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OAKLAND  
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# AGENDA REPORT

**TO: DEANNA J. SANTANA  
CITY ADMINISTRATOR**

**FROM: Fred Blackwell**

**SUBJECT: Mobile Food Vending Group Site Program  
Extension and Minor Amendments**

**DATE: November 5, 2012**

City Administrator  
Approval

Date

11/10/12

**COUNCIL DISTRICT: 1, 2, 3 and 4**

## RECOMMENDATION

Staff recommends that the City Council approve:

**An Ordinance Extending Interim Regulations With Minor Amendments For Permitting Mobile Food Vending Group Sites Within The Limited Area Of The City Of Oakland Defined, In Part, By Council Districts 1, 2, 3, And 4. The Interim Regulations Contained Herein Shall Remain In Place And Be Effective Through July 1, 2013, Or Until The City Council Adopts New Permanent Mobile Food Vending Regulations, Whichever Comes First; and**

**An Ordinance Amending The Master Fee Schedule (Ordinance No. 13133 C.M.S. As Amended) to Reduce The Interim Food Vending Group Site Operation Date Fee.**

## EXECUTIVE SUMMARY

There has been a strong interest on the part of mobile food vendors, mobile food event organizers, members of the general public and various advocacy groups, as well as some City Council members, to increase opportunities for mobile food vendors to vend legally in Oakland. The feedback from mobile food vendors, in particular, has been that the City should establish a permanent citywide program that will allow for individual vendors to vend 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, and provide economic opportunities for small business persons. However, any program to increase mobile food vending must be balanced with ensuring public health and safety, equitable and appropriate use of the public right-of-way, and strike a balance with the interests of the City's brick and mortar restaurants.

Item: \_\_\_\_\_  
CED Committee  
November 27, 2012

Since 2001, the City has permitted vehicular food vending (on private property only) and pushcart vending (on sidewalks) in very limited areas along certain major corridors east of Lake Merritt (per OMC Chapters 5.49 and 8.09); and outside of these areas with a Conditional Use Permit (CUP) from the Department of Planning, Building and Neighborhood Preservation (a Major CUP on private property or a minor CUP in City parks for a "Fast Food Commercial Activity).<sup>1</sup> More recently, the City Council adopted Interim Regulations to permit Mobile Food Vending Group Sites ("Group Site Interim Regulations") that went into effect on January 20, 2012 and are set to expire on January 1, 2013. Group Sites are defined as "the stationary operation of three (3) or more mobile food vendors clustered together on a single site".<sup>2</sup> The original intent was to have new permanent citywide mobile food vending regulations in place that would supersede the Interim Regulations and the existing Vehicular Vending and Pushcart programs prior to January 1, 2013. However, due to the complex nature of regulating mobile food vending inside and outside the public right-of-way, involving coordination across several City departments, it will not be possible to adopt new citywide regulations prior to the expiration of the current Interim Group Site regulations. Staff expects to bring proposals for a permanent citywide mobile food vending program for consideration by the CED Committee of the City Council in early 2013.

In order to inform the next phase of the City's mobile food regulation update, City staff conducted an extensive evaluation of the new Mobile Food Vending Group Site and the existing Vehicular and Pushcart permit programs. The evaluation consisted of meetings and surveys of Group Site patrons, businesses adjacent to permitted Group Sites, Group Site Organizers/Vendors and City staff who play a role in administering the City's Mobile Food Vending programs.<sup>3</sup> Group Site patrons who responded to the survey were generally very positive. The response from businesses adjacent to currently permitted Group Sites was mixed; the most negative responses came from brick and mortar restaurants located around City Hall. The main feedback from currently permitted Group Site Organizers and vendors included comments that permit fees are too high, and that a better system for reserving parking spaces for Group Sites and more and consistent enforcement are needed. These are larger issues that will be addressed by the proposal for new citywide mobile food regulations that staff intended to bring to the CED Committee of the City Council for consideration in early 2013.

In the meantime, staff is recommending that the Council extend the current Mobile Food Vending Group Site pilot program for Council Districts 1, 2, 3 and 4 to July 13, 2013 or until the Council adopts new permanent mobile food regulations, whichever comes first, so that those vendors and organizers currently part of the Group Site program will not experience any

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<sup>1</sup> Exceptions include instances where a Special Event Permit has been issued by the Oakland Police Department for a limited duration event, or by an ordinance or resolution establishing and regulating a street market in the city.

<sup>2</sup> OMC Section 5.51.040.

<sup>3</sup> Staff prepared a report summarizing Group Site Patron, Group Site Adjacent Business and Group Site Organizer/Vendor survey responses. It is available from the Planning, Building and Neighborhood Preservation Department at 250 Frank Ogawa Plaza, Suite 3315 and online at: [www.oaklandnet.com/mobilefoodvending](http://www.oaklandnet.com/mobilefoodvending)

interruption in operation from now until new permanent regulations are adopted. The proposed extension will only allow those who have approved Group Site locations as of December 31, 2012 to 1) continue to operate according to their currently permitted location, dates and hours, or 2) renew a permit that was active from January 1 through December 31, 2012 for the same location and frequency of previously approved vending dates, through the duration of the effective period of the Food Vending Group Site Pilot Program. Conforming changes to OMC Chapter 5.51 Food Vending Group Site Pilot Program are shown in the Ordinance attached to this Agenda Report.

### OUTCOME

Adoption of this ordinance will extend the current Interim Regulations for Mobile Food Vending Group Sites, to remain in place and be effective from January 1 through July 1, 2013 (or until the City Council adopts new permanent mobile food vending regulations, whichever comes first). This will ensure that there is no interruption in the ability of those vendors and organizers currently participating in the program to operate.

### BACKGROUND/LEGISLATIVE HISTORY

In 2001, the Council adopted regulations to establish a pilot program for both pushcart and vehicular food vending.<sup>4</sup> The City's pilot program regulations were then revised and made permanent in 2004, when the Council decided to establish an ongoing pushcart program (on sidewalks) and vehicular food vending program (on private property only) in limited areas along certain major corridors east of Lake Merritt.<sup>5</sup> These areas and regulations are specified in O.M.C. Chapter 5.49, Pushcart Food Vending Pilot Program; and O.M.C. Chapter 8.09, Vehicular Food Vending. Outside of the permitted areas specified in O.M.C. Chapters 5.49 and 8.09, Mobile Food Vending requires a Major Conditional Use Permit (CUP), and review and approval by the Planning Commission, except in the Mobile Food Vending Group Site pilot program areas defined, in part, by Council Districts 1, 2, 3 and 4; in instances where a Special Event Permit has been issued by the Oakland Police Department for a limited duration event; or by an ordinance or resolution establishing and regulating a street market in the city.

In the past several years, one of the more noteworthy food trends to emerge in Bay Area and nationally is the increasing number and popularity of high-quality mobile vendors offering a diversity of food choices from around the world. When located appropriately, mobile food

<sup>4</sup> Ordinance No. 12310, and 12311 established eighteen-month pilot pushcart and vehicular vending programs, respectively.

<sup>5</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.

vending can add vitality to the street and bring additional foot traffic to existing commercial districts, meaning increased sales overall. Mobile food vending can also contribute to the richness of Oakland's culinary and cultural offerings, and provide economic opportunities for small business persons. In discussions about Oakland's existing mobile food regulations and the potential of expanding the permitted areas for these activities, a number of concerns have been expressed, in particular in relation to such issues as:

- Potential competition with existing "brick and mortar restaurants";
- Ensuring proper public health permitting and inspections;
- Ensuring public safety, litter and cleanliness is maintained;
- The legitimacy of any associated commercial commissaries;
- Equitable and appropriate use of the public right-of-way; and
- The ability of the city to enforce its regulations.

As a first phase of updating the City's mobile food vending regulations, Staff presented a proposal to the CED Committee of the City Council for interim regulations in December 2011 that would allow for a group of mobile food vendors clustering in one location to vend, which are commonly referred to as "food pods." Vending in groups, as opposed to individually, was the focus of the first phase of work to update the City's mobile food regulations comprehensively, because vending in visually identifiable groups at known locations would: 1) increase the likelihood of being perceived as "an event" by potential patrons; and 2) facilitate identification and monitoring by City staff. The City Council adopted Interim Regulations for a permit program for Mobile Food Vending Group Sites ("MFV Group Sites") that went into effect on January 20, 2012 and is set to expire on January 1, 2013. MFV Group Sites are defined as "the stationary operation of three (3) or more mobile food vendors clustered together on a single site."<sup>6</sup>

The original intent was to have adoption of a comprehensive set of permanent citywide mobile food regulations that addressed all formats of mobile food vending (e.g. trucks/trailers or carts, and vending in groups or individually, inside and outside the public right of way) prior to January 1, 2013, superseding the current ordinance (which only deals with vending in groups of three or more mobile food vendors) and the existing Vehicular Vending and Pushcart Vending programs (OMC Chapters 8.09 and 5.49). Elements of the Oakland Municipal Code and Planning Code that are likely to be affected include:

- *5.02 Business Permits Generally*
- *5.48 Peddlers and Solicitors*
- *5.49 Pushcart Food Vending Pilot Program*
- *5.51 Food Vending Group Site Pilot Program*
- *8.09 Vehicular Food Vending*

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<sup>6</sup> OMC Section 5.51.040.

