

CITY OF OAKLAND



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## NOTICE

September 6, 2019

**Subject:** Proposed Revisions to the Administrative Guidelines for Mobile Food Sidewalk Vendors

The City of Oakland is proposing revisions to the *Administrative Guidelines* for **Mobile Food Sidewalk Vendors**, which provide guidance on the issuance and enforcement of sidewalk vending permits, in conjunction with Ordinance No. 13421 (adopted in 2017), and we'd like to provide you with the opportunity to review and comment on the changes. Note that the Administrative Guidelines for non-sidewalk vendors, such as food trucks, vendors on private property or on streets, are not changing at this time. The proposed revisions to the *Administrative Guidelines* are available on the Mobile Food Vending website [bit.ly/OaklandMobileFood](http://bit.ly/OaklandMobileFood) and appended here.

The City has updated the *Administrative Guidelines* to comply with State Bill 946 Safe Sidewalk Vending Act (effective on January 1, 2019) for vendors that operate from non-motorized conveyances on public sidewalks or pedestrian paths ("Sidewalk Vendors"). Furthermore, the City is proposing to revise the *Administrative Guidelines* to designate the Special Activity Permits Division in the City Administrator's Office, instead of the Bureau of Planning, as the new implementing entity of the Mobile Food Vending Program, and is proposing to streamline the future review process for changes to these *Administrative Guidelines*.

Please address all written comments to Christina Ferracane, Strategic Planning, City of Oakland, Planning and Building Department, 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, CA 94612 or [cferracane@oaklandca.gov](mailto:cferracane@oaklandca.gov). Comments must be received by **October 6, 2019**.



## **9/6/2019 DRAFT Proposed Revisions**

### **SIDEWALK VENDORS:**

#### **Administrative Guidelines for Mobile Food Vending**

##### **1. Purpose**

On March 28, 2017, the Oakland City Council adopted Ordinance No. 13421 C.M.S. to create a new citywide mobile food vending program in OMC Chapter 5.51 (“Ordinance”) and approved *Guidelines for the Issuance of Food Vending Permits Operating on Private Property and within Public Rights-of-Way* (“Administrative Guidelines”). Together, the Ordinance and the Administrative Guidelines constitute the “Mobile Food Vending Program”.

On September 17, 2018, Governor Brown signed State Bill 946 *Safe Sidewalk Vending Act*, which added Chapter 6.2 to the Government Code to limit how cities and counties may regulate and enforce regulations related to vendors that operate from non-motorized conveyances on public sidewalks or pedestrian paths (“Sidewalk Vendors”). Several provisions of the City’s Mobile Food Vending Program conflict with SB 946 as they relate to Sidewalk Vendors. Until City Council formally adopts revisions to the Food Vending Program ordinance to align with SB946, the City Administrator may only enforce those provisions of the Food Vending Program that are clearly permitted under SB 946.

These Administrative Guidelines have been updated to comply with the new State law and to memorialize the City Administrator’s designation of the implementing entity of the Mobile Food Vending program as the Special Activity Permits Division in the City Administrator Office. Related to the designation of the Special Activity Permits Division in the City Administrator Office as the implementing entity, the proposed revisions also streamline the review and reporting process for changes to these Guidelines.

The following constitute the guidance:

- Administrative Guidelines for Mobile Food Vending for ***Sidewalk Vendors*** (this document)
- Permitted Area Map for ***Stationary Sidewalk Vendors*** to Comply with State Bill 946 (***Attachment A*** to this document)

##### **2. Applicability**

These Administrative Guidelines supersede the original Administrative Guidelines to provide guidance for implementing and enforcing the Food Vending Program for non-motorized Sidewalk Vendors to align with the provisions of SB 946. The entire Food Vending Program as originally adopted by the City Council applies to all other vendors (e.g., food trucks or other food vendors on private property or on the street right-of-way); the original Administrative Guidelines still apply to

those vendors. However, the change to the implementing entity (now the Special Activity Permits Division in the City Administrator Office) and related changes, applies to the entire Food Vending Program.

### 3. Definitions

Definitions pertaining to the Food Vending Program are found in OMC Section 5.51.020. Below are additional explanations that supplement the adopted definitions, including guidance on terminology from SB 946.

