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AGENDA REPORT

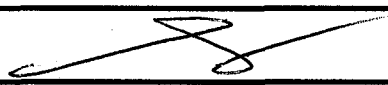
TO: Sabrina B. Landreth
City Administrator

FROM: Darin Ranelletti
Interim Director, PBD

SUBJECT: Supplemental Report on New
Citywide Mobile Food Vending
Program

DATE: March 13, 2017

City Administrator Approval

 Date: 3/15/17

RECOMMENDATION

Staff Recommends That Council Conduct A Public Hearing, And Upon Conclusion, Adopt A New Citywide Food Vending Permit Program. Action Requires Replacing Existing Oakland Municipal Code ("O.M.C.") Chapters 5.49 "Pushcart Food Vending Pilot Program," 5.51 "Food Vending Group Site Pilot Program" And 8.09 "Vehicular Food Vending" With A New Citywide Food Vending Program In O.M.C. Chapter 5.51; Making Various Conforming Changes To The O.M.C. And Planning Code; And Adopting California Environmental Quality Act (CEQA) Findings.

REASON FOR SUPPLEMENTAL REPORT

On February 28, 2017, the Community and Economic Development Committee (CED) of the Oakland City Council held a public meeting to consider a new Citywide Food Vending Program (Program). After considering the comments from 21 public speakers and from the CED members, a motion was made to recommend the new Citywide Food Vending Program to the full Council on March 21, 2017, with revisions and Council recommendations for new analysis to be presented in a Supplemental Report.

This report responds to the comments made by the CED members at the hearing, and presents staff recommendations for Council consideration.

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EXECUTIVE SUMMARY

On February 28, 2017, the CED Committee forwarded the item to the full Council for consideration with the following recommendations:

1. Change the buffer distance between food vendors and brick and mortar restaurants to 300 feet;
2. Include a method for "phasing in" a reduced number of permits in year one of the Program, so that enforcement is adequate;
3. Analysis by City staff of how many positions will be required to adequately enforce the new Food Vending Program regulations;
4. Ensure that rules for signage, labor hiring, and other permitting regulations are as equivalent as possible for a food vendor as to a restaurant;
5. City staff to return to Council at a future date with an ordinance that amends the Oakland Municipal Code, permitting mobile retail sales (i.e. "non-food" mobile vending); and
6. At Councilmember Campbell-Washington's request, add one block of the Leimert Boulevard commercial district, between Clemens and Oakmore, to the Program Permitted area map.

In addition to the CED Committee member's motion, this supplemental report includes:

1. Options showing the effect on the permitted vending area of different restaurant and schools buffer distances.
2. Changes to the ordinance from the version reviewed by CED on February 28, 2017 in order to:
 - a. make the ordinance internally consistent, and conform with other sections of the Oakland Municipal Code;
 - b. add new language to the ordinance that allocates fees for the Program to the Development Services Fund (2415); and
 - c. add new language to the ordinance that authorizes a lottery system be used by the Bureau of Planning for allocating vending locations in the public right-of-way;
3. Correction to Staff Presentation regarding new food vending permits on International Boulevard and Fruitvale Avenue; and
4. Explanation of how previous permit holders will be granted new permits in their current location, given new buffer distances and new requirements.

Each of these recommended changes are discussed in the following "Analysis and Policy Alternatives" section.

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ANALYSIS AND POLICY ALTERNATIVES

February 28, 2017 CED Committee Motion and staff response.

The motion made by the CED Committee on February 28, 2017 to recommend the new Citywide Food Vending Program to the full City Council on March 21, 2017 included six recommendations; each item from the CED motion is addressed below.

1. *Change regulation to require a 300-foot buffer distance between a vendor and a brick and mortar restaurant (from 100 feet as initially proposed by staff).*

Staff Response: CED Committee members recommended a buffer distance of 300 feet between vendors and restaurants, as a compromise between the 75-foot distance suggested by other speakers at the hearing¹, the proposed regulation (100 feet), the existing regulation (200 feet), and the distance requested by some food truck owners (1,000 feet).

Staff has analyzed the impact of a 300-foot buffer between vendors and restaurants and have concluded that it would significantly reduce the permitted vending area in the City, especially downtown, which is contrary to the main objective of the new Program, which was to increase food vending opportunities.

Staff has also researched what other cities require as buffers from food vendors. Table 1 shows a selection of California cities and their applicable buffer distances.

Table 1. Food Vending Buffer Distances (feet)

City	Buffer from vendor	Buffer from school	Buffer from restaurant
San Francisco	None	500-1000	75
San Jose	500	500	None
Berkeley*	None	None	None
Emeryville	200	300	200
Sacramento	400	400	100 (with outdoor seating; otherwise, none)

*Vending in the public right-of-way is at the City Manager's discretion.

However, given the Committee's motion, Staff presents two alternatives for the Council to consider:

- a. Change the buffer distances to a uniform 300 feet (see illustrative maps, **Attachment A**): from food vendor to vendor; from vendor to restaurants; and from

¹ Speakers from the Oakland Food Policy Council at the February 28th CED meeting called for a 75-foot buffer distance, a reduction from the current regulation (200 feet), and from staff's proposal (100 feet). Note that the equivalent buffer distance in the San Francisco food vending program is 75 feet.

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vendor to schools. This keeps the buffer distance recommend by CED members (300 feet), but changes the current proposal for vending near schools to 300 feet (from 500 feet). By reducing the distance from schools, while retaining the healthy food exemption, this option would slightly decrease the impact of a 300-foot restaurant buffer on the amount of permitted vending area in the city. An ordinance with these buffer distances is included as **Attachment B**; or

- b. Retain the existing 200-foot buffer between food vendors and restaurants, along with the 300-foot buffer distance between vendors, and 300-foot buffer distance from schools described in Option a. This changes the current proposal for vending near schools to 300 feet (from 500 feet), and changes the CED proposal for vending near restaurants to 200 feet (from 300 feet). The advantage of this option is that it keeps the distance between vendors and restaurants at the same distance it has been since 2001 in Fruitvale and Central and East Oakland—effectively it is a continuation of the current regulation. This option results in *70% more potential vending locations* when compared to the number of potential locations with a 300-foot restaurant buffer (see illustrative maps, **Attachment C**). An alternative ordinance with these buffer distances is **Attachment D** to this report.
2. *Staff to develop a “phase in” of the number of vending permits issued in year one of the Program, to allow for effective enforcement.*

Staff response: Staff shares the Council’s interest in only permitting the number of food vendors which can be effectively enforced.

For year one of the Program, to “phase in” the number of vendors, Staff proposes to reduce the number of designated vending spaces in the street right-of-way to 25 (from 50, as initially proposed), and to reduce the number of permits issued to trucks and trailers on private property, and to pushcarts and stationary carts in the sidewalk area, to 75 each. This modifies the original proposal to:

- 75 permits issued to trucks and trailers on private property;
- 75 permits issued to pushcarts and stationary carts on sidewalks; and
- 25 designated vending spaces in the street right-of-way.

Staff commits to returning to Council with an informational report after year one of the Program is complete, and if necessary, to suggest changes in the Program, such as to the number of permits.

Further, Staff notes that further restricting the number of vending permits, when combined with the CED Committee recommended 300-foot vendor/restaurant buffer, will likely make finding an available space to vend more difficult and competitive.

3. *Show analysis and budget, justifying the number of enforcement officers.*

Staff response: The tasks of the new enforcement officers are expected to include education and outreach to the vending community; field and site visits; research about

former permits and complaints; meetings with applicants; preparing citations and violation notices; conferring with management and the City Attorney; and data entry and follow up.

The estimate of how many staff people will be required to enforce the Program includes the following assumptions:

- The majority of existing illegal vendors in the city choose to voluntarily participate in the City's permitting program once they are made aware of the new requirements through initial education and outreach (in multiple languages, as needed);
- Only a small percentage of illegal vendors will continue to operate in the City without a permit after initial education and outreach by an enforcement officer, and become subject to administrative penalties, citations, civil action and/or other legal remedies, including seizure of a food vending facility, and/or food and drink merchandise;
- No more than 25 percent of all permits issued will result in full enforcement actions;
- Each full enforcement action for a single vendor will take an officer about 6.5 hours of staff time on average; and
- The majority of customer interactions will require less time than 6.5 hours.

The City Administrator's Office, in their 2017-2018 Budget request to Council, is, as of this writing, seeking two full time enforcement staff to enforce the permits which are in O.M.C. Chapter 5 (besides food vending, this includes cannabis, massage and other business activities). As noted in the February 28th Agenda Report, the cost of both positions is approximately \$290,000, which will be covered by the expected revenue from the food vending program, and from fee revenue from other permits issued by the City Administrator's office (such as massage).

These two staff members would work some nights and weekends, and would be scheduled to work in conjunction with Planning and Zoning, Oakland Police, Fire, Parking Enforcement and other City staff on citations in the field. They will also participate in enforcement actions done with the Alameda County Environmental Health Division.

