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OFFICE OF THE CITY CLERK  
OAKLAND

# CITY OF OAKLAND

## AGENDA REPORT

2011 APR 14 PM 3:13

TO: Office of the City Administrator  
ATTN: P. Lamont Ewell, Interim City Administrator  
FROM: Community and Economic Development Agency  
DATE: April 26, 2011

RE: Report on Preliminary Proposals for Amending Oakland's Mobile Food Vending Regulations in OMC Chapter 8.09 to Create Potential New Program Permitted Areas Outside of the Existing Pilot Program Area and to Allow New Group Site Vending Clusters

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### SUMMARY

On October 26, 2010, Planning staff presented an informational report to the CED Committee that included a plan for reviewing and amending where necessary the City's food-related Code regulations, based on input from the Oakland Food Policy Council (OFPC), which is urging adoption of new food policy regulations in the City (*Attachment A*). The OFPC is an organization established by the Oakland City Council with the mission to promote more efficient food delivery, particularly healthy food to low-income neighborhoods in Oakland. One of the OFPC areas of interest includes modifying the regulations for "Mobile Food Vending".

With Council adoption of the Residential and Commercial Zoning Update on March 15, 2011, staff resources are now available to initiate work on the previously discussed comprehensive food policy review. This agenda report will focus on potential amendments to the current Pilot Program regulations for "Mobile Food Vending" in OMC Chapter 8.09. (A separate planning team has also been formed that will focus on potential amendments to the current regulations for "Urban Agriculture").

The goal of any amendments to the current "Mobile Food Vending" program will be to:

- Meet the clear demand for additional mobile food vending areas in Oakland outside of the existing Pilot Program Area;
- Include regulations to allow "Group Site" vending clusters on private or public property sites, not including any street right-of-way;
- Promote community economic development by fostering the creation of new living-wage jobs and local ownership opportunities;
- Address problems with the existing mobile food vending regulations/pilot program (Vehicular Food Vending - Oakland Municipal Code (OMC) Chapter 8.09);
- Identify opportunities for greater coordination/information sharing across City/County departments that deal with mobile food vendors; and
- Strive to ensure greater access to healthy, affordable food in many underserved Oakland neighborhoods.

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Staff has recently been hearing an increased interest and support from both community members and policy makers for an expanded and improved mobile food vending program. Since the high season for mobile food vending is typically during the good weather months in spring through fall, there is a clear need to expedite the amendment process if any regulatory changes are to be adopted and implemented that allow for a timely improvement to the city's existing mobile food vending program. In order to address this timing issue, Staff is proposing the following two-phase approach to amending the existing mobile food vending regulations, with the goal of completing an initial set of amendments to the mobile food vending regulations by July 2011, prior to the summer recess:

- Phase 1 changes will be limited to amendments to OMC Chapter 8.09 only, and aimed at creating potential new Program Permitted Areas outside of the existing Pilot Program Area; allowing new Group Site vending clusters on private or *public property* — *not including any street right-of-way*—only; and suggesting solutions to identified problems with the current Pilot Program regulatory system. No changes to the current restrictions on vehicular food vending in the *public right-of-way* or to the Oakland Planning Code (Title 17) are proposed at this time. These “Phase 1” changes will also *not* include any changes to the current Pushcart regulations (OMC Chapter 5.49).
- Phase 2 changes will address the more complex mobile food vending related issues - such as clarifying the regulatory authority for permit issuance. Existing City Codes split permit issuance authority between the Building Services Division for mobile food vending *inside* the Pilot Program area (OMC Chapter 8.09); and the Planning & Zoning Division for mobile food vending in all areas of the city *outside* of the Pilot Program permitted area - where mobile food vending is currently classified as a “Fast Food Restaurant Commercial” Activity in the Planning Code (Title 17), and requires a Major Conditional Use Permit (CUP), with review by the Planning Commission. Phase 2 changes could also consider: (1) the creation of a new Land Use Classification in the Planning Code for “Mobile Food Vending” separate from the definition of “Fast Food”; (2) review of the current Pushcart regulations in OMC Chapter 5.49; and (3) revisions to OMC Chapter 8.09 regarding vehicular food vending in the public right-of-way. These additional code changes will require a more extensive public review process, and thus will need an additional 6-12 months to complete following Council adoption of the initial Phase 1 mobile food vending code amendments.

## FISCAL IMPACT

The proposed revisions to the mobile food vending program in OMC Chapter 8.09 will require the administration of two new permit types, a mobile food vending Individual Operator permit and a mobile food vending Group Site permit. The exact amount of the fees for each of these new permit types is not known at this time. Fees will be set at a level that will recover costs associated with the permitting and review of mobile food vending activities. Fees collected by

the City of Oakland's Community Economic Development Agency (CEDA) will be deposited into the "Development Services Fund" (2415). Staff is requesting to return to the CED Committee at its May 24<sup>th</sup> meeting with proposed fees, their basis, and proposed draft text amendments to OMC Chapter 8.09.

Currently, a nonrefundable application fee and permit fee will continue to be assessed prior to issuance of each mobile food vending permit type. Upon application approval, the application fee will be applied to the annual permit fee. The mobile food vending permits will be valid for twelve (12) months from the date of issuance. The permits must be renewed on or before its expiration date. If the annual renewal permit is not paid in a timely manner, a late fee will be assessed. No changes to these elements of the permit issuance process are proposed. The purpose of an annual mobile food vending fee is to make clear that the issuance and/or renewal of a mobile food vending permit will not confer any form of permanent land use entitlement to the person, entity, or property associated with such permit. Instead, all such permits would be issued to the individual operator or property owner, and would not run with the land.

All current fees assessed are published in the City of Oakland's Master Fee Schedule. All new or proposed fees will be assessed after adopted by the Oakland City Council and made available to the public when fees are paid.

## BACKGROUND

The food sector in Oakland is among the City's most dynamic and widely talked-about industries. However, over the years, a number of concerns have been expressed about mobile food vending, in particular in relation to issues such as:

- (a) The potential for competition with existing "brick and mortar" restaurants;
- (b) The need to ensure proper public health permitting and inspections;
- (c) The legitimacy of any associated commercial commissaries; and
- (d) The ability of the City to enforce its regulations.

Because of these concerns, Mobile Food Vending is currently only permitted along certain major corridors east of Lake Merritt within the city's "Pilot Program" area, as defined in Chapter 8.09 in the Oakland Municipal Code. Outside of this permitted area, mobile food vending requires a Major Conditional Use Permit (CUP), and review and approval by the Planning Commission. (See *Attachments B and C* for a Summary of Oakland's Existing Mobile Vending Regulations and a Map of the Existing Mobile Food Vending Pilot Program Permitted Areas.)

The city's current mobile food vending regulations were adopted in 2001, and since that time, one of the more noteworthy food trends to emerge in cities like Portland, Seattle, New York, San Francisco, and Los Angeles is the increasing number and popularity of high-quality mobile vendors offering a diversity of food choices from around the world. This food sales model has had a difficult time blossoming in Oakland though, due to the City's current regulations.

Based on staff’s research, the experience of other cities shows that food vendors tend to attract foot traffic to commercial districts – which means increased sales and more vibrant retail business overall. And by offering low-cost, culturally-diverse food for people on the go, they typically complement - rather than compete – with sit-down restaurants and give people more reasons to frequent local shopping districts. Food vendors also provide many business employees with convenient breakfast or lunch options in areas underserved by nearby restaurants.

Mobile food vending has also been shown to be 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. In fact, some of the more popular food vendors have begun to invest in their own “brick and mortar” restaurants.

Amendments to the city’s mobile food regulations are currently under development by staff. The next report section includes a brief summary of the proposed amendments to OMC Chapter 8.09 for CED committee review and feedback. This report also includes a series of attached maps showing potential new mobile food vending permitted areas that may be considered, based on CED committee review and feedback, in addition to the existing pilot program area.

