

## Oakland City Planning Commission

## STAFF REPORT

June 1, 2016

<b>Location:</b>	CITYWIDE
<b>Proposal:</b>	<p>Establish a new citywide food vending permit program that would replace Oakland's existing food vending permit types and programs. The new citywide food vending program would permit, with certain restrictions, individual food vending on private property and from the public right of way in selected commercial and industrial areas. The new program would also permit group site vending citywide. Ordinance would revise the definition of "Fast Food Restaurant Commercial Activities" in Section 17.10.280 of the Oakland Planning Code; and revise the following sections of the Oakland Municipal Code: Section 5.51 ("Food Vending Group Site Pilot Program"); Section 5.49 ("Pushcart Food Vending Pilot Program"); and Section 8.09 ("Vehicular Food Vending"). The Ordinance would also include revisions to other Planning and Municipal Code sections as minor conforming changes.</p>
<b>Applicant:</b>	City of Oakland
<b>Case File Number:</b>	ZA16009
<b>Environmental Determination:</b>	<p>The Project relies on the previous set of applicable CEQA documents including: the Coliseum Area Specific Plan EIR (2015); Broadway Valdez Specific Plan EIR (2014); West Oakland Specific Plan EIR (2014); Central Estuary Area Plan EIR (2013); Land Use and Transportation Element of the General Plan EIR (1998); the Oakland Estuary Policy Plan EIRs (1999, 2006) and Supplemental EIR (2013); the Redevelopment Area EIRs- West Oakland (2003), Central City East (2003), Coliseum (1995), and Oakland Army Base (2002); the Historic Preservation Element of the General Plan EIR (1998); the 2007-2014 Housing Element Final EIR (2010) and Addendum (2014); and various Redevelopment Plan Final EIRs (collectively, "Previous CEQA Documents"). No further environmental review is required under CEQA Guidelines Sections 15162 and 15163. Moreover, each as a separate and independent basis, this proposal is also exempt from CEQA pursuant to CEQA Guidelines Sections 15183 (projects consistent with General Plan and Zoning) and 15061(b)(3) (general rule, no significant effect on the environment).</p>
<b>City Council District:</b>	All Council Districts
<b>Action to be Taken:</b>	Recommendations to the City Council
<b>Staff Recommendation:</b>	Recommend proposal to the City Council
<b>For Further Information:</b>	Contact case planner <b>Devan Reiff</b> at <b>510-238-3550</b> or <b>dreiff@oaklandnet.com</b>

**SUMMARY**

The proposed new citywide food vending permit program will replace Oakland's existing food vending permit types and programs. The program would permit, with certain restrictions, individual food vending on private property and from the public right of way in selected commercial and industrial areas. The new program will permit group site vending citywide. The proposal revises the definition of "Fast Food Restaurant Commercial Activities" in Section 17.10.280 of the Oakland Planning Code; and revises the following sections of the Oakland Municipal Code: Section 5.51 ("Food Vending Group Site Pilot Program"); Section 5.49 ("Pushcart Food Vending Pilot Program"); and Section 8.09 ("Vehicular Food Vending"). The proposal also includes revisions to other Planning and Municipal Code sections as minor conforming changes.

This proposal comes after a year of significant community outreach to merchants, restaurant owners, mobile food vendors, community members, neighborhood groups, business improvement district directors, as well as review by City staff in the Parks and Recreation department, Oakland Public Works, the Oakland Police Department, the Oakland Fire Department, and the City Administrator's office.

Staff is also preparing administrative rules and procedures to serve as guidelines for permit issuance and conflict resolution. These rules and procedures will provide the detailed requirements, procedures and prohibitions under which the new food vending program will be operated. They will also provide the flexibility necessary to make timely changes to effectively implement the new food vending program. These rules and procedures will be presented to the public in advance of the program implementation date, and approved by the Director of Planning and Building.

The proposal also requires the addition of new City staff to help administer and enforce the new food vending program, including positions in the City Administrator's Nuisance Abatement Division and the Planning and Zoning Division. New permit fees are proposed for the food vending program to cover the cost of these staff positions.

The map of proposed food vending areas includes selected commercial and industrial areas of the City.

The proposed new food vending program provides an important opportunity to increase neighborhood small-business opportunities, increase food choice options and access to affordable food in many underserved Oakland neighborhoods, and address problems with the existing food vending regulations and programs.

Without the new program, or the newly proposed enforcement and administrative staff, the current enforcement difficulties will continue.

## BACKGROUND

In 2001, the City of Oakland adopted its first pilot program to permit vehicular food vending on private property and pushcart vending on sidewalks (Oakland Municipal Code (OMC) Chapters 5.49 and 8.09), in limited areas along certain major corridors east of Lake Merritt. This 2001 pilot program was then revised and made permanent in 2004 when the Council decided to establish permanent pushcart and vehicular food vending programs in the same limited areas. In 2011, the City adopted another pilot program, which allowed mobile food vendors to apply to sell in groups of three or more mobile food vendors clustered together on a single site, also known as “Group Sites”, within limited areas of Council Districts 1, 2, 3 and 4. In 2013, the City Council extended the pilot program to permit Mobile Food Vending Group Sites until “the City Council adopts permanent mobile food vending regulations.”

Outside of the permitted program areas specified above, Mobile Food Vending in the City of Oakland currently requires either:

- (1) A Major Conditional Use Permit (CUP) for Fast Food Restaurant Commercial Activities, and review and approval by the Planning Commission; or
- (2) A Special Event Permit, issued by the Oakland Police Department (with the participation of the City Administrator’s office) for a limited duration event.

At the March 19, 2015 Rules and Legislation Committee of the City Council, the Committee moved to place an item on the July 14, 2015 Community and Economic Development (CED) Committee agenda to: “adopt an ordinance amending Ordinance No. 12579 C.M.S. which establishes a permanent vehicular food vending program, and for staff to provide recommendations on expanding the vehicular food vending program citywide.” Planning staff presented an informational report to the CED Committee and described the present permitting and enforcement situation for food vending in Oakland, assessed programs elsewhere in the country, and highlighted considerations for future expansion (see **Attachment A** to this report<sup>1</sup>). At the July 14<sup>th</sup> meeting, the CED Committee directed staff to develop a comprehensive food vending program proposal. This report contains the elements of that requested program.

In January 2016, the City released a framework food vending proposal and proposed vending map for discussion. Responses from the public to that initial framework proposal have guided the development of a draft ordinance and map, which is the subject of this and future hearings.

## COMMUNITY OUTREACH

Planning Bureau staff has met with a variety of stakeholders to gain diverse perspectives on the various current food vending programs, and to brainstorm ideas for an expanded citywide program. Meetings have been held with the following interested parties:

- Individual food truck and pushcart vendors;
- Group Site organizers;

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<sup>1</sup> The July 14, 2015 Agenda report addresses other program details not covered in this report.

- Restaurant owners;
- Leadership of business improvement districts in Downtown, Koreatown/Northgate, Temescal and Fruitvale;
- Chinatown merchants;
- Oakland Chamber of Commerce;
- Chinatown Chamber of Commerce;
- Oakland Unified School District (OUSD) staff;
- Alameda County Environmental Health Department;
- Unity Council;
- Oakland Food Policy Council;
- HOPE Collaborative; and
- Community groups, including the West Oakland Neighbors and Hoover Residents Advisory Committee.

In addition, staff has coordinated five community meetings for the public and interested parties to discuss the major proposed components of a citywide mobile food program. The most recent community meeting with Central and East Oakland residents was held on May 9, 2016.

Staff collected feedback at these meetings through verbal discussion and written comment cards. This feedback has influenced policy recommendations by staff. Staff also created digital forms for input and developed a dedicated food vending webpage, which includes a listserv to provide updates on the proposed program. Throughout the planning process, feedback has also been welcomed through a publicized phone number and email address where the public can give additional comments.

### **NEW CITYWIDE FOOD VENDING PROGRAM**

The proposed new Citywide Food Vending program will require the following city code amendments:

1. Revise the definition of “Fast Food Restaurant Commercial Activities” in Section 17.10.280 of the Oakland Planning Code, to remove the portions referring to vehicular food vending;
2. Replace OMC chapters 5.51 (“Food Vending Group Site Pilot Program”), 5.49 (“Pushcart Food Vending Pilot Program”), and 8.09 (“Vehicular Food Vending”) with new citywide food vending program regulations, which will be located in OMC Chapter 5.51;
3. Adopt a new Food Vending Program Map; and
4. Revise other Planning and Municipal Code sections as minor conforming changes.

Staff proposes to delete OMC chapters 5.51, “Food Vending Group Site Pilot Program”, 5.49, “Pushcart Food Vending Pilot Program”, and 8.09, “Vehicular Food Vending” and replace them with one new citywide Food Vending Program – that can be found in OMC Chapter 5.51 (see **Attachment B** to this report). The proposed new citywide food vending program would be accompanied by a map of the “Food Vending Program Permitted Area” (see **Attachment C** to this report). Administrative procedures to implement the program would also be included. These

administrative procedures are being prepared by Bureau of Planning staff, in coordination with Oakland Public Works, the Oakland Police Department, the Oakland Fire Department, and the City Administrator's Office, and will be available to the public prior to the effective date of the program; the procedures will be approved by the Director of Planning and Building.

As currently proposed, Planning staff will issue food vending permits to applicants, and will help resolve potential conflicts. This is a somewhat unusual administrative arrangement, since programs and regulations outside of the Oakland Planning Code (Title 17) are not typically within the administrative jurisdiction of the Bureau of Planning. However, based on the Planning Bureau's experience in administering similar permit types, staff determined that Planning should also administer this new program. Another reason for this administrative arrangement is that the Planning Bureau already issues permits for food vending in some situations - through review of Major Conditional Use Permits (CUPs) submitted for vehicular food vending, which is currently considered a Fast Food Restaurant Commercial Activity in the Planning Code. An important implementation element of the proposed new food vending program is to consider removal of *vehicular food vending* from the definition of "Fast Food Restaurant Commercial Activities" (see Page 9 in this report for more discussion on this item), which will remove the ability of food vending applicants to apply for a conditional use permit, which is a permanent land use entitlement for fast food on a parcel.

This proposed amendment to the definition of "Fast Food Restaurant Commercial Activities" in the Planning Code, coupled with the proposed elimination of the other existing food vending-related regulations in various chapters of the municipal code, would allow for the consolidation of regulatory authority over the permitting of mobile food vending in a single municipal code chapter, and thereby establish one unified Food Vending Program for the entire city.

### **Comparison of current regulations to new regulations.**

In February 2016, the City posted a memo to the food vending project website which explained the major changes to the mobile food vending programs. The proposed changes include:

- **Expansion of Vending areas:** Staff proposes to greatly expand the areas where an individual food vendor, or a group of food vendors clustered together on a single site, also known as a "Group Site" ("food pod") event can locate, by authorizing food vending in selected industrial and commercial areas of the City. Individual food vendors would be able to apply to sell in downtown, West Oakland and North Oakland. Currently, the areas where an individual vendor can sell are limited to private property in the Fruitvale neighborhood and commercial streets in Central and East Oakland (International Blvd, Fruitvale, Foothill, and San Leandro Street). Under the proposal, these streets will continue as permitted food vending areas. The proposal also expands food vending to the commercial sections of MacArthur Boulevard in the Laurel and Dimond neighborhoods. Group Sites would be allowed in the Fruitvale neighborhood, and on commercial streets of Central and East Oakland (the proposal allows group sites in Council Districts 5, 6 and 7, where currently there are prohibitions).

- **Food sales from the street and sidewalk allowed:** Proposal would allow food vendors permission to sell from public streets and sidewalks. On-Street vendors will have to pay all applicable parking meters and observe parking regulations (such as yellow curbs or parking time limits). Currently, no on-street food vending is permitted in Oakland.