The daily assignments and operations of these two staff will be at the discretion of the City Administrator's Office. Currently, no staff are assigned to any of the tasks described above. If it is necessary, during year one of the Program, to add more enforcement capabilities, and if the permit revenues warrant it, then temporary enforcement staff will be sought.

4. *Ensure that regulations for vendors are equivalent to those for restaurants (e.g. signage, labor laws, etc).*

Staff Response: Food vendors in the Program are expressly required to follow all laws and regulations (such as the Oakland minimum wage law) which are applicable. Signage is limited on a food facility to 30 square feet and must be approved in advance.

5. *Staff to return to Council at later date with new non-food mobile vending regulations.*

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Staff Response: Staff agrees to return to Council with a program to amend the Oakland Municipal Code's current prohibition on any vehicle selling merchandise from a street. Given the other priorities that Planning Bureau staff have committed to in Spring and Summer 2017, it is expected that Staff could to return Council in Fall 2017 or another date if practicable, with a proposal for amendment. A public and community outreach effort will be necessary by Staff, to engage Oakland's small business community in this proposed change to a long-standing prohibition; however, other California cities have adopted similar mobile retail ordinances, and staff will contact those jurisdictions to learn about their best practices and regulations.

6. *Add Leimert Boulevard, between Clemens and Oakmore, to Program Permitted Area map.*

Staff Response: Staff agrees with the inclusion of the Leimert Boulevard commercial block to the Program Area (and had included it in an earlier version of the Program Permitted Area, given the success of a group site at Rocky's Market parking lot). The commercial block of Leimert Blvd, between Clemens and Oakmore is added to the Program area (see map, **Attachment E**). This will allow individual food vendors or group sites to vend from locations in this one Leimert block, should buffer distances permit.

Staff proposed changes for March 21, 2017

Staff recommends the following additional changes to the ordinance.

1. **Staff Recommendation:** adopt new language to the food vending ordinance, with changes shown in track changes/redline) to:
 - Make the ordinance internally consistent, and to conform with other sections of the Oakland Municipal Code;
 - Allocate fees for the Program to the Development Services Fund (2415); and
 - Expressly authorize a lottery system be used by the Planning Division for allocating vending locations in the public right-of-way. This Lottery will be used to allocate spaces for stationary vehicles, such as food trucks at designated street parking spaces, and stationary carts on sidewalks. The language for the lottery distribution is based on the existing Oakland Municipal Code procedure used for the Oakland Artisan Market Place.²
 - Make clarification to Ordinance, section 5.51.110 – "Decisions regarding the approval, approval with conditions, or denial of a Food Vending Permit." Explaining that the priority groups will be used to issue permits on an ongoing basis (not just in the first year).
2. **Staff Recommendation:** In addition to the changes to the ordinance in #1 above, adopt an ordinance with 200 foot buffer distance vendors and restaurants, and 300 feet between vendors and schools. This ordinance is included as **Attachment D** to this report.

² See OMC Section 5.43.070 "Lottery".

- a. An alternative, CED-recommended ordinance, with 300 foot buffer distances between vendors and restaurants is included as **Attachment B** to this report.
3. During the CED Committee meeting, when questioned by Councilmember Gallo, Staff misspoke, saying International Boulevard was the only street where new permits would not be issued (except to applicants with a history of previous City permits on that street). A correction to that statement is found in the Administrative Guidelines, which state in Section 3a that:
 - i. Vending from food trucks or similar vehicles is prohibited within the International Boulevard street right-of-way and on private property, between 1st and 105th Avenues during the construction period of the Bus Rapid Transit (BRT) Line, and for one year after the start of its full operation. Only vendors with a history of permitted food vending on International Boulevard will be issued permits to continue to vend on International Boulevard in this new program.
 - ii. Vending from any type of food vending facility is prohibited within the Fruitvale Avenue public right-of-way (street and sidewalk) between East 12th Street and East 22nd Street. Vending from private property on Fruitvale Avenue is permitted.
 - iii. Vending from food trucks or similar vehicles is prohibited within the Broadway street right-of-way between Embarcadero and 27th Street. Other types of food vending on this portion of Broadway are permitted.
 4. Staff intended to clarify at the Committee meeting that vendors with current or previously issued food vending permits from the City of Oakland will be reviewed in the new program against the buffer distances which were in place at the time of their initial permit. This is a way of allowing some "non-conforming" vendors to come into the new Program in their current locations. This will also be true of group sites, which may have been permitted in locations with a restaurant buffer distance of 100 feet (the current regulation), and now may have a Program buffer of 300 feet (if the Council adopts that buffer distance).
 5. Staff made conforming edits to the Administrative Guidelines, reflecting the changes noted in this report (**Attachment F**).

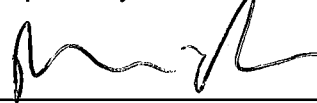
ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That Council Conduct A Public Hearing, And Upon Conclusion, Adopt A New Citywide Food Vending Permit Program with the following revisions:

- 1) Change the required buffer distance between food vendors and restaurants to 200 feet, and between food vendors and schools to 300 feet;
- 2) Reduce the maximum number of designated vending spaces in the street right-of-way to 25; the maximum number of permits issued to trucks and trailers on private property to 75; and the maximum number of permits issued to pushcarts and stationary carts to 75;
- 3) Expressly authorize a lottery system be used by the Bureau of Planning for allocating vending locations in the public right-of-way. This Lottery will be used to allocate spaces for stationary vehicles, such as food trucks at designated street parking spaces, and stationary carts on sidewalks;
- 4) Make minor changes to the ordinance to be internally consistent, and conforming with other sections of the Oakland Municipal Code; and
- 5) Add Leimert Boulevard between Clemens and Oakmore to Program Permitted Area map.

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

Respectfully submitted,



Darin Ranelletti
Interim Director, Department of Planning and
Building

Reviewed by: Ed Manasse
Strategic Planning Manager

Prepared by: Devan Reiff, AICP
Planner III
Bureau of Planning

Attachments

Attachment A: Illustrative maps of a 300 foot buffer from schools and restaurants

Attachment B: Revised Food Vending Program Ordinance with 300 foot buffers

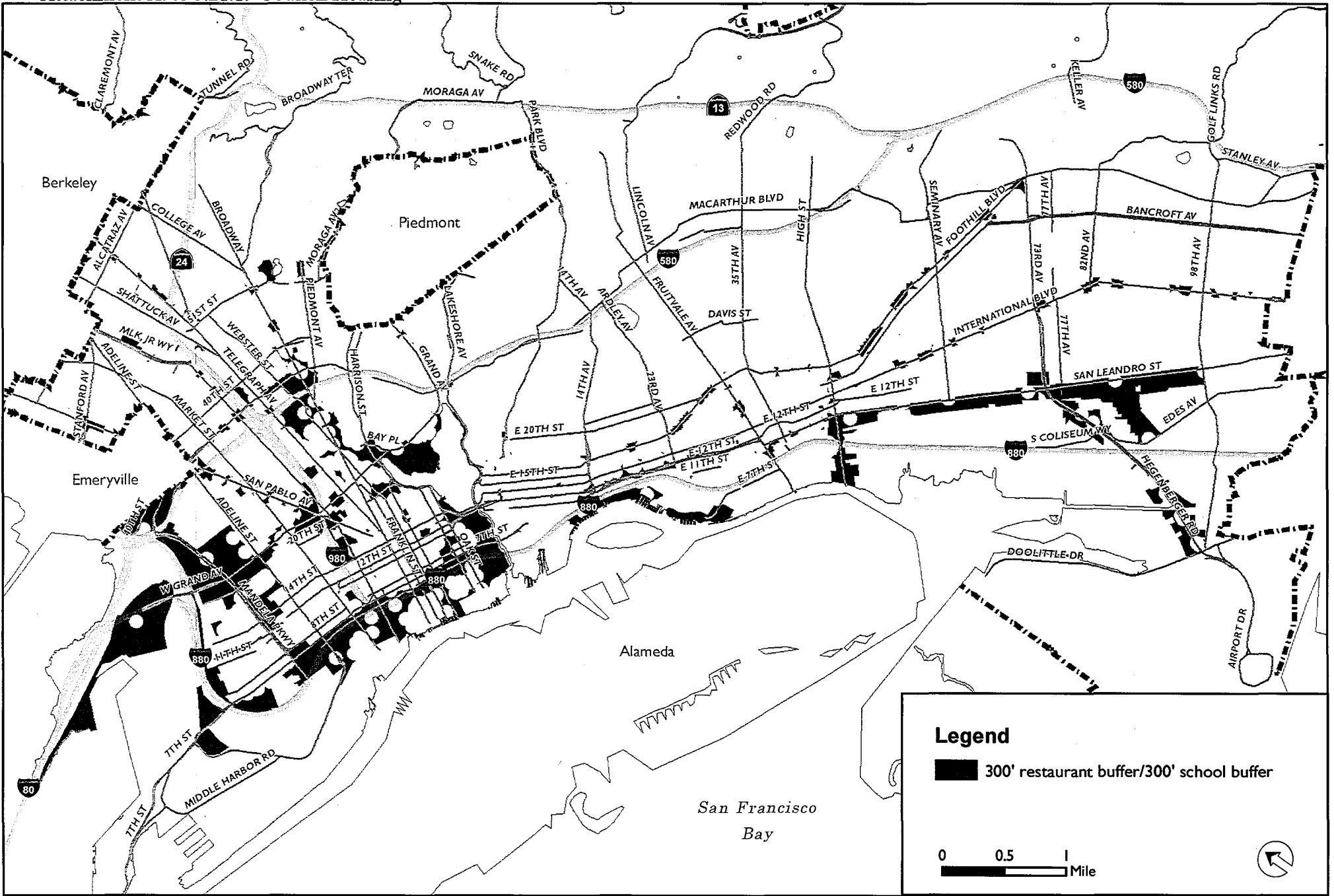
Attachment C: Illustrative maps of a 200 foot buffer from restaurants and 300 foot buffer from schools

Attachment D: Staff recommended Food Vending Program Ordinance with 200 foot buffer from restaurants and 300 foot buffer from schools.