- *9.52 Special Event Permits*
- *12.04 Sidewalk, Driveway and Curb Construction and Maintenance*
- *12.08 Encroachments*
- *17.10 Use Classifications*
- *17.102 General Regulations Applicable to All or Several Zones*

Due to the complex nature of regulating mobile food vending, involving multiple City and County departments, it will not be possible to adopt new citywide regulations before January 1, 2013. Staff anticipates bringing the new citywide regulations for Planning Commission and City Council consideration early next year. In order to ensure that Group Site Organizers/Mobile Food Vendors currently participating in the Mobile Food Group Site Vending program can continue to operate until permanent regulations are in place, Staff is recommending extending the current regulations for Mobile Food Vending Group Sites until July 1, 2013, or until the City Council adopts permanent mobile food vending regulations, whichever comes first.

## ANALYSIS

In order to inform the next phase of the City's mobile food regulation update, City staff conducted an evaluation of the new Mobile Food Vending Group Site pilot program, and the existing Vehicular and Pushcart permit programs. To date, there have been nine (9) Vehicular Food Vending permits and seventeen (17) Pushcart permits issued in 2012 that operate in the permitted areas defined by OMC Chapters 5.49 and 8.09. At the time of the Group Site and adjacent business surveys, there were eight (8) permitted and active Mobile Food Vending Group Sites that ranged from 3 -16 trucks/pushcarts (see Attachment A). Out of these Group Sites, five (5) operate during the lunch period; and three Group Sites operate during the evening hours. All eight (8) Group Sites operate on a weekly basis and are located in sites within the public right-of-way, in curbside parking spaces, except for the "First Fridays" Group Site, which operates once a month and is located on private property.<sup>7</sup> Two of the Group Sites operate on the same block (Clay Street between 14th and 16th Streets) although on different days and on different sides of Clay Street.

The evaluation was based on surveys and meetings conducted with:

1. Group Site patrons;
2. Adjacent businesses;
3. Organizers/vendors, and;
4. City staff that play a role in administering and/or enforcing the program.

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<sup>7</sup> As of September 18, 2012, the MFV Group Site located at Splash Pad Park terminated its operations.

Key points of the evaluation are summarized below and in a report that is available from the Planning, Building and Neighborhood Preservation Department at 250 Frank Ogawa Plaza, Suite 3315, and on the Web at: [www.oaklandnet.com/mobilefoodvending](http://www.oaklandnet.com/mobilefoodvending).

### ***Group Site Patron Survey***

A total of 278 patrons were surveyed between August 6, 2012 and September 7, 2012 at the various Mobile Food Vending Group Sites.<sup>8</sup> A range of 14-56 patrons surveyed at each Group Site, as summarized in Table 1 below. Surveys were conducted by interviewing patrons directly and by asking patrons to fill out a form. Surveys were collected until the minimum number of 25 patrons was reached or for a span of 1.5 hours, whichever came first.

The following is a summary of the noteworthy results of the patron survey:

- 44% of patrons found out about the food truck Group Site by walking by.
- 89% of patrons typically spend less than \$20 per visit. Cost does not limit how often they visit the Group Site trucks;
- 77% of patrons reported “unique and diverse food” as the primary reason for visiting food trucks, followed by 37% reporting “convenient and fast”;
- 70% of patrons at lunch pods reported that they would have gone to a nearby restaurant if the Group Site food trucks were not there, compared to 47% of patrons at dinner pods;
- There was a distinct difference between the characteristics of lunch pods and dinner pods.
- 66% of patrons indicated that having food trucks would make them more likely to visit nearby businesses and restaurants around the area;
- Overall, most patrons thought food trucks enhanced their pedestrian experience and created a better sense of community (126 patrons gave positive comments, 0 gave negative comments)
- Generally, patrons felt “safe” around the food truck pods (5 patrons commented that the area felt safer than before because the food trucks brought more people in to the area).

### ***Adjacent Businesses to Group Sites Survey***

A total of 44 businesses were surveyed between August 8, 2012 and September 17, 2012, as shown in Table 1 on the following page. Most businesses located within a one-block radius from a particular Mobile Food Vending Group Site were surveyed. The number of businesses surveyed for each Group Site ranged from zero to 15, depending on how many businesses were located within a one-block radius. For each business, either the owner or manager was sought out to answer survey questions.

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<sup>8</sup> Surveys were conducted by City staff with assistance from the Oakland Food Policy Council (OFPC).

Table 1.

MFV Group Site	Day/Time Vending Occurs	# Businesses Surveyed
Clay Street between 14 <sup>th</sup> & 16 <sup>th</sup> Streets	Tu, W, Th, F (lunch)	15
12 <sup>th</sup> Street between Franklin & Broadway	Th (lunch)	5
Webster between 2 <sup>nd</sup> & 3 <sup>rd</sup> Streets	Tu, Th (lunch)	3
Snow Park	W (lunch)	6
Bites Off Broadway (365 45 <sup>th</sup> Street)	F (evening) – May – Oct.	0
Splash Pad Park	Th (evening)	12
First Fridays (2025 Telegraph Ave Parking Lot)	F (evening – 1 <sup>st</sup> Friday of each month)	3
<b>Total</b>		<b>44</b>

Responses were very specific to site context and therefore, it is difficult to generalize responses across all sites; a summary of key responses by location is provided below:

- Clay Street between 14<sup>th</sup> & 16<sup>th</sup> Streets: Most complaints against the food truck pods came from the restaurants in Frank Ogawa Plaza. Five out of six businesses in Frank Ogawa Plaza reported that business has decreased when the food trucks were operating, while all nine businesses located in City Center reported that business no change in business;
- 12th Street between Franklin & Broadway: There were only five businesses within a one-block radius of the permitted Group Site. There were generally positive responses regarding food trucks among survey respondents;
- Webster between 2nd & 3rd Streets: There were only three businesses/restaurants within a one-block radius of the permitted Group Site. Businesses generally reported not being affected by food trucks.
- Snow Park: There were mixed reviews from nearby restaurants/businesses. Three restaurants/cafes out of the six businesses surveyed complained about unfair competition from the presence of the food trucks; other businesses were either indifferent or positive.
- Bites Off Broadway (365 45th Street): This food pod occurred every Friday evening from about mid-May through mid-October in front of Studio One Recreation Center. There were no stores or businesses within a one-block radius to survey. Staff at the Studio One Recreation Center provided the following comments:
  - Food trucks bring more attention to the area and to the Recreation Center and Temescal Pool;
  - Food trucks provided a great environment for kids and for the community;
- Splash Pad Park: Business owners had generally positive or neutral responses. The only business that reported an increase in business when food trucks were in operation was the

Grand Lake Theater. Four out of twelve businesses report increased foot traffic, but ten out of twelve businesses report that business has stayed the same. Five businesses believe that food trucks have the potential to draw more patrons to the area and make them more likely to visit nearby restaurants/businesses.<sup>9</sup>

- First Fridays (2025 Telegraph Ave Parking Lot): There were only three businesses located within a one-block radius. Survey respondents generally believed that the food truck pod did increase foot traffic, and did have the potential to draw patrons to the area that may return to other restaurants or businesses in the future.

### ***Group Organizer/Vendor Survey***

The following is a summary of key findings from the responses to the Organizer/Vendor survey and from meetings held over the past year and a half:

- Most said that permit fees are too high; one person commented that the fees were “not a problem;”
- Business is less profitable than expected after permitting costs;
- Permitting process is time-consuming with a lot of paperwork;
- There is a strong desire for Oakland to allow permitting for individual trucks to vend in more areas in the City;
- The “No Parking” signs that the City has provided have often been stolen or tampered with, resulting in other cars being parked at Group Site approved locations; the process for reserving parking spaces for the mobile food trucks needs to be improved;
- There is a strong desire to see more and consistent enforcement; some vendors report seeing unpermitted vendors vending near their permitted Group Site without any enforcement occurring; there is also a lot of unpermitted vending reported throughout the City.