- **“Healthy foods”** include but are not limited to: Fruits; Non-fried vegetables; dairy foods; food made from nuts, seeds, legumes, cheese; foods made from whole grains (defined as 51% or more); foods which do not contain trans-fat. Beverages for sale in this definition include: water (preferred beverage); 100% fruit or vegetable juice; nonfat and 1% milk (including nonfat chocolate milk); and non-dairy milk, such as soy. No sugar-sweetened beverages are in this definition.
- **“Public right-of-way”** means City streets or sidewalks.
- **“Late night vending”** means food vending allowed past the regular permitted hour limit of 10 p.m., to a time as determined by the city, not to exceed 3 a.m.
- **“Sidewalk Vendor”** means a person who sells food or beverages on a public sidewalk or other pedestrian path from a pushcart, stationary cart other non-motorized equipment allowed by the Alameda County Environmental Health Department.
- **“Roaming Sidewalk Vendor”** means a sidewalk vendor who moves from place to place and stops only to complete a transaction.
- **“Stationary Sidewalk Vendor”** means a sidewalk vendor who vends from a fixed location.

### 4. Limits on Location of Sidewalk Vendors

Sidewalk vendors may vend in the Permitted Area (4.A), as long as they also comply with the buffer distances, clearances and permissions described in Sections 4.B-H below:

#### A. Permitted Area:

**Roaming Sidewalk Vendors** may vend on any public sidewalk or pedestrian path in the City of Oakland, as long as, during a vending transaction, they also comply with the buffer distances, clearances and permissions described in Sections 4.B-H below.

**Stationary Sidewalk Vendors** are restricted to areas of the City that are not zoned exclusively residential, as illustrated in **Attachment A**, and they must also comply with the buffer distances, clearances and permissions described in Sections 4.B-H below.

- B. Distance from Schools: Per OMC Section 5.51.050, food vending is not permitted within three hundred (300) feet of any school serving children between kindergarten and high school, with the following exceptions:
- i. Food sales are permitted after 6pm, Monday through Friday and on weekends.
  - ii. If a food vendor receives written consent from the supervising entity of the school to serve “healthy food” (as defined in these Administrative Guidelines) during certain hours. For OUSD Schools, the supervising entity is the Executive Director of OUSD Nutritional Services.
- C. Distance from Other Individual Food Vendors or Group Sites: Per OMC Section 5.51.050(B), individual vendors are not permitted to operate within three hundred (300) feet of any other food vendor or group site, with the exception of individual vendors or group sites that are permitted to operate on different days of the week from the same location.
- D. Distance from Restaurants: Individual vendors are not permitted to operate within one hundred (100) feet of a Full Service or Limited Service Restaurant. This separation requirement will only apply during the normal hours of operation of the Full Service or Limited Service Restaurant. As a further exception, individual vendors may locate in the lot at the southeast corner of the intersection of Mountain Boulevard and Werner Court. The distance will be measured to the front door of the restaurant. Restaurants which are not street-facing, but which are within buildings (i.e. on a mezzanine), will be measured from the building entrance. Individual vendors and group sites that receive and hold a city food vending permit to vend at a particular location may be exempted from this distance separation requirement if a Full Service or Limited Service Restaurant closer than one hundred (100) feet opens after initial issuance of the food vending permit, as long as the renewal of a Food Vending Permit for such a location will not have an adverse impact upon the public health, safety, or order.
- E. Distance from Farmer’s Markets and Special Events: There is a 100-foot distance requirement during hours of operation between a scheduled farmer’s market which features food vending as part of its regular program, and any non-affiliated food vendor; there is also a 100-foot distance separation requirement between a special event (e.g. “First Fridays”) and any non-affiliated food vendor during hours of operation of the special event.
- F. Park Location: Sidewalk Vending may be allowed in Oakland parks with permission from the Central Reservation Office of Oakland Parks and Recreation, and the following factors will be used to evaluate the time, place and manner of vending:
- i. Objective health, safety or welfare concerns
  - ii. Public use and enjoyment of natural resources and recreational opportunities

- iii. Prevention of undue concentration of commercial activity that unreasonably interferes with scenic and natural character of the park.
- G. Sidewalk Clearances: The preferred location for stationary Sidewalk Vendors vending from a fixed location are on sidewalks ten (10) feet wide or greater. A map of sidewalk widths in the permitted area is available to staff and the public. Individual food vending facilities or group sites cannot block or impede access under the Americans with Disabilities Act (ADA) to the public facilities listed in OMC Section 5.51.050(c). In addition, the vendor and vending facilities must maintain a minimum clearance of:
- i. Fifty (50) feet of any vehicle entrance of any fire station, police department, hospital, or any other building with a health and safety activity;
  - ii. Fifteen (15) feet from the angular return of any sidewalk, and may not obstruct the use of any corner or mid-block accessible curb ramps, or any access ramp designed for persons with disabilities;
  - iii. Fifteen (15) feet from any building entrance or exit, intersection, or driveway;
  - iv. Fifteen (15) feet from any delineated bus zone / bus stop;
  - v. Fifteen (15) feet from fire hydrants or a fire escape;
  - vi. Fifteen (15) feet from any outdoor seating area of a restaurant or café; or parklet;
  - vii. Fifteen (15) feet from a red-zone/striped curb (distance does not apply to other colors of curb markings);
  - viii. Ten (10) feet from the area in front of display windows of fixed location businesses;
  - ix. Six (6) feet clearance between the pushcart and existing street equipment, including but not limited to parking meters, pedestrian signal crossings, fire alarms, news racks, kiosks, benches, bike racks, etc.; and
  - x. Two (2) foot clearance is required along the curbside for pushcarts operating adjacent to existing on-street parallel parking.