Attachment E: Map adding Leimert commercial block to Program Permitted Area

Attachment F: Revised Administrative Guidelines

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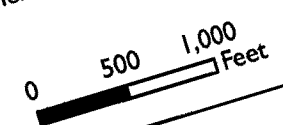


A. Proposed Food Vending Program (300' /300' buffers)

Attachment A4 to 3/21/17 Council Hearing



Legend
 ■ 300' restaurant buffer/300' school buffer



Proposed Food Vending Program (300'/300' buffers)
 Downtown Detail



Planning and Building Department
 March 10, 2017

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APPROVED AS TO FORM AND LEGALITY

DRAFT

INTRODUCED BY COUNCILMEMBER _____

OFFICE OF THE CITY ATTORNEY

OAKLAND CITY COUNCIL
ORDINANCE No. _____ C.M.S.

ORDINANCE AMENDING THE OAKLAND MUNICIPAL CODE (“OMC”) TO ADOPT A NEW CITYWIDE FOOD VENDING PROGRAM, DELETE CHAPTERS 5.49 PUSH CART FOOD VENDING PILOT PROGRAM, 5.51 FOOD VENDING GROUP SITE PILOT PROGRAM AND 8.09 VEHICULAR FOOD VENDING, ADOPT NEW CHAPTER 5.51 FOOD VENDING PROGRAM AND VARIOUS CONFORMING CHANGES TO THE OMC AND CITY PLANNING CODE, AND ADOPTING CEQA FINDINGS

WHEREAS, on February 6, 2001, the City Council adopted Ordinance No. 12312 C.M.S., which established the Vehicular Food Vending Pilot Program, allowing food trucks to sell from private property in certain industrial and commercial areas of Central and East Oakland; and

WHEREAS, on February 17, 2004, the City Council adopted two pieces of legislation related to food vending, Ordinance No. 12579 C.M.S., which created a permanent Vehicular Food Vending Program, codified in Oakland Municipal Code (“OMC”) Chapter 8.09, Vehicular Food Vending, and Ordinance No. 12582 C.M.S., which created a permanent Pushcart Food Vending Program, codified in OMC Chapter 5.49, Pushcart Food Vending Pilot Program; and

WHEREAS, on December 20, 2011, the City Council adopted Ordinance No. 13098 C.M.S., establishing interim regulations to allow three or mobile food vendors (“Group Sites”) to operate legally in a limited area in the City of Oakland defined, in part, by Council Districts 1, 2, 3 and 4, codified in OMC Chapter 5.51, Food Vending Group Site Pilot Program; and

WHEREAS on February 5, 2013, the City Council adopted Ordinance No. 13152 C.M.S., extending the effective date of the Group Site Food Vending Pilot Program regulations until City Council adopts permanent mobile food vending regulations; and

WHEREAS, on January 17, 2017, the City Council adopted Ordinance No. 13414 C.M.S., which permitted food vending on private property and, for the first time, in the public right of way on 85th Avenue, between Edes Avenue and San Leandro Boulevard; and

WHEREAS, the City seeks to expand food vending opportunities with a comprehensive citywide

expansion of the food vending program, with the goals of adding vitality to neighborhoods, contributing to the richness of Oakland's culinary and cultural offerings, and provide economic opportunities for small business owners, many of whom are Oakland residents; and

WHEREAS, City staff has worked with stakeholders to develop a proposed new comprehensive citywide food vending program that would expand the areas in Oakland where food vending will be permitted, and address problems with the existing food vending regulations and programs; and

WHEREAS, staff from the Bureau of Planning met with many of the stakeholders who are involved with food vending in Oakland, including mobile food vendors, restaurant owners, business improvement district leaders, City staff, chambers of commerce, residents and community groups, and considered stakeholders' comments in developing new food vending legislation; and

WHEREAS, the new citywide food vending program would permit, with certain restrictions, individual food vending on private property and from the public right of way in selected commercial and industrial areas of Oakland. The new program would also permit group site vending citywide; and

WHEREAS, in connection with the new citywide food vending program, the City seeks to (1) revise the definition of "Fast Food Restaurant Commercial Activities" in Section 17.10.280 of the Oakland Planning Code, (2) replace Oakland Municipal Code Chapters 5.51 (Food Vending Group Site Pilot Program), 5.49 (Pushcart Food Vending Pilot Program) and 8.09 (Vehicular Food Vending) with a new Chapter 5.51 (Food Vending Program); (3) revise other Municipal Code sections as minor conforming changes; and (4) adopt CEQA findings; and

WHEREAS, this Ordinance serves the public interest and is necessary to protect and promote the health, safety, and/or welfare of the City of Oakland's constituents, and is enacted pursuant to the City of Oakland's general police powers, Article XI, Sections 5 and 7, of the California Constitution, Vehicle Code Section 22455, and Section 106 of the Charter of the City of Oakland; and

WHEREAS, it is in the City's interest to regulate food vending to protect public health and safety, including pedestrian, and bicyclist, motorist, and mobile food vendor safety at the new vending sites in the street right-of-way; and

WHEREAS, space on sidewalks adjacent to restaurants may be limited by crowded pedestrian areas at entrances, with customers required to stand outside, as well as by the use of outdoor seating, which warrants the inclusion of buffer distances in the regulations and administrative guidelines; and

WHEREAS, narrow sidewalk width, and existing obstructions in the sidewalk can limit accommodations for the disabled and other pedestrians to follow a safe path of travel, which are further limited with the presence of pushcarts and other mobile food vendors; and

WHEREAS, regulations that limit a single food vending facility's days to use a particular

location in the public right-of-way, during the course of a week will encourage and provide for greater opportunities for diversity of mobile food vending facilities in the locations where different vendors will appear on a rotating basis; and

WHEREAS, location restrictions and buffer distances are included in the regulations and administrative guidelines to minimize conflict between pedestrians, ~~and bicyclists~~, customers of food vending facilities, automobile drivers on city streets, and mobile food vendors; ~~and to avoid double-parking and vehicular congestion which may occur when limited on-street parking is occupied by food vending facilities; to cause fewer motorist distractions and resulting accidents; to avoid causing pedestrians to be pushed into busy streets; and to prevent injuries; and~~

WHEREAS, funds from fees collected pursuant to this ordinance, and adopted in the Master Fee Schedule, shall be deposited and appropriated in the Development Services Fund (2415), Planning Organization (84211), Other Fees: Misc. Account(45419) and Construction and Obstruction Permit Accounts (42211 and 42315) and Contingency Account (54011), Food Vendor Projects (10000867 and 1000868) which is established for food vending administration; penalties collected pursuant to this ordinance, beyond what is needed to recover the costs of program operations, shall be deposited to the same fund; and;

WHEREAS, the proposed amendments to the Oakland Municipal Code and Oakland Planning Code were considered, after a duly noticed public hearing, at a regular meeting of the City Planning Commission on December 21, 2016, and the Planning Commission recommended adoption of the proposed new comprehensive food vending program to the City Council; and

WHEREAS, this Ordinance was considered, after a duly noticed public meeting of the Community and Economic Development Committee on February 28, 2017, and the Committee recommended adoption of this Ordinance with revisions; and

WHEREAS, this Ordinance was considered, after a duly noticed public hearing, at a regular meeting of the City Council on March 21, 2017, and all interested parties were provided an ample opportunity to participate in said hearing and express their views; and

WHEREAS, this Ordinance is supported by sufficient justifications and/or evidence, including for reasons stated herein and in the record, including the February 28, 2017 City Council Agenda Report, incorporated herein by reference, and meets the appropriate legal standards, including without limitation the City's police power, constitutional standards, Vehicle Code Section 22455, and the Oakland City Charter; and

WHEREAS, the City Council finds and determines that the public safety, health, convenience, comfort, property, and general welfare will be improved with a new comprehensive food vending program; now therefore,

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

Section 1. Recitals. The recitals contained in this Ordinance are true and correct and are an

integral part of the Council's decision, and are hereby adopted as findings.