Sidewalk food vending, such as from roaming Pushcarts and stationary “hot dog cart” type trailers, would also be permitted, preferably, on wider sidewalks, only where there is enough pedestrian clearance and ADA access. Currently, no stationary sidewalk vending is permitted in Oakland.

- **Expanded number of Group Site locations:** Group sites (also known as “food pods”) will be defined as two or more food vendors selling together on the same site. The proposal would allow Group site organizers to apply for up to five different locations in Oakland. Currently, the regulation limits two locations per organizer. Also, each Group site would be allowed to conduct sales up to three times a week (an increase from two times per week currently). On private property, group sites would be allowed to sell with no limitation on the number of days. This is to encourage food pods, or a food vending gathering to be permanently housed on a surface lot, similar to those in San Francisco<sup>2</sup> and in Portland, OR.
- **Required Fire Inspections:** An annual inspection by the Oakland Fire Department will be required for individual food trucks or trailers/pushcarts which use gas for cooking. This is not currently required, and is an important health and safety consideration, given recent explosions in other cities.<sup>3</sup>
- **Healthy Food Vending:** The selling of healthy foods, which include, but are not limited to: fruits, vegetables, as well as 100% fruit and vegetable juices; whole grain products; dairy products; and non-dairy milks (made from soy, coconut, rice and/ or almonds), will be encouraged. Healthy food vendors will be given incentives in the proposal, particularly the ability to sell within 500 feet of a school, which is currently prohibited.
- **Grandfathering:** The proposed program, in certain circumstances, would allow long-standing food vendors to continue to sell from current locations (known as “grandfathering”). The administrative procedures will list the criteria for granting this special permission.
- **Enforcement:** The program proposes the creation of new staff in the City Administrator’s office who will be given enforcement and citation authority for food vending.
- **Limits to number of pushcart vendors:** A maximum of 100 food vending permits will be issued for pushcarts to operate within the City. At no time shall more than one hundred

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<sup>2</sup> The SoMA StrEat Food Park, at 11<sup>th</sup> Street and Division, is one example.

<sup>3</sup> The City of Philadelphia in 2014 experienced a propane tank explosion in a mobile food truck.

permits be active. This is in an increase from the current limit of 60 pushcarts, to allow these types of vendors to be permitted in areas of West Oakland, North Oakland, and downtown. The definition of a pushcart includes “hot dog stand” type carts, which are pulled on wheels to a location and dropped off, typically on a sidewalk, or in a corner of a parking lot.

Of the total 100 Food Vending Permits available for issuance to pushcarts, no more than 30 permits will be issued for pushcarts to operate within the following boundaries: Fruitvale Avenue and High Street between Interstate 880 to the west and Foothill Boulevard to the east, Foothill Boulevard between 19th Avenue to the north and MacArthur Boulevard to the south, International Boulevard between First Avenue to the north and 105th Avenue to the south, and San Leandro Street between Fruitvale Avenue to the north and 98th Avenue to the south. East 12th Street between 4th Avenue to the west and 23rd Avenue to the east, 14th Avenue between East 11th Street in the south and East 19th Street in the north.

- **Annual and Temporary permits:** The program will create two types of permits, annual permits renewed every 12 months, and temporary permits which are effective for 90 days. There will be a reduced fee for the temporary permit. This is intended to create an opportunity for vendors new to Oakland to try different areas of the City, or to sell seasonal products.
- **Fees for Permits:** The current permit fee for a food truck to operate on private property in the “pilot” area is \$1,800; for a pushcart on the sidewalk in the permit area, the fee is \$850<sup>4</sup>. The fees for the proposed program are intended to cover new positions at the City Administrator and Bureau of Planning for enforcement and administration, and are intended to approximate the same amount as the current program, for both food trucks and pushcarts. However, the proposed program will likely have additional permit fees which are not in the current program: 1) fire department inspection of gas-burning facilities; and 2) payment into the City’s excess litter fee program.

### **Map & changes to the map after community comment**

In early 2016, City staff initially proposed a map for the new food vending program which included all commercial and industrial zones of the City, as well as open space areas such as larger parks, neighborhood parks, and athletic fields. After extensive community comment, staff has reviewed and revised the proposed Food Vending Program Permitted Area (**Attachment C** to this report), and removed some of the initial areas for food vending, in order to limit the expansion of food vending in areas which are primarily residential, or where there is a high likelihood that negative impacts could occur from introducing food vending activities (such as at the intersections with narrow streets). These revisions include removing certain neighborhood parks and athletic fields; the streets around Highland Hospital; the sections of MacArthur Boulevard from 73<sup>rd</sup> Avenue to the San Leandro border, as well as International and San Leandro

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<sup>4</sup> Both amounts include the cost of a \$56 zoning clearance.

Streets, between 98<sup>th</sup> Avenue and the San Leandro border in East Oakland; the section of Martin Luther King Jr. Way in Downtown from 14<sup>th</sup> to 7<sup>th</sup> Streets; and smaller shopping centers in the Oakland hills surrounded by residential development. Nothing precludes the Commission or the Council from adding, or removing, additional areas on the proposed Food Vending Program Permitted Area map as are deemed appropriate, or not appropriate for food vending.

Separately, an option is presented to remove the area of Frank Ogawa Plaza, and many of the streets bordering it, including Latham Square, from the Program Permitted Area (**Attachment D**). Frank Ogawa Plaza is a unique commercial area in the City, where: 1) the land and many of the buildings are publically owned; and 2) existing restaurants and stores are only accessed by customers from within the Plaza -- there are few customers coming from the primary streets of Broadway or Telegraph Avenue. Latham Square will soon open with specific design features (such as lowered curbs) that will allow for occasional closure of Telegraph Avenue for special events, which might include food vending.

### **Location Requirements**

Individual food vending facilities or Group Sites will not be permitted to block or impede access to:

- Required parking or driveways;
- Bicycle racks;
- Signal crossings;
- Required on-site parking;
- Parking meters;
- Pedestrian or bicycle routes;
- Emergency vehicle routes;
- Building ingress and egress;
- Required handicapped accessibility routes and curb cuts;
- Easements;
- Trash enclosure areas or access to trash bins/trash enclosures; or
- Other City facilities, as determined by the City Administrator.

Individual food vending facilities and Group Sites must maintain site circulation and access consistent with the Americans with Disabilities Act (ADA).

All food vending facilities on public sidewalks are to be located such that a minimum of 5½ feet of unobstructed improved sidewalk or 50% of the overall improved sidewalk width, whichever is greater, is provided. For purposes of the minimum clear path, parking meters, traffic signs, trees, tree wells, sidewalk planter strips, and all similar obstacles shall constitute obstruction. Sidewalks with greater than 10 feet of width will be given preference for pushcart vending.

Each individual food vending facility and Group Site will need to locate within 200 feet of a restroom facility that employees have permission to access. This is already a requirement of the Alameda County Environmental Health Department permit for food vendors.

## CHANGES PROPOSED FOR THE OAKLAND PLANNING CODE

As mentioned earlier in this report, the proposed program would remove “mobile food vending” from the definition of “Fast Food Restaurant Commercial Activities” in Section 17.10.280 of the Oakland Planning Code. If adopted, this would remove the current conditional use permit requirement for mobile food vending, a land use entitlement, and replace it with the requirement for an administrative permit under the authority of the citywide food vending program. The proposed amendments to Section 17.10.280 are shown below (deletions are shown in ~~strikethrough~~ and additions are shown in underline):

### 17.10.280 Fast-Food Restaurant Commercial Activities.

A. Fast-Food Restaurant Commercial Activities include the retail sale of ready-to-eat prepared foods and beverages, for on- or off-premises consumption, whenever the foods and beverages are available upon a short waiting time and are primarily served in or on disposable wrappers, containers, or plates. Fast-Food Restaurants may also exhibit other design and operating characteristics, including: (1) a limited menu; (2) food is typically ordered and served at a service counter; (3) food is paid for prior to consumption; (4) the facility in which the activity/use is occurring provides a take-out counter space and space for customer queuing. This classification ~~They also includes~~ certain activities accessory to the above, as specified in Section 17.10.040.

~~B. Except as may otherwise be allowed in Oakland Municipal Code (OMC) Chapters 5.49, 5.51, 8.09, and 9.52, the sale of ready-to-consume prepared foods from trucks, pushcarts or other movable equipment located on public or private property on a semi-permanent basis during hours of operation. Vehicular food vending generally has the following characteristics:~~

- ~~• Food is ordered and served from a take-out counter that is integral to the catering truck;~~
- ~~• Food is paid for prior to consumption;~~
- ~~• Catering trucks, pushcarts or other movable equipment from which the food is sold typically have a take-out counter and space for customer queuing;~~
- ~~• Food and beverages are served in disposable wrappers, plates or containers; and~~
- ~~• Food and beverages are prepared and sold for off-site consumption.~~

~~This classification also includes certain activities accessory to the above, as specified in Section 17.10.040.~~

Other changes to the Planning Code have also been identified to support implementation of the new food vending program, including:

- Adding *mobile food commissary* to the definition of “Custom Manufacturing Industrial Activity”. Currently, there is no explicit definition of this business activity in the Planning Code, leading to different interpretations of this unique business type. Every food vendor is required by Alameda County Environmental Health to have a commissary, in order to clean and store vehicles after vending. Adding a limitation note to each

Permitted Activity chart in all Commercial and Industrial Zones in the Planning Code, indicating that Commissaries meeting certain standards and used for mobile food vending are a permitted activity in all zones which allow Custom Manufacturing and do not require a conditional use permit.

Unfortunately, due to other code amendment initiatives currently underway that will be proposing amendments to many of these same Planning Code sections, it is not feasible to move forward at the present time with the recommended commissary-related Planning Code changes above in support of the new food vending program. Instead, the proposal is to include only the recommended change to the definition of “Fast Food Restaurant Commercial Activities” in Section 17.10.280 at the present time, and defer the Planning Code changes related to commissaries to the next code update package that staff is planning to bring forward for review later this year.

### **CHANGES TO THE OAKLAND MUNICIPAL CODE**

The new Citywide food vending program being proposed will be located in Oakland Municipal Code, Chapter 5.51. The new program will replace the current Chapter 5.51, “Food Vending Group Site Program” in its entirety; as well as the current programs in Chapters 5.49 “Pushcart Food Vending Pilot Program” and Chapter 8.09 “Vehicular Food Vending”. These programs, including the Group Site program, would be revised and combined into one Chapter, 5.51, to be called “Food Vending.”

Ancillary changes throughout the Municipal Code are also proposed. Those changes will be made available for the Community and Economic Development Committee hearing.

### **ENVIRONMENTAL DETERMINATION**

The Project relies on the previous set of applicable CEQA documents including: the Coliseum Area Specific Plan EIR (2015); Broadway Valdez Specific Plan EIR (2014); West Oakland Specific Plan EIR (2014); Central Estuary Area Plan EIR (2013); Land Use and Transportation Element of the General Plan EIR (1998); the Oakland Estuary Policy Plan EIRs (1999, 2006) and Supplemental EIR (2013); the Redevelopment Area EIRs- West Oakland (2003), Central City East (2003), Coliseum (1995), and Oakland Army Base (2002); the Historic Preservation Element of the General Plan EIR (1998); the 2007-2014 Housing Element Final EIR (2010) and Addendum (2014); and various Redevelopment Plan Final EIRs (collectively, “Previous CEQA Documents”).

No further environmental review is required under CEQA Guidelines Sections 15162 and 15163. Moreover, each as a separate and independent basis, this proposal is also exempt from CEQA pursuant to CEQA Guidelines Sections 15183 (projects consistent with General Plan and Zoning) and 15061(b)(3) (general rule, no significant effect on the environment).

