercial decline. Redevelopment under Urban Renewal altered the fabric of some commercial streets and perceptions of the south side as a poor retail market were applied to Hyde Park uncritically. Thus, while there was a market for retail development in the neighborhood, up until very recently, it has been largely underserved resulting in considerable leakage as residents and workers left to shop in other neighborhoods (South East Chicago Commission 2000).

In 2000, the City of Chicago and the University of Chicago began working together to address the dearth of commercial development. Targeting 53rd Street, an historic commercial street, the produced a revitalization plan and designated the area a tax increment financing (TIF) district with the vision of creating "a cohesive and vibrant mixed-use commercial district that provides a comprehensive range of commercial and retail uses" (City of Chicago 2001, 1). The plans called for working to expand and improve existing businesses, create an identity for the area, and address the need for parking and access. The City and University held multiple visioning sessions between 2007 and 2009 and conducted a survey of the University student body to determine the type of retail development desired.

Representatives of the University have been vocal about their interest in revitalizing the street to enhance "the quality of life for students and faculty who are used to the kinds of amenities you find in places like New York, Boston and Palo Alto" (Sharoff 2012). As a result, the University played a key role in implementing the plan by aggressively acquiring property along 53rd Street including the former Harper Theatre in 2002 and Harper Court shopping center[6] in 2008. These properties were redeveloped into a 600,000 square foot mixed-use project completed in 2013 that was intended to serve as a catalyst to

[5] The development of infill sites in Portland is strongly encouraged by the city and regional planning frameworks and the urban growth boundary that restricts the supply of ready greenfield sites.

[6] Harper Court shopping center was initially developed as a relocation site for small, neighborhood businesses displaced by Urban Renewal. It was largely financed by the University of Chicago and Archdiocese of Chicago and featured subsidized rents.

drive revitalization. The retail space in this project has largely been filled with regional and national chains, but rents have been too high for small retailers (Urban Land Institute 2012, Cholke 2013).

In addition to the Harper Court redevelopment project, the University has also purchased or negotiated long-term master leases for many of the other buildings along 53rd Street. Many of the previous tenants have been relocated or not had their lease renewed (Cholke 2013). The University has used these retail spaces to temporarily bring apparel, home goods and toy stores to the commercial district as pop-up shops. The stated reasons for using pop-up shops are to allow small retailers to test their concepts in the neighborhood and to provide local residents a wider variety of choices. It is also explicitly aimed at A a consistent issue identified through a variety of reports, analyses and meetings that few retailers have been willing to be pioneers where there is limited familiarity with the customer base. The pop-up shops serve to demonstrate a market for the types of retailers that had been identified as both retail types missing from the neighborhood and those that are difficult to attract (Sharoff 2012).

Currently, the third set of pop-up stores is finishing their run. The University closely screens and recruits the retailers that operate the pop-up shops. All of the pop-ups selected by the University are small retailers that have already had success in other neighborhoods in Chicago. In addition to identifying and recruiting the pop-up retailers, the University also provides funds to set up the space, covers insurance for the space and facilitates all necessary approvals. All three of the current group of retailers already operate successful stores in affluent north side neighborhoods. Thus far, the pop-up stores have been successful with operators stating that it was a "perfect way to get my feet wet" and "great because you can kind of test the waters" (Bishku-Aykul 2014). One of the pop-up retailers has transitioned to permanent businesses in the neighborhood (closing their existing shop on the north side), and another expressed interest but was unable to break their current lease (Cholke 2014). The pop-up retailers also help fulfill the University's commitments to both the neighborhood and the City that they made as part of securing development approvals to bring in local businesses that serve the neighborhood residents as well as the University community.

### *5.3 Pop-up Retail in Detroit, MI*

Pop-up retail has become popular in Detroit over the past several years as a potential solution for few proven markets, shrinking market base, and high retail vacancy rates. Temporary retail uses have emerged as a way to demonstrate market demand, increase vitality, create an identity and cultivate entrepreneurs.

A variety of neighborhood actors have worked as facilitators of temporary retail including business improvement districts, neighborhood organizations, and community development corporations focused on commercial development. In addition, a program citywide program called REVOLVE has been started by the Detroit Economic Growth Corporation, an organization working to promote neighborhood economic development. This program is specifically aimed at using temporary, pop-up spaces to recruit new businesses, encourage public and private investment, and change the image and narrative of neighborhood business districts (Revolve Detroit 2014, 9). They recruit, vet and link potential businesses and properties in target neighborhoods. They assist start-up businesses with training, support and funding. They provide a checklist for potential pop-up businesses that explicitly identifies costs and processing times for required tasks including business licensing, permitting and lease negotiations (Revolve Detroit 2014, 27-30). Also provided is contact information for permitting, insurance and equipment rentals as well as sample lease agreements.

One example of the use of pop-up retail spaces is the Chalmers Square redevelopment in the Jefferson-Chalmers retail district near the boundary of Detroit and Gross Pointe. Chalmers Square was a redevelopment project that renovated three vacant, historic buildings into a mixed-use building with 47 affordable apartments and 17,000 square feet of retail space. The project was put together over a ten year period by the local business association who facilitated transfer of buildings from City ownership to the private developer and completion of Phase 1 site assessment. While the residential units were absorbed fairly quickly, the retail component did not (Jefferson East Business Association 2013).

The Jefferson East Business Association, working with the property owner and the American Institute of Architects, developed a plan to open the spaces for pop-up retail. Seven pop-up retailers were recruited to fill the five storefronts to operate on a temporary basis during the annual Jazz on Jefferson music festival. The event was dubbed June on Jefferson and ran through June and July 2013 (Clark 2014).