### ***Feedback from City Staff Who Play a Role in the City’s Current Mobile Food Vending Permit (MFV) Programs***

Feedback from City staff mainly relate to two areas: program administration and consistency with the original program intent. Regarding program administration, the following observations were made:

- Since the MFV Group Site permit is a new program, involving coordination with several City departments and the County Environmental Health Department, it took a few months to get the process to run smoothly.

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<sup>9</sup> The July 3, 2012 online edition of the “Splash Pad Park newsletter” included the following comment about the Splash Pad Food Truck Pod: “The past several weeks, Lake Park has been busier than usual every Thursday thanks to the arrival of the “Splash Pad Food Truck Pod”. Council member Pat Kemighan talked about this at the Lakeshore BID Annual Meeting last month. She said this is a temporary, city-wide pilot program to find out how the food trucks impact individual neighborhoods. The most obvious concern is that their presence could hurt area restaurants. According to Pat, the only person she's spoken with regarding this issue is Gary Rizzo. He thinks they're great as the food trucks generate far more pedestrian traffic than we'd be seeing otherwise.”



- At this point, it appears that the majority of staff time is required during the MFV Group Site permit application process (e.g. updating files, checking Group Organizer and participating vendor documents, etc.). At the current scale of the MFV Group Site program, issuing the permits to vend on the approved dates does not seem to be taking as long as originally estimated. It appears possible to recalibrate fees based on changes to permit processing. Staff will revisit fees as part of permanent citywide program, which are not anticipated to be based on a per-event cost but rather offer the option of an annual or shorter-term “flat fee” permit.
- Reservation of curbside parking is an issue since Permittees are experiencing problems with having their “No Parking” signs removed or tampered with, resulting in other cars being parked in their permitted locations during their approved vending dates/hours. Placing permanent restrictions on parking (i.e., installing signs) would require action by City Council. Staff is exploring options to present to City Council as part of the citywide permanent program.
- There is a concern over staff resources regarding permit processing and enforcement when MFV program is expanded to a citywide permanent program. Staff will be presenting options to City Council as part of the citywide permanent program that includes looking at earmarking new permit fees to fund dedicated staff to help with administration and enforcement.

Regarding consistency with the original intent:

- City staff did not anticipate that most proposed Group Sites would be located in curbside parking spaces, which is actually the least optimal scenario with respect to safety and metered parking. Staff will explore how to incentivize other mobile food vending scenarios.
- The resulting concentration around immediate the City Hall area was also not anticipated. One of the original goals was to add foot traffic and activate properties/areas of the City that have nearby employment and residential population, but are underutilized (e.g. surface parking and vacant lots).
- Economic Development and Planning, Building and Neighborhood Preservation staff are working in coordination with MFV Group Site Organizers and vendors to develop incentives and identify potential vending sites that balance Organizer/Vendor interests to locate in areas with high concentrations of workers/residents and the City’s interests to activate underutilized/under-served areas and to minimize conflict with brick and mortar restaurants.
- City staff expected a greater response to the Group Site permit program, specifically from Business Improvement District/Community Benefit District Managers, who presumably would be in a good position to know locations that would be appropriate (i.e., low conflict with adjacent businesses, high population of potential customers – residents or employees). Staff did receive feedback that since this was a new program some were

waiting to see how it did before getting into unfamiliar territory. The paperwork involved in the process was also perceived as daunting.

### ***Conclusions and Recommendations***

As a first phase of increasing opportunities to allow for mobile food vending businesses to operate legally in Oakland, staff believes that the MFV Group Site program is going well overall, based on the evaluation conducted. There is definitely room for improvement. Some issues can be dealt with now, such as marketing/publicity and fees, while others would be more appropriately addressed as part of the proposal for a new, permanent citywide mobile food vending program. Based on staff's current assessment of the time it takes to process and issue permits for additional vending dates after the first vending date for an approved Group Site has been approved, staff is recommending a reduction in the permit event fee to \$50 from \$100. Staff has also implemented changes to the City's website that will make it much easier for the public to use the website to find out exactly which food vendors will be vending at a particular location/date.

The larger issues related to staffing, enforcement, parking must be addressed in any proposal for a comprehensive, citywide mobile food vending program. Staff intends to bring a proposal to the CED Committee of the City Council in early 2013, with the goal that a new set of regulations may be adopted and implemented in time for the beginning of the 2013 spring vending season.

In the meantime, staff is recommending that the Council extend the current Mobile Food Vending Group Site pilot program for Council Districts 1, 2, 3 and 4 to July 1, 2013, or until the Council adopts new permanent mobile food regulations, whichever comes first. This would allow vendors currently participating in the Group Site program to avoid any interruption in operation from now until new permanent regulations are adopted. The proposed extension will only allow those who have had approved Group Site locations approved as of December 31, 2012 to:

1. Continue to operate according to their currently approved dates/hours; or
2. Renew a permit that was active from January 1 through December 31, 2012 for the same frequency of previously approved vending dates through July 1, 2013, or until the Council adopts new permanent mobile food regulations, whichever comes first.

All other elements of the interim regulations are proposed to remain the same except for the following minor amendments:

- The total maximum number of 40 vending dates allowed under a particular Food Vending Group Site permit is proposed to be deleted since the City would be extending the regulations beyond the original effective period (O.M.C. Section 5.51.030.B.);

Item: \_\_\_\_\_  
CED Committee  
Nov. 27, 2012

- The prohibition to locate within 100 feet of a city park unless written consent is obtained is being amended to also include any City-owned facility or property.

All changes described above, to OMC Chapter 5.51 Food Vending Group Site Pilot Program and the Master Fee Schedule, are shown in the Ordinances attached to this Agenda Report.

### PUBLIC OUTREACH/INTEREST

Over the past year and a half, staff has been meeting with stakeholders representing vendors, mobile food event organizers that have experience vending/organizing events in multiple jurisdictions, the City's business improvement and community benefit districts, and "brick and mortar" restaurants. Staff is also consulting with other cities that have been working on, or have recently adopted, mobile food regulations.

### COORDINATION

Planning staff has met with a Technical Advisory Committee composed of City and County staff from departments that either currently or could in the future play a role in permitting and enforcement of mobile food vending. These include staff from the –Department of Planning Building, and Neighborhood Preservation, the City Administrator's Finance and Business Tax divisions, OPD - Parking, the Public Works Agency- Transportation Services, the Police and Fire Departments, and the offices of the City Administrator and the City Attorney.

### COST SUMMARY/IMPLICATIONS

The extension of the current interim Food Vending Group Site Pilot Program includes the following fees:

- A nonrefundable application fee of \$421.66
- A notification fee of \$200.00 would also be charged to cover the cost of preparing a one-time required noticing of property owners, business owners, and building occupants located within three hundred (300) feet of the Group Site location
- A per event fee of \$50.00 for each additional vending date after the first approved vending date, not to exceed the maximum allowed vending frequency per Permit of up to two (2) dates per week. As noted above, based on an assessment of the current Group Site program, staff is proposing to reduce the per event permit fee from \$100 per event to \$50 per event.

To date, a total of \$30,606 has been collected as part of the Group Site permit program, of which, \$19,400 in application, permit and signage fees have been deposited to the General Fund. The remaining \$11,206 consists of \$4,384 in parking meter fees, and \$6,822 City park use fees (which must be paid if a Group Site is within 100 feet or inside a City park).

Proposed Group Site fees are set at a level that staff believes will recover costs associated with implementation of the extension of the interim Group Site Pilot Program, and the permitting and review of food vending activities by the City Administrator, or his or her designee. Fees will be reassessed as part of the development of a new permanent citywide program regulating mobile food vending.

### **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:***

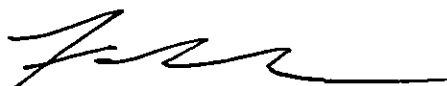
- Encourage greater access to healthy, affordable food in underserved Oakland neighborhoods, while encouraging self-employment opportunities.

CEQA

The extension of the current Mobile Food Vending Group Site regulations is not a project under CEQA.

For questions regarding this report, please contact Alisa Shen, Planner, at (510) 238-2166.