**CONCLUSION**

Staff has heard from business owners, associations and community groups and residents, made revisions to the original proposal, and presents this proposed new food vending program and enforcement proposal as the best opportunity to have legal food vending from private property and the public right of way in designated commercial and industrial areas throughout Oakland.

Staff recommends the Planning Commission hold a public hearing, hear public comments, give staff comments, and forward the food vending proposal and related Oakland Municipal code and City Planning Code amendments to the City Council.

**RECOMMENDATION**

- 1) Affirm staff's environmental determination; and
- 2) Recommend that the City Council adopt the proposed food vending program and permitted areas map.

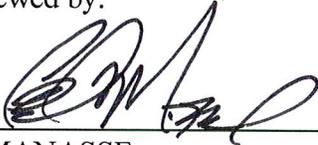
Prepared by:



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DEVAN REIFF, AICP  
Planner III

Reviewed by:



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ED MANASSE  
Strategic Planning Manager

Reviewed by:



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DARIN RANELLETTI  
Deputy Director Bureau of Planning

Approved for forwarding to the  
City Planning Commission:



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RACHEL FLYNN, Director  
Department of Planning and Building

**ATTACHMENTS:**

- A. July 14, 2015 CED Agenda Report
- B. Proposed new Food vending program, new text for O.M.C. 5.51.
- C. Food Vending Program Permitted Area map
- D. Frank Ogawa Plaza Proposal



FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2015 JUL -2 AM 11:06

# AGENDA REPORT

**TO:** Sabrina B. Landreth  
CITY ADMINISTRATOR

**FROM:** Rachel Flynn

**SUBJECT:** Informational Report on a  
Citywide Food vending Program

**DATE:** June 26, 2015

City Administrator  
Approval

Date 7/2/15

**COUNCIL DISTRICT:** City-Wide

## RECOMMENDATION

Staff recommends that Council review an informational report on a comprehensive, citywide food vending program, and provide feedback to staff.

## OUTCOME

Staff is seeking Council direction on the details of a citywide food vending program. If directed, staff will return to Council in the fall with a proposed program.

## EXECUTIVE SUMMARY

The City has permitted mobile food vending in limited areas, East of Lake Merritt, since 2001. Since 2011, the City has also permitted combinations of three or more food vendors at Group Sites (or "food pods") in Council Districts 1, 2, 3 and 4. There is an issue with un-permitted vendors throughout the City, and limited means and ability to enforce current food vending permit provisions. For a number of years now, there has been a strong interest on the part of mobile food vendors, mobile food event organizers, members of the public, and various advocacy groups, to increase opportunities for mobile food vendors to vend legally throughout the City of Oakland. In this informational report, Planning Bureau staff analyzed the key components of a such a citywide food vending program, provide comparisons to other similar cities, such as San Francisco and San Jose, and seek Council and public feedback about the value and details of a comprehensive mobile food policy.

A proposed schedule for consideration and possible adoption is:

Item: \_\_\_\_\_  
Community and Economic Development Committee  
July 14, 2015

- Public/community workshop in **August 2015**;
- Planning Commission hearing in **September 2015**;
- CED hearing in **October 2015**; and
- Council hearings in **November/December 2015**.

As background to the public discussion about mobile food vending in Oakland, the report addresses the key recommended components of a citywide food vending program in Oakland, specifically:

- A. Agency/Department issuing permit(s)
- B. Permit Types
- C. Permit Duration
- D. Permit Application and Cost
- E. Locations
- F. Public Health and Safety
- G. Parking
- H. Restrictions
- I. Permit Application
- J. Enforcement
- K. Special Events

The main goals for a new citywide food vending program are to:

- Meet the clear demand for additional food vending areas in Oakland, outside of the existing program areas;
- Promote community economic development by fostering the creation of new living-wage jobs and local business ownership opportunities;
- Address problems with the existing food vending regulations and programs;
- Identify opportunities for greater coordination/information sharing across City/County departments that deal with food vendors; and
- Strive to ensure greater access to healthy, affordable food in many underserved Oakland neighborhoods.

## **BACKGROUND/LEGISLATIVE HISTORY**

In 2001, the City of Oakland adopted its first pilot program to permit vehicular food vending on private property and pushcart vending on sidewalks<sup>1</sup> (per Oakland Municipal Code (OMC) Chapters 5.49 and 8.09), in limited areas along certain major corridors east of Lake Merritt. This 2001 pilot

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<sup>1</sup> Ordinance No. 12310, and 12311 established eighteen-month pilot pushcart and vehicular vending programs, respectively.

program was then revised and made permanent in 2004<sup>2</sup>, when the Council decided to establish permanent pushcart and vehicular food vending programs in the same limited areas. In 2011, the City adopted an “interim” program, which allowed mobile food vendors to apply to sell in group sites, defined as “*the stationary operation of three or more mobile food vendors clustered together on a single site,*” within limited areas of Council Districts 1, 2, 3 and 4.<sup>3</sup> These food vendor groupings are sometimes referred to as “food pods.” More recently, in 2013, the City Council made the Interim Regulations to permit Mobile Food Vending Group Sites effective until “the City Council adopts permanent mobile food vending regulations.”<sup>4</sup>

Outside of the permitted program areas specified above, Mobile Food Vending in the City of Oakland currently requires either:

- (1) A Major Conditional Use Permit (CUP) for fast food activities, and review and approval by the Planning Commission; or,
- (2) A Special Event Permit, issued by the Oakland Police Department (with the participation of the City Administrator’s office) for a limited duration event.

For a number of years now, there has been a strong interest on the part of mobile food vendors, mobile food event organizers, members of the public and various advocacy groups, to increase opportunities for mobile food vendors to vend legally throughout the City of Oakland. The feedback from mobile food vendors, in particular, has been that the City should establish a permanent citywide program that will allow one or more vendors to vend in designated areas throughout the City, including in the public right-of-way. When located appropriately, mobile food vending can add vitality to the street, contribute to the richness of Oakland’s culinary and cultural offerings, provide economic opportunities for small business persons, and contribute tax and permit revenue for the City. However, any program to expand mobile food vending through a citywide permanent program must be informed by the lack of staff resources to enforce the City’s current food vending regulations to prevent un-permitted vending; and balanced with the need to ensure public health and safety, and the equitable and appropriate use of the public right-of-way.

At the March 19, 2015 Rules and Legislation Committee, Councilmember Gallo recommended, and the Committee moved to place an item on the July 14, 2015 Community and Economic Development Committee agenda to: “adopt an ordinance amending Ordinance No. 12579 C.M.S. which establishes a permanent vehicular food vending program, and for staff to provide recommendations on expanding the vehicular food vending program citywide.” This request is the subject of this informational report. To re-start an earlier effort to create a citywide food vending program, Planning Bureau staff has recently met, and continues to meet, with a variety of stakeholders: food vendors, restaurant owners,

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<sup>2</sup> Ordinance No. 12582 C.M.S. and 12583 established a permanent Pushcart Vending Program and amended the Master Fee Schedule, respectively; Ordinance No. 12580 and 12581 amended the Master Fee Schedule and established a permanent Vehicular Vending program, respectively.

<sup>3</sup> See OMC Chapter 5.51. See Ordinance No. 13098 C.M.S. adopted December 20, 2011.

<sup>4</sup> Ordinance No. 13152 C.M.S., adopted February 5, 2013. The Group Site program is still limited to Council Districts 1, 2, 3 and 4.

directors of business improvement districts, and policy advocates, to gain a perspective on the current food vending programs, and to consider ideas for a potential citywide program. Staff expects to hold at least one community meeting on this topic, prior to adoption hearings.

For reference, the November 5, 2012 Agenda Report is *Attachment A* to this report, which discusses many of the same issues that arise in developing a comprehensive food vending program.

Staff includes detailed case studies on how San Francisco and San Jose regulate mobile food vending as *Attachment B* to this report.

### ANALYSIS

The intention of a citywide program is to permit a wide variety of food vendors in the City, regardless of their vending format. Therefore, the “mobile” adjective is dropped from the discussion below, and instead, the report will refer to “food vending,” which is meant to refer to the sale of prepared food items in settings other than in a permanent building.

This report is background to the public discussion about mobile food vending in Oakland. The report addresses the key recommended components of a citywide food vending program in Oakland, specifically:

- A. Agency/Department issuing permit(s)
- B. Permit Types
- C. Permit Duration
- D. Permit Application and Cost
- E. Locations
- F. Public Health and Safety
- G. Parking
- H. Restrictions
- I. Permit Application
- J. Enforcement
- K. Special Events

The main goals for a new citywide food vending program are to:

- Meet the clear demand for additional food vending areas in Oakland, outside of the existing program areas;
- Promote community economic development by fostering the creation of new living-wage jobs and local business ownership opportunities;
- Address problems with the existing food vending regulations and programs;
- Identify opportunities for greater coordination/information sharing across City/County departments that deal with food vendors; and

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- Strive to ensure greater access to healthy, affordable food in many underserved Oakland neighborhoods.

**A. *Agency/Department issuing permit(s)***

A key decision is which City department will administer the new food vending permit program. Food vendors have communicated to City staff that the current permit process is too fragmented across different departments and agencies, is confusing to applicants, and not well understood by line staff. Making the food vending application permit process simple, convenient and consistent is a primary goal of the revised regulations.

Today, there are four different departments that can issue different food vending permits in Oakland:

- *Building Services* (in the pilot program area only, through a permit for Vehicular Food Vending or Pushcart Vending);
- *Planning and Zoning* (in all areas outside of the pilot program area, through a Major CUP for food vending on private property);
- *City Administrator* (in Council Districts 1-4 only, through a permit for “Group Site” food vending, such as for the weekly food truck “pod” event at the Oakland Museum); and
- *Police Department* (citywide, through the special event permit program).

There are several options for the designation of permitting authority:

- 1) All food vending permits issued through a designated lead department, division, or office in the City, as a “one stop shop.” This would include permits for vending on public and private property, and applications for the right-of-way (streets and sidewalks), as well as for group sites (“food pods”). Depending on proposed vending location and type, the lead reviewing body would route applications to other departments for supplemental review prior to making a decision, such as to Oakland Public Works for Right-of Way (ROW) standards review, and Police for temporary event review. Based on feedback from other departments, the lead reviewing body could then issue permits, after any required notification period ended.
- 2) Permits could be issued based on location: Bureau of Planning could issue permits for public and private property (lots and parcels), and Oakland Public Works could issue separate permits for food vending in the right-of-way (streets and sidewalks).
- 3) Special events permits (such as First Friday) could continue to be processed by the Police and/or the City Administrator.

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*Permit Processing in Other Cities:* Both San Francisco and San Jose have mobile food vending programs with permits issued based on location, and in San Francisco, the large majority of food vending permits are obtained to authorize food vending in the public right-of-way. In San Francisco, the Department of Public Works issues the permits for the right-of-way; in San Jose, the Police Department issues a peddler's permit.

For purposes of streamlined review, and for a simple customer service-oriented experience, staff recommends that there be designated a single permitting authority. However, Oakland Public Works staff must be closely involved with the food vending program development and implementation, as there is potential for a significant increase in food vending on City streets and sidewalks, where these types of activities historically were not permitted..

***Staff recommendation:*** *All food vending permits should be issued through a designated lead department, division, or office in the City, as a "one stop shop."*

### ***B. Permit Types***

All food vendors are currently required to apply for, and receive, the Alameda County Environmental Health Division "permit to operate," which ensures a vendor maintains standards of public health and safety, as codified in the California Retail Food Code, which defines vending methods and regulates public health requirement.<sup>5</sup> In addition, all food vendors (both employees and owners) must obtain a Food Handler's Certificate from the County.