**PROJECT DESCRIPTION**

The following section includes a brief summary of the proposed amendments to OMC Chapter 8.09 for CED committee review and feedback.

|                | Existing Regulations   | Proposed Amendments  |
|----------------|--|--|
| Permitted Area | The current “Pilot Program Area” is limited to private property with an address on, and visible from, the following public streets: portions of Foothill Blvd., International Blvd., San Leandro St., E. 12 <sup>th</sup> St., 14 <sup>th</sup> Ave., Fruitvale Ave., and High St. The pilot area is also defined by specified zoning districts. | Current Pilot Program Area will be considered “Program Area 1”. Additional permitted areas will be proposed by Planning Director for review and approval by the City Council, including the Downtown, the Jack London district, and other desirable locations.<br><br>In addition to continuing to allow Individual Operators on individual sites, new regulations would allow the clustering of mobile food vending units on a single site as part of a new Group Site Permit program - with the number of allowed units per Group Site based on criteria such as: property size and plan layout; the variety and quality of the proposed vendors; the level of site amenities to be provided; the designation of a Group Site manager to be responsible for the day-to-day site management; and the location of the proposed mobile food vending group site property in relation to other nearby uses. |
| Permit Type    | Vehicular Food Vending   | Establish ministerial permit process with prescriptive   |

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|   | Existing Regulations   | Proposed Amendments  |
|---|--|--|
| (Permit Type cont'd)                      | Permit   | standards for approval for new permits. Permit types: <ul style="list-style-type: none"> <li>▪ Mobile Food Vending - <b>Individual Operator</b> Permit;</li> <li>▪ Mobile Food Vending - <b>Group Site Permit</b> (2 or more mobile food vending units on the same property).</li> </ul> * <i>Mobile Food Vendor definition amended to include not only trucks, but also trailers and other moveable wheeled equipment.</i>  |
|   | Outside of permitted area(s), regulated as "Fast Food Commercial Activity" per Planning Code.  | No changes to land use classifications as part of Phase 1.   |
| Responsibility to Issue Permit            | Building Services; Business License Division; Alameda County Health  | Establish new role for Planning and Zoning in permitting in collaboration with Building Services; coordinate review with Fire Services for issues of access, circulation, and hazardous materials (propane); continue oversight by Alameda County Health; and new engagement by Business License Division for revenue monitoring and collection (business license and sales tax reporting).  |
| Inspection Prior to Commencing Activities | Upon issuance of permit, the applicant shall not commence business activities until Building Services has inspected and approved all conditions of the permit. | Building Services (same as existing)   |
| Enforcement                               | Building Services  | Building Services, in coordination with Planning and Zoning  |
| Application Process                       | City must complete within 10 business days from date when application is deemed complete.  | For <b>Individual Operator Permit</b> : <ul style="list-style-type: none"> <li>▪ Generally same as existing.</li> </ul> For new <b>Group Site Permit</b> : <ul style="list-style-type: none"> <li>▪ Annual application period when applications for Group Sites will be accepted by City;</li> <li>▪ Criteria for evaluating applications:                             <ul style="list-style-type: none"> <li>• layout/organization of proposed mobile vending areas, level of site amenities proposed (e.g. seating and restroom facilities, quality and variety of proposed site vendors; relation to other nearby uses; designation of site manager).</li> </ul> </li> <li>▪ During first year of the Group Site pilot program, only [X#] of group sites will be issued in each designated Program Area; thereafter, the Planning Director may review and approve an additional [X#] of Group Site permits/yr. per Program Area.</li> </ul> |

|                                   | Existing Regulations   | Proposed Amendments  |
|-----------------------------------|--|--|
| Fees                              | \$157.21 to apply;<br>(which will be put towards \$2,090.75 annual permit fee if granted)  | Fees TBD   |
| Permit Conditions and Issuance    | Current permit application does not include standard conditions of approval.   | Includes standard conditions of approval as part of permit relating to topics, such as: <ul style="list-style-type: none"> <li>▪ site layout;</li> <li>▪ access/circulation/queuing;</li> <li>▪ signage;</li> <li>▪ clustering of propane tanks;</li> <li>▪ litter/grease and disposal of other waste;</li> <li>▪ electrical/utility hookup requirements;</li> <li>▪ water supply;</li> <li>▪ drainage;</li> <li>▪ permits required from other entities (e.g. Business License, Fire, County Health).</li> </ul> |
| Separation Requirement            | Cannot be within: <ul style="list-style-type: none"> <li>▪ <i>200 feet</i> (as measured from parcel boundary) of any other vehicular food vendor; or any fast food restaurant, full-service restaurant, or delicatessen, unless owner of restaurant has provided mobile food vendor with written permission to locate on same lot; and</li> <li>▪ <i>500 feet</i> of any public park, or any primary or secondary school.</li> </ul> | <ul style="list-style-type: none"> <li>▪ Amends separation requirements from restaurants and other mobile food vendors to either <i>100 feet</i> or <i>150 feet</i> of separation (based on further review and feedback);</li> <li>▪ Eliminates separation requirements from parks and schools;</li> <li>▪ Allows food vendors to congregate together with proper permits into Group Sites or "pods".</li> </ul>   |
| Tables and Chairs                 | Up to 4 "stand up cocktail tables" allowed but other types of tables, chairs or other site furniture not allowed.  | Allows same as Sidewalk Cafe: up to 5 tables and 15 chairs for each mobile food vending unit allowed by right; more could be allowed for Group Sites through conditions of approval.   |
| Restrictions to remaining on site | Requires signage indicating no loitering allowed and patrons can only remain on lot a maximum of 15 minutes after receiving food.  | No restriction on maximum time limit for patrons to remain on-site after receiving food.   |

## KEY ISSUES AND IMPACTS

### A. Existing Mobile Food Vending Regulations

Staff has completed a preliminary evaluation of the current mobile food vending program, and determined that the existing regulations severely limit the areas for permitted mobile food vending within the Pilot Program boundary, and therefore, impede the addition of more mobile food vending operations.

Specifically, staff has identified the following aspects of the existing mobile food vending regulations in OMC Chapter 8.09 as impediments to the addition of more mobile food vending operations in the city, and within the scope of what could be addressed in Phase 1 through code amendments. These include:

- The highly restrictive separation requirements, including -
  - 500 feet from any public park;
  - 500 feet from any primary or secondary school;
  - 200 feet from any fast food restaurant, full-service restaurant, or delicatessen; and
  - 200 feet from any other vehicular food vendor (unless the owner of such restaurant has provided the mobile food vendor with permission to locate on the same lot);
- The prevention of mobile food vendors from congregating together into group sites or “pods” like they do successfully in Portland and other places;
- The prevention of vendors from providing chairs or other site furniture next to the food vending vehicle;
- The lack of any mobile food vending permitted areas in downtown, Jack London, West Oakland, the Broadway/Telegraph triangle, and other high interest districts;
- The prohibition against customers remaining on the lot for more than fifteen (15) minutes after receiving their food; and finally,
- Nearly all of the listed zoning designations in OMC Section 8.09.030 that were intended to help define the current pilot program area for mobile food vending were eliminated upon adoption of the Zoning Update on March 15, 2011 (such as *C-20 Shopping Center Commercial*; *C-25 Office Commercial*; *C-27 Village Commercial*; *C-28 Commercial Shopping District*; *C-30 District Thoroughfare Commercial*; *C-31 Special Retail Commercial*; *C-35 District Shopping Commercial*; *C-36 Gateway Boulevard Service Commercial*; and *C-40 Community Thoroughfare Commercial*, among others).

In particular, the current mobile food vending separation requirements listed above from restaurants, parks, schools, or other vendors severely limit the area for mobile food vending within the Pilot Program permitted area.

### B. Potential New Permitted Areas for Mobile Food Vending

As mentioned earlier in this report, a series of maps are attached showing potential new mobile food vending permitted areas that may be considered, based on CED committee review and feedback, in addition to the existing Pilot Program area (*Attachment D*). The potential new permitted areas for mobile food vending are described generally as:

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- Jack London/ Downtown/ Telegraph to 27<sup>th</sup> to Harrison St. Areas;
- Portions of West Oakland;
- Portions of the Temescal-Telegraph Corridor;
- Between 45<sup>th</sup> St. and Coronado along the Upper Broadway Corridor;
- High Street Corridor between the Estuary, Alameda Ave. and 42<sup>nd</sup> Ave., up to San Leandro Ave.;
- Hegenberger Corridor, plus Coliseum Area;
- MacArthur Blvd. between 73<sup>rd</sup> and Parker Ave.;
- MacArthur Blvd. between Foothill and Durant Ave.;
- Embarcadero Cove Area.

### C. Introduction of a New “Group Site” Food Vending Program

"Mobile food vending – Group Site" refers to the clustering of two (2) or more mobile food vending units on public or private property, not including any street right-of-way, on a semi-permanent basis during hours of operation. Each approved mobile food vending Group Site cluster or “pod” will typically consist of a specified number of vending spaces for rent by individual food vendors on the specified public or private property, and may include such amenities as shared seating areas and/or restroom facilities for Group Site customers.

Appropriate permits will be required for any utility hook-ups or connections to on-site utilities to ensure public safety, and consistency with applicable building codes.

Staff is envisioning an annual application period, in which property owners within a program permitted area and owning a proposed site that permits “General Food Sales” activities by right in the Oakland Planning Code could submit a mobile food vending Group Site permit application for a proposed mobile food vending cluster to be located on a designated private or public property site, not including any street right-of-way. All submitted mobile food vending Group Site permit applications would be reviewed by the Planning Director or his/her designee, based on an evaluative point system that takes into consideration such factors as:

- The organization and layout of the proposed mobile vending areas on the subject property;
- The variety and quality of the proposed site vendors;
- The level of site amenities proposed, such as seating areas and/or restroom facilities;
- The designation of a Group Site manager to be responsible for the day-to-day site management;
- The location of the proposed mobile food vending group site property in relation to other nearby uses; and
- Any other factor that the Planning Director deems necessary to the peace, order and welfare of the public.