Section 2. Repeal of the Existing Food Vending Program, Located in Oakland Municipal Code Chapters 5.51 (Food Vending Group Site Pilot Program), 5.49 (Pushcart Food Vending Pilot Program) and 8.09 (Vehicular Food Vending). The existing food vending program, which is located in Oakland Municipal Code Chapters 5.51 (Food Vending Group Site Pilot Program), 5.49 (Pushcart Food Vending Pilot Program), and 8.09 (Vehicular Food Vending), is hereby expressly repealed in its entirety.

Section 3. Adopt New Comprehensive Food Vending Program by Adding Language to Chapter 5.51 of Oakland Municipal Code. Chapter 5.51 of the Oakland Municipal Code is amended to read as follows (additions are shown as underlined text):

CHAPTER 5.51 FOOD VENDING PROGRAM

Sections:

Article I – General Provisions

Article II – Standards and Requirements

Article III – Enforcement, Revocation and Abatement

Article I – General Provisions

5.51.010 – Title and Purpose.

5.51.020 – Definitions.

5.51.025 – Administrative Regulations.

5.51.030 – Permit required.

5.51.040 – Conflicting Provisions.

5.51.050 – Permitted Area.

5.51.060 – Transference of a Food Vending Permit.

5.51.070 – Food Vending Permit Not a Land Use Entitlement.

5.51.080 – Maximum Number of Food Vending Permits.

5.51.090 – Application requirements for all Food Vending Permits.

5.51.100 – Additional application requirements for group sites.

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

5.51.120 – Inspections required prior to legal operation.

5.51.130 – Food Vending Permit expiration and renewal.

5.51.140 – Finality of Decisions

5.51.010 – Title and purpose.

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

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

5.51.020 – Definitions.

“Administrative Guidelines” means the document prepared by the City Administrator or his/her designee, used by Bureau of Planning staff to administer the Food Vending program. The document includes the “Food Vending Program Permitted Area” map, and is revised by the City Administrator or his/her designee.

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

“Assembly area” is an indoor or outdoor place where people may gather for any permitted purpose.

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

“Food vending” means the business of selling, or causing to be sold from a food vending facility, raw or cut fruit, produce, prepared foods and non-alcoholic beverages, and/or prepackaged foods and beverages, where:

1. Food is prepared off-site in a commercial commissary and/or prepared on-site within the food vending facility, per Alameda County Health Regulations;
2. Food is ordered and served from the truck, trailer, pushcart, or other equipment or vehicle as permitted by Alameda County Environmental Health;
3. Fruit and produce is sold to customers without preparation or cooking by a vendor;
4. Food is served outdoors or under a non-permanent structure;
5. Food is paid for prior to consumption; and
6. Food and beverages are prepared and sold for on-site or off-site consumption.

“Food vending facility” means a truck, trailer, pushcart, stationary cart or other equipment or vehicle from which food vending services are provided, as permitted by the Alameda County Environmental Health Department. Food vending trucks and trailers must be less than eighteen feet, six inches (18’ 6”) in length, eight feet (8’ 0”) in width, and ten feet, six inches (10’ 6”) in height, measured from bottom of tire. Not included in this definition is the preparation of food and serving of food outside of a vehicle, typically under a tent, canopy, or from a booth.

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

“Food Vending Program Permitted Area” is the map in the Administrative Guidelines which shows which areas and public right-of-ways are permitted for a Food Vending Permit. The Permitted Area map also shows specific parking spaces in the street right-of-way, designated by the City for Food vending facilities. Designated parking spaces are the only permitted areas allowed for Food vending on the street right-of-way.

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

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

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

“Group site food vending facility” means a food vending facility that is operating at a “group site”.

“Group Site Food Vending Permit” means a Food Vending Permit for a group site.

“Healthy foods” are defined in the Administrative Guidelines.

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

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

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

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

“Pushcart” is a type of non-motorized food vending facility that, because of its small size and operable wheels, can be easily moved by a person during hours of operation. This definition may also include a food vending facility integrated or pulled by non-motorized, pedal-powered vehicle such as a bicycle or tricycle.

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

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

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

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

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

“Stationary cart” means a type of non-motorized food vending facility that generally has a maximum length of eight (8) feet, maximum depth of six (6) feet, and a maximum height of eight (8) feet. Stationary food carts are typically larger than pushcarts; pulled or delivered by a vehicle into position; and stationary at a specific site during hours of operation, and then removed by a vehicle after operating hours. Umbrellas nine (9) feet in diameter or less are permitted with these carts.

“Stationary food cart vendor” is a person who owns and operates a business vending from a stationary food cart.

5.51.025 – Administrative Regulations.

The City Administrator or his/her designee is hereby authorized to adopt rules and regulations consistent with this Chapter as needed to implement this Chapter, subject to the review and approval of the Office of the City Attorney, and to develop all related forms and/or other materials and take other steps as needed to implement this Chapter, and make such interpretations of this Chapter as he or she may consider necessary to achieve the purposes of this Chapter.

5.51.030 – Permit required.

- A. Except as may be allowed by a previously granted Conditional Use Permit for the use under Title 17, or by any ordinance or resolution establishing and regulating a street market or farmer’s market in the City; or for a limited period by a Special Event Permit issued in accordance with Chapter 9.52, it shall be unlawful for any individual, group, or legal entity to sell, offer for sale, or solicit offers to purchase food from food vending facilities in the City of Oakland without first obtaining a Food Vending Permit as specified in this Chapter. Conducting a food vending operation in the City of Oakland without such a valid form of city permission is a public nuisance, as defined in this Code.
- B. Any individual, group, or legal entity desiring to engage in food vending in the City shall first file an application with the Bureau of Planning pursuant to procedures established in this Chapter and/or in the Administrative Guidelines to this Chapter.
- C. Issuance of an Encroachment or Obstruction Permit from the City of Oakland is not required to operate an individual food vending facility or group site in the public right-of-way.
- D. The individual, group, or legal entity desiring to engage in food vending shall obtain and maintain all required permits from the Alameda County Environmental Health Department the City of Oakland, and other regulatory agencies, including, but not limited to Electrical Permits or Fire Department permits.

5.51.040 – Conflicting provisions.

Where a conflict exists between the regulations or requirements in this Chapter and applicable regulations or requirements contained in other Chapters and Titles of the Oakland Municipal Code, including but not limited to the Oakland Planning Code (Title 17), the applicable regulations or requirements in this Chapter shall prevail.

5.51.050 – Permitted area.

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

- A. Food vending shall only be located in the Food Vending Program Permitted Area, and may be located on private property, on publicly-owned property, or in the public right-of-way. Food vending in the street right-of-way is restricted to designed parking spots as shown on the Food Vending Program Permitted Area map. The City Administrator or his or her designee is authorized to adopt a Food Vending Program Permitted Area Map and make amendments or correct administrative errors to such map.
- B. A location for an individual food vending facility or group site shall not be permitted if it is proposed to be closer than the distances specified below.
 - 1. Three hundred (300) feet from another individual food vending facility or group site, unless individual food vending facilities or group sites are permitted to operate at designated parking spaces on the street right-of-way, or separate individual vending facilities or group sites are permitted to operate on different days of the week from the same location;
 - 2. Vending within ~~five~~ three hundred (3500) feet from the parcel boundary of a school serving children between kindergarten and high school between the hours of 7 a.m. and 6 p.m. Monday through Friday is restricted as per the Administrative Guidelines to this Chapter;
 - 3. ~~One~~ Three hundred (3400) feet from the primary entrance of a Full Service or Limited Service Restaurant; as an exception, food vending facilities may locate within ~~one~~ three hundred (3400) feet of a Full Service or Limited Service Restaurant if the restaurant owner has provided the vehicular food vendor with permission to locate on the same lot; or if the restaurant is closed during the permitted hours of food vending operation; and
 - 3. Any additional location requirements, as determined by the City Administrator or his/her designee, per Section 5.51.030(B) of this Chapter.
- C. Individual food vending facilities or group sites cannot block or impede access to:
 - 1. Required parking or driveways;
 - 2. Bicycle racks;
 - 3. Signal crossings;
 - 4. Required off street parking;
 - 5. Parking meters;
 - 6. Pedestrian or bicycle routes;
 - 7. Emergency vehicle routes;
 - 8. Building entrances and exits;

- 9. Required accessibility routes and curb cuts;
- 10. Easements;
- 11. Trash enclosure areas or access to trash bins/trash enclosures; or
- 12. Other City facilities, as determined by the City Administrator or his/her designee.
- D. Individual food vending facilities and group sites shall maintain site circulation and access consistent with the Americans with Disabilities Act (ADA).
- E. Each stationary individual food vending facility and group site shall be located within two hundred (200) feet of a restroom facility that employees can legally access.
- F. All stationary food vending facilities on public sidewalks shall be located and operated such that a minimum of five and one-half (5½) feet of unobstructed improved sidewalk or fifty percent (50%) of the overall improved sidewalk width, whichever is greater, is provided and maintained at all times from all building entrances, as well as from parking meters, traffic signs, trees, tree wells, sidewalk planter strips, and all similar sidewalk obstacles.