Respectfully submitted,



Fred Blackwell  
Assistant City Administrator

Reviewed by:  
Scott Miller, Interim Director  
Dept. of Planning, Building, and Neighborhood Preservation

Ed Manasse, Strategic Planning Manager

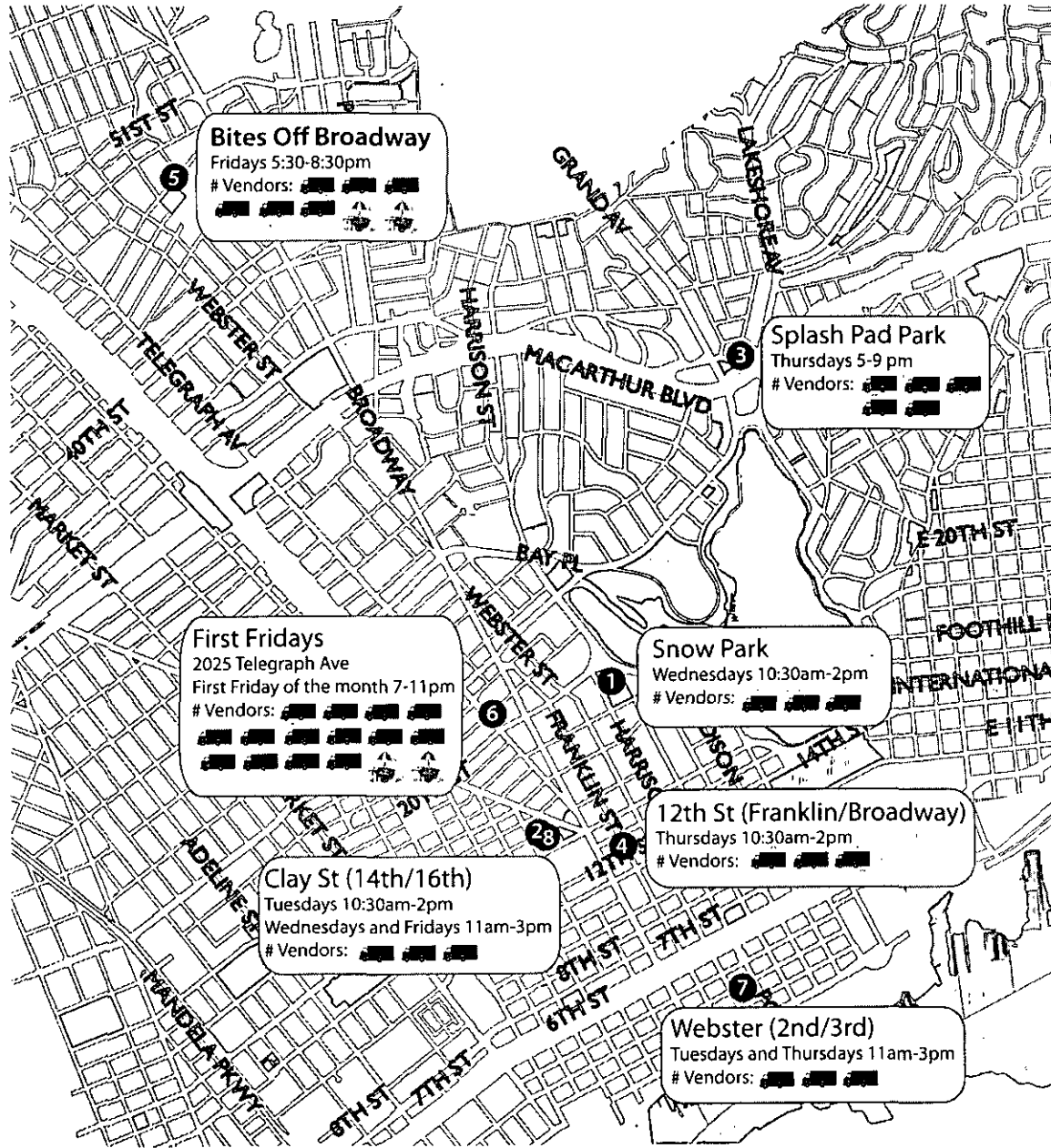
Prepared by:  
Alisa Shen, Planner III  
Dept. of Planning, Building, and Neighborhood Preservation

Deanna J. Santana, City Administrator

Subject: Mobile Food Vending Group Site Extension and Minor Amendments

Date: November 5, 2012

Permitted Mobile Food Vending Group Sites at the time of the Group Site and adjacent business surveys (August – September 2012)\*



\*Survey results are available online at: [www.oaklandnet.com/mobilefoodvending](http://www.oaklandnet.com/mobilefoodvending)

Item: \_\_\_\_\_  
CED Committee  
Nov. 27, 2012

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OAKLAND

2012 NOV 14 PM 4:09

APPROVED AS TO FORM AND LEGALITY



INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

City Attorney

## OAKLAND CITY COUNCIL

ORDINANCE No. \_\_\_\_\_ C.M.S.

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**AN ORDINANCE EXTENDING INTERIM REGULATIONS WITH MINOR AMENDMENTS FOR PERMITTING MOBILE FOOD VENDING GROUP SITES WITHIN A LIMITED AREA OF THE CITY OF OAKLAND DEFINED, IN PART, BY CITY COUNCIL DISTRICTS 1, 2, 3, AND 4. THE INTERIM REGULATIONS CONTAINED HEREIN SHALL REMAIN IN PLACE AND BE EFFECTIVE THROUGH JULY 1, 2013, OR UNTIL THE CITY COUNCIL ADOPTS NEW PERMANENT MOBILE FOOD VENDING REGULATIONS, WHICHEVER COMES FIRST.**

**WHEREAS**, changes in the economy and the growing popularity of mobile food vending have increased mobile food vending in both the public and private right of way in the City of Oakland; and

**WHEREAS**, on December 20<sup>th</sup>, 2011 the City Council adopted interim regulations to allow permitted food vending "Group Sites" or "Food Pods" to operate legally in a limited area in the City of Oakland defined, in part, by Council Districts 1, 2, 3, and 4, as set forth in OMC Chapter 5.51 Food Vending Group Site Pilot Program; and

**WHEREAS**, as originally adopted, the interim regulations are set to expire on January 1, 2013; and

**WHEREAS**, the original intent was to have new permanent citywide mobile food vending regulations in place that would supersede the interim regulations prior to January 1, 2013; and

**WHEREAS**, due to the complex nature of regulating mobile food vending inside and outside the public right-of-way, involving coordination across several City departments, it will not be possible to adopt new citywide regulations prior to the expiration of the current interim regulations; and

**WHEREAS**, extending the current interim regulations to remain in place and be effective from January 1 through July 1, 2013 (or until the City Council adopts new permanent mobile food vending regulations, whichever comes first) will ensure that there is no interruption in the ability of those currently participating in the program to operate; and

**WHEREAS**, the interim regulations contained in OMC Chapter 5.51 shall only apply to Group Site Organizer/Vendors who have been granted a Group Site permit as of December 31, 2012 to 1) continue to operate according to their currently permitted dates/ hours, or 2) renew a permit that was active from January 1 through December 31, 2012 for the same frequency of previously approved vending dates, through July 1, 2013, or until the Council adopts new permanent mobile food regulations, whichever comes first; and

**WHEREAS**, the total maximum number of 40 vending dates allowed under a particular Food Vending Group Site permit in O.M.C. Section 5.51.050.D. shall be deleted since the regulations are being extended beyond the original effective period; and

**WHEREAS**, the prohibition to locate within 100 feet of a city park unless written consent is obtained is being amended to also include any City-owned facility or property; and

**WHEREAS**, the proposal is exempt from the California Environmental Quality Act (CEQA) under several CEQA Guidelines, including without limitation Section 15061(b)(3) (known as the "General Rule," that states a project is exempt from CEQA if there is no possibility that the activity in question will have a significant effect on the environment) and Section 15183 (projects consistent with a Community Plan, General Plan and/or Zoning); and

**WHEREAS**, for the reasons set forth above, the Council declares that this ordinance is necessary to preserve the public peace, health, welfare or safety, and to protect the health, safety, and welfare of the community, and the "Whereas" clauses above taken together constitute the City Council's statement of the reasons constituting such necessity; now, therefore

**THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

Section 1. The following section of the Oakland Municipal Code is hereby amended as follows:

**Chapter 5.51**

**FOOD VENDING GROUP SITE PILOT PROGRAM**

Sections:

**5.51.010 – Title and purpose.**

**5.51.020 - Applicability.**

**5.51.030 – Expiration of the Food Vending Group Site pilot program.**

**5.51.040 - Definitions.**

**5.51.050 – Food Vending Group Site Permit required.**

**5.51.060 - Contents of application form.**

**5.51.070 - Application procedure.**

**5.51.080 - Action on application.**

**5.51.090 - Conditional approval of Food Vending Group Site Permit.**

**5.51.100 - Grounds for denial of application.**



- 5.51.110 – Transferability of Food Vending Group Site Permits and requests for changes in food vendor participants.
- 5.51.120 – Requests for Additional Vending Dates and Annual Renewal.
- 5.51.130 – Operating standards.
- 5.51.140 - Revocation of Food Vending Group Site Permit.
- 5.51.150 - Penalties for violation of Food Vending Group Site Permit requirements.
- 5.51.160 - Enforcement.
- 5.51.170 - Abatement generally.
- 5.51.180 - Order to abate.
- 5.51.190 - Abatement procedure.
- 5.51.200 - Violations constituting infractions.
- 5.51.210 - Penalty for violation.