A proposed mobile food vending Group Site permittee could be denied for failure to meet such evaluation criteria established by the Planning Director, and any applicable requirements of the City building code, City fire code, this Code, or any violation of State or local law relevant to the



site's operation. The Planning Director would also establish conditions of approval, including, but not limited to: the arrangement and maximum number of mobile food vending units on site, seating number and arrangement, and hours of operations.

During the first year of the mobile food vending Group Site pilot program (2011-2012), the proposed amendments to the food vending regulations will specify a maximum number mobile food vending Group Site permits to be issued within each program permitted area. Then for every succeeding permit year of the subject pilot program, the Planning Director could be allowed to review and approve, based on established criteria, a certain number of additional mobile food vending Group Site permits per year within each program permitted area.

Due to the expansive area and density of existing restaurants within the potential "Jack London/ Downtown/ Telegraph to 27th to Harrison St." program permitted area, Staff is requesting Council feedback and direction on the type and number of food vending permits that would be allowed in this area. One possibility is to limit the initial food vending program in the central area to a maximum number of Group Sites only, and thereby complement - rather than compete with existing restaurant clusters and give people more reasons to frequent downtown area shopping districts.

## **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 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.

## DISABILITY AND SENIOR CITIZEN ACCESS

Disability and senior citizen access will not be affected as the proposed regulatory changes will not alter any requirements related to the Americans with Disabilities Act (ADA), the Older Americans Act, or other applicable laws.

## ACTION REQUESTED OF THE CITY COUNCIL

Prior to preparation of amendments to the City's mobile food regulations in OMC Chapter 8.09, staff requests Council feedback and direction on the proposed mobile food vending program revisions described in this staff report, and the potential new mobile food vending permitted areas (shown in attached maps) that may be considered in addition to the existing mobile food vending pilot program area. Staff intends to return to the CED Committee within six weeks with proposed fees, their basis, and proposed draft text amendments to OMC Chapter 8.09. Finally, staff requests Council feedback and direction on the scope changes proposed in Phase 2, on page 2 of this report.

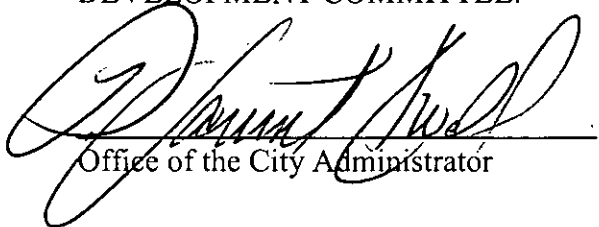
Respectfully submitted,



Walter S. Cohen, Director  
Community and Economic Development Agency

Prepared by:  
Edward Manasse, Planner V, Strategic Planning Division

APPROVED AND FORWARDED TO THE  
COMMUNITY AND ECONOMIC  
DEVELOPMENT COMMITTEE:

  
Office of the City Administrator

### Attachments:

- A. October 26, 2010 CED Committee Report
- B. Summary Chart of Oakland's Mobile Vending Regulations
- C. Map of Existing Pilot Program Permitted Areas
- D. Maps Showing Potential Additional Mobile Food Vending Pilot Program Permitted Areas

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**CITY OF OAKLAND**  
 OFFICE OF THE CITY CLERK  
 OAKLAND **AGENDA REPORT**

2010 OCT 14 PM 6:33

TO: Office of the City Administrator  
 ATTN: Dan Lindheim  
 FROM: Community and Economic Development Agency  
 DATE: October 26, 2010

RE: **Report on Food- and Agriculture-Related Zoning Changes to be Included in Phase I of the Citywide Zoning Update and a Plan for Future Analysis Of The Oakland Food Policy Council's Major Recommendations Regarding The City's Food -Related Code Regulations**

### SUMMARY

Planning Staff has recently received input from the Oakland Food Policy Council (OFPC) urging adoption of new food policy regulations in the City. The OFPC is an organization established by the Oakland City Council with the mission to promote more efficient food delivery, particularly healthy food to low-income neighborhoods in Oakland. Specifically, the OFPC areas of interest include: adopting new Land Use Classifications for "Farmers Markets", "Community Gardens, Civic", and "Urban Agriculture, Commercial"; clarifying standards for indoor vs. outdoor agricultural operations; clarifying the review procedures for limited duration retail operations, such as "pop-up" markets and seasonal outdoor sales operations; modifying the regulations for "Push Carts" and "Mobile Food Vending", and modifying the City's Sidewalk Seating/Encroachment Permit requirements for restaurants.

Staff has informed the OFPC members that a comprehensive food policy update will require significant coordination with other City agencies, since the regulations for these various activities are integrated into many different sections of both the Municipal and Planning Codes. This effort will require public outreach, as well as involve significant staff and Zoning Update Committee (ZUC) time. Therefore, review of the major OFPC recommendations will need to wait until completion of the current "Phase I" of the Citywide Zoning Update (which involves in Phase I the adoption of new Residential and Commercial Zoning Chapters, and a new Zoning Map).

Staff has committed to the OFPC to begin a comprehensive review of the City's food policy regulations in the early part of 2011, upon completion of "Phase F" of the Zoning Update. In the meantime, the following minor changes to food policy regulations have been incorporated into the current Zoning Update work program:

- 1) Conditionally permit "Crop and Animal Raising Agricultural Activities" in every new Commercial and Residential Zoning District. This change will allow for the potential of small urban farms throughout the City after the noticing of a neighborhood surrounding

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- the site and City analysis of possible impacts relating to noise, hours of operation, soil contaminants, pesticides, traffic, odor, and water runoff;
- 2) Clarify the definition of “Community and botanical gardens” within the City’s current Land Use Classification of “Essential Service Civic Activities”; and
  - 3) Clarify that for Industrial and mixed Industrial Zoning Districts, such as CIX, IG, and HBX, *indoor food production* can be interpreted as a “Custom Manufacturing” activity when applied to buildings of less than 10,000 square feet – at least until new “Urban Agriculture” and other new food-related Land Use Classifications can be created during the next phase of the zoning update.

## FISCAL IMPACT

Staff has concluded that the proposed Conditional Use Permit requirements for “Crop and Animal Raising Agricultural Activities” in every new Commercial and Residential Zoning District can be implemented at existing budgeted staffing levels.

Fees collected by the City of Oakland’s Community Economic Development Agency (CEDA) will be deposited into the “Development Services Fund” (2415). All activities associated with the review of Crop and Animal Raising Activities will be cost covered. Therefore, the proposed planning review changes will not have a negative impact on the City’s finances.

## BACKGROUND

### *Citywide Zoning Update*

Oakland adopted a new General Plan Land Use and Transportation Element (LUTE) in 1998. The LUTE included changes to the city’s Land Use Map, and new policies about how and where development should occur. Adoption of the LUTE established a new vision for Oakland, but also created inconsistencies between the General Plan and the zoning regulations (found in Title 17 “Planning Code” of the Oakland Municipal Code). Although piecemeal changes to the Planning Code have been made over time, it has not been comprehensively amended since 1965. The bulk of Oakland’s zoning regulations remain outdated; not consistent with national best practices in zoning, include many obsolete terms; and are cumbersome for many users.

To address the inconsistency between the Zoning Code and the General Plan, Conformity Guidelines were adopted to provide a procedure for deciding whether a project is consistent with the Plan’s intent.<sup>1</sup> The original intent was for the Conformity Guidelines to be in effect for a short, temporary period until new zoning that was up-to-date and consistent with the General Plan could be adopted, and render them unnecessary. However, they remain in effect today.

<sup>1</sup> General Plan Conformity Guidelines were first adopted in 1999; they have been amended several times subsequently, as new zoning has been adopted and/or as the need to extend the guidelines has arisen. The Guidelines are accessible online at: <http://oaklandnet.com/strategicplanning>

An initial effort to comprehensively update the Zoning Code began in 1999, following adoption of the General Plan LUTE. A consultant was retained, stakeholder meetings were conducted, an ordinance was drafted, and maps were prepared. Agreement was reached on some components of the new draft Zoning Code, including regulations for zones to implement the Open Space General Plan land use designation (Resource and Conservation Area and Urban Open Space) and the Housing Business Mix (HBX) land use designation. However, the overall effort was put on hold in 2003.

In 2007, the City resumed efforts to complete the Citywide Zoning Update. The City Council adopted new zoning for the city's industrial areas (areas designated as Business Mix or General Industrial/Transportation in the LUTE) in June 2008, and new zoning for the Central Business District was adopted in July 2009.

The remaining work to be completed in "Phase I" of the Citywide Zoning Update is comprised of updating the zoning for areas with residential and commercial General Plan LUTE land use designations.<sup>2</sup> The effort to update residential and commercial zoning was initiated in fall 2008. Land designated with a residential or commercial General Plan land use designation, listed below, represents over half the land area of Oakland:

- **Residential General Plan Land Use Designations (53% of the land area of Oakland):**
  - Hillside Residential
  - Detached Residential
  - Mixed Housing Type
  - Urban Residential
  
- **Commercial General Plan Land Use Designations (5% of the land area of Oakland):**
  - Neighborhood Center Mixed Use Commercial
  - Community Commercial
  - Regional Commercial

On October 13, 2010, Staff anticipates a final Zoning Update Committee (ZUC) review of the proposed new Residential and Commercial Zoning Chapters, and the new Zoning Map. The next step would then be 2-3 presentations to the full Planning Commission in November and December 2010. Review by the Oakland City Council is expected in February 2011.