In addition to the minimum clearance regulations, the Permittee is prohibited from placing any freestanding A-frames, displays, signs, umbrellas, or other similar obstruction within the public right-of-way. No more than one (1) storage container or cooler, and one (1) refuse collection receptacle is allowed per vending operation within the public right-of-way.

Chairs and tables are not allowed, with the exception of one chair for stationary sidewalk vendors to use for themselves; the chair must comply with the clearances listed above.

## **5. Hours of Operation and Late-Night Vending**

The regular permitted hours are 7 a.m. to 10 p.m., daily. "Late night vending" (past the regular permitted hour limit of 10 p.m. is allowed for Sidewalk Vendors operating in non-Residential Zoning

districts provided that other businesses on the same street block are permitted to operate past 10 p.m. (to a time, as determined by the City, which matches the permitted hours of other businesses on the same street block face).

## **6. Proof of Insurance**

Vendors must show proof of, and maintain, adequate commercial general liability insurance and worker's compensation insurance (if there are employees). The City of Oakland sets insurance requirements in "Schedule Q for Mobile Food Sidewalk Vendors"<sup>1</sup> which are summarized here for reference:

- A. "Commercial General Liability insurance of one million dollars (\$1,000,000), unless the City's Risk Management Department recommends a higher amount, shall cover bodily injury, property damage and personal injury liability for premises operations, independent contractors, products-completed operations personal & advertising injury and contractual liability." And, vendor "shall provide insured status naming the City of Oakland, its Councilmembers, directors, officers, agents, employees and volunteers as insureds under the Commercial General Liability policy."
- B. Vendor "certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code, which requires every employer to provide Workers' Compensation coverage, or to undertake self-insurance in accordance with the provisions of that Code."

## **7. Food Vending Permit Approval**

- A. The City Administrator's Special Activity Permits Division will determine whether the subject application meets the requirements for a Food Vending Permit based on OMC Chapter 5.51 and these Administrative Guidelines.
- B. The Assistant to the City Administrator in the Special Activity Permits Division or his/her designee will approve, approve with conditions, or deny a Food Vending Permit application based on the standards and criteria in OMC Chapter 5.51 and these Administrative Guidelines. The Assistant to the City Administrator in the Special Activity Permits Division or his/her designee may impose conditions of approval on a Food Vending Permit, if in the exercise of his or her reasonable discretion, the conditions are necessary to protect the public health, safety and welfare. The applicant will be notified of any conditions of approval in writing.

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<sup>1</sup> More details regarding insurance requirements can be viewed in "Schedule Q for Mobile Food Sidewalk Vendors" at the City's Mobile Food Vending website: [bit.ly/OaklandMobileFood](http://bit.ly/OaklandMobileFood).

## 8. Food Vending Permit Expiration and Renewal

- A. Each Annual Food Vending Permit will be valid for twelve (12) months from the month of issuance and expire, and become null and void, on the anniversary of its issuance if not renewed as described in Subsection b. below.
- B. Holders of an Annual Food Vending Permit who wish to vend in the City on a multi-year or ongoing basis will need to apply annually to the City Administrator’s Special Activity Permits Division for a Food Vending Permit renewal prior to the expiration of their active Food Vending Permit. All renewal applications need to be filed with the City Administrator’s Special Activity Permits Division pursuant to the procedures in these Administrative Guidelines.
- C. Each Temporary Food Vending Permit will expire and become null and void after ninety (90) days and may only be renewed for one additional consecutive 90-day time period.

## 9. Enforcement

Only the following administrative fines shall apply to Non-Motorized Sidewalk Vendors for violations of the Food Vending Program or vending without a valid permit. Violations will not be punished as infractions or misdemeanors.