As noted above, in the City of Oakland, there are currently several ways to obtain a food vending permit:

- 1) The "pilot program," which is limited to the Fruitvale area and designated commercial streets in central and east Oakland, has two permit categories, both issued by the Building Services division: a) Vehicular Food Vending (i.e. food trucks), and b) Pushcart Food Vending for carts or "peddler's carts." Pushcarts are limited by ordinance<sup>6</sup> to 60 total permits issued; which has since the adoption of the ordinance been administered as 30 permittees in the Fruitvale neighborhood, and 30 more in the central and east Oakland commercial streets. At no point in any given year have all sixty pushcart permits been issued.
- 2) Citywide, on all other private property, where fast food is conditionally permitted, a vendor can apply for a Major CUP from the Planning Division. The Oakland Planning Code includes "Vehicular Food Vending" in the definition of "Fast Food restaurant commercial activities,"

<sup>5</sup> See California Health and Safety Code, Part 7.

<sup>6</sup> See O.M.C. 5.49.040 (C). After 60 permits are issued, a waiting list is formed.

which is conditionally permitted in most commercial zones.<sup>7</sup> The CUP is a comparatively lengthy and expensive process and is seen as a barrier to vendors, although there are a few vendors who have successfully received CUPs for mobile food<sup>8</sup>.

- 3) The Special Event Permit from the Police Department allows organizers of festivals and farmer's markets, which are often inclusive of food vending in the event area. First Friday events receive this permit, major street fairs and festivals throughout Oakland.
- 4) The Mobile Food Vending Group Site program (also known as "food pods") is limited to groupings of three or more trucks, parked together on a limited calendar basis, and is restricted geographically to Council Districts 1, 2, 3 and 4, within specified zoning districts.

With the process described in this report, Oakland proposes to expand its current food vending program to permit food vending by individual or group operators in more areas in the City, and consolidate the programs above into a single citywide program. In addition to the requirement for a proposed City food vending permit, the overall food vending program will require an applicant to separately receive a Permit to Operate from Alameda County, and each food vendor will be required to obtain an Oakland Business Tax Certificate, and pay the appropriate business taxes to the City. Other permits from the Fire Department or other agencies may also be necessary.

As a separate but related issue, part of the proposed food vending program must also include the clarification in the Planning Code for "commercial kitchens" and "commissaries" to allow the operators of commercial kitchens and commissaries to acquire the correct Oakland zoning clearance, business tax certificate, and County Health permits. Some food vendors currently use a commercial kitchen or commissary to prepare food, yet those facilities do not have the required City and County permits.

### ***C. Permit Duration***

The length of time which a permit is granted to a food vendor is an important consideration of a citywide program. Currently, in the "pilot" program area, either the Food Vehicle (FV) or the Food Cart (FC) permit is renewed annually by the applicant, on the anniversary of their original application. There are penalties for late renewals in the Master Fee Program. This is a different renewal process than that of the Oakland business license, which renews every year for all businesses on March 1st. A vendor who is operating under the Conditional Use Permit for fast food effectively

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<sup>7</sup> See 17.10.280 (B) Fast-food restaurant commercial activities.

has a permit to vend with no end date, as the CUP is granted to the property, in perpetuity. The Group Site permit is renewed monthly by the City Administrator's Office; and Special Event permits end after the authorized temporary event ends.

Creating a method for currently permitted vendors to transfer into the new citywide food vending program, perhaps on their anniversary date, will be necessary. Allowing new vendors to pay the upfront permit fees in installments, a request by the Oakland Food Policy Council, is being considered by staff, which would allow smaller vendors to become permitted, begin operations, and earn income towards the full permit cost, over time.

Planning staff could also develop a new type of permit in the Oakland Planning Code that would authorize certain temporary activities which expire after a limited period of time that are not automatically renewed. This could be a "temporary activity permit", following San Francisco as an example, which issues an annual "temporary use authorization" for food vendors on private property. If such a "temporary activity permit" were created in the Oakland Planning Code, it could be expanded over time to become the procedure for permitting other temporary uses, such as Christmas tree lots or farmer's markets.

#### *D. Permit Application and Cost*

The City's food vending permit fee should ideally be "cost covering": that is, the permit fee is sufficient to pay for the staff and department time to administer and enforce the program. However, given the costs of other permitting (e.g. Alameda County Health), there is a potential that vendors might continue to vend illegally, as is happening now, if the City's new permit fee is too high.

To compare the cost of a mobile food permit across different cities, **Table 1** compares Oakland's 2015 mobile food fees for an individual vendor in the public right-of-way, with those of comparison cities, San Francisco and San Jose. These figures are close approximations of the total cost to apply for a food vending permit in each city.

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<sup>8</sup> The proposed citywide program will recognize the existing conditional use permits issued in prior years.

**Table 1. Food Permit Fees for an individual vendor in the public right-of-way**

<b>Fee</b>	<b>Oakland<sup>9</sup></b>	<b>San Francisco</b>	<b>San Jose</b>
Mobile Food Facility permit – <i>pushcart (in pilot program area)</i>	\$530	\$764	\$328
Mobile Food Facility permit – <i>vehicle/food truck</i>	\$1,959 ( <i>in pilot program area, only</i> )	\$764	\$328
County Health permit -- <i>pushcart</i>	\$314	\$490	\$438
County Health permit – <i>vehicle/food truck</i>	\$609	\$701	\$635
Business Licensing	\$100	\$76	\$150
Other fees (Fire, etc.)	\$0	\$674	\$217
<b>Totals-- <i>pushcart</i></b>	<b>\$944</b>	<b>\$2,004</b>	<b>\$1,133</b>
<b>Totals – <i>vehicle/ food truck</i></b>	<b>\$2,668</b>	<b>\$2,215</b>	<b>\$1,330</b>

Staff is still gathering specific details about costs to administer and enforce the current food vending program, as well as the precise cost for new enforcement personnel, which arguably is the most expensive labor cost to cover with the new fee.

### ***E. Locations***

Different departments in the City currently regulate where a vendor sells food, as described earlier in the report. There are two main types of locations: public and private property (lots), and right-of-way (streets and sidewalks). Both are described below.

#### **Type 1: Public and private property (outside of public right-of-way)**

Public and private property is any land owned by public or private entity. Mobile food vendors in this type typically locate in parking lots or on vacant lots.

Public property could be lands owned by the City of Oakland or another public agency. Vendors currently pay an hourly fee to vend in or near a City Park, and occasionally operate on publicly owned land for a special event.

#### **Type 2: Right-of-way (streets and sidewalks)**

Oakland Public Works (OPW) has jurisdiction over all structures in the City's streets and sidewalks.<sup>10</sup>

<sup>9</sup> Note that Oakland's fees will go up after July 1, 2015, as part of an overall fee increase in the Planning Bureau.

*Streets:* Food vending from streets takes up a metered parking spot that otherwise would be used by the public, and vendors are familiar with feeding a parking meter throughout their vending time. For the Group Site program, the City issues “No Parking” signs for the vendors to put up in advance, and the City will tow a vehicle parked in the vendor’s space on the permitted day.

*Sidewalks:* The primary issues around vending from the sidewalk, typically done in a pushcart or “pop up” or table/tent, are pedestrian safety for passersby, congestion at corners or at sidewalk “chokepoints”, and competition with nearby brick and mortar businesses. The widths of Oakland’s commercial sidewalks vary greatly, and similar to the current sidewalk café permit, the new citywide food vending program will consider maintaining a distance requirement that leaves at least 5½ feet of unobstructed sidewalk for pedestrians, and require minimum distance separations from fire hydrants, trees, and other obstructions.

*Other cities:* Most food vendors in San Francisco appear to seek permits for vending in the right-of-way. San Francisco has a comprehensive application process through the Department of Public Works, with a 30-day noticing period to area businesses, appeal processes, and buffer limitations, and minimum sidewalk width. For street-side vending, there is no longer a permit in San Francisco for the vendor to roam with their vehicle, but rather, a vendor must apply to sell food in a dedicated and specific parking space. See “Parking” section, below, for further details.

***Staff recommendation:*** Allow sidewalk vending under certain circumstances, similar to San Francisco’s program. Consider allowing street-side vending in a designated number of selected parking spots citywide, and not allowing roaming of vehicles.

#### ***F. Public Health and Safety***

The safety of patrons, and of vendors, must be paramount in the creation of a citywide food vending program. Also, the safety of existing business owners and of pedestrians who are not food vending customers must be recognized. While the Alameda County Environmental Health permit addresses food safety concerns, the larger question of public safety at food vending businesses remains. The Municipal Code contains provisions that currently regulate a food vendor from becoming a “public nuisance” such as patrons consuming alcoholic beverages, or acts by a customer or vendor which threaten the public safety and health.<sup>11</sup> Those provisions of public nuisance will need to remain in any citywide food vending program.

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<sup>10</sup> Starting in July 1, 2015, Oakland Public Works will begin issuing encroachment permits for private actions in the ROW (formerly, these permits had been issued by the Building Services Division).

<sup>11</sup> See Ord. 12579 § 2 (part), 2004 and Ord. 12312 § 2 (part), 2001

To date, staff has not collected information from the Oakland Police Department about calls for service to mobile food vendors, but is working to compile that information. Food vending is primarily a cash business, and so vendors may be at risk of robbery.

Staff is looking to future interviews with stakeholders, and studies of best practices in other cities, to determine how to protect vendors, customers, and local residents and businesses should a citywide food vending program be adopted.

### ***G. Vendor Parking***

Currently, Oakland's Group Site program vendors receive "No Parking" signs from the City, which are placed by the vendor at the site of their reserved parking spaces 72 hours in advance of the weekly vending event. Staff has been informed that these temporary "No Parking" signs are occasionally discarded or ignored by automobile parkers. If during the day of the group site event, illegally parked cars are in the vendors' permitted locations, the cars are towed by the City at the request of the food vendor (which can often result in a significant delay in starting operations for the vendor).

The proposed Oakland citywide food vending program will need to resolve whether the City will issue "No Parking signs" to each individual vendor (as is done now with the Group Site program), or whether the City would require vendors to reserve their permitted parking space in advance, so that it is available at their allotted selling time.

Staff is considering the following options for the parking component of the program:

- Have the City reserve and install signage for a specified number of parking spaces for food vending;
- Have a vendor apply to park at or near a certain intersection, rather than a specific parking space;
- Have a food vendor apply for a certain block location, with no restriction to individual parking space; and or,
- Have a food vendor apply for a particular parking space, which is reserved for the vendor with City assistance, such as "No Parking signs" and towing services.

*Other cities:* San Francisco's permit to food trucks issued by the Public Works Department does not include the reservation of a parking space; vendors are instead left to their own ability to have the permitted parking space available at the time of the permitted selling hours.

*Proposal to reserve food vending spaces in the right-of-way:* A promising idea being considered by staff is for the City to set aside a specified number of dedicated mobile food vending spaces throughout the City's commercial corridors, by marking and signing existing parking spaces *for food*

*vending only* during certain times or days. Were this to happen, individual food vendors could apply to vend from these dedicated food vending parking sites, with a limited operating duration, to allow for a variety of food vendors to operate at the same location over the course of a week. Since the selection of specific parking spaces throughout the City's commercial corridors would be a difficult task for staff, it was further suggested that the City hold an annual food vending permit application round, similar to the existing Parklets program, and have vendors suggest their preferred parking spaces or sidewalk locations to the City. Such an annual permit would include established distance requirements, such as from schools, churches, and brick and mortar restaurants, as well as from fire hydrants and disabled parking spaces. Also, there could be limitations to the number of parking locations per commercial area, or Council District. The City would establish ranking/voting criteria that is well-publicized, to make the selection process fair and equitable.