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<sup>2</sup> Mixed Waterfront General Plan land use designation was updated by the Estuary Policy Plan (EPP), which was adopted in 1999. Zoning to implement the EPP will be addressed separately from the Citywide Zoning Update effort by other planning processes including the Central Estuary Specific Plan currently underway.

## KEY ISSUES AND IMPACTS

### 1. Zoning Use Classifications for “Farmers Markets”, “Community Gardens, Civic”, and “Urban Agriculture, Commercial”

The Oakland Food Policy Council (OFPC) is requesting to add a new Zoning Use Classification for “Farmers Markets” and then designate zoning districts where they would be a permitted use. This would also allow for the expansion of outdoor market operations to private property in many parts of the City. Farmer Market designations in the Zoning Code would provide clarity to those wishing to set up new markets in the City; and should include cross references to other code sections and permits that may be necessary for the operation of a Farmers Market. The OFPC is also requesting to create a new Zoning Use Classification for “Community Gardens, Civic” separate from, and replacing, the reference to “Community and botanical gardens” within the City’s current Zoning Use Classification of “Essential Service Civic Activities”. A separate Use Category for “Community Gardens, Civic” would increase public awareness of the use and make code navigation by the public more user-friendly. Thirdly, the OFPC is requesting to create a new Zoning Use Classification for “Urban Agriculture, Commercial” that would replace and/or supplement the current Zoning Use Classifications of “Crop and Animal Raising Agricultural Activities” and “Plant Nursery Agricultural Activities”. The new Use Classifications would allow for clarification between indoor vs. outdoor food production; whether on-site sales would be allowed, and if so, under what conditions; how many and what kind of livestock is allowed in which Zoning districts; and other similar currently unresolved issues.

Response: Planning Staff will review and update the above food-related Use Classifications during the next phase of the Zoning Update.

### 2. Farmer’s Markets

Farmer’s Markets are not currently explicitly called out anywhere in the Zoning Code as an allowed use, so if a market wanted to operate on *private property*, Planning Staff would have to interpret other use categories to include the operation of a Farmers Market, or tell the applicant that the use is not allowed. On the other hand, Farmer’s Markets taking place on *public property* (such in a public park or within the street right-of-way) do not require a planning permit in order to operate. Instead, this use requires reviews and permits from a multitude of other City and County agencies. This lack of a clear path forward for a new market operator causes confusion and uncertainty.

Response: Planning Staff will review and update the City’s food-related regulations, including the lack of clarity around the operation of a Farmers Market, during the next phase of the Zoning Update.

### 3. Limited Duration Retail Food Sales, such as “Pop-Up Markets”

The OFPC is requesting to clarify when and where limited duration retail food sales, such as a “Pop-Up Market”, are permitted in the City. Clarifying this issue may also apply to and facilitate seasonal sales, such as pumpkin and Christmas tree lots.

Response: Planning Staff will review and update the above regulations during the next phase of the Zoning Update.

### 4. Mobile Food Vending

Over the years, mobile food vending activities have raised a series of concerns around such issues as:

- (a) The potential for competition with existing “brick and mortar” restaurants;
- (b) The need to ensure public health permitting and inspections; and
- (c) The legitimacy of any associated commercial commissaries.

Because of these concerns, Mobile Food Vending is currently subject to extensive regulations in Chapters 5.49 and 8.09 in the Oakland Municipal Code, and is only permitted along certain major corridors within the city’s “pilot program” area. Outside of this permitted area, the use requires a Major Conditional Use Permit (CUP), which must be reviewed by the Planning Commission.

Mobile Food Vending is currently classified in the Oakland Zoning Code as a “Fast Food Restaurant Commercial” Activity, and defined as: *“The sale of ready-to-consume prepared foods from trucks, pushcarts or other movable equipment located on 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.”*

Any change to Mobile Food Vending regulation will need to balance the objectives of the OFPC with the concerns that have been expressed about food cart operations above.

Response: Planning Staff will update and modernize the City’s food vending regulations during the next phase of the Zoning Update. In recent years, one of the more noteworthy food trends in West Coast cities like Portland, Seattle, San Francisco, and Los Angeles is the increasing number and popularity of high-quality food carts offering a

diversity of food choices from around the world. This food sales model has had a difficult time taking root in Oakland though, due to the City's restrictive food regulations that: 1) prevent food carts from congregating together into "pods" like they do successfully in Portland and other places; 2) don't allow vendors to locate downtown, in Jack London Square, or within 500 feet of a public park; and 3) prevent vendors from providing chairs or other site furniture next to the food cart.

One option is to move the review of Mobile Food Vending and Push Carts located on private property out of Municipal Code Chapters 5.49 and 8.09 and into the Planning Code. This would allow for the review, and potential clustering, of food vendors on private property through an administrative Conditional Use Permit (CUP). In line with OFPC objectives, the CUP review criteria for neighborhoods with limited access to nutritious foods, for example, could emphasize vendors who sell healthier foods. Potential concerns such as the number and location of food vendors in relation to other types of businesses and uses, as well as food safety issues, could also be considered as part of this CUP review. In Los Angeles, for example, mobile food facilities will soon require twice-a-year inspections and the posting of letter grades from public health officials evaluating their food handling practices.

In summary, if the concerns with mobile food that have been expressed in the past can be addressed to the satisfaction of the council and the public, Planning Staff can see the potential for properly permitted mobile food facilities to operate successfully in the future on otherwise vacant or underutilized private properties in the city; and bring vitality, pedestrian activity, and spillover economic activity to surrounding districts.

Roving truck vendors wanting to locate in different locations at different times would still need to be addressed in the Municipal Code and administered by another department or agency, since the Planning Department does not have authority over activities in the Public Right-of-Way.

##### 5. Sidewalk Seating and Encroachment Permits

Sidewalk Seating regulations were amended by Planning Staff in 2007 to facilitate sidewalk café review and approval, with the intention of encouraging more café businesses in the City. However, the OFPC points out that many applicants continue to have difficulty getting final approval of their sidewalk seating plan due to problems obtaining an Encroachment Permit from Building Services/Public Works after the Planning review.

Response: Like many other permit procedures, the request for sidewalk seating requires the review and approval of many different city departments and agencies. Planning Staff are very interested in bringing representatives from all the various departments together to develop a streamlined cross-departmental review and approval process that would apply not only to sidewalk seating permits, but to other types of desirable business activities.



*The charts below summarize the timeline for inclusion of OFPC areas of interest in the Zoning Update process:*

**MINOR ITEMS INCLUDED AS PART OF THE CURRENT PHASE OF THE ZONING UPDATE (2010-11)**

| TOPIC                           | DESCRIPTION OF DESIRED OUTCOME  | TIMELINE FOR REVIEW  |
|---------------------------------|---|--|
| Crop and Animal Raising         | <ul style="list-style-type: none"> <li>▪ As an interim measure, until new Agriculture-related Land Use Classification can be created:                             <ul style="list-style-type: none"> <li>– Conditionally permit “Crop and Animal Raising Agricultural Activities” in every new Commercial and Residential Zoning District.</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>▪ Zoning Update Cmte. (ZUC) review on 10/13/10.</li> <li>▪ Planning Commission (PC) review on 11/3/10, 11/17/10, and 12/1/10.</li> <li>▪ Expected review for adoption by City Council (CC) in February 2011.</li> </ul> |
| Community and botanical gardens | <ul style="list-style-type: none"> <li>▪ Clarify definition of: “Community and botanical gardens” within the City’s current Land Use Classification of: “Essential Service Civic Activities”</li> </ul>   |  |
| Indoor food production          | <ul style="list-style-type: none"> <li>▪ Clarify that for Industrial and mixed Industrial Zoning Districts (such as CIX, IG, and HBX), <i>indoor food production</i> can be interpreted in the interim, as a “Custom Manufacturing” activity when applied to buildings of less than 10,000 square feet.</li> </ul>  |  |