5.51.060 – Transferability of a Food Vending Permit.

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

5.51.070 – Food vending permit not a land use entitlement.

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

5.51.080 – Maximum number of Food Vending Permits.

The maximum number of the different types of Food Vending Permits which may be issued shall be set by the City Administrator in the Administrative Guidelines to this Chapter, and reviewed annually. At no time shall more than the maximum number of the specified types of Food Vending Permits be active.

5.51.090 – Application requirements for all Food Vending Permits

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

- A. Name, contact information, and copy of a photo ID of the applicant;
- B. A non-refundable application fee in an amount set in the Master Fee Schedule;
- C. If proposed location is on private property, written consent in a form approved by the City

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

5.51.100– Additional application requirements for group sites.

- A. The application for a Group Site Food Vending Permit shall include the items in Section 5.51.090, and the following additional information:
1. Legal and business name and mailing address for each food vendor; and
 2. Designation of a manager to be responsible for the day-to-day site management of the group site.

5.51.110 – Decisions regarding the approval, approval with conditions, or denial of a Food Vending Permit.

- A. The Director of City Planning, or his or her designee, shall determine whether the proposal meets the requirements for a Food Vending Permit as set forth in this Chapter and/or in the Administrative Guidelines to this Chapter.
1. During the first year of the program, the Director of City Planning, or his or her designee, shall review and issue Food Vending Permits in the following order of priority:
 - i. Priority Group One: Vendors with valid, unexpired Oakland Food Vending permits (i.e. 2016-2017 Food Cart “FC” or Food Vehicle “FV” permits);
 - ii. Priority Group Two: Vendors with expired Oakland Food Vending permits (i.e. 2001-2015 Food Cart “FC” or Food Vehicle “FV” permits);
 - iii. Priority Group Three: Vendors applying for City-designated parking spaces in the street right-of-way; and
 - iv. Priority Group Four: All other vending applicants.
 2. During this first year of the program, applications in Priority Groups One and Two with current or expired Oakland Food Vending permits shall have their applications reviewed based on the buffering standards that applied at the time of their initial issuance of an Oakland Food Vending permit, as described in the Administrative Guidelines to this Chapter. As a result, permits may be granted for a previously permitted location that does not meet the current buffer distances in Section 5.51.050.
 3. After the first year of the program, all new permit applications in Priority Groups Three and Four shall be reviewed with equal priority and according to the current requirements for a Food Vending Permit as set forth in this Chapter and/or in the Administrative Guidelines to this Chapter. However, all permits that are renewed on an annual basis shall continue to be evaluated according to the standards that applied at the time of the initial permit issuance.
- B. At the time of Food Vending Permit application, the applicant vendor or group site organizer shall obtain from the Bureau of City Planning, a list of names and mailing addresses of all persons shown on the last available equalized assessment roll as owning the City of Oakland lot or lots adjacent to the project site and directly across the street abutting the project site; and a Notice to Neighboring Property Owners form which includes the project description and contact information.
- C. Prior to the subject application being deemed complete, the applicant shall provide by certificate of mailing or certified delivery to all persons shown on the last available equalized assessment roll as owning the City of Oakland lot or lots adjacent to the project site and directly across the street abutting the project site, a copy of the completed project notice form.

as well as a site plan that shows the proposed vending location.

- D. All required notification of adjacent and across the street property owners shall be completed by the project applicant not less than ten (10) days prior to the earliest date for final decision on the application.
- E. Decision by the Director of City Planning. The Director of City Planning or his/her designee shall approve, approve with conditions, or deny a Food Vending Permit application based on the standards and criteria set forth in this Chapter and/or in the Administrative Guidelines to this Chapter. The Director of City Planning or his/her designee may impose conditions of approval on a Food Vending Permit in the exercise of his or her reasonable discretion. The applicant shall be notified of any conditions of approval in writing.
- F. The Administrative Guidelines shall include such reasonable rules and regulations as are necessary to hold any lottery the city may utilize in the issuance of permits.
- GF. A Food Vending Permit application may be denied upon evidence that:
1. Information contained in the application, or supplementary information requested from the applicant, is false in any material detail; or
 2. The applicant has failed to ensure conformity with the operating standards and/ or permitted area location requirements in this Chapter and/or in the Administrative Guidelines to this Chapter; or
 3. The applicant has failed to provide a complete application form after having been notified of the requirement of producing additional information or documents; or
 4. The applicant has previously been cited by the City of Oakland for causing a public nuisance, or causing an unlawful or criminal activity during the operation of a food vending activity; or
 5. 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
 6. The granting of the Food Vending Permit will have an adverse impact upon the public health, safety, or order.

5.51.120 –Inspections required prior to legal operation.

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

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

5.51.130 – Food Vending Permit expiration and renewal.

- A. Unless renewed as described in Subsection B. below, each Annual Food Vending Permit shall be valid for twelve (12) months from the month of issuance, and expire and become null and void annually on the anniversary of its month of issuance. Each Temporary Food Vending Permit shall expire and become null and void after ninety (90) days, and may be renewed for one additional consecutive ninety (90)-day time period.
- B. An individual food vending facility or group site organizer may apply to the Director of City Planning, or his or her designee, for a Food Vending Permit renewal on a form provided by the City prior to the expiration of their active Food Vending Permit. All renewal applications shall be filed with the Bureau of Planning pursuant to procedures established in this Chapter and/or in the Administrative Guidelines to this Chapter. As stated in Section 5.51.110.A, all Food Vending Permits that are renewed on an annual basis shall continue to be evaluated according to the standards that applied at the time of the initial permit issuance.

5.51.140 – Finality of decisions

Decisions regarding a Food Vending Permit application shall be effective immediately and are not appealable.

Article II – Standards and Requirements

5.51.150 – Hours of operation

5.51.160 – Appearance and Operating Standards

5.51.170 – Liability and Indemnification

5.51.150 – Hours of operation

- A. The regular permitted hours of operation for all individual food vending facilities and group sites are 7 a.m. to 10 p.m., daily.
- B. If an applicant is granted permission for late night vending, as described in the Administrative Guidelines to this Chapter, the City may allow an individual food vending facility or group site to operate later than the regular permitted hours, but no later than 3 a.m.
- C. For Group Sites in the public right-of-way, the specific hours of operation shall be determined by the City, and shall not exceed more than five (5) hours of food vending operation on any day of permitted group site activity, unless specified otherwise at the discretion of the Director of City Planning or his or her designee.

5.51.160 – Appearance and operating standards.

- A. Appearance and condition of the food vending facility.
 - 1. All food vending facilities and group sites shall clearly display a current City of Oakland business tax certificate, Alameda County Environmental Health permit (and decal), and

City of Oakland Food Vending Permit (and decal) in plain view and at all times on the exterior of the food vending facility or at the group site.

2. No more than three (3) signs shall be attached to any food vending facility, with a maximum aggregate display surface of thirty (30) square feet of signage per food vending facility.

B. Utilities.

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

C. Refuse, trash and litter maintenance.

1. The food vending facility or group site organizer shall not throw, deposit, discharge, leave, or permit to be thrown, deposited, discharged, or left, any fat, oil, grease, refuse, garbage, or other discarded or abandoned objects, articles, and accumulations, in or upon any street, alley, sidewalk, gutter, storm drain, inlet, catch basin, conduit or other drainage structure, or upon any public or private lot of land in the City, so that the same might be or become a pollutant.
2. Other than roaming food vending facilities, a minimum of one thirty-two (32)-gallon litter receptacle shall be within fifteen (15) feet of each individual food vending facility for customers and employees.
3. Individual food vending facilities and group site organizers shall maintain the subject site and adjacent public right-of-way free of litter on and within one hundred (100) feet of their site.
4. At a minimum, all refuse shall be removed from the individual food vending facility location or group site, and properly disposed of after each vending period.
5. Failure to adequately clean up after a food vending operation date shall be grounds for denying an applicant's request for permit renewal as set forth in Section 5.51.130.

D. Seating, chairs and tables.

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

E. Performance standards.

1. Noise levels from food vending facilities shall not exceed the City's noise ordinance standards. Vendors should use low-noise emission generators.
2. Noise and odors from food vending facilities shall be contained within immediate area of the permitted food vending location.
3. The vehicular food vendor shall maintain site circulation for pedestrians and access consistent with the Americans with Disabilities Act.

F. Security.

1. The site shall be maintained in a safe and clean manner at all times.
2. Food vending facilities and group sites shall have adequate lighting to ensure customer safety. Lighting shall be directed downwards and away from public streets and adjacent

properties.