5.51.010 – Title and purpose.

This chapter shall be known as the Food Vending Group Site Pilot Program ordinance, and establishes an interim pilot program for issuing Food Vending Group Site Permits until ~~January 1~~ July 1, 2013, or until the City Council adopts permanent mobile food vending regulations, whichever comes first.

The general purpose of these interim regulations is to allow permitted food vending “group sites” or “food pods” to operate legally in the City, and to bring vitality, pedestrian activity, and spillover economic activity to surrounding districts while protecting the health, safety, comfort, convenience, prosperity, and general welfare of the Oakland community and customers with a minimum level of cleanliness, quality and security.

5.51.020 – Applicability.

A. The interim regulations contained in this chapter shall only apply to properties located:

1. Within Oakland City Council Districts 1, 2, 3, and 4; and
2. In a CN Neighborhood Center Commercial zone; CC Community Commercial zone; CR Regional Commercial zone; C-40 or C-45 Commercial zone; CBD Central Business District -C, -X, or -P zone; CIX, IG, IO, M-20, M-30, or M-40 Industrial zone (not including any such designation on Port of Oakland property); OS Open Space -RSP, -CP, -NP, -AMP, -PMP, -LP, -SU, or -AF zone (not including any such designation north of Highway 13); S-1 Medical Center zone; S-2 Civic Center zone; or RU Urban Residential -4 or -5 zone, as such terms are defined in the Oakland Planning Code.

These regulations shall not apply to areas of Oakland subject to the Pushcart Food Vending Program set forth in Chapter 5.49 of the Municipal Code, or the Vehicular Food Vending Program set forth in Chapter 8.09 of the Municipal Code.

B. To the extent that there is any express conflict between the interim regulations in this Chapter and other regulations in the Oakland Municipal and Zoning Codes, the regulations in this Chapter shall take precedent.

C. To ensure public safety and consistency with applicable City codes, appropriate additional permits will be required, which include but are not limited to connecting to on-site utilities, right-of-way encroachments, temporary street closures, or use of public property.

D. The interim regulations contained in this chapter shall only apply to Group Site Organizer/Vendors who have been granted a Group Site permit as of December 31, 2012 to 1) continue to operate according to their currently permitted location, dates and hours, or 2) renew a permit that was active from January 1 through December 31, 2012 for the same location and frequency of previously approved vending dates, through the duration of the effective period of the Food Vending Group Site Pilot Program.

**5.51.030 – Expiration of the interim Food Vending Group Site Pilot Program.**

The interim regulations contained in this Chapter shall remain in place and be effective through January 1, 2013, or until the City Council adopts permanent mobile food vending regulations, whichever comes first.

**5.51.040 - Definitions.**

As used in this chapter:

"Applicant" means the Responsible Party who seeks a Food Vending Group Site Permit from the City, to conduct or sponsor a Food Vending Group Site as governed by this chapter.

"City Administrator" means the City Administrator of Oakland or his/her designee.

"City" means the City of Oakland.

"Mobile Food Vending Group Site" or "Food Vending Group Site" or "Food Vending Pod" means the stationary operation of three (3) or more mobile food vendors clustered together on a single site.

"Mobile Food Vending Group Site Pilot Program" or "Food Vending Group Site Pilot Program" means the interim regulations established in this Chapter for the review, issuance, and enforcement of Food Vending Group Site Permits in the area defined under Section 5.51.020.

"Mobile Food Vending" or "Food Vending" means the sale of prepared foods from a truck, trailer, or other movable wheeled equipment or vehicle during hours of

operation. Mobile food vending includes, but is not limited to, the following characteristics:

1. Food is prepared off-site in a commercial commissary and/or prepared on-site within the mobile food vending unit kitchen, per Alameda County Health Regulations; and
2. Food is ordered and served from the truck, trailer, or other movable wheeled equipment or vehicle utilized for mobile food vending;
3. Trucks, trailers, or other wheeled vehicles from which food is sold typically have a take-out counter and space for customer queuing;
4. Food is paid for prior to consumption;
5. Food and beverages are prepared and sold for on-site or off-site consumption; and
6. Food and beverages prepared and sold for off-site consumption are served in disposable wrappers, plates or containers.

“**Mobile food vending unit**” or “**Food vending unit**” means the truck, trailer, or other movable wheeled equipment or vehicle from which “mobile food vending” occurs.

“**Mobile food vendor**” or “**Food vendor**” means a person who is engaged in “mobile food vending.”

“**Permit**” or “**Food Vending Group Site Permit**” is an interim approval by the City Administrator, or his or her designee, that enables the holder to conduct a Mobile Food Vending Group Site and vend food items at authorized locations and times, for a specified period of time with specified public health and safety conditions including, but not limited to, the maximum number of vending unit spaces for use by individual food vendors, hours of operation, and/or site amenities, such as public seating areas and/or restroom facilities.

“**Responsible Party**” or “**Mobile Food Vending Group Site Event Organizer**” means, for the purpose of determining liability for damage to City or public facilities as a result of a Mobile Food Vending Group Site, the individual or legal entity who is directly responsible for organizing and/or conducting the Mobile Food Vending Group Site and/or the facility manager, and his or her respective designees.

“**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 Permit.

**5.51.050 - Food Vending Group Site Permit required.**

A. A Food Vending Group Site Permit shall be required for any Mobile Food Vending Group Site located as described in Section 5.51.020A, except as may otherwise be permitted by:

1. A Conditional Use Permit consistent with regulations in the Oakland Planning Code related to fast food restaurant activities;
2. An ordinance or resolution establishing and regulating a street market in the city;
3. A Special Event Permit consistent with regulations in Chapter 9.52 of the Oakland Municipal Code, but only for a defined limited duration (4 or fewer dates over a 12-month period).

B. It shall be unlawful for any person to conduct a Food Vending Group Site without first obtaining and maintaining a valid Food Vending Group Site Permit pursuant to this chapter for each location at which that activity is to occur. Conducting a Food Vending Group Site without a valid Food Vending Group Site Permit is a public nuisance, as defined in the Oakland Municipal Code. The City Administrator shall have power to adopt rules of procedure and regulations not inconsistent with the provisions of this chapter for the purpose of carrying out the provisions of this chapter; and a copy of such rules of procedure and regulations shall be on file and available for public examination at the Department.

C. Any Food Vending Group Site without a valid Food Vending Group Site Permit, including without limitation a person whose license has been suspended or revoked, shall be required to immediately permanently remove a food vending unit used for food vending and failure to cease operation as a Food Vending Group Site after the termination, revocation, expiration, or suspension of any Food Vending Group Site 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 the Oakland Municipal Code.

BD. Permit Limitations.

1. No Applicant may hold more than two (2) Food Vending Group Site Permits at the same time.
2. During the effective period of the Mobile Food Vending Group Site Pilot Program, any Applicant may apply for a Mobile Food Vending Group Site Permit pursuant to the requirements in this Chapter. Permit applications will be accepted and issued in the manner described in Section 5.51.070. The Applicant shall be the Responsible Party, and must be eighteen (18) years of age or older.
3. During the effective period of the Mobile Food Vending Group Site Pilot Program. ~~The~~ the number of vending dates allowed under a Food Vending Group Site Permit shall not exceed two (2) dates per week ~~or the maximum total number of forty (40) vending dates per 12-month period.~~ A Food Vending Group Site

~~Permit shall be valid for no more than one (1) year from the date of issuance, unless an annual renewal is considered, as set forth in Section 5.51.120.~~

4. The specific hours of operation shall be determined by the City, and shall not exceed more four (4) hours of food vending operation on any day of permitted Group Site activity.
5. The Applicant shall specify in their Permit application the maximum number of proposed vending unit spaces to be provided for use by individual food vendors, the hours of operation, and the Group Site location.
6. No more than two (2) Food Vending Group Site Permits shall be issued for any single site location at any given time, including any specific portion of public right-of-way; and only if operating dates for each Group Site occur on different days of the week.
7. No City action related to issuing or renewing a Food Vending Group Site Permit shall confer any form of land use entitlement and/or vested rights to the persons, entities, or properties associated with such Permit.