<b>Number of Violations</b>	<b>Violation of regulation that complies with standards of SB 946</b>	<b>Vending without a permit</b>
<b>First Violation</b>	\$100	\$250
<b>Second Violation</b>	\$200	\$500
<b>Third Violation</b>	\$500	\$1,000
<b>Fourth Violation and each thereafter</b>	\$500 and Revocation of permit	\$1,000

## 10. City Departments—Responsibilities

- A. **City Administrator.** Under OMC Section 5.51.030, “the City Administrator or his/her designee is authorized to issue such Administrative Guidelines, not inconsistent with this Chapter, governing the issuance of Food Vending Permits.” The City Administrator has designated the Special Activity Permits Division, within the City Administrator’s Office, to administer and issue Food Vending Permits and to periodically revise these Administrative Guidelines and the

Program Permitted Area Map, following the procedure described in Section 12 of these Guidelines.

- B. **City Administrator's Office, Special Activity Permits Division staff.** The Assistant to the City Administrator within the Special Activity Permits Division shall periodically revise these Administrative Guidelines and the Program Permitted Area Map, following the procedure described in Section 12 of these Guidelines. The Special Activity Permits Division will administer and issue Food Vending Permits, through the counter located at in City Hall (One Frank H. Ogawa Plaza), 1st Floor, Room 123. The Division will maintain an informational website, provide outreach and informational materials, and publicize a phone number and email address for people to contact for more information. The Division's Municipal Code Enforcement Officers will enforce the regulations via education and citations for violations. The Division will lead the ordinance update required to implement SB 946 Safe Sidewalk Vending Act.
- C. **Bureau of Planning.** The Bureau of Planning will assist with the ordinance update required to implement SB 946 Safe Sidewalk Vending Act.
- D. **Business Tax Office (Revenue):** The Business Tax Office will issue Business Tax Certificates to individual food vendors/applicants.
- E. **Oakland Fire Department:** The Oakland Fire Department will inspect propane and other gas tanks on a vehicle, during an initial inspection, before the City's permit is granted. One annual inspection will be completed at the time of application or renewal.
- F. **Oakland Police Department (OPD):** OPD will be on call to support the enforcement efforts of the City Administrator's Office. The OPD is not expected to initiate enforcement efforts, but rather to coordinate as needed with the City Administrator and/or Alameda County Environmental Health.
- G. **Oakland Parks and Recreation (OPR):** OPR will review permits for sidewalk vending in Oakland parks.

## 11. Good Neighbor Policies

Permit holders will manage their food vending facility according to the following good neighbor policies:

- A. Vendor will maintain a quiet, safe and clean selling location.
- B. Vendor will provide adequate storage and disposal of garbage and trash.
- C. Noise and odors will not become a nuisance or burden on neighbors. This includes noise from food truck generators, motors and fans, and from customer's automobiles and radios, particularly at night.



- D. Vendors or their employees will walk a one hundred (100) foot radius from the food vending site after close of business, and dispose of beverage and serving materials or other trash left by their customers.

## **12. Revisions and Changes to these Administrative Guidelines and the Program Permitted Area Map**

Any proposed changes to these Administrative Guidelines and to the Program Permitted Area Map will follow the adoption sequence below, to ensure the public has an opportunity to review and comment on the changes:

- A. Any proposed changes to the Administrative Guidelines and to the Program Permitted Area Map will be coordinated by the Special Activity Permits Division within the City Administrator's Office with the Departments listed in Section 10 of this report.
- B. Any proposed changes will be posted on the city's Food Vending web page, and made available for inspection and copying by the Special Activity Permits Division within the City Administrator's Office.
- C. Each holder of a permit or license issued under this program will receive notice of any proposed changes to the Administrative Guidelines and to the Program Permitted Area Map.
- D. A ten-day (10) public comment period to receive comments on the proposed changes to the Administrative Guidelines and to the Program Permitted Area Map will commence on the date the notice of the proposed changes is posted on the city Food Vending web page and sent to those permitted or licensed under this program. During the comment period, any person may submit written comments regarding the proposed changes as specified in the accompanying notice.

After the close of the public comment period, the Special Activity Permits Division within the City Administrator's Office will consider all public comments on the proposed changes to the Administrative Guidelines and/or to the Program Permitted Area Map; and will approve the final changes.

- E. The final changes to the Administrative Guidelines and to the Program Permitted Area Map approved by the City Administrator or his/her designee will become final on the date the changes are posted on the City's food vending webpage.

## **13. Reports to City Council**

Staff from the Special Activity Permits Division within the City Administrator's Office will provide annual informational memoranda to the City Council. The informational memoranda will contain at least the following items:

- Numbers of Food Vending permits issued and outstanding in the previous year;
- Revenue collected from permit fees, from enforcement action;

- Changes made to the Administrative Guidelines;
- Changes made to the Program Permitted Area Map;
- Summary of community meetings, staff discussions with vendors and the public; and
- Recommendations for future changes and adjustments to the program.