**MAJOR ITEMS TO BE INCLUDED AS PART OF THE NEXT PHASE OF THE ZONING UPDATE (2011)**

| TOPIC                                       | DESCRIPTION OF DESIRED OUTCOME   | TIMELINE FOR REVIEW  |
|---|--|--|
| Urban Agriculture                           | <ul style="list-style-type: none"> <li>▪ Create new Land Use Classifications for:                             <ul style="list-style-type: none"> <li>- Community Gardens, Civic; and</li> <li>- Urban Agriculture, Commercial.</li> </ul> </li> <li>▪ Specify zoning districts where allowed.</li> <li>▪ Clarify livestock regulations.</li> <li>▪ Clarify regulations for indoor vs. outdoor food production.</li> <li>▪ Specify when and where associated retail sales are allowed.</li> </ul>   | <p><b>9-12 months required for Planning Staff and public review - beginning in approx. February 2011, following Council adoption of Phase I of the Citywide Zoning Update (which includes new Residential and Commercial Zoning Chapters and a new Zoning Map)</b></p> <p><b>NOTE:</b><br/>To expedite the timeline for review, a code amendment package of the least controversial of these food policy elements could be brought forward separately.</p> |
| Farmers Markets                             | <ul style="list-style-type: none"> <li>▪ Clarify process for reviewing a new Farmer's Market on:                             <ul style="list-style-type: none"> <li>- Private property (in Zoning Code); and</li> <li>- Public property (include references in Zoning to other review agencies)</li> </ul> </li> </ul>   |  |
| Pop up Markets                              | <ul style="list-style-type: none"> <li>▪ Clarify when and where limited duration retail food sales, such as "Pop-Up Markets", are permitted in the City.</li> </ul>  |  |
| Mobile food                                 | <ul style="list-style-type: none"> <li>▪ Create new Use Classification for "Mobile Food Vending" separate from Fast Food.</li> <li>▪ Move regulations for Mobile Food Vending on private property into the Oakland Zoning Code (Title 17).</li> <li>▪ Revise regulations to conditionally permit:                             <ol style="list-style-type: none"> <li>1) food carts to congregate together into "pods";</li> <li>2) locate downtown, in Jack London Square, near a public park, or other desirable location; and</li> <li>3) provide chairs or other site furniture next to the food cart.</li> </ol> </li> </ul> |  |
| Sidewalk seating.<br><br>Cabaret Licensing. | <ul style="list-style-type: none"> <li>▪ Work with other City Agencies to coordinate creation of                             <ul style="list-style-type: none"> <li>- A streamlined review process for sidewalk Encroachment Permits, and</li> <li>- A "Cabaret Lite" Special Activity Permit category.</li> </ul> </li> </ul>   |  |

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October 26, 2010

## SUSTAINABLE OPPORTUNITIES

The mission of the Oakland Food Policy Council (OFPC) is to establish an equitable and sustainable food system in Oakland, California.

### *Economic:*

The economic goals of the OFPC are to:

- Promote community economic development; and foster development in the food sector that creates living-wage jobs and local ownership in many sectors of the food system; and
- Support local agriculture that is economically viable, environmentally sustainable and socially responsible; and make Oakland a market for processing and consuming local food, with the objective of having at least 30 percent of Oakland's food needs sourced from within the City and the surrounding region.

### *Environmental:*

The environmental goals of the OFPC are to:

- Promote energy efficiency; reduce energy consumption; and promote local, sustainable food production that helps Oakland transition to a locally- and regionally-based food system;
- Promote a “closed-loop” food system that eliminates pollution and use of non-renewable materials, and will promote food scrap composting; and
- Support the protection of environmental resources by promoting consumption of locally and sustainably-grown food, particularly food produced using environmentally-benign and energy-efficient growing, processing and distribution practices.

### *Social Equity:*

The social equity goals of the OFPC are to:

- Strive to ensure access to healthy, affordable food within walking distance of every Oakland resident;
- Increase food security in Oakland to ensure that no Oakland resident experiences hunger;
- Build greater public health in Oakland; and support the development of balanced food environments that empower residents with opportunities to make healthy food choices and reduce environmental causes of obesity, diabetes, heart disease and other diet-related illnesses; and
- Increase public “food literacy” by sharing information that will allow communities to make food-related choices that positively influence public health, social responsibility and environmental sustainability.

## DISABILITY AND SENIOR CITIZEN ACCESS

Disability and senior citizen access will not be affected as the Zoning text changes will not alter any requirements related to the Americans with Disabilities Act (ADA), the Older Americans Act, or other applicable laws.

## RECOMMENDATION(S) AND RATIONALE

After much discussion, Planning Staff and the Oakland Food Policy Council (OFPC) appear to be in agreement about the timeline and phasing of review of their food policy recommendations. Planning Staff have agreed to incorporate their minor recommendations as part of the current zoning update work (see “Minor Items” Chart on page 7 of this staff report); while the major aspects of the OFPC proposal that involve: adding new Zoning Use Classifications for “Farmers Markets”, “Urban Agriculture, Civic”, and “Urban Agriculture, Commercial”; modifying the City’s Cabaret License requirements for restaurants; and modifying the review procedures and regulations for “Mobile Food Vending” (see “Major Items” Chart on page 8 of this staff report), will need to undergo a separate public review process, because they are more complicated; potentially controversial; connected like a web to other parts of the Zoning and Municipal Code; and involve multiple City Divisions and Agencies.

Therefore, to avoid slowing down the current “Phase I” work of the zoning update (adoption of new Residential and Commercial Zoning chapters), Staff recommends that the City Council accept the following timeline for review of the Oakland Food Policy Council’s recommended changes to the City’s food -related regulations:

- I. Minor Items included as part of the current phase of the Zoning Update (2010-11) -
  - Conditionally permit “Crop and Animal Raising Agricultural Activities” in every new Commercial and Residential Zoning District;
  - Clarify definition of “Community and botanical gardens” within the City’s current Land Use Classification of “Essential Service Civic Activities”;
  - Clarify that *indoor food production* can be interpreted in the interim, as a “Custom Manufacturing” activity when applied to buildings of less than 10,000 square feet.
  
- II. Major Items to be included as part of the next phase of the Zoning Update (2011) -
  - Create new Land Use Classifications for Community Gardens and Urban Ag.;
  - Clarify process for reviewing a Farmer’s Market;
  - Clarify when and where limited duration retail food sales are permitted in the City;
  - Review the regulations and review procedures for “Mobile Food Vending” activities;
  - Work with other City Agencies to create a streamlined review process for sidewalk Encroachment Permits, and a “Cabaret Lite” Special Activity Permit category.

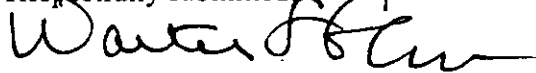
Item: \_\_\_\_\_  
 CED Committee  
 October 26, 2010

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff recommends that the City Council accept the following timeline for review of the Oakland Food Policy Council's recommended changes to the City's food -related regulations:

- I. Minor Items included as part of the current phase of the Zoning Update (2010-11) -
- Conditionally permit "Crop and Animal Raising Agricultural Activities" in every new Commercial and Residential Zoning District;
  - Clarify definition of "Community and botanical gardens" within the City's current Land Use Classification of "Essential Service Civic Activities";
  - Clarify that for Industrial and mixed Industrial Zoning Districts (such as CIX, IG, and HBX), *indoor food production* can be interpreted in the interim, as a "Custom Manufacturing" activity when applied to buildings of less than 10,000 square feet.
- II. Major Items to be included as part of the next phase of the Zoning Update (2011) -
- Create new Land Use Classifications for "Community Gardens, Civic" and "Urban Agriculture, Commercial";
  - Clarify process for reviewing a Farmer's Market on public and private property;
  - Clarify when and where limited duration retail food sales, such as "Pop-Up Markets", are permitted in the City;
  - Review the regulations and review procedures for "Mobile Food Vending" activities;
  - Work with other City Agencies to create a streamlined review process for sidewalk Encroachment Permits, and a "Cabaret Lite" Special Activity Permit category.

Respectfully submitted,



Walter S. Cohen, Director  
Community and Economic Development Agency

Prepared by:  
Edward Manasse, Planner V, Strategic Planning Division

APPROVED AND FORWARDED TO THE  
COMMUNITY AND ECONOMIC  
DEVELOPMENT COMMITTEE:



Office of the City Administrator

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October 26, 2010

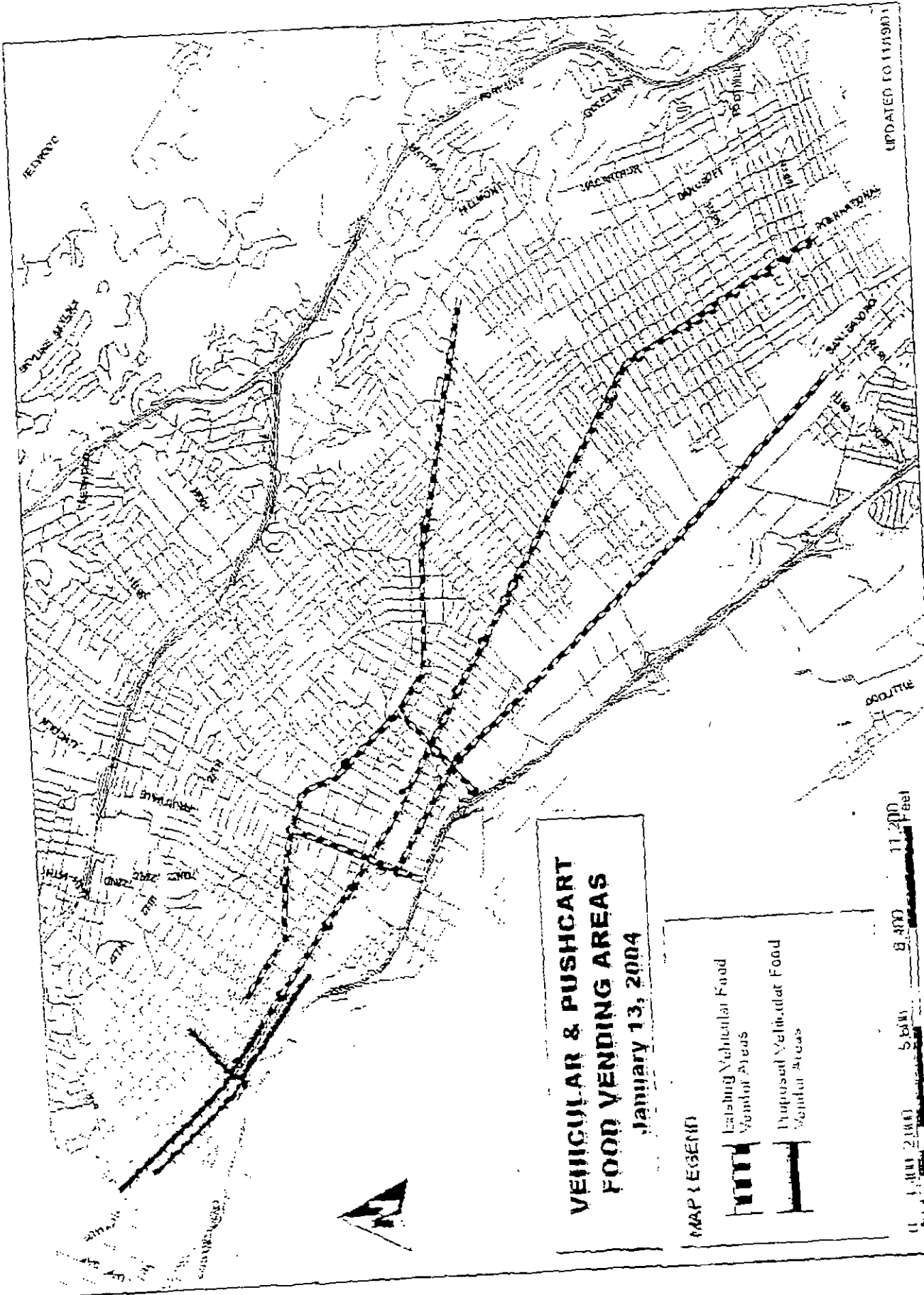
**SUMMARY OF OAKLAND MOBILE VENDING REGULATIONS**

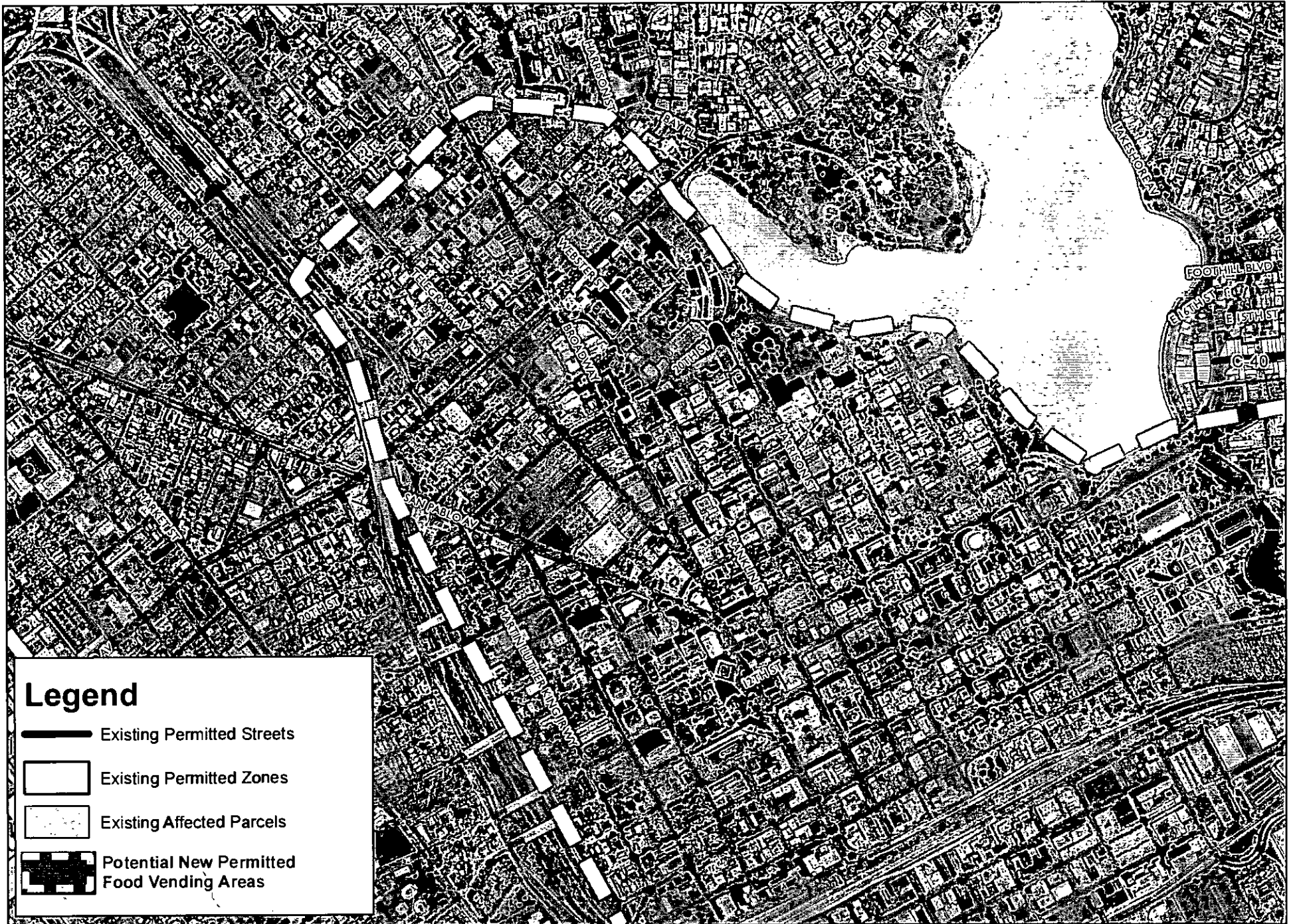
**Private Property**

| Activity                   | Description   | Regulations   |
|----------------------------|---|---|
| Pushcart Food Vending      | Selling food from carts and stands on private property.           | <u>All areas:</u> Considered Fast Food Commercial Activity and Open Nonresidential Facility by zoning regulations (Title 17: Planning Code)   |
| Pushcart Non-Food Vending  | Selling non-food items from carts and stands on private property. | <u>All areas:</u> Considered General Retail Sales Commercial Activity and Open Nonresidential Facility by zoning regulations  |
| Vehicular Food Vending     | Selling food from vehicles on private property.                   | <u>Vehicle Food Vending Area:</u> Vehicle food vending permit required from Building Services (OMC Chop. 8.09)<br><u>Other areas:</u> Considered Fast Food Commercial Activity and Open Nonresidential Facility by zoning regulations |
| Vehicular Non-Food Vending | Selling non-food items from vehicles on private property.         | <u>All areas:</u> Considered General Retail Sales Commercial Activity and Open Nonresidential Facility by zoning regulations  |

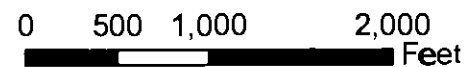
**Public Right-of-Way (Streets and Sidewalks)**

| Activity  | Description   | Regulations  |
|---|---|--|
| Peddling (Food & Non-Food; without pushcart or vehicle) | Moving from place to place along city streets selling items to non-regular customers. | <u>Downtown:</u> Prohibited (OMC Sec. 5.48.080)<br><u>Other areas:</u> Peddler permit required from Police Department (OMC Chop. 5.48)                       |
| Pushcart Food Vending                                   | Selling food from carts and stands along city streets.                                | <u>Pushcart Vending Area:</u> Pushcart vending permit required from Building Services (OMC Chop. 5.49)<br><u>Other areas:</u> Prohibited (OMC Sec. 5.48.050) |
| Pushcart Non-Food Vending                               | Selling non-food items from carts and stands along city streets.                      | <u>Downtown:</u> Prohibited (OMC Sec. 5.48.080)<br><u>Other areas:</u> Peddler permit required from Police Department (OMC Chop. 5.48)                       |
| Vehicular Food Vending                                  | Selling food from vehicles along city streets.  | <u>All areas:</u> Prohibited (OMC Sec. 5.48.050)   |
| Vehicular Non-Food Vending                              | Selling non-food items from vehicles along city streets.                              | <u>Downtown:</u> Prohibited (OMC Sec. 5.48.080)<br><u>Other areas:</u> Peddler permit required from Police Department (OMC Chop. 5.48)                       |