G. Other requirements.

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

5.51.170 – Liability and Indemnification

- A. To the fullest extent permitted by law, any actions taken by a public officer or employee under the provisions of this Chapter shall not become a personal liability of any public officer or employee of the City.
- B. To the maximum extent permitted by law, the permittees under this Chapter shall defend (with counsel acceptable to the City), indemnify and hold harmless the City of Oakland, the Oakland City Council, the Oakland City Planning Commission, and their respective officials, officers, employees, representatives, agents and volunteers (hereafter collectively called "City") from any liability, damages, actions, claims, demands, litigation, loss (direct or indirect), causes of action, proceedings or judgment (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "Action") against the City to attack, set aside, void or annul, any food vending- related approvals and actions or implementation of such approvals and actions, including conditions of approval, if any. The City may elect, in its sole discretion, to participate in the defense of said Action and the permittee shall reimburse the City for its reasonable legal costs and attorneys' fees.
- C. Within ten (10) calendar days of the service of the pleadings upon the City of any Action as specified in Subsection B above, the permittee shall execute a Letter of Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations and the Letter of Agreement shall survive termination, extinguishment or invalidation of the food vending-related approval. Failure to timely execute the Letter of Agreement does not relieve the permittee of any of the obligations contained in this Section or any other requirements or performance or operating standards that may be imposed by the City.

Attachment B to March 21, 2017 Council (CED Recommendation)

Article III. Enforcement, Revocation and Abatement

5.51.180 – Enforcement.

5.51.190 – Violation.

5.51.200 – Responsibility.

5.51.210 – Revocation of Food Vending Permits.

5.51.220 – Penalties for violation of Food Vending Permit requirements.

5.51.230 – Abatement generally.

5.51.240 – Notice to abate.

5.51.250 – Abatement procedure.

5.51.260 – Violations constituting infractions.

5.51.270 – Penalty for violation.

5.51.180 – Enforcement.

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

5.51.190 – Violation.

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

5.51.200 – Responsibility.

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

5.51.210 – Revocation of Food Vending Permits.

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

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

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

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

5.51.220– Penalties for violation of Food Vending Permit requirements.

Any violation of this Chapter may be charged as a civil penalty or administrative citation as provided for in Chapters 1.08 and 1.12 of this Code. Enforcement action specifically authorized by this Section may be utilized in conjunction with, or in addition to, any other statutory, code, administrative or regulatory procedure applicable to this Chapter, including confiscation of merchandise and food for sale, and/or impoundment of the food vending facility. In addition, nothing in this Section shall be interpreted to preclude or limit the City from seeking injunctive or other judicial relief.

5.51.230 – Abatement generally.

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

5.51.240 – Notice to abate.

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

- A. The street address and legal description of the site 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 applicant, as well as the property owner if the activity is located on private property, are in violation of this Chapter;
- C. A statement specifying the condition that has been deemed a public nuisance;
- D. A statement ordering the property owner, individual food vendor, and/or responsible party to abate the condition(s), and specifying the manner in which the same shall be abated, and the period within which such abatement shall be accomplished.

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

It is unlawful for the property owner, individual food vendor, and/or responsible party to fail or neglect to comply with such order or notice of abatement. In the event that the property owner, individual food vendor, and/or responsible party shall not promptly proceed to abate said nuisance condition(s) within seven (7) days of notice to abate, as ordered by the enforcing official, the abatement procedure set forth in Section 5.51.250 may be undertaken.

5.51.250 – Abatement procedure.

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

5.51.260 – Violations constituting infractions.

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

5.51.270 – Penalty for violation.

Any person violating any provision of this Chapter shall be punished upon a first violation by a fine of not more than \$1,000.00 and, for a second violation within a period of one year, by a fine of not more than \$2,000.00 and, for a third or any subsequent violation within a one-year period, by a fine of not more than \$5,000.00. Any violation beyond the third, within a one-year

period may be charged by the City Attorney or the District Attorney as a misdemeanor and the penalty for conviction of the same shall be punishable by a fine of not more than \$10,000.00 or by imprisonment in the county jail for a period of not more than six months or by both. Any person violating or failing to comply with any of the provisions of this Chapter shall be subject to civil penalties and administrative citations per Chapters 1.08 and 1.12 of this Code, and could be subject to confiscation of their merchandise and food for sale, and/or impoundment of the food vending facility.

Section 4. Conforming Changes in the Oakland Municipal Code and Oakland Planning Code. Chapters 1.08 (Civil Penalties), 1.12 (Administrative Citations), 1.16 (Alternative Administrative Procedure for Abatement of Certain Violations), ~~(5.02 (Business Permits Generally), 5.48 (Peddlers and Solicitors), and 12.08 (Encroachments)~~ of the Oakland Municipal Code, and Chapter 17.10 (Use Classifications) of the Oakland Planning Code, are hereby amended to bring these chapters into conformity with the new comprehensive food vending program (additions are shown as underlined text and deletions are shown as ~~strikethrough~~):

Chapter 1.08 - CIVIL PENALTIES

1.08.020 - Scope

A. This chapter authorizes the administrative assessment of civil penalties to effect abatement of:

1. Any violations of provisions of the following Oakland Municipal Codes: Oakland Building Code (OMC Chapter 15.04), the Oakland Housing Code (OMC Chapter 15.08), Uniform Fire Code (OMC Chapter 15.12), Fire Damaged Area Protection & Improvement Code (OMC Chapter 15.16) Bedroom Window Security Bar & Smoke Detector Permit Code (OMC Chapter 15.64), Oakland Planning Code (OMC Title 17), Transient Occupancy Tax Code (OMC Chapter 4.24), Hotel Rates & Register Code (OMC Chapter 5.34), Food Vending Program (OMC Chapter 5.51); Animal Code (OMC Title 6), Health & Safety Code (OMC Title 8), Public Peace, Morals and Welfare Code (OMC Title 9), Vehicles and Traffic Code (OMC Title 10), Streets, Sidewalks & Public Places Code (OMC Title 12), Creek Protection, Storm Water Management and Discharge Control Code (OMC Chapter 13.16), Affordable Housing Impact Fees (OMC Chapter 15.72), Transportation and Capital Improvements Impact Fees (OMC Chapter 15.74), and the Oakland Sign Code (OMC Chapter 14); or,

2. The occurrence of anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, which affects-at-the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal; or

3. The occurrence of any public nuisance as known at common law or in equity jurisprudence, or

4. The violation of any state or federal law or regulations under which such violation is deemed a public nuisance.

B. Civil penalties established in this chapter are in addition to any other administrative or legal remedy which may be pursued by the city to address violations of the codes and ordinances identified in this chapter.

Chapter 1.12 - ADMINISTRATIVE CITATIONS

1.12.020 - Scope.

A. This chapter authorizes the administrative assessment of citations to effect abatement of:

1. Any violations of the following provisions of the Oakland Municipal Code: the Oakland Building Code (CIVIC Chapter 15.04), the Oakland Housing Code (OMC Chapter 15.08), Uniform Fire Code (CIVIC Chapter 15.12), Fire Damaged Area Protection & Improvement Code (CIVIC Chapter 15.16) Bedroom Window Security Bar & Smoke Detector Permit Code (CIVIC Chapter 15.64), Oakland Planning Code (CIVIC Title 17), Oakland Sign Code (OMC Chapter 146), Transient Occupancy Tax Code (OMC Chapter 4.24), Unattended Donation/Collection Boxes (OMC Chapter 5.19), Hotel Rates & Register Code (CIVIC Chapter 5.34), Food Vending Program (OMC Chapter 5.51); Animal Code (OMC Title 6), Health & Safety Code (OMC Title 8), Public Peace, Morals and Welfare Code (OMC Title 9), Vehicles and Traffic Code (OMC Title 10), Streets, Sidewalks & Public Places Code (OMC Title 12) and Creek Protection, Storm Water Management and Discharge Control Code (OMC Chapter 13.16); or

2. The occurrence of anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal; or

3. The occurrence of any public nuisance as known at common law or in equity jurisprudence.

4. The violation of any state or federal law or regulations under which such violation is deemed a public nuisance.

B. Administrative citations established in this chapter are in addition to any other administrative or legal remedy which may be pursued by the city to address violations of the codes and ordinances identified in this chapter.

Attachment B to March 21, 2017 Council (CED Recommendation)

Chapter 1.16 - ALTERNATIVE ADMINISTRATIVE PROCEDURE FOR ABATEMENT OF CERTAIN VIOLATIONS

1.16.020 - Scope.