**5.51.060 - Contents of application form.**

A. The application for a Food Vending Group Site shall provide the following information:

1. Name of Applicant and mailing address for notification;
2. Maximum number of mobile food vendors to operate at the proposed Food Vending Group Site, legal and business names for each, and mailing address for notification;
3. Location of the proposed Mobile Food Vending Group Site (indicated by Address, Assessor Parcel Number (APN), and/or specific section of public right-of-way);
4. Four (4) photographs (showing different views) of the proposed Mobile Food Vending Group Site location;
5. 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 Mobile Food Vending Group Site to locate on the site; or copy of encroachment permit or license application if location is on public property;
6. All proposed dates for the Mobile Food Vending Group Site, and starting and ending times for each;

7. Sample menu or itemized list for each mobile food vendor to operate at the proposed Mobile Food Vending Group Site;
8. The size and description of each food vending unit (truck, trailer, or other movable wheeled equipment or vehicle); plus four (4) photographs (showing different exterior views) of each food vending unit;
9. Sample, photograph, or rendering of business signs;
10. Scaled or dimensioned site plan depicting the proposed location and arrangement of all participating food vending units; any proposed public seating or other site amenities; and any existing structures on site, driveways, or required parking spaces for other businesses;
11. Designation of a Mobile Food Vending Group Site Manager (if different than Mobile Food Vending Group Site Event Organizer) to be responsible for the day-to-day site management;
12. Proof of valid City of Oakland business tax certificate for the applicant and for each mobile food vendor to operate at the proposed Mobile Food Vending Group Site;
13. Proof of valid Alameda County Health Permit for each mobile food vendor to operate at the proposed Mobile Food Vending Group Site;
14. Mobile Food Vending Group Sites shall be located within two hundred (200) feet of an approved, readily available and fully functioning restroom facility per the California Retail Food Code, as may be amended. The Applicant shall provide documentation to the City demonstrating access to such restrooms for its Food Vendors and their employees. Documentation may include a letter from the property owner within two hundred (200) feet of the Food Vending Group Site location authorizing use of his or her restroom facilities by food vendors and their employees;
15. Signed statement that the Applicant accepts total responsibility for cleaning up after each Food Vending Group Site operation date. 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 a Permit that might otherwise be approved as set forth in Section 5.51.120. The City shall require Applicant to pay for cleaning, and/or post clean-up expenses; provided that if the Applicant does not pay, the City has the right to clean up the Food Vending Group Site and seek reimbursement from the Applicant; and

16. Any supplementary information which the City Administrator shall find reasonably necessary to determine whether to approve, deny or conditionally approve the Permit.

**5.51.070 - Application procedure.**

A. Upon submittal of a complete application, the City Administrator, in consultation with applicable City Staff, shall review the application based on a weighted point system that takes into consideration the required operating standards in Section 5.51.130, as well as the following additional criteria:

1. The extent to which the Applicant would be personally and actively engaged in organizing and/or conducting the Food Vending Group Site;
2. The Applicant's ability to successfully operate a Food Vending Group Site. Previous experience in food vending or comparable activity is desirable;
3. The Applicant's history of complying with City ordinances or State laws relating to business regulation, street vending, food service, and health;
4. The organization and layout of the proposed food vending unit spaces on the subject property;
5. The level of site amenities proposed at the Food Vending Group Site, such as seating areas and/or restroom facilities;
6. The variety and quality of the food items to be offered by the participating food vendors; and
7. Whether the location of the proposed Food Vending Group Site is likely to add vitality, pedestrian activity, and spillover economic activity to the surrounding district, including any Business Improvement District (BID) or Community Benefit District (CBD) in the area.

B. The City Administrator may reject applications that are deemed incomplete.

C. No later than thirty (30) days after submittal of a complete application, the City Administrator shall approve, conditionally approve, or deny Food Vending Group Site Permit applications based on the standards and criteria set forth in this chapter. Applicants shall only be issued a Food Vending Group Site Permit upon determination by the City Administrator that the application is complete and meets the standards and criteria set forth in this chapter; the Applicant has completed the required public notice, as described in subsection D below, and submitted proof of consent from any Business Improvement District (BID) or Community Benefit District (CBD) in the area, as applicable; and the City shall have issued, or be in the process of issuing, any other required City permits, including, but not limited to, those required for any connection to

on-site utilities, right-of-way encroachments, temporary street closures, or use of public property.

D. Applicants with complete and conforming applications, as described in subsection C above, shall be required to send notice of the proposed Group Site operation, in a form approved by the City, to all property owners, business owners, and building occupants located within three hundred (300) feet of the Group Site location. Notice shall also be given to any Business Improvement District (BID) or Community Benefit District (CBD) in the area and to the applicable Council District office. Notification shall be provided by certified mail or delivery, and be completed by the applicant not less than ten (10) days prior to the first proposed Group Site operation date.

E. Food Vending Group Site Permit applications will be accepted and issued in the manner described in this Section until such time as the interim regulations in this chapter expire, as stated in Section 5.51.030.

F. Upon application for and/or issuance of a Food Vending Group Site Permit, the Applicant shall pay a fee or fees as established by the City Master Fee Schedule. Such fees are not inclusive of other fees the Applicant may have to pay for other necessary permits, such as, but not limited to, right-of-way encroachment permits.

#### **5.51.080 - Action on application.**

A. The City Administrator shall determine whether an application is complete and meets the requirements for a Food Vending Group Site Permit as set forth in this chapter.

B. The City Administrator shall approve, conditionally approve, or deny Food Vending Group Site Permit applications based on the standards and criteria set forth in this chapter. Such action shall be taken no later than thirty (30) calendar days after submittal of a complete application, as described in Section 5.51.070. The City Administrator may impose conditions of approval on a Food Vending Group Site Permit in the exercise of his or her reasonable discretion, as stated in Section 5.51.090. The Applicant shall be notified of any conditions of approval in writing.

C. Food Vending Group Site Permit applications that are denied shall be notified in writing of the specific grounds for the denial, as stated in Section 5.51.100. Any applicant whose Permit application is denied shall have the right to request reconsideration of the denial. Reconsideration requests must be submitted to the City Administrator within ten (10) days of issuance of the denial. Said request for reconsideration shall be in writing and shall state any and all reasons of any nature why the City Administrator's stated reasons for denial are in error. Within fifteen (15) days of receipt of said request for reconsideration, the City Administrator shall schedule a hearing before an independent hearing officer on the reconsideration request, and send written notice of such to the Applicant. The initial decision of the administrative hearing officer shall become final ten (10) days after the date of decision unless appealed to the City Administrator in writing within ten (10) days of the hearing officer's decision. The decision of the City



Administrator on an appeal shall be final and conclusive, with no further appeal to the City Council or any other appellate body.

D. After an Applicant is issued a Group Site Permit that specifies the first approved vending date at the Group Site location, the Applicant will need to apply to the City Administrator, or his or her designee, for each additional vending date, not to exceed the maximum number and frequency of vending dates per Permit allowed by this chapter, and pay the required per event fee specified in the master fee schedule.

**5.51.090 - Conditional approval of Food Vending Group Site permit.**

The City Administrator may impose conditions of approval on a Food Vending Group Site Permit in the exercise of his or her reasonable discretion when conditionally granting a permit, including, but not limited to:

A. Requiring the Applicant to be personally present at all times during Food Vending Group Site operations;

B. Requiring the Applicant to provide a working telephone where he or she can be reached directly at all times during Food Vending Group Site operations;

C. Requiring the posting of the Food Vending Group Site Permit at the site;

D. Requiring the submission of copies of all promotional materials simultaneously with the posting or distribution of said materials. All promotional materials must identify the promoter, and must not be posted or affixed to or on City or public property;

E. Requiring a proof of liability insurance in the amount required by the City;

F. Requiring such other additional conditions as are reasonably believed to be necessary to protect the public health, safety, welfare and order, and to minimize adverse impacts upon the surrounding neighborhood and the general community.

**5.51.100 - Grounds for denial of application.**

A Food Vending Group Site Permit application may be denied upon evidence that:

A. Information contained in the application, or supplementary information requested from the applicant, is false in any material detail; or

B. The Applicant has failed to ensure conformity with the operating standards in Section 5.51.130; or

C. The Applicant has failed to provide a complete application form after having been notified of the requirement of producing additional information or documents; or

- D. The Applicant has not submitted a completed Food Vending Group Site Permit application form in the time provided pursuant to Sections 5.51.070 and 5.51.080; or
- E. 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
- F. The granting of the Food Vending Group Site Permit will have a substantial adverse impact upon the public health, safety, or order; or
- G. The granting of the Food Vending Group Site Permit will result in substantial adverse impacts including, but not limited to, noise, litter, traffic and congestion upon the surrounding neighborhood or the community in general; or
- H. Another complete Food Vending Group Site Permit application has been previously filed for the same place requested by the Applicant, or so close to the previously requested place as to cause traffic congestion or a demand for police services which the Police Department is unable to meet; or
- I. The time or size of the Food Vending Group Site will substantially interrupt the safe and orderly movement of pedestrian or vehicular traffic in the immediate vicinity of the Group Site, or disrupt the use of a street at a time when it is usually subject to great traffic congestion; or
- J. The concentration of persons and vehicles at the Food Vending Group Site will prevent proper police, fire, ambulance, or other essential public services to areas contiguous to the Group Site; or
- K. The size or duration of the Food Vending Group Site will require diversion of so great an amount of city police services that providing for the minimum level of police services to other areas of the city is jeopardized; or
- L. The Food Vending Group Site operation dates will substantially interfere with construction or maintenance work scheduled to take place upon or along the city streets or a previously granted encroachment permit; or
- M. The Food Vending Group Site will operate at a time and place where the noise created by the activities of the Group Site will substantially disturb or disrupt the activities of such institutions as schools and hospitals; or
- N. Sponsors have failed to pay the city for previous Food Vending Permit fees and costs; or
- O. The granting of the Food Vending Group Site Permit is likely to result in substantial negative impacts upon the delivery of city-wide police services and therefore

pose a threat to the public health, safety and order due to the likelihood of the Food Vending Group Site resulting in a call for a police emergency response.