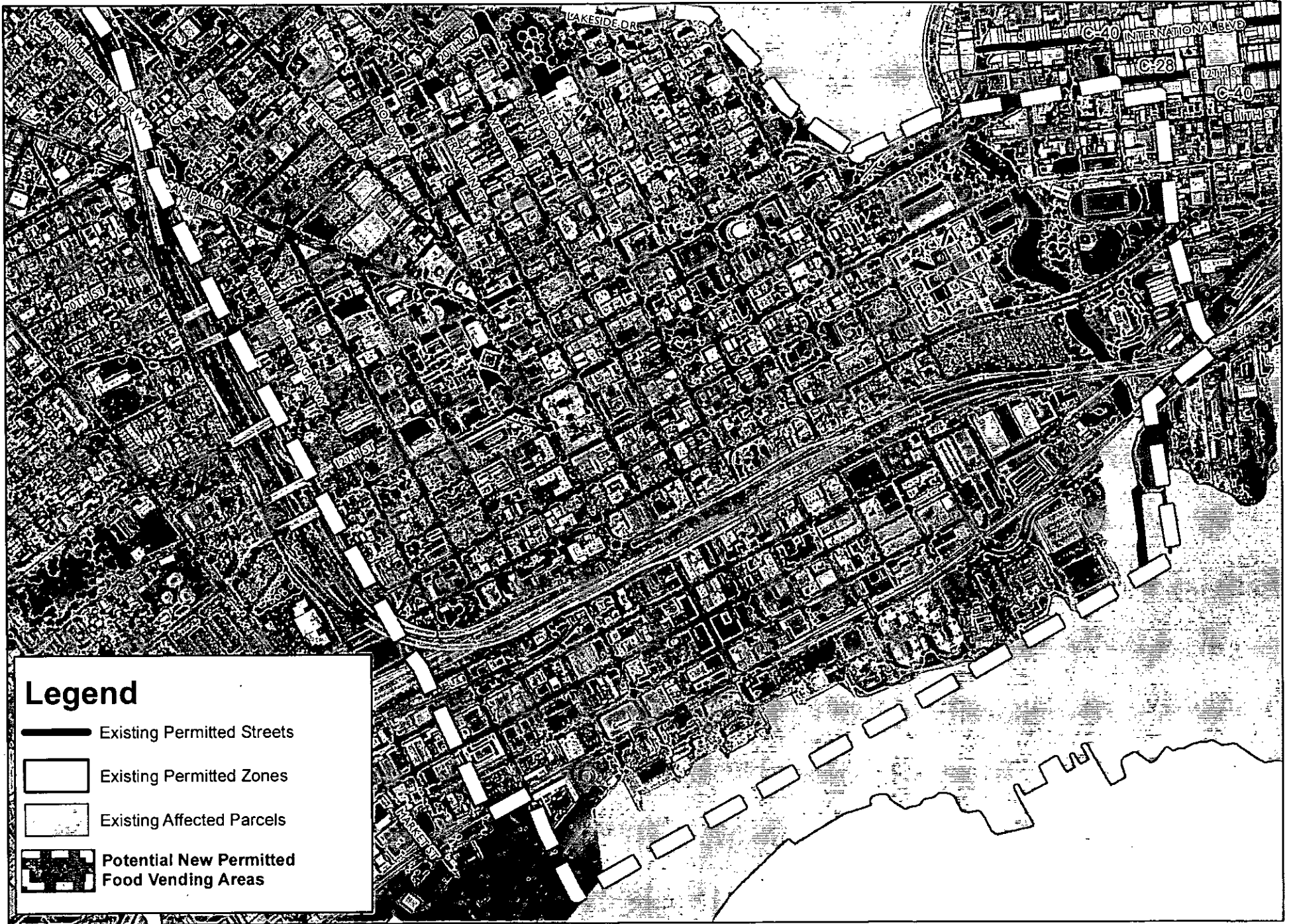




**Potential New Permitted Food Vending Areas**  
14th Street/27th Street





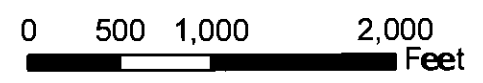


**Legend**

- Existing Permitted Streets
- Existing Permitted Zones
- Existing Affected Parcels
- Potential New Permitted Food Vending Areas



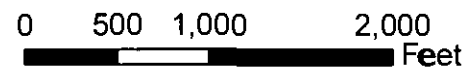
**Potential New Permitted Food Vending Areas**  
Jack London/Downtown/14th Street








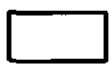


**Potential New Permitted Food Vending Areas**  
West Oakland (South)





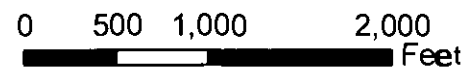


**Legend**

-  Existing Permitted Streets
-  Existing Permitted Zones
-  Existing Affected Parcels
-  Potential New Permitted Food Vending Areas







**Potential New Permitted Food Vending Areas**  
Temescal-Telegraph Corridor and Upper Broadway Corridor





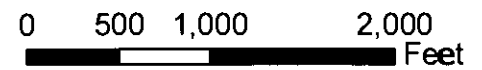
### Legend

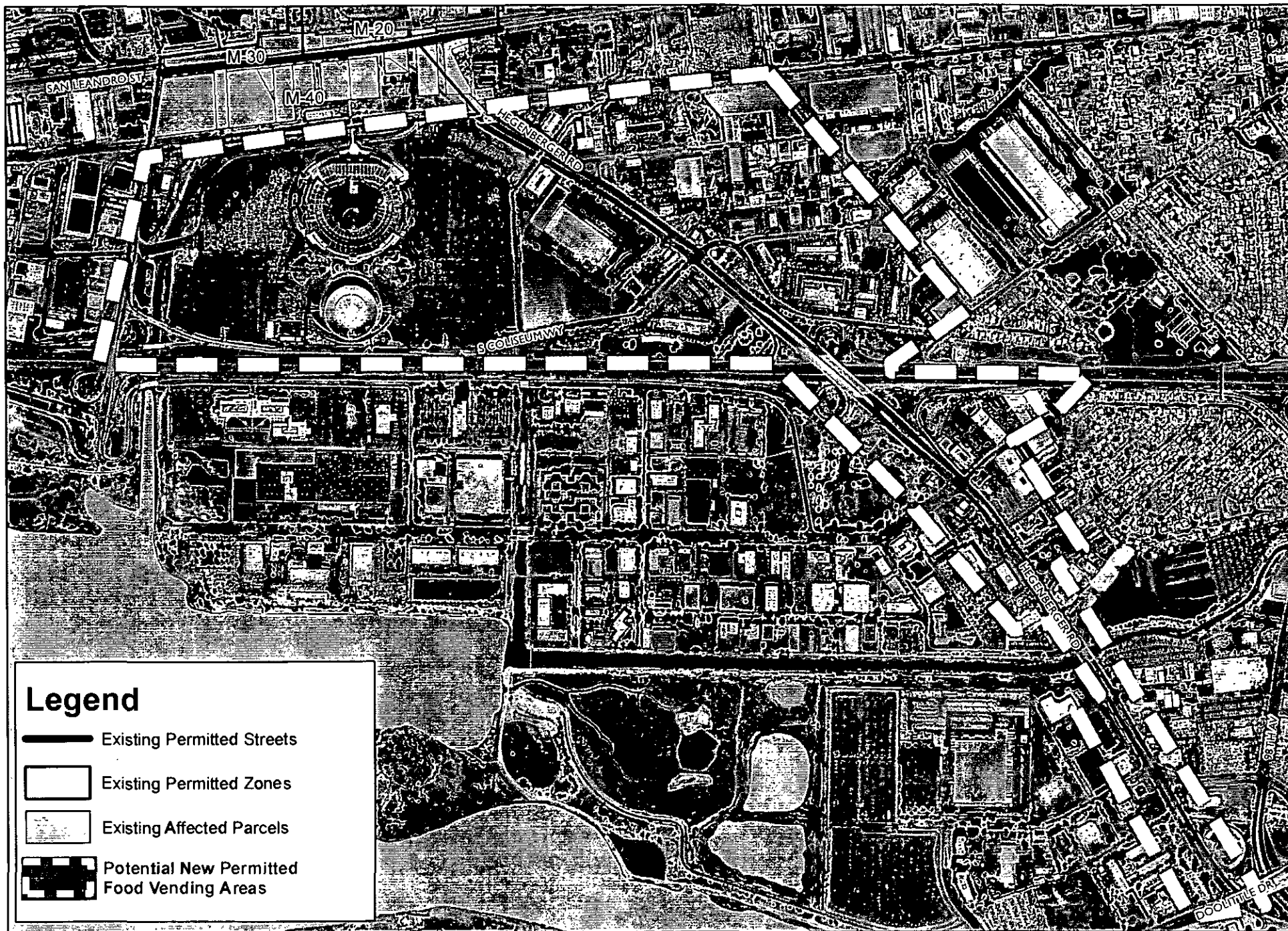
-  Existing Permitted Streets
-  Existing Permitted Zones
-  Existing Affected Parcels
-  Potential New Permitted Food Vending Areas