The advantage of such a parking space reservation system is that for food vendors who want to be in the public right-of-way in certain neighborhoods, the City will have pre-selected and approved those parking spaces in the right-of-way. Following the Parklets program as an example, the City could require noticing to the neighborhoods that a proposed reserved food vending site is applied for, which would allow the existing businesses and residents to participate in the decision to permit food vendors.

The assumption for this proposal is that the parking space location would be signed for food vending, and parking enforcement could tow private automobiles that are in the space on a time or day when food trucks only are allowed. This arrangement would be easiest to enforce - a police officer or parking attendant could look at the permitted mobile food vending parking space, see if the vendor had an Oakland food vending permit to occupy that space at that time, and then cite accordingly.

The alternative to a reservation site program is to follow San Francisco's lead and issue vendors ongoing permits to park in the right-of-way, but with no reservation or "No Parking" signage assistance provided by the City. This creates a greater burden on the vendor, and the possibility that fewer vendors will apply for the new City permit

#### ***H. Restrictions***

Food vending is currently regulated with certain restrictions, including times of operation, location, in certain zoning districts, and buffers from parks, schools and restaurants. Currently, in the pilot program area, vehicular vending is prohibited "within 500 feet of primary or secondary school or park"; and pushcart vending is prohibited "within 200 feet of primary or middle school or park." Distance requirements between a food vendor and other restaurants and food vendors are 200 feet. Group Sites ("food pods") are limited to distances of at least 100 feet from schools, parks and other restaurants.

Zoning districts where food vending is permitted include, for the Group Site program, all Commercial and Industrial Zones; Residential Zones are prohibited areas. The pilot program limits food vending

to the Commercial Zones in the geographic areas of the program. Staff recommends limiting citywide food vending to Commercially and Industrially zoned areas of the City, and restricting vending in lower density residentially zoned areas.

*Schools:* There are reports of unpermitted vendors at Oakland's elementary schools, some within the 500-foot buffer, and some just outside it, who sell snacks, ice cream, fruit and prepared foods, and compete with the Oakland Unified School District's attempts to make healthy food accessible to students and families. Staff recommends stricter enforcement of a buffer from elementary schools, except in those cases where "healthy" foods (such as fruits and vegetables) are sold by vendors.<sup>12</sup> The City wants to support OUSD's efforts to allow students and parents to have access to healthy food<sup>13</sup>.

*Other cities:* in San Francisco, to get a permit from the Department of Public works to vend in the right-of-way, vendors must be 1,500 feet away from middle schools, junior high schools, and high schools<sup>14</sup>.

City staff and different agencies of the City are determining the specific physical locations for food vending in the Oakland right-of-way, but staff is starting with San Francisco's distances as guidelines. Staff is also considering limitations on the number of permits issued in a geographic area, or to a single vendor/operator at this time.

### ***I. Permit Application***

Planning staff continue to discuss the components that will be needed in a future food vending application, and the process by which an applicant applies for, and is granted a permit to vend. Staff expects that one of the end products of a citywide food vending permit will be a new decal or sign that the vendor displays, graphically demonstrating compliance with the City of Oakland food vending program requirements. The decal or sign will enable streamlined enforcement by regulators, and self-enforcement by permitted vendors.

*Notification:* Any food vending permit program should involve some form of notification of an application to neighbors. Staff notes that there is already an established procedure which has worked well for the Parklets program (also a public use in the right-of-way): an applicant sends a notice to property owners on both sides of the affected blocks, and a yellow Bureau of Planning sign is posted at the site, both give 10 days for the public to review the application. A meeting can be requested by the public with the Bureau of Planning to discuss an application, prior to its approval. Some version of this notification process is likely to be recommended by staff upon return to Council.

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<sup>12</sup> An initiative of the HOPE Collaborative and other organizations works with vendors to sell healthy foods.

<sup>13</sup> OUSD's program is called "Oakland Fresh" and it organizes farmer's markets at 18 schools.

<sup>14</sup> There is no distance restriction from elementary schools in San Francisco.

The process, or application “flow” has not yet been determined, but staff recommends that a “one-stop shop” be established.

### *J. Enforcement*

Food vendors who operate without permits from the City take advantage of the limited enforcement of the City’s current food vending regulations, and put economic pressure on permitted vendors and brick and mortar restaurants. Food vendors who sell snacks and ice cream after school ends (on school property, or closer than the required 500-foot buffer from schools) are competing directly with OUSD healthy farmer’s markets, which occur on 18 school campuses weekly. Enforcement of the current pilot program regulations is challenged by lack of staff resources. While Alameda County is coordinating its enforcement efforts for their health permits, the City does not have a similar level of internal coordination for enforcing its food vending permits, specifically the vehicular and pushcart food vending permits in the pilot area. For example, there is no dedicated City staff (or revenue stream to pay for staff) empowered to check vendors outside or inside the pilot program area for current City permits and business licenses. In addition, there is limited authority to cite and collect fines from an operator who is in violation of not having these permits. The goal of a comprehensive, citywide food vending program is to create a permit program that today’s un-permitted vendors will participate in, allowing them to operate in other areas of the City, and reducing the concentration of illegal food vendors overall in Oakland’s neighborhoods.

*Current enforcement system in Oakland:* Enforcing food vending varies, in terms of location. There are different “regulators” for vending on private property, public property, or trucks in the “pilot” program east of Lake Merritt. Food vendors who don’t have a permit and who are on private property are inspected by the Code Enforcement division (which has no dedicated staff assigned for this duty, and are limited by other calls for service). Permitted vendors in the City’s pilot program are inspected by the Building Services division staff who issued the permit. Also, if an un-permitted vendor is in the public right-of-way, there is no way to collect an unpaid violation, or to enforce a double-fee penalty if it is given to a vendor. In those cases where the un-permitted vendor is on private property, the property owner can be given the violation. Un-collected violation fees make it difficult to budget for enforcement staff. Based on priorities and other calls for service, the Oakland Police Department can be called to respond to complaints of unpermitted vendors. On an ad hoc basis, the Police will coordinate with Alameda County public health staff, or the Oakland City Administrator’s Office, to conduct an enforcement action, or “sweep.”

*Authority necessary in the Oakland Municipal Code:* As of now, only the Police Department has the authority to ask an allegedly un-permitted vendor for personal identification, and can issue a citation to that individual, if he or she is not in possession of the required permits. As part of the comprehensive food vending program update, departments with enforcement and citation authority will be specifically granted that authority in the Oakland Municipal Code. The legal limitations of enforcement of a citation or a notice of violation are being reviewed by the City Attorney’s Office.

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*Suggestions about enforcement made to staff during stakeholder interviews:*

- Educate unpermitted vendors first: Work with established community organizations, such as the Unity Council, to educate vendors and promote compliance with current food vending programs, and in the future, with a citywide permitting program;
- Budget for, and train Oakland Police Problem Solving Officers (PSOs) to open a “case” on an area with repeated unpermitted vending;
- Train Police Services Technicians (PSTs) to provide information about training opportunities and permit processes to unpermitted vendors;
- Encourage the Oakland Fire Department to be involved with spot inspections of fuel tanks and cooking systems;
- Coordinate with the City’s Code Enforcement Division and Oakland Public Works to establish clearly defining enforcement duties (private property vs. public right of way);
- Create an easily understandable document that explains the steps and the permitting process, translated into multiple languages, for distribution to the public and potential vendors;
- Work closely with, and have Oakland enforcement staff accompany Alameda County Public Health team, who are already inspecting vendors in Oakland for the Permits to Operate. For example, share Oakland-based permit information with Alameda County staff, as material for their weekly vendor trainings;
- Host food vending trainings through the Business Assistance Center, the Business Improvement Districts (BIDs) and the Metropolitan Chamber of Commerce.

***K. Special Events***

The City of Oakland is a popular host city for special events and festivals throughout the year; it is common for these events to feature permitted mobile food vendors. In addition to the City-sponsored events, such as “Art and Soul” (August), there are a number of annual privately-funded events that often include food vendors as well as 13 farmer’s markets, some of which include prepared food sold by vendors.

In each case, the festival or event organizer must pay for a special event permit from the Police Department (with assistance from the City Administrator’s Office), which costs \$300 (not including charges for Police staff time and Alameda County Health permits), and which pre-clears a select group of food vendors to operate within the event’s “footprint.”<sup>15</sup>

Planning staff recognizes the complexity of creating a citywide food vending program, and seeks guidance from the Council, the public, and food vending stakeholders and advocates on the development of a program that works successfully for Oakland.

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<sup>15</sup> The First Friday “footprint” doesn’t just include the blocks of Telegraph Avenue where the event is held; it also includes the numbered side streets which are “soft closed” to local traffic only, between Telegraph and Broadway.

## PUBLIC OUTREACH/INTEREST

Planning staff have recently met with a variety of different food vending stakeholders: individual vendors; group site organizers; restaurant owners; leadership of business improvement districts in Rockridge, KoNo/Northgate, and Fruitvale; the Oakland Chamber of Commerce; OUSD staff, and with advocates such as the Unity Council, Oakland Food Policy Council, and HOPE Collaborative. In addition, staff plan to coordinate and publicize at least one community meeting for the public and interested parties to attend to discuss a citywide mobile food program, prior to adoption hearings. The Mobile Food page of the City's website has current information about public meetings and hearings, and there is an email list serv for the public to receive announcements about the citywide update.<sup>16</sup>

## COORDINATION

Planning staff have also met with the other City departments who are currently involved with the food vending program, and those that will be involved with developing a citywide program: City Administrator, Buildings Bureau, City Attorney, Oakland Police Department, Oakland Parks and Recreation, Oakland Public Works and Alameda County Environmental Health. Planning staff recognizes the leadership of Nancy Marcus and Greg Minor in the City Administrator's Office for convening internal staff meetings on the ongoing issue of food vending enforcement; and that of Councilmember Gallo, for whom this subject is a top priority.

A proposed schedule for adoption includes:

Public/community workshop in **August 2015**;

Planning Commission hearing in **September 2015**;

CED hearing in **October 2015**; and

Council hearings in **November/December 2015**.

Full implementation of the program would take place three or more months after adoption, to allow time for application material preparation, translation of materials, decal production, public outreach & education, and staff training. Under this possible schedule, by **April 2016**, the City could initiate permitting under a new citywide food vending program.

## COST SUMMARY/IMPLICATIONS

No costs have been determined to administer and enforce a new citywide food vending program. Staff will continue to work with other City departments on estimating labor costs and personnel details, and will present the information in a future report to Council.

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<sup>16</sup> See <http://www2.oaklandnet.com/Government/o/PBN/OurOrganization/PlanningZoning/OAK032864>

## **FISCAL IMPACT**

This is an informational report to Council, so no costs are associated with review of this report. At a future date, when staff returns to Council with a program for citywide food vending, a full and detailed cost and budget for the program will be included, including estimates of the cost to enforce the program.

## **SUSTAINABLE OPPORTUNITIES**

***Economic:*** Meet the clear demand for additional mobile food vendors in Oakland - both within the existing pilot program area and in potentially new permitted areas throughout the City. Promote community economic development by fostering the creation of new living-wage jobs and local business ownership opportunities. Attract additional foot traffic to commercial districts - which means increased sales and more vibrant retail business overall. Support an effective entry point to owning one's own business. For a modest investment, an entrepreneur can develop a track record in retail sales and develop a loyal clientele.

***Environmental:*** Encourage the provision of low-cost, culturally-diverse food for Oakland residents, employees, and visitors.

***Social Equity:*** Encourage greater access to healthy, affordable food in underserved Oakland neighborhoods, while encouraging self-employment opportunities. Food vending is particularly attractive business for immigrant entrepreneurs.

**CEQA**

The review of an informational report is not a project under CEQA.

For questions regarding this report, please contact Devan Reiff, Planner III, at 510-238-3550.