**5.51.110 – Transferability of Food Vending Group Site Permits and requests for changes in food vendor participants.**

A. Food Vending Group Site Permits are not transferable in any form to any other person, firm, association, corporation, organization, club, or ad hoc committee.

B. Once a Food Vending Group Site Permit has been issued, the maximum number of food vendors allowed to operate at the Group Site location as a condition of the Permit shall not be increased at any time. However, an Applicant may request a change in the specific mix of food vendors approved under the original Permit, but only if such request is submitted for review and approval by the City Administrator at least three (3) days before the proposed date of new vendor participation.

C. Any request for a change in participating food vendors shall include the following information:

1. Proof of valid City of Oakland business tax certificate and Alameda County Health Permit for each proposed new mobile food vendor;
2. Sample menu or itemized list for each proposed new mobile food vendor;
3. The size and description of each proposed new food vending unit (truck, trailer, or other movable wheeled equipment or vehicle); plus four (4) photographs (showing different exterior views) of each proposed new food vending unit;
4. Sample, photograph, or rendering of business signs; and
5. Facsimile of logo to be applied to all disposable paper products to be provided to customers.

**5.51.120 – Requests for Additional Vending Dates and Annual Renewal.**

A. After an Applicant is issued a Food Vending Group Site Permit that specifies the one or more approved vending dates at the Group Site location, the Applicant may apply to the City Administrator for additional vending dates, not to exceed the maximum number and frequency of vending dates per Permit allowed by this chapter, and shall pay the required per event fee specified in the master fee schedule for each approved vending date.

B. Depending on the length of time this interim Food Vending Group Site Pilot Program remains active, requests for annual renewal of a Food Vending Group Site Permit may be considered, but only if submitted on or before the one (1) year anniversary of the original Permit issuance. Applicants who do not submit an annual renewal request on or before the one (1) year anniversary of the original Permit issuance must re-apply for

a new Food Vending Group Site Permit according to the procedure set forth in Section 5.51.070.

**5.51.130 – Operating standards.**

A. **Location.** Food Vending Group Sites shall be subject to the following location requirements unless such activities are otherwise pennitted under Section 5.51.050 (A):

- 1 Food Vending Group Sites shall only be located in the areas and zoning districts set forth in Section 5.51.020. A Food Vending Group Site Pilot Program Area map is available at the City of Oakland Planning and Zoning counter (Zoning counter), located at 250 Frank H. Ogawa Plaza, Second Floor.
2. Use of Open Space zoned property for Food Vending Group Sites may be exempted from normally required municipal and zoning regulations at the discretion of the City Administrator, based upon evidence that the applicant has received written consent in a form approved by the City from the park owner to locate in the subject park, the maximum frequency and overall length of the Group Site activity conforms to the regulations in this chapter, and the activity will not have a detrimental affect on public health, safety or welfare.
3. Food Vending Group Sites, as described in this chapter, shall not locate within one hundred (100) feet of:
  - a. Any public school, unless the Applicant obtains written consent in a form approved by the City from the applicable public school, indicating that the school has no objections to the proposed Food Vending Group Site locating on school grounds or within one hundred (100) feet of the subject school grounds (as measured along the path of travel from the location of the closest proposed food vending unit on its address lot or site to the parcel boundary of the subject school);
  - b. Any public park or City-owned facility or property, unless the Applicant obtains written consent in a form approved by the City from the applicable public park or City-owned facility or property owner, indicating no objections to the proposed Food Vending Group Site locating within the park or within one hundred (100) feet of the park or City-owned facility or property (as measured along the path of travel from the location of the closest proposed food vending unit on the application site to the parcel boundary of the park or City-owned facility or property); or
  - c. Any active Full Service Restaurant, Limited Service Restaurant and Cafe, or Fast Food Restaurant (as defined in OMC Title 17, the Oakland Planning Code), unless the Applicant obtains written consent in a form approved by the City from each applicable restaurant owner, indicating that he or she has no objections to the proposed Food Vending Group Site locating within one hundred (100) feet of their restaurant (as measured

from the location of the closest proposed food vending unit on its address lot or site along the path of travel to the front door of the subject restaurant).

4. Food Vending Group Sites shall be located within two hundred (200) feet of an available fully functioning restroom facility and shall provide documentation to the City demonstrating Applicant has access to such restrooms for its food vendors and their employees. Documentation may include a letter from a property owner within two hundred (200) feet of the Food Vending Group Site location authorizing use of his or her restroom facilities by food vendors and their employees;
  5. Unless permitted to operate from the same site but on different days of the week, Food Vending Group Sites shall not locate within three hundred (300) feet of any other Food Vending Group Site (as measured along the path of travel between the location of the closest proposed food vending units on each Group Site address lot or site).
  6. No more than two (2) Food Vending Group Site Permits shall be issued for any single site location at any given time, including any specific portion of public right-of-way; and only if operating dates for the Group Sites occur on different days of the week.
  7. Food Vending Group Sites shall not locate in parking spaces required to meet minimum parking requirements for any other business.
  8. Food Vending Group Sites shall not block driveways or the required parking for other businesses.
  9. Each food vending unit at a Food Vending Group Site shall be sited in a manner to insure that the customer queue maintains a minimum five (5) feet of unobstructed clear path along any public sidewalk or right-of-way when the service window faces the street or sidewalk.
- B. Condition/Appearance of Mobile Food Vending Unit.**
1. Each food vending unit at a Food Vending Group Site shall display current business tax certificate and health department permit in plain view on or immediately adjacent to the front, left-side window.
  2. The health department decal shall be located on the left rear of each mobile food vending unit.
  3. Each food vending unit at a Food Vending Group Site shall maintain a valid health permit at all times. If the health permit expires, or is suspended or revoked, then all food sales shall cease until the health permit is reinstated.

4. Food vending units at a Food Vending Group Site shall display no more than three (3) signs attached to the food vending unit, with a maximum aggregate display surface of thirty (30) square feet of signage per food vending unit.
5. Food Vending Units shall be entirely self-sufficient in regards to gas, electricity, water, and telecommunications, unless appropriate permits are reviewed and approved by City Departments, including but not limited to, the Building Services Division and the Fire Department.
6. Food vending units shall be maintained in movable condition at all times.
7. No Applicant or food vendor shall 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.

**C. Condition/Appearance of Site.**

1. The Group Site location shall be maintained in a safe and clean manner at all times.
2. Exterior storage of refuse, equipment or materials associated with the Group Site operation and each food vending enterprise is prohibited.
3. The lot shall be paved.
4. The Food Vending Group Site shall maintain site circulation and access consistent with the Americans with Disabilities Act (ADA).
5. 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 date of a Food Vending Group 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 Group Site Permit application.

**D. Lighting.** The Food Vending Group Site shall provide adequate lighting to ensure customer safety. Lighting shall be directed downwards and away from adjacent properties.

**E. Noise Control.** Noise levels measured at the Group Site location boundary or property line shall not exceed the city's noise ordinance standards.

**F. Litter Control.**

1. Each food vendor shall provide at least one thirty-two (32)-gallon litter receptacle within fifteen (15) feet of their food vending unit.
2. The applicant shall be responsible for maintaining the subject property and adjacent right-of-way free of litter on and within one hundred (100) feet of the subject location after each Food Vending Group Site operation date.
3. The applicant shall arrange and pay for collection and disposal of the waste after each Food Vending Group Site operation date.
4. 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.

**G. Security.**

1. The serving or consumption of alcohol is prohibited at Food Vending Group Sites.

**H. Hours of Operation.** No Mobile Food Vending Group Site activities shall be conducted before 7:00 a.m. or after 3:00 a.m. on any day of the week. The specific hours of operation shall be determined by the City, and shall not exceed more than four (4) hours of food vending operation on any day of permitted Group Site activity.