A. This chapter permits the administrative limitation of the use of property by authorizing the recordation of notices of violation and by authorizing the revocation, suspension, and/or withholding of permits as appropriate to effect abatement of:

1. Any violations of the Oakland Building Code (OMC Chapter 15.04), Oakland Housing Code (OMC Chapter 15.08), Uniform Fire Code (OMC Chapter 15.12), Fire Damaged Area Protection & Improvement Code (OMC Chapter 15.16) Bedroom Window Security Bar & Smoke Detector Permit Code (OMC Chapter 15.64), the Oakland Planning Code (OMC Title 17), Transient Occupancy Tax Code (OMC Chapter 4.24), Hotel Rates & Register Code (OMC Chapter 5.34), Food Vending Program (OMC Chapter 5.51); Animal Code (OMC Title 6), Health & Safety Code (OMC Title 8), Public Peace, Morals and Welfare Code (OMC Title 9), Vehicles and Traffic Code (OMC Title 10), Streets, Sidewalks & Public Places Code (OMC Title 12), Creek Protection, Storm Water Management and Discharge Control Code (OMC Chapter 13.16) and Oakland Sign Code (OMC Chapter 14; or
2. The occurrence of anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal; or
3. The occurrence of any public nuisance as known at common law or in equity jurisprudence.
4. The violation of any state or federal law or regulations under which such violation is deemed a public nuisance.

Attachment B to March 21, 2017 Council (CED Recommendation)

Chapter 5.02 - BUSINESS PERMITS GENERALLY

Sections:

5.02.010 - Permits generally.

5.02.020 - Application.

5.02.030 - Procedure on application.

5.02.040 - Chief of Police as the investigating official.

5.02.050 - Notice of hearing on application.

5.02.060 - Action on application.

5.02.070 - Transfer of permits.

5.02.080 - Revocation and suspension of permit.

5.02.090 - Hearings.

5.02.100 - Appeals.

5.02.110 - Inspection of premises.

5.02.120 - Permits to be exhibited.

5.02.130 - ~~City Clerk~~ Planning Director, or his or her designee, to examine applications as to zone.

5.02.140 - ~~City Administrator, or his or her designee, Clerk~~ to be notified of actions on permits.

5.02.150 - Expiration of permit.

5.02.010 - Permits generally.

Whenever, by the provisions of this Cchapter, a permit from the city is a prerequisite to the operation or maintenance of any business, establishment or place, or to the furtherance of any undertaking or the doing of any thing, unless otherwise specifically provided, such permit shall be procured in the manner, and be subject to the provisions, hereinafter in this Cchapter set forth.

5.02.020 - Application.

Application for any permit referred to in Section 5.02.010 shall be filed with the City AAdministrator, ~~or his or her designee, City Clerk~~ in triplicate, the original of which shall be duly acknowledged before some person lawfully authorized to administer oaths, and upon forms to be furnished by said City official, ~~Clerk~~, and shall set forth the following information:

- A. A full identification of the applicant and all persons to be directly or indirectly interested in the permit if granted;

- B. The residence and business address and the citizenship of the applicant, including all members of any firm or partnership, or all officers and directors of any corporation applying;
- C. The location of the proposed business, establishment, place, thing, etc., for which the permit is requested, and the name of the owner and the present use of such premises;
- D. The exact nature of the proposed business, establishment, place, thing, etc., for which the permit is requested, and the name under which it is to be operated;
- E. The past experience of the applicant in the matter to which the requested permit appertains; and the name, address, and past experience in such business or matter of the person to be in charge of the premises or business;
- F. Whether or not any permit has been revoked, and if so, the circumstances of such revocation;
- G. Such further information as the City ~~Administrator, Manager,~~ or such official of the city to whom the application may be referred, may require.

5.02.030 - Procedure on application.

Immediately on the filing of any application for a permit as provided in Sections 5.02.010 and 5.02.020, the City ~~Administrator, Clerk~~ for his or her designee, shall place the acknowledged copy in the permanent records of his or her office, refer one copy to ~~the City Administrator and one copy to~~ such official of the city the administrative functions of whom are those primarily concerned with the granting or denying of such permit, which latter official, hereinafter in this ~~C~~chapter referred to as the "investigating official," shall make such investigation of the applicant and of the facts set forth in such application as he or she shall deem advisable, and shall make a written report of such investigations, together with his or her recommendations relative to disposal of the application, to the City Administrator, who shall proceed to act upon said application after a hearing set by the City ~~Administrator, or his or her designee, Clerk~~ for a day certain, not more than forty-five (45) days from the date of filing completed said application. At such hearing, all persons interested shall be entitled to file objections, protests or recommendations in the premises. Such hearing may, by the City Administrator, be continued over from time to time as circumstances may require; provided, however, that if hereinafter in this ~~C~~chapter specifically provided, the investigating official may grant the permit applied for without referring the same to the City Administrator, and with or without a hearing thereon, as may be provided.

5.02.040 - Chief of Police as the investigating official.

Whenever the Chief of Police is the investigating official pursuant to this ~~C~~chapter, the applicant shall pay ~~to the City Clerk~~ upon filing the application or an application for renewal, a fee to pay for the cost of such investigation.

5.02.050 - Notice of hearing on application.

The City Administrator, or his or her designee, Clerk shall in every case of application for a permit notify the applicant of the time and place of such hearing to be held therein as in Section 5.02.030 provided, and such notice shall be given at least thirty (30) days before the date of such hearing.

In the event that a public notice of the hearing on any application for a permit may be hereinafter in this Chapter required, the City Administrator, or his or her designee, Clerk shall cause a notice to be published once in the official newspaper of the city at least thirty (30) days before said hearing date, and cause a copy thereof to be posted upon the premises to be primarily affected by the granting of such permit, and a copy on the bulletin board near the Council Chambers. Such notice shall set forth the fact that such application has been filed, the name of the applicant, the nature of the thing to be permitted, and the time and place of hearing upon such application.

For applications involving the ongoing use of property, notice of the hearing shall be given by posting a notices thereof on within three hundred (300) feet of the property involved in the application. Notice of the hearing shall also be given by mail or delivery to all persons shown on the last available equalized assessment roll as owning real property in the city within three hundred (300) feet of the property involved and to all addresses within three hundred (300) feet of the property and to registered community groups. All such notices shall be given not less than seventeen (17) days prior to the date set for the hearing. The fee for the notification process, as established by the master fee schedule, shall be a separate charge in addition to the application fee.

5.02.060 - Action on application.

The City Administrator, or the investigating official acting thereon, shall deny the granting of any permit applied for if it shall appear to his or her satisfaction that the applicant ~~is not a fit and proper person, either for financial, moral, or other reasons, to conduct or maintain the business, establishment, place, or other thing, to which the application appertains; that the applicant has not complied with the provisions of this Code which directly appertain to the maintenance or conduct of the business, establishment, place, or other thing in question or for the violation of any law appertaining thereto; or for any other reason hereinafter in this Chapter more specifically set forth.~~

In granting or denying such permit, and in specifying the conditions, if any, upon which it is granted, the City Administrator or other official acting thereon, shall consider ~~the character of the applicant as respects morality, honesty and integrity, and all pertinent facts which may concern the health, safety, and general welfare of the public, and shall exercise a reasonable and sound discretion in the premises.~~ The City Administrator, or other official acting thereon, in acting upon an application for a permit, shall notify the investigating official to whom such application was referred, of such action.

5.02.070 - Transfer of permits.

No permit in this Chapter required shall be transferable, nor apply to any premises other

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than those originally specified as the location of the thing permitted, except upon written permission of the City ~~Administrator, Manager~~, or other official originally granting such permit, granted upon written application by the transferor, made in the same manner as may be required in the instance of the original application for such permit.

5.02.080 - Revocation and suspension of permit.

Any permit granted pursuant to the provisions of this Cehapter may be revoked or suspended by the City ~~Administrator Manager~~ as in his or her discretion may seem meet and just, for any reason for which a granting of such permit might be lawfully denied, or for any other reason hereinafter in this Cehapter specifically provided. Such revocation or suspension shall be made only upon a hearing granted to the holder of the permit so revoked or suspended, held before the City ~~Administrator Manager~~ after five (5) days' notice to such permit holder, stating generally the grounds of complaint against him or her and stating the time and place where such hearing will be held. In the event of such revocation or suspension, any certificate issued in connection with the granting of such permit shall, by the holder thereof, be forthwith surrendered to the City ~~Administrator, Manager~~.

Such revocation or suspension of any permit shall be in addition to any other penalties more specifically provided in this Cehapter.

5.02.090 - Hearings.

Any investigation, inquiry or hearing which the City ~~Administrator Manager~~ has power to undertake or to hold may be undertaken or held by such member of the City ~~Administrator's Manager's~~ staff as he or she may designate and to whom the matter is assigned. The person to whom a matter is assigned shall be deemed a "Hearing Officer." In any matter so assigned the Hearing Officer conducting the investigation, inquiry or hearing shall report within thirty (30) days after the conclusion of the investigation, inquiry or hearing his or her findings and recommendations to the City ~~Administrator, Manager~~.

Within sixty (60) days after the filing of the findings and recommendations of the Hearing Officer, the City ~~Administrator Manager~~ shall confirm, adopt, modify or set aside the findings of the Hearing Officer and with or without notice enter his or her order, findings, decision or award based upon the record in the case.