Respectfully submitted,



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Rachel Flynn, Director  
Planning and Building Department

Darin Ranelletti, Deputy Director, Bureau of Planning  
Ed Manasse, Strategic Planning Division Manager

Devan Reiff, AICP, Planner III

Attachments

- A. November 5, 2012 Agenda Report
- B. Case studies on San Francisco and San Jose mobile food vending programs.

## **CHAPTER 5.51 FOOD VENDING**

### **Sections:**

Article I – General Provisions

Article II – Standards and Requirements

Article III – Enforcement, Revocation and Abatement

### **Article I – General Provisions**

5.51.010 – Title and Purpose.

5.51.020 – Definitions.

5.51.030 – Permit required.

5.51.040 – Conflicting Provisions.

5.51.050 – Permitted Area.

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### **5.51.010 – Title and purpose.**

This Chapter shall be known as the Food Vending Program Regulations, and establishes a citywide food vending program in Oakland.

The purpose of this Chapter is to regulate the vending of food and food products from food vending facilities on public and private property throughout the city in such a manner as to bring convenience, economic vitality, and pedestrian activity to these areas. This includes protecting the health, safety, and general welfare of the Oakland community and customers through appropriate regulation by requiring that new and existing food vendors provide the community and customers with a minimum level of cleanliness, quality and security.

### **5.51.020 – Definitions.**

**"Applicant"** means the responsible party who seeks a Food Vending Permit from the City of Oakland.

**"Employee"** means any person hired or paid compensation by, or any person under contract to, a food vendor.

**"Food vending"** means the business of selling, or causing to be sold from a food vending facility, fruit, produce, prepared foods and beverages, and/or prepackaged foods and beverages, where:

1. Food is prepared off-site in a commercial commissary and/or prepared on-site within the food vending facility, per Alameda County Health Regulations;
2. Food is ordered and served from the truck, trailer, pushcart, or other equipment or vehicle as permitted by Alameda County Environmental Health;
3. Food is served outdoors or under a non-permanent structure;
4. Food is paid for prior to consumption; and
5. Food and beverages are prepared and sold for on-site or off-site consumption.

**"Food vending facility"** means a truck, trailer, pushcart, or other equipment or vehicle from which food vending services are provided, as permitted by the Alameda County Environmental Health Department. Not included in this definition is the preparation of food and serving of food outside of a vehicle, typically under a tent, canopy, or from a booth.

**"Food Vending Permit"** is the City of Oakland's annual or temporary permit required to place, operate, maintain, or allow an individual food vending facility or group site within the Oakland City limits.

**"Food Vending Program Permitted Area"** is the map adopted by City Council which shows which areas and public rights of way are permitted for a Food Vending Permit.

**"Food vendor"** means a person who is engaged in "food vending" as governed by this Chapter.

**"Group Site"** or "Group Site food vending" means the stationary operation of two (2) or more food vending facilities clustered together on a single site and operating at the same time.

**"Group Site organizer"** or "responsible party" means, for the purpose of determining liability for damage to City or public facilities as a result of a group site operation, the individual or legal entity who is directly responsible for organizing and/or conducting the group site and/or the facility manager, and his or her respective designees.

**"Group Site food vending facility"** means a food vending facility that is operating at a "group site".

**"Group Site Food Vending Permit"** means a Food Vending Permit for a group site.

**"Healthy foods"** include, but are not limited to: fruits, vegetables, as well as 100% fruit and vegetable juices; whole grain products; dairy products; non-dairy milks (made from soy, coconut, rice and/ or almonds); food made from dried beans and peas; and food made from nuts and nut butters.

“Ice cream trucks” means a truck that sells pre-packaged frozen products. For purposes of this Chapter, a Food Vending Facility that serves soft-serve ice cream is not considered an ice cream truck.

“Individual food vending” means a food vending facility that is not operating at a group site.

“Individual Food Vending Permit” means a Food Vending Permit for an individual food vending facility.

“Mobile café” is a motorized food vending facility that serves coffee and tea drinks and pre-made pastries, and does not have cooking equipment.

“Non-food merchandise” means goods, wares, or non-food merchandise.

“Pushcart” is a type of food vending facility that generally has a maximum length of eight (8) feet, maximum depth of six (6) feet, and a maximum height of eight (8) feet. Pushcarts are intended to store all materials and merchandise related to the vending activity, and are easily moved by a person or vehicle. This definition includes a food vending facility integrated or pulled by non-motorized, pedal-powered vehicle such as a bicycle or tricycle.

“Pushcart food vendor” is a person who owns and operates a business vending from a pushcart.

“Roaming” means the movement of a food vending facility to multiple locations during vending hours.

“School” means any private, public or charter school serving children between pre-school and high school. For the purposes of this Chapter, community colleges and universities are not included in this definition.

“Site” means the specific public or private property location, including any public right-of-way, for which an applicant or responsible party has been issued a Food Vending Permit.

“Stationary” means a food vending facility which does not move during vending hours.

#### 5.51.030 – Permit required.

- A. Except as may be allowed by a previously granted Conditional Use Permit for the use under Title 17, or by any ordinance or resolution establishing and regulating a street market or farmer’s market in the City; or for a limited period by a Special Event Permit issued in accordance with Chapter 9.52, it shall be unlawful for any individual, group, or legal entity to sell, offer for sale, or solicit offers to purchase food from food vending facilities in the City of Oakland without first obtaining a Food Vending Permit as specified in this Chapter. Conducting a food vending operation in the City of Oakland without such a valid form of city permission is a public nuisance, as defined in this Code.
- B. The City Administrator or his/her designee is authorized to issue such rules and regulations, not inconsistent with this Chapter, governing the issuance of Food Vending Permits.
- C. Any individual, group, or legal entity desiring to engage in food vending in the City shall first file an application with the Bureau of Planning pursuant to procedures established in this Chapter and/or by the City Administrator or his/her designee. There are two types of Food Vending Permits: Annual Food Vending Permits and Temporary Food Vending Permits.
  1. Annual Food Vending Permits expire after one (1) year unless renewed under the provisions of Section 5.51.140.

2. Temporary Food Vending Permits expire after ninety (90) days and may be renewed for one additional 90-day time period. A renewal shall require a new application and fee.
- D. Issuance of an Encroachment Permit from the City of Oakland is not required to operate an individual food vending facility or group site in the public right-of-way.
- E. The individual, group, or legal entity desiring to engage in food vending shall obtain and maintain all required permits from the Alameda County Environmental Health Department the City of Oakland, and other regulatory agencies, including, but not limited to Electrical Permits or Fire Department permits.

#### **5.51.040 – Conflicting provisions.**

Where a conflict exists between the regulations or requirements in this Chapter and applicable regulations or requirements contained in other Chapters and Titles of the Oakland Municipal Code, including the Oakland Planning Code (Title 17), the applicable regulations or requirements in this Chapter shall prevail.

#### **5.51.050 – Permitted area.**

Individual food vending facilities and group sites shall be subject to the following location requirements:

- A. Food vending shall only be located in the Food Vending Program Permitted Area adopted by City Council, and may be located on private property, on publically-owned property, or in the public right-of-way.
- B. A location for an individual food vending facility or group site shall not be permitted if it is proposed to be closer than the distances specified below, as measured along the path of pedestrian travel. These distance requirements do not apply to approved roaming facilities:
  1. One hundred (100) feet from another individual food vending facility or group site, unless permitted to operate on different days of the week;
  2. Five hundred (500) feet from the parcel boundary of any school between the hours of 7 a.m. and 5 p.m. Monday through Friday, unless the individual food vendor or group site organizer: a) receives a signed letter from the school principal indicating that he/she does not object to the proposed location of the individual food vending facility or group site, and b) only serves healthy food; and
  3. Any additional location requirements, as determined by the City Administrator or his/her designee, per Section 5.51.030(B) of this Chapter.
- C. Individual food vending facilities or group sites cannot block or impede access to:
  1. Required parking or driveways;
  2. Bicycle racks;
  3. Signal crossings;
  4. Required off street parking;
  5. Parking meters;
  6. Pedestrian or bicycle routes;
  7. Emergency vehicle routes;
  8. Building ingress and egress;
  9. Required handicapped accessibility routes and curb cuts;
  10. Easements;
  11. Trash enclosure areas or access to trash bins/trash enclosures; or
  12. Other City facilities, as determined by the City Administrator or his/her designee.

- D. Individual food vending facilities and group sites shall maintain site circulation and access consistent with the Americans with Disabilities Act (ADA).
- E. Each non-roaming individual food vending facility and group site shall be located within two hundred (200) feet of a restroom facility that employees can legally access.
- F. All food vending facilities on public sidewalks shall be located such that a minimum of five and one-half (5½) feet of unobstructed improved sidewalk or fifty percent (50%) of the overall improved sidewalk width, whichever is greater, is provided. For purposes of the minimum clear path, parking meters, traffic signs, trees, tree wells, sidewalk planter strips, and all similar obstacles shall constitute obstruction.
- G. Individual food vending facilities and group sites that sell food from the public right-of-way in the Program Permitted Area may either apply to vend from one or more specific on-street parking spaces or apply to utilize one or more non-specific on-street parking space(s) located anywhere along an approved city block frontage. Only on-street parking spaces that meet the distance requirements in this Section shall be approved for food vending.

**5.51.060 – Transference of a food vending permit.**

A Food Vending Permit cannot be transferred or conveyed from the permit applicant, or otherwise assigned to another person or entity without permission from the City Administrator, or his or her designee.

**5.51.070 – Food vending permit not a land use entitlement.**

No City action related to issuance and/or renewal of a Food Vending Permit for an individual food vendor or a group site shall be interpreted to confer any form of permanent land use entitlement to the person, group, entity, or property associated with such permit.

**5.51.080 – Maximum number of pushcart permits.**

- A. A maximum of one hundred (100) Food Vending Permits may be issued for pushcarts to operate within the City. At no time shall more than one hundred (100) such permits be active.
- B. Out of the total number of Food Vending Permits available for issuance to pushcarts, no more than thirty (30) such Permits may be issued for pushcarts to operate within the following boundaries: Fruitvale Avenue and High Street between Interstate 880 to the west and Foothill Boulevard to the east, Foothill Boulevard between 19th Avenue to the north and MacArthur Boulevard to the south, International Boulevard between First Avenue to the north and 105th Avenue to the south, and San Leandro Street between Fruitvale Avenue to the north and 98th Avenue to the south. East 12th Street between 4th Avenue to the west and 23rd Avenue to the east, 14th Avenue between East 11th Street in the south and East 19th Street in the north.