**5.51.140 - Revocation of Food Vending Group Site Permit.**

Food Vending Group Site Permits may be revoked at any time by the City Administrator in accordance with Chapter 5.02.080 for:

- A. Violating any of the required operating standards set forth in Section 5.51.130; or
- B. Violating any of the imposed Food Vending Group Site Permit conditions; or
- C. Unlawful or criminal activity occurring during the operation dates of a Food Vending Group Site; or any other violation of this Chapter

Revocation shall be immediately effective upon written notice of the revocation by the City Administrator. Revocation hearings and appeals shall be done in accordance with Chapter 5.02.090 and 5.02.100.

**5.51.150 - Penalties for violation of Food Vending Group Site Permit requirements.**

Any violation of this Chapter may be charged as a civil penalty or administrative citation as provided for in Chapter 1.08 of the Oakland Municipal 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.

**5.51.160 - Enforcement.**

The City Administrator 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.

**5.51.170 - Abatement generally.**

A. Failure to permanently remove a food vending unit used for food vending and failure to cease operation as a Food Vending 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 the Oakland Municipal Code.

B. When the City Administrator determines that a Food Vending Group Site has been used as an instrument for, or has contributed substantially to, any of the conditions stated in Sections 5.51.100 or 5.51.130 in violation of this Chapter, the City Administrator may deem the violation a public nuisance and issue a notice to abate the Food Vending 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.

**5.51.180 - Notice to abate.**

Upon declaring and deeming a violation of this Chapter a nuisance, the City Administrator shall send a notice of abatement to the property owner and 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 and applicant 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 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 Group Site 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 and/or Responsible Party to fail or neglect to comply with such order or notice of abatement. In the event that the property owner and/or applicant shall not promptly proceed to abate said nuisance condition(s), that is to say within seven (7) days of notice to abate, as ordered by the enforcing official, the abatement procedure set forth in Section 5.51.190 may be undertaken.

**5.51.190 - 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 the Oakland Municipal Code.

**5.51.200 - Violations constituting infractions.**

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

**5.51.210 - 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 one thousand dollars (\$1000.00) and, for a second conviction within a period of one year, by a fine of not more than two thousand dollars (\$2000.00) and, for a third or any subsequent conviction within a one-year period, by a fine of not more than five thousand dollars (\$5000.00). 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 ten thousand dollars (\$10000.00) 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 the Oakland Municipal Code.

Section 2. The City Council finds and determines the foregoing recitals to be true and correct and hereby makes them a part of this Ordinance.

Section 3. The City Council finds and determines that the adoption of this Ordinance is exempt from the California Environmental Quality Act ("CEQA"), including, but not limited to, Section 15183 "Projects Consistent with a Community Plan, General Plan or Zoning" and/or Section 15061(b)(3) of the State CEQA Guidelines, and authorizes the filing of a Notice of Exemption with the Alameda County Clerk.

Section 4. If any article, section, subsection, sentence, clause or phrase of this Ordinance is held to be invalid, the offending portion shall be severed and shall not affect the validity of the remaining portions which shall remain in full force and effect.

Section 5. The controls imposed by this interim ordinance shall remain in place and be effective through July 1, 2013, or until the City Council adopts permanent mobile food vending regulations, whichever comes first.

Section 6. For the term of this ordinance, as set forth in Section 5 above, the provisions of this ordinance shall govern, and to the extent there is any conflict between the provisions of this ordinance and the provisions of any other City code, ordinance, resolution or policy, all such conflicting provisions shall be suspended.

Section 7. This ordinance shall be effective on January 1, 2013 (after final passage by the City Council).

Section 8. This Ordinance is enacted pursuant to the City of Oakland's general police powers, Sections 106 of the Charter of the City of Oakland, and Article XI of the California Constitution.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF, and PRESIDENT REID

NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_

LaTonda Simmons  
City Clerk and Clerk of the Council  
of the City of Oakland, California

DATE OF ATTESTATION: \_\_\_\_\_

2012 NOV 14 PM 4:08

**AN ORDINANCE EXTENDING INTERIM REGULATIONS WITH MINOR AMENDMENTS FOR PERMITTING MOBILE FOOD VENDING GROUP SITES WITHIN A LIMITED AREA OF THE CITY OF OAKLAND DEFINED, IN PART, BY CITY COUNCIL DISTRICTS 1, 2, 3, AND 4. THE INTERIM REGULATIONS CONTAINED HEREIN SHALL REMAIN IN PLACE AND BE EFFECTIVE THROUGH JULY 1, 2013, OR UNTIL THE CITY COUNCIL ADOPTS NEW PERMANENT MOBILE FOOD VENDING REGULATIONS, WHICHEVER COMES FIRST.**

This Ordinance proposes to extend an interim pilot permitting process under the City of Oakland's Municipal Code Section 5.51: "Food Vending Group Site Pilot Program," until July 1, 2013, or until the City Council adopts new permanent mobile food vending regulations, whichever comes first. The intent of the extension is to ensure that those currently participating in the Group Site program will not experience any interruption in operation from now until new permanent regulations are adopted. The proposed extension will only allow those who have had approved Group Site locations approved as of December 31, 2012 to:

1. continue to operate according to their currently permitted location, dates and hours; or
2. renew a permit that was active from January 1 through December 31, 2012 for the same location and frequency of previously approved vending dates, through the duration of the effective period of the Food Vending Group Site Pilot Program.

All other elements of the interim regulations are proposed to remain the same except for the following minor amendments:

- The total maximum number of 40 vending dates allowed under a particular Food Vending Group Site permit is proposed to be deleted since we are extending the regulations beyond the original effective period (O.M.C. Section 5.51.030.D.);
- The prohibition to locate within 100 feet of a city park unless written consent is obtained is being amended to also include any City-owned facility or property.

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2012 NOV 14 PM 4:09

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY

*Allen*

City Attorney

**OAKLAND CITY COUNCIL**  
**ORDINANCE NO. \_\_\_\_\_ C.M.S.**

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**AN ORDINANCE AMENDING THE MASTER FEE SCHEDULE  
(ORDINANCE NO. 13133 C.M.S. AS AMENDED) TO REDUCE THE  
INTERIM FOOD VENDING GROUP SITE OPERATION DATE FEE.**

**WHEREAS**, on December 20<sup>th</sup>, 2011 the City Council adopted interim regulations to allow permitted food vending "Group Sites" or "Food Pods" to operate legally in a limited area in the City of Oakland defined, in part, by Council Districts 1, 2, 3, and 4, as set forth in OMC Chapter 5.51 Food Vending Group Site Pilot Program; and

**WHEREAS**, as originally adopted, the interim regulations are set to expire on January 1, 2013; and

**WHEREAS**, the original intent was to have new permanent citywide mobile food vending regulations in place that would supersede the interim regulations prior to January 1, 2013; and

**WHEREAS**, due to the complex nature of regulating mobile food vending inside and outside the public right-of-way, involving coordination across several City departments, it will not be possible to adopt new citywide regulations prior to the expiration of the current interim regulations; and

**WHEREAS**, extending the current interim regulations to remain in place and be effective from January 1 through July 1, 2013 (or until the City Council adopts new permanent mobile food vending regulations, whichever comes first) will ensure that there is no interruption in the ability of those currently participating in the program to operate; and

**WHEREAS**, based on staff's current assessment of the time it takes to process and issue additional vending dates after the first vending date for an approved Group Site permit, staff is recommending amending the Master Fee Schedule to reduce the permit Group Site Operation Date fee from \$100 to \$50; and

**WHEREAS**, for the reasons set forth above, the Council declares that this ordinance is necessary to establish interim regulations during the period of development of a new citywide mobile food vending program to allow review of currently pending requests to establish mobile food vending "Group Sites" or "Food Pods", and the "Whereas" clauses above taken together constitute the City Council's statement of the reasons constituting such necessity; now, therefore



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NOTICE AND DIGEST  
2012 NOV 14 PM 4:09

**AN ORDINANCE AMENDING THE MASTER FEE SCHEDULE (ORDINANCE NO. 13133 C.M.S. AS AMENDED) TO REDUCE THE INTERIM FOOD VENDING GROUP SITE OPERATION DATE FEE.**

This Ordinance proposes to amend the Master Fee Schedule to reduce the per Group Site Operation Date fee for the Interim Food Vending Group Site Pilot Program Ordinance. The Group Site Operation Date fee would be reduced from \$100 to \$50; all other fees in Subsection A.25. Food Vending Group Site Permit of the Master Fee Schedule would remain the same.