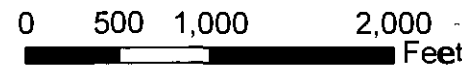
## Potential New Permitted Food Vending Areas

### Alameda Ave/42nd Avenue

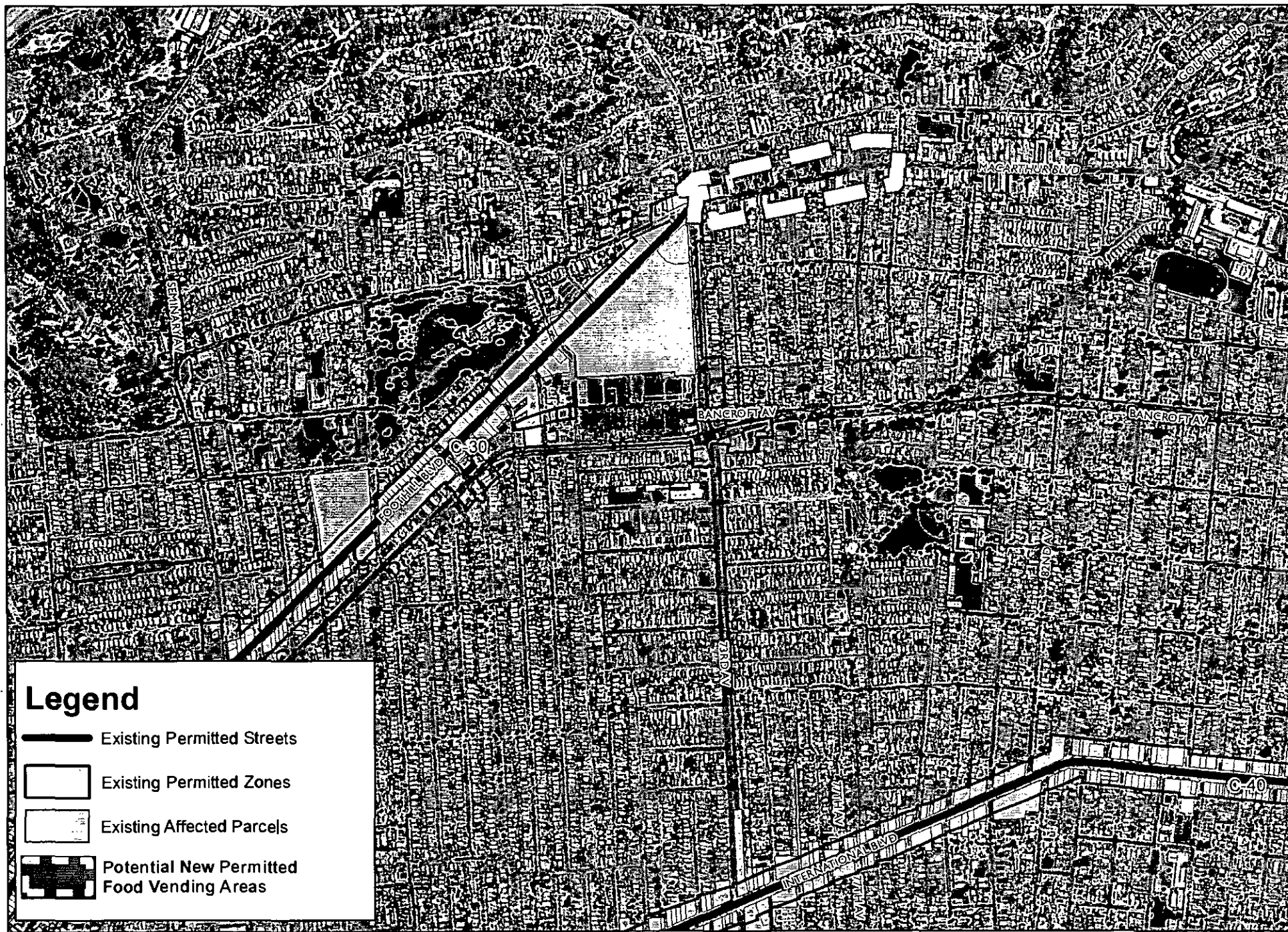




**Potential New Permitted Food Vending Areas**  
Hegenberger Corridor





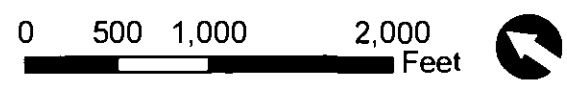


**Legend**

- Existing Permitted Streets
- Existing Permitted Zones
- Existing Affected Parcels
- Potential New Permitted Food Vending Areas



**Potential New Permitted Food Vending Areas**  
Foothill Blvd/MacArthur Boulevard





### Legend

- Existing Permitted Streets
- Existing Permitted Zones
- Existing Affected Parcels
- Potential New Permitted Food Vending Areas

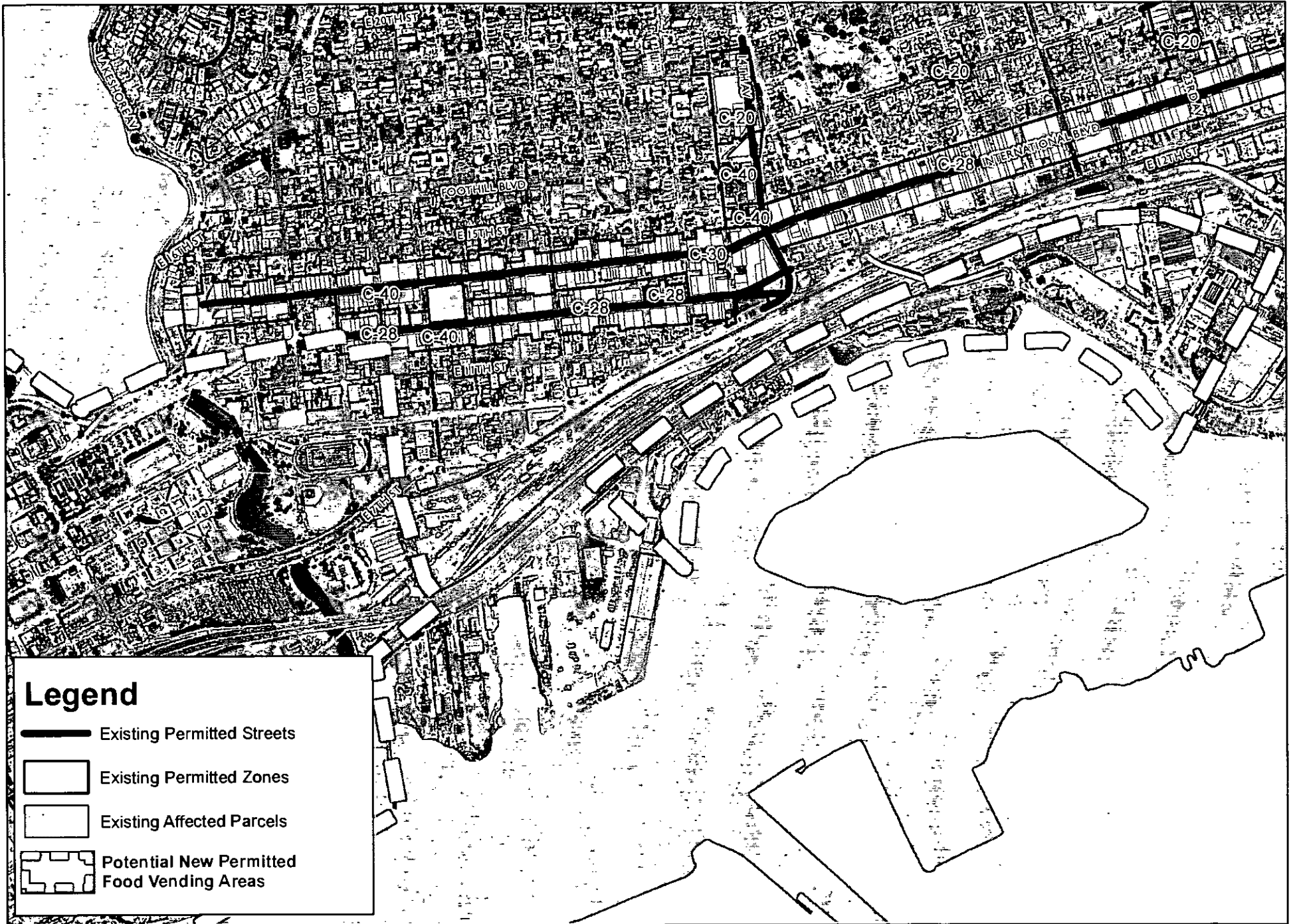


## Potential New Permitted Food Vending Areas





MacArthur Blvd/Durant Square







**Legend**

-  Existing Permitted Streets
-  Existing Permitted Zones
-  Existing Affected Parcels
-  Potential New Permitted Food Vending Areas



**Potential New Permitted Food Vending Areas**  
 Embarcadero Cove Area