**5.51.090 – Application requirements for all Food Vending Permits**

Application for an Individual Food Vending Permit shall be made by the owner of the affected food vending facility, or his or her authorized agent, or in the case of a Group Site Food Vending Permit, by the group site organizer, or his or her authorized agent, on a form prescribed by the

Bureau of Planning. Each application for an Individual or Group Site Food Vending Permit shall include:

- A. Name, contact information, and copy of a photo ID of the applicant;
- B. A non-refundable application fee in an amount set on the Master Fee Schedule;
- C. If proposed location is on private property, written consent in a form approved by the City from the property owner (if other than self) permitting the individual food vending facility or group site to locate on the property;
- D. A map drawn to scale, showing:
  - 1. The proposed location(s);
  - 2. The address and Assessor's Parcel Number of the subject or nearest parcel, and/or specific section of the public right-of-way; and
  - 3. The two (2) nearest street intersections.
- E. A scaled and dimensioned site plan for each proposed location, containing:
  - 1. If on a parcel, the location and dimensions of all proposed food vending facility(s), any public seating or other site amenities (including chairs and tables), property lines, buildings or other structures on site, paved areas, driveways, trash receptacles, garages, parking spaces, maneuvering aisles, and pavement striping;
  - 2. If in the public right-of-way, location and dimensions of the proposed food vending facility(s), sidewalks, curb cuts, trash receptacles, front property line of nearest parcel(s), and obstructions such as parking meters, telecommunication boxes, street trees, or light poles.
- F. Photographs of the site(s) and food vending facility(s);
- G. Sample, photo, or rendering of proposed signs;
- H. The proposed menu of items to be offered at the food vending facility(s);
- I. Proof of all required approvals from the Alameda County Department of Environmental Health for the proposed food vending facility(s) and/or group site;
- J. Proof that food vending facility(s) and the group site organizer has a valid City of Oakland Business Tax Certificate;
- K. The proposed schedule for the individual food vending facility or group site, including dates, and starting and ending times of the vending period;
- L. Maintenance plan, including litter pickup and cleaning in the vicinity of the individual food vending facility or group site;
- M. The address where the food vending facility(s) will be stored during non-operating hours;
- N. The following information shall be provided regarding the commercial kitchen or commissary to be used by the applicant, if any:
  - 1. Proof of all required approvals from the Alameda County Department of Environmental Health;
  - 2. A valid lease between the facility operator(s) and a commercial kitchen or commissary; and
  - 3. For a commissary in Oakland, evidence of a valid City of Oakland Business Tax Certificate and Zoning Clearance.
- O. A signed statement from the applicant that they will abide by all local and federal requirements, including, but not limited to, those relating to the minimum wage and sick leave.
- P. Any other reasonable information regarding time, place, and manner of the individual food vending facility or group site operation that the City Administrator or his/her designee requires to evaluate the proposal.

**5.51.090– Additional application requirements for group sites.**

- A. The application for a Group Site Food Vending Permit shall include the following additional information (in addition to those items found in Section 5.51.080):
1. Legal and business name and mailing address for each food vendor; and
  2. Designation of a manager to be responsible for the day-to-day site management of the group site.

**5.51.110 – Noticing procedures**

- A. On a form prescribed by the City Administrator or his/her designee, Food Vending Permit applicants shall provide a notice to the following parties prior to the subject application being deemed complete:
1. All property owners, business owners, and building occupants (including residents) located within one hundred (100) feet of the proposed vending site; however, failure to send notice to any such property owner, business owner, and building occupant (including resident) where his or her address is not shown on the last available equalized assessment roll shall not invalidate the affected permit;
  2. Any Business Improvement District or Community Benefit District whose jurisdiction includes the project site; and
  3. The property owner of the site on which the individual food vending facility or group site is proposed to be located.
- B. All notices shall be distributed by the applicant to the subject owners and/or occupants by certificate of mailing or delivery, and be completed not less than ten (10) days prior to the final decision on the application by the City. During the required noticing period, the City Administrator or his/her designee shall receive and consider comments from any interested party.

**5.51.120 – Decisions regarding the approval and renewal of a Food Vending Permit.**

- A. The City Administrator or his/her designee shall approve, approve with conditions, or deny a Food Vending Permit application based on the standards and criteria set forth in this Chapter. The City Administrator or his/her designee may impose conditions of approval on a Food Vending Permit in the exercise of his or her reasonable discretion. The applicant shall be notified of any conditions of approval in writing.
- B. A Food Vending Permit application may be denied upon evidence that:
1. Information contained in the application, or supplementary information requested from the applicant, is false in any material detail; or
  2. The applicant has failed to ensure conformity with the operating standards in this Chapter; or
  3. The applicant has failed to provide a complete application form after having been notified of the requirement of producing additional information or documents; or
  4. The applicant has previously had a food vending permit revoked in Oakland or in another jurisdiction, for violating food vending permit conditions or for unlawful conduct relating thereto; or
  5. The granting of the Food Vending Permit will have a substantial adverse impact upon the public health, safety, or order.

**5.51.130 – Inspections required prior to legal operation.**

Upon issuance of the permit, the applicant shall not commence business activities until:

- A. An Oakland Fire Department designee has inspected all food vending facilities for safety that involve the use of gas for cooking onsite.
- B. Once the food vending facility or group site has passed all required inspections and can legally operate, the applicant shall affix an issued City of Oakland Food Vending Permit seal/placard/sticker at a clearly visible location on the individual food vending facility or display such Permit seal/placard/sticker at a prominent place at a group site. The City of Oakland Food Vending Permit seal/placard/sticker shall contain the permit number, the expiration date, and an indication that the individual food vending facility or group site is legal to operate.

**5.51.140 – Food Vending Permit expiration and renewal.**

- A. Unless renewed as described in Subsection B, below, each Annual Food Vending Permit shall be valid for twelve (12) months from the date of issuance, and expire and become null and void annually on the anniversary of its date of issuance. Each Temporary Food Vending Permit shall expire and become null and void after ninety (90) days, and may be renewed for one additional consecutive 90-day time period.
- B. An individual food vending facility or group site organizer may apply for a Food Vending Permit renewal by submitting to the City Administrator or his/her designee, prior to the expiration of the active Annual Food Vending Permit. The Annual Food Vending Permit renewal application shall be made on a form provided by the City Administrator or his/her designee. All applications shall be filed with the City Administrator or his/her designee.

**5.51.150 – Finality of decisions**

Decisions regarding Food Vending Permit applications are not appealable, final, and effective immediately.

**Article II – Standards and Requirements**

**5.51.170 – Hours of operation**

**5.51.180 – Appearance and Operating Standards.**

**5.51.170 – Hours of operation**

- A. The permitted hours of operation for individual food vending facilities and group sites are 7 a.m. to 10 p.m., Monday through Thursday, and 8 a.m. to 12 a.m. on Friday, Saturday and Sunday.
- B. Upon the granting of special approval from the City Administrator or his/her designee, an individual food vending facility or group site may operate up to 3 a.m.

**5.51.180 – Appearance and operating standards.**

**A. Appearance and condition of the food vending facility.**

1. All food vending facilities and group sites shall clearly display current City of Oakland business tax certificate, Alameda County Environmental Health permit (and decal) and Food Vending Permit (and decal) in plain view and at all times on the exterior of the food vending facility or at the group site.
2. No more than three (3) signs shall be attached to any food vending facility, with a maximum aggregate display surface of thirty (30) square feet of signage per food vending facility.
3. Pushcarts shall be a maximum length of eight (8) feet, maximum depth of six (6) feet, and a maximum height of eight (8) feet. Larger facilities may be permitted by the City Administrator or his/her designee on a case by case basis.

**B. Utilities**

1. Individual food vending facilities and group sites shall either be entirely self-sufficient in regards to gas, electricity, water, and telecommunications, or the food vending facility shall be required to apply for appropriate permits for any utility hook-ups or connections to on-site utilities to ensure building and public safety and consistency with applicable building codes.

**C. Refuse, Trash and litter maintenance.**

1. The food vending facility or group site organizer shall not throw, deposit, discharge, leave, or permit to be thrown, deposited, discharged, or left, any fat, oil, grease, refuse, garbage, or other discarded or abandoned objects, articles, and accumulations, in or upon any street, alley, sidewalk, gutter, storm drain, inlet, catch basin, conduit or other drainage structure, or upon any public or private lot of land in the city, so that the same might be or become a pollutant.
2. Other than roaming food vending facilities, a minimum of two thirty-two (32)-gallon litter receptacles shall be within fifteen (15) feet of each individual food vending facility for customers and employees.
3. Other than roaming food vending facilities, individual food vending facility and group site organizers shall maintain the subject property and adjacent right-of-way free of litter on and within one hundred (100) feet of their site.
4. At a minimum, all refuse shall be removed from the individual food vending facility location or group site, and properly disposed of after each vending period.
5. Failure to adequately clean up after a food vending group site operation date shall be grounds for denying an applicant's request for permit renewal and/or additional vending dates under an issued permit that might otherwise be approved as set forth in Section 5.51.120.

**D. Seating, Chairs and tables**

1. Depending on site size, configuration, and location, a plan for site amenities, including but not limited to tables and chairs, portable restroom facilities, and/or temporary shade structures, may be permitted in conjunction with the operation of a food vending site. A scaled or dimensioned site plan depicting the proposed location of any site amenities shall be submitted for review and approval in conjunction with a food vending permit application.

**E. Performance Standards**

1. Noise levels from food vending facilities shall not exceed the city's noise ordinance standards. Vendors should use low-noise emission generators.
2. Noise and odors from food vending facilities shall be contained within immediate area of the permitted food vending location.

3. The vehicular food vendor shall maintain site circulation for pedestrians and access consistent with the Americans with Disabilities Act.

F. Security

1. The site shall be maintained in a safe and clean manner at all times.
2. The serving or consumption of alcohol is prohibited from individual food vending facilities or at group sites.
3. Food vending facilities and group sites shall have adequate lighting to ensure customer safety. Lighting shall be directed downwards and away from public streets and adjacent properties.

G. Other requirements.

1. Food vending facilities shall be maintained in operating condition at all times, and shall be movable at all times.
2. No food vehicle shall become a permanent fixture on the site and shall not be considered an improvement to real property.
3. The food vendor shall maintain a valid Alameda County Environmental Health Permit at all times. If the permit expires, or is suspended or revoked, then all food sales shall cease until the permit is reinstated.
4. The organizer of a group site or their representative shall be personally present at all times during group site operations.
5. Proof of liability insurance in the amount required by the City shall be maintained by the group site organizer.
6. The posting of the food vending permit at the site is required at all times.
7. The food vendor or group site organizer shall have a working telephone where he/she can be reached directly at all times during food vending.

**Article III. Enforcement, Revocation and Abatement**

5.51.190 – Enforcement.

5.51.200 – Violation.

5.51.210 – Responsibility.

5.51.220 – Revocation of Food Vending Permits.

5.51.230 – Penalties for violation of Food Vending Permit requirements.

5.51.240 – Abatement generally.

5.51.250 – Notice to abate.

5.51.260 – Abatement procedure.

5.51.270 – Violations constituting infractions.

5.51.280 – Penalty for violation.

**5.51.190 – Enforcement.**

The City Administrator or his/her designee shall be responsible for enforcing this Chapter. If periodic inspections are necessary to monitor compliance, reinspection fees per the master fee schedule shall be assessed against the responsible party.

**5.51.200 – Violation.**

Failure to comply with any of the provisions of this Chapter is declared to be prima facie evidence of an existing violation, a continuing blight and a declared public nuisance and shall be abated by the City Administrator or his/her designee, in accordance with the provisions of this Chapter. Any person in violation will be subject to administrative penalties, citations, civil action and/or other legal remedies, including seizure of a food vending facility, and/or food and drink merchandise

**5.51.210 – Responsibility.**

If a food vending facility is on a privately owned parcel, the parcel owner and the individual food vending facility or group site organizer have joint and several liability for compliance with this Chapter, including fees, administrative citations, civil actions, and/or legal remedies relating to an individual food vending facility or group site. The parcel owner remains liable for any violation of duties imposed by this Chapter even if the parcel owner has, by agreement, imposed on the individual food vending facility or group site organizer the duty of complying with the provisions of this Chapter.

**5.51.220 – Revocation of Food Vending Permits.**

The City of Oakland reserves the right to revoke this permit at any time if it is found that the approved activity is violating any of the provisions of the City of Oakland Municipal Code or causing a public nuisance, in accordance with Section 5.02.080 OMC for:

- A. Violating any of the required operating standards set forth in Section 5.51.180; or
- B. Violating any of the imposed permit conditions; or
- C. Causing a public nuisance, or causing an unlawful or criminal activity occurring during the operation a food vending activity or group site; or any other violation of this Chapter.

Revocation shall be immediately effective upon written notice of the revocation by the City Administrator or his/her designee. Revocation hearings and appeals shall be done in accordance with Sections 5.02.090 (Hearings) and 5.02.100 (Appeals).