One of the pop-up retailers that operated during the event chose to transition from a temporary to permanent use. The Coffee and (_) shop selling coffee and whatever baked goods the owner felt like making that day. The site lacked kitchen facilities. The owner baked the goods at a separate location and brought them to the shop. The shop attracted a strong neighborhood following, but closed at the end of its pre-determined temporary run. After a short hiatus, the owner decided to attempt to open a permanent business in the temporary location and was allowed to reopen her temporary business while undertaking the necessary work to prepare the space and acquire the necessary approvals (Trudeau 2013).

Despite having support of the Business Association and a cooperative City staff, the process has lasted over a year. Initially, the City was going to force her to close the shop while she pursued her permanent Certificate of Occupancy at the expiration of the Temporary Certificate of Occupancy. After the intervention of the Business Association, she was able to stay open during the process (with only a brief closure to finish construction). It took months of work to comply with historic preservation, building and sign permit requirements (Trudeau 2013, Trudeau 2014, and Revolve Detroit 2014).

Revolve Detroit uses this case as an example of the difficulties of transitioning from temporary to permanent use. The lessons learned from this particular case are instructive. They note the significant difference between planning for and executing a temporary use and a permanent use. Additional due diligence is necessary to understand the existing space and what level of investment and approval will be necessary to maintain a permanent business in that location (Revolve Detroit 2014). Designing, financing and building a permanent space requires knowledge and expertise well above that needed to cobble together a temporary space. Interior space, fixtures, furniture, and signage that might have previously been borrowed or rented, one of the hallmarks of temporary uses, must now be bought or built. Permits for permanent uses are considerably more expensive than those for temporary uses. The level of scrutiny applied to permanent uses by the local authority is also much higher. Permanent uses must meet all city codes including zoning, structural, mechanical, plumbing, and electrical.

While temporary uses may be allowed to operate in spaces not intended for that type of use (for example, the coffee shop occupying a retail space without a kitchen), permanent uses may not. Changes in use, even those that may not require a zoning amendment such as a change from a retail to a restaurant use, may trigger an additional review resulting in added time and cost. Even without a change in use, becoming permanent will require obtaining a Certificate of Occupancy. Technical assistance on a variety of subjects including business operations, access to capital, legal assistance and local authority approvals are very often necessary to insure a successful transition from temporary to permanent. Lease negotiations can also be time consuming and complicated.

## 6. Conclusions

In the case of food carts in Portland, food cart operators were able to identify and occupy an informal space within the regulatory regime by locating their carts on private property. Supportive property owners and politicians provided space for planners in Portland to formalize this arrangement by permissive interpretation of existing ordinances and codes, navigating a narrow path between upholding existing plans and codes while facilitating the temporary use of vacant lots and parking lots. While this maneuver is widely regarded as successful, as Portland's food cart pods have gained local and international acclaim, they have also become deeply entrenched. The strong claim asserted by the food cart operators to the sites they now occupy has created a new anticommons, albeit one that might not be particularly tragic. However, it does serve as a cautionary note.

The Chicago pop-up retail establishments demonstrate the potential value provided by temporary uses for efforts to revitalize struggling commercial districts. The temporary uses in this case were employed in conjunction with a broad revitalization strategy that also included a large, catalytic redevelopment project. They filled an important role in this larger strategy by providing space for small businesses and for recruiting specific types of retail businesses identified as lacking in the neighborhood, satisfying neighborhood resident demands. The pop-up shops served as a demonstration of the potential of the market to support these types of businesses. In this case, the anticommons was overcome by a single, powerful actor, the University of Chicago, absorbing the transaction costs and using its power to assemble the necessary rights. A hefty endowment and strong bond rating rendered investor veto meaningless and deep ties with the City eased permitting issues. However, in doing so, it displaced existing local businesses that were deemed less desirable. This type of cooptation of temporary uses to serve the needs of powerful actors does not fit easily into the narrative that is often told about temporary uses. Yet with the growing popularity of temporary uses, it would not be surprising to see this strategy adopted more widely.

Finally, the Detroit case vividly illustrates the use of temporary use to activate vacant retail space and reads like an example of best practice. Part of a larger citywide effort to use pop-up retail to attract small entrepreneurs and investors to struggling commercial districts, the June on Jefferson event achieved multiple ends. It filled Chalmers Square's empty retail spaces temporarily providing the property owner with a short term return and the business operators with an opportunity to test the market and their concepts. The event also raised the profile of the commercial district citywide. The process was facilitated by a citywide non-profit and a neighborhood business association working with a receptive city government which lowered the transaction costs for the actors involved. The event also resulted in a best case scenario with one of the pop-up retailers deciding to transition to a permanent use. However, the process of transitioning was very difficult with the regulatory regime creating particularly significant barriers. The transition took much longer and was much more costly than anticipated. This demonstrates that, while temporary uses may provide a short-term solution to an anticommons, they do not necessarily resolve it.

The three cases presented above further illustrate that temporary uses may be valuable contributors to revitalization and emphasizes the importance of for providing an avenue within planning for temporary uses. They demonstrate the ability of temporary uses to provide a short-term solution to the anticommons. However, these cases also reveal some of the potential drawbacks of temporary uses including entrenchment, cooptation and transition. All three cases illuminate the role that powerful actors can and do play in sanctioning and enabling temporary uses.

## 7. References


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