#### **14. Contacts for Further Information**

Special Activity Permits Division in the City Administrator Office,

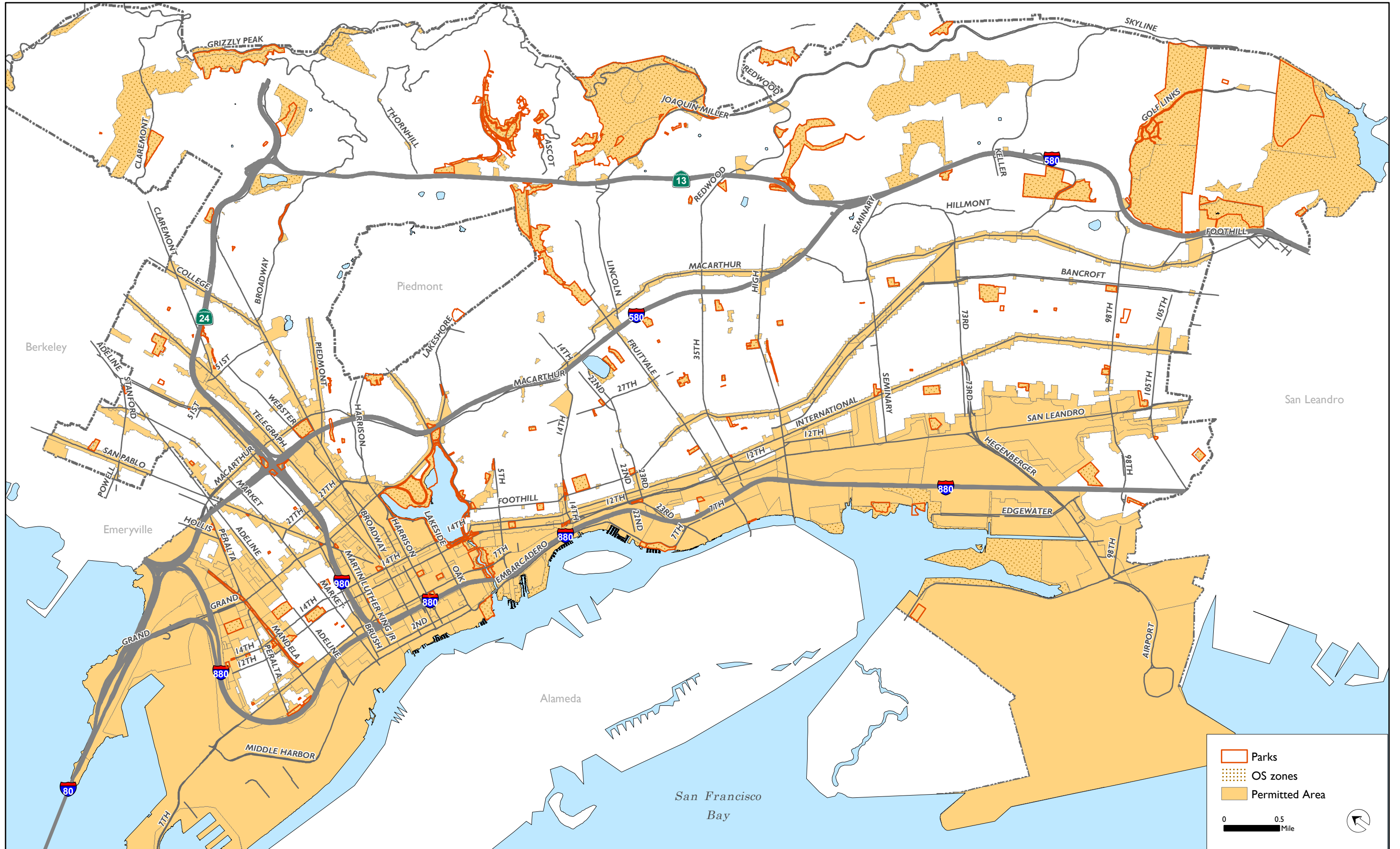
[MobileFoodVending@oaklandca.gov](mailto:MobileFoodVending@oaklandca.gov)

- Permit Information: 510-238-3294
- Municipal Code Enforcement Officers: 510-238-7398

Fire Department: Inspections, 510-238-3851

Alameda County Environmental Health: 510-567-6700

Oakland Parks and Recreation: 510-238-3420



**Sidewalk Food Vending Permitted Area for Stationary Vendors**