Should a food vending permit be revoked, the vendor shall be required to cease operation immediately or be subject to action which may include impounding of vehicle and/or citation.

**5.51.230– Penalties for violation of Food Vending Permit requirements.**

Any violation of this Chapter may be charged as a civil penalty or administrative citation as provided for in Chapters 1.08 and 1.12 of this Code. Enforcement action specifically authorized by this Section may be utilized in conjunction with, or in addition to, any other statutory, code, administrative or regulatory procedure applicable to this Chapter. In addition, nothing in this

Section shall be interpreted to preclude or limit the City from seeking injunctive or other judicial relief.

**5.51.240 – Abatement generally.**

- A. Failure to permanently remove a food vending facility or group site and failure to cease operation as a food vending facility or group site after the termination, revocation, expiration, or suspension of any permit issued pursuant to this Chapter shall constitute a public nuisance, and shall be subject to enforcement and abatement procedures set forth in Chapter 1.16 of this Code.
- B. When the City Administrator or his/her designee determines that an individual food vending facility or a group site has been used as an instrument for, or has contributed substantially to a violation of this Chapter, the City Administrator or his/her designee may deem the violation a public nuisance and issue a notice to abate the food vending facility or group site operation, and direct the responsible party to:
1. Comply with the notice to abate;
  2. Comply with a time schedule for compliance; and
  3. Take appropriate remedial or preventive action to prevent the violation from recurring.

**5.51.250 – Notice to abate.**

Upon declaring and deeming a violation of this Chapter a nuisance, the City Administrator or his/her designee shall send a notice of abatement to the property owner, individual food vendor, and/or responsible party. The notice of abatement shall contain the following:

- A. The street address and a legal description of the property sufficient for identification of the premises or property upon which the nuisance condition(s) is located;
- B. A statement that the enforcement official has determined pursuant to this Chapter that the property owner and applicant are in violation of this Chapter;
- C. A statement specifying the condition that has been deemed a public nuisance;
- D. A statement ordering the property owner, individual food vendor, and/or responsible party to abate the condition(s), and specifying the manner in which the same shall be abated, and the period within which such abatement shall be accomplished.

Service of said notice may be made by delivery to the property owner, individual food vendor, and/or responsible party and to the applicant or person in possession personally or by enclosing the same in a sealed envelope, addressed to the occupant at such premises, or to the property owner at the address provided in the food vending permit application, postage prepaid, registered or certified mail, return receipt requested, and depositing same in the United States mail. Service shall be deemed complete at the time of the deposit in the United States mail.

It is unlawful for the property owner, individual food vendor, and/or responsible party to fail or neglect to comply with such order or notice of abatement. In the event that the property owner, individual food vendor, and/or responsible party shall not promptly proceed to abate said

nuisance condition(s), that is to say within seven days of notice to abate, as ordered by the enforcing official, the abatement procedure set forth in Section 5.51.260 may be undertaken.

**5.51.260 – Abatement procedure.**

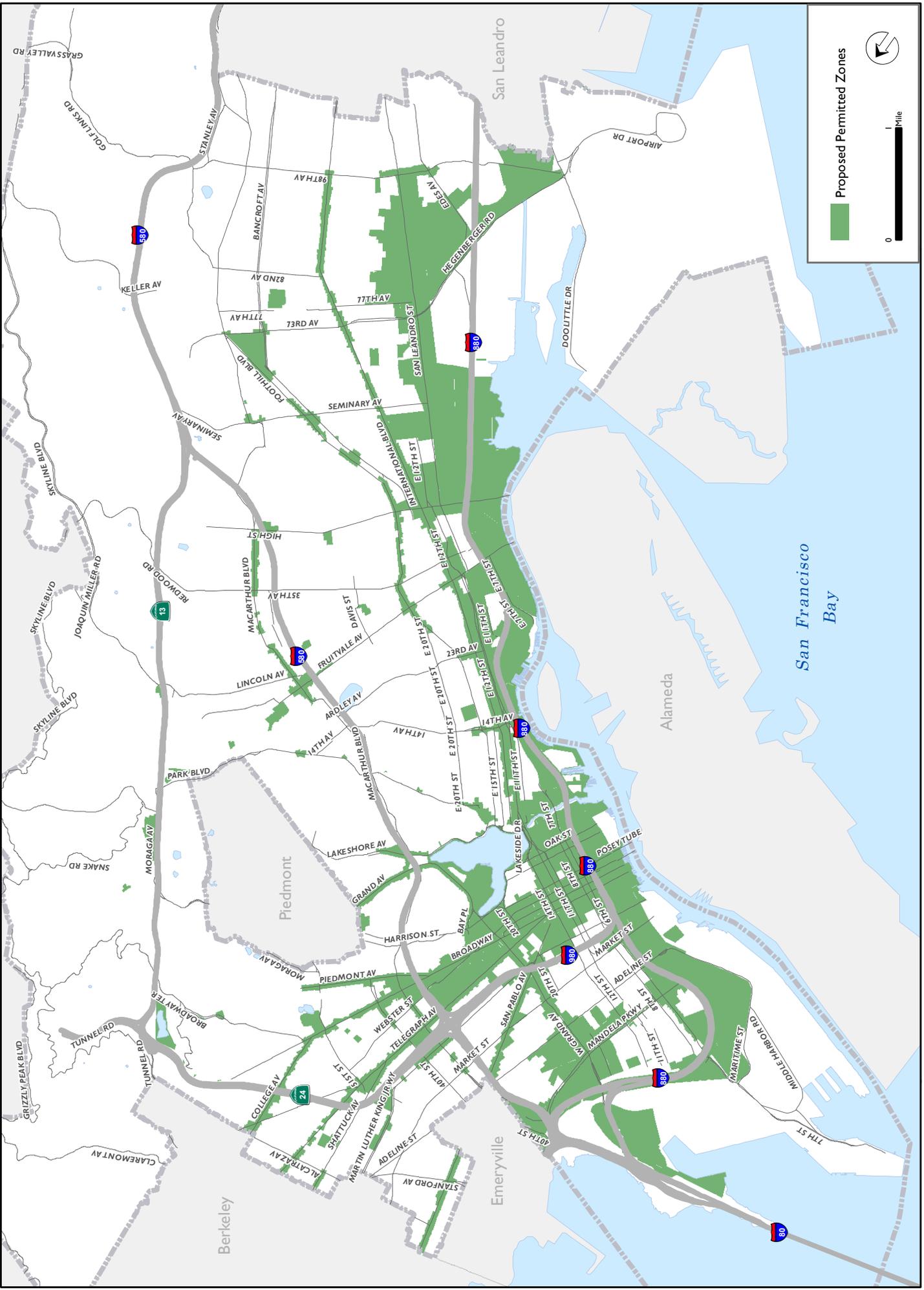
Any person violating or failing to comply with any of the provisions of this Chapter shall be subject to the abatement procedure set forth in Title 1 of this Code.

**5.51.270 – Violations constituting infractions.**

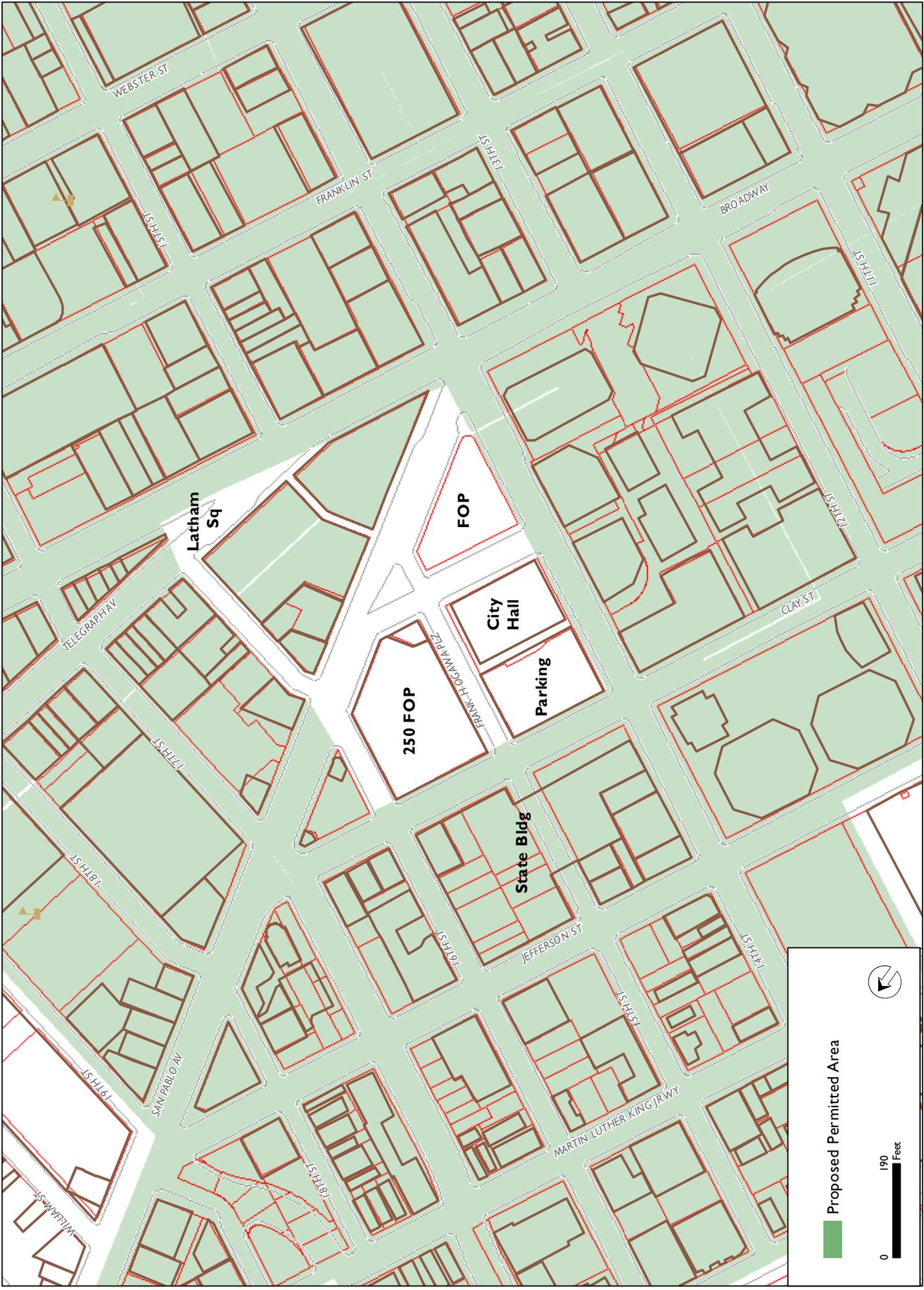
Any person violating or failing to comply with any of the provisions of this Chapter shall be guilty of an infraction.

**5.51.280 – Penalty for violation.**

Any person convicted of an infraction under the provision of this Chapter shall be punished upon a first conviction by a fine of not more than \$1,000.00 and, for a second conviction within a period of one year, by a fine of not more than \$2,000.00 and, for a third or any subsequent conviction within a one-year period, by a fine of not more than \$5,000.00. Any violation beyond the third conviction within a one-year period may be charged by the City Attorney or the District Attorney as a misdemeanor and the penalty for conviction of the same shall be punishable by a fine of not more than \$10,000.00 or by imprisonment in the county jail for a period of not more than six months or by both. Any person violating or failing to comply with any of the provisions of this Chapter shall be subject to civil penalties and administrative citations per Chapters 1.08 and 1.12 of this Code.



# 2016 Food Vending Proposed Program Permitted Area



# 2016 Food Vending Program Permitted Area - Frank Ogawa Plaza Detail