In such hearings, investigations, and inquiries by the City ~~Administrator Manager~~ or a Hearing Officer, he or she shall not be bound in the conduct thereof by the common law or statutory rules of evidence and procedure but inquiry shall be made in the manner, through oral testimony and records, which is best calculated to ascertain the substantial rights of the public parties and carry out justly the spirit and provisions of this Cehapter.

No informality in any proceeding or the manner of taking testimony shall invalidate any other decision, award or rule made as specified in this Cehapter. No order, decision, award or rule shall be invalidated because of the admission into the record and the use as any proof of any fact in dispute or any evidence not admissible under the common law or statutory rules of evidence and

procedure.

5.02.100 - Appeals.

Any person excepting to any denial, suspension or revocation of a permit applied for or held by him or her pursuant to the provisions of this ~~C~~chapter, or pursuant to the provisions of this code where the application for said permit is made to, or the issuance thereof is by the City ~~Administrator, Manager,~~ or any person excepting to the granting of, or to the refusal to suspend or revoke, a permit issued to another pursuant to the provisions of this ~~C~~chapter, or issued to another by the City ~~Administrator, Manager,~~ pursuant to the provisions of this Code, may appeal in writing to the City Council by filing with the City ~~Administrator, or his or her designee, Clerk~~ a written notice of such appeal setting forth the specific grounds thereof. Such notice must be filed within fourteen (14) days after notice of such action appealed from is posted in the United States mail. Upon receipt of such notice of appeal, the Council shall set the time for consideration thereof. The City ~~Administrator, or his or her designee, Clerk~~ shall cause notice thereof to be given (A) to the appellant and (B) to the adverse party or parties, or to the attorney, spokesman, or representative of such party or parties, not less than five (5) days prior to such hearing. At such hearing the appellant shall show cause on the grounds specified in the notice of appeal why the action excepted to should not be approved. Such hearing ~~may, by the Council, be continued over from time to time~~ and its findings on the appeal shall be final and conclusive in the matter.

5.02.110 - Inspection of premises.

Any officer of the city charged with the enforcement or administration of any of the provisions of this ~~C~~chapter shall be permitted to enter and inspect at any reasonable time, without charge or other restraint, any premises to which any permit granted under the provisions of this ~~C~~chapter may pertain, or which are directly affected by such permit, for the purpose of ascertaining whether or not any of the provisions of this ~~C~~chapter applicable thereto are being violated.

5.02.120 - Permits to be exhibited.

Any permit required under the provisions of this ~~C~~chapter shall be exhibited in a conspicuous place in that part, to which the public has access, of the premises to which such permit appertains.

5.02.130 - ~~City Clerk~~ Planning Director, or his or her designee, to examine applications as to zone.

~~Upon~~ Prior to the filing of any application for a permit as in this ~~C~~chapter provided for, the ~~City Clerk~~ Planning Director, or his or her designee, shall examine the same for the purpose of ascertaining whether the business, establishment or place for which such permit is desired is proposed to be located within a zone in which the same is permitted pursuant to the provisions of this code and the ordinances and laws of the city. If such location is not within such approved zone, the ~~City Administrator, or his or her designee, City Clerk~~ shall refuse to accept such application.

5.02.140 - City Administrator, or his or her designee, Clerk to be notified of actions on permits.

Any official of the city taking any action upon any application for a permit or upon any permit to operate or maintain any business, establishment or place within the city as in this Chapter provided for, shall notify the City Administrator, or his or her designee, Clerk of such action, and shall, so far as possible, supply the City Administrator, or his or her designee, Clerk with copies of all communications, findings and records pertaining to such applications and permits, and the City Administrator, or his or her designee, Clerk shall place the same on file with the applications and permits to which they pertain.

5.02.150 - Expiration of permit.

Any permit granted pursuant to the provisions of this Chapter but under which the thing herein permitted has not been done, carried on or maintained within six (6) months from the time of the issuance of such permit, shall expire by limitation and cease to be valid for any purpose. Provided, however, that the City Administrator, or his or her designee, Manager may renew such permit upon written application being made prior to its expiration.

Chapter 5.48 - PEDDLERS AND SOLICITORS

Sections:

5.48.020 - Peddlers and solicitors—Police certificate.

5.48.050 - Peddling foodstuffs from vehicles.

5.48.070 - Peddlers' carts, stands.

5.48.080 - Peddling in certain districts.

5.48.090 - Peddling in certain districts—Construction.

5.48.020 - Peddlers and solicitors—Police certificate.

It is unlawful for any person to solicit or take orders from house to house, or upon any public street, grounds or squares, or within any public buildings, within the city, for the sale of any article, merchandise or other thing of value; or to peddle the same or solicit in such manner any moneys, funds, articles, merchandise, or other thing of value for any charitable, religious, business or other purpose, without a police certificate, provided, however, that no such certificate shall be required of ~~drummers~~, traveling salespersons, or other persons engaged in soliciting or taking orders exclusively from the trade, or established retail dealers, for the delivery of goods, wares or merchandise by wholesale.

An application for a police certificate required by the provisions of this section shall be made in writing to the Chief of Police, shall be presented in person, and shall set forth the nature of the business of the applicant, the firm or corporation which the applicant represents, the kind of goods or property to be sold, solicited or dealt in, and such further information as the Chief of Police may require. ~~Such application shall be accompanied by the written recommendation of not less than five citizens of the city, concerning the moral character, honesty and integrity of the applicant.~~ The applicant, upon filing his or her application, may shall be fingerprinted by the Bureau of Identification at the request of the Oakland Police Department.

The Chief of Police, if satisfied as to the ~~moral character, honesty and integrity~~ business practices of the applicant, shall issue to him or her a police certificate to engage in the said business within the city, which certificate shall be effective for a period of one (1) year from date of issuance, and any renewal thereof shall be made upon application made as herein required in the instance of the original application. Such police certificate, together with any license otherwise required of such person by the provisions of this Code, shall be at all times carried by the person therein certified when he or she is engaged in said business. The Chief of Police shall at all times maintain in his or her office a complete list of all persons to whom such police certificates have been issued.

5.48.050 - Peddling foodstuffs from vehicles.

It is unlawful for ~~farmers, hucksters or~~ vendors of fruits, vegetables, fish or dairy products to display for sale such goods, wares and merchandise to the passing public in or from ~~wagons, vehicles or portable stands on the streets or sidewalks of the city, except ; provided, however, that nothing in this section contained shall be construed as forbidding the peddling of such goods, wares or merchandise from house to house in wagons or other vehicles as may be permitted;~~

- A. By regulations set forth elsewhere set forth in the Municipal or Planning Codes;
- B. By any ordinance or resolution establishing and regulating a farmer's market or street market in the city;
- C. Within those areas of Oakland subject to the Food Vending Program set forth in Chapter 5.51 of the Municipal Code; and this title. However, within those areas of Oakland subject to the pusheart food vending program ordinance, pusheart food vending is regulated by Chapter 5.49 of the municipal code.
- D. For a limited time in accordance with the Special Event permit program set forth in Chapter 9.52 of the Municipal Code.

5.48.070 - Peddlers' carts, stands.

It is unlawful for any person having charge or control of ~~a cart, wagon or~~ any vehicle used for the vending of goods, wares, merchandise, foods, confections, refreshments or other article, therefrom commonly known as peddlers' carts, ~~wagons or~~ vehicles to occupy, or permit to be occupied, as a stand for such cart, ~~wagon or~~ vehicle, any portion of any street, lane, alley or sidewalk in the city, or to cause or permit such cart, wagon or vehicle to stand within five hundred (500) feet of any entrance or exit to any public park, public building or public grounds for the purpose of peddling such goods or merchandise therefrom except as may be permitted:-

- A. By regulations set forth elsewhere in the Municipal or Planning Codes;

- B. By any ordinance or resolution establishing and regulating a farmer's market or street market in the city;
- C. Within those areas of Oakland subject to the Food Vending Program set forth in Chapter 5.51 of the Municipal Code; and
- D. For a limited time in accordance with the Special Event permit program set forth in Chapter 9.52 of the Municipal Code.

However, within those areas of Oakland subject to the pusheart food vending program ordinance, pusheart food vending is regulated by Chapter 5.49 of the municipal code.

Nothing in this section shall be so construed as to conflict with, or repeal, any provision of this code or any ordinance establishing and regulating a street market in the city.

5.48.080 - Peddling in certain districts.

It is unlawful for any person to traffic in, vend or sell, or attempt to, or offer to, traffic in, vend or sell, any goods, wares, merchandise, meats, vegetables, fruits, berries, produce or any article of household, family or domestic supplies, ~~within the territory hereinafter in this section defined,~~ unless the same is done by such person at a fixed place of business conducted in a building or store lawfully occupied by him or her, or is permitted by:

- A. Regulations set forth elsewhere in the Municipal or Planning Codes;
- B. Any ordinance or resolution establishing and regulating a farmer's market or street market in the city;
- C. The Food Vending Program set forth in Chapter 5.51 of the Municipal Code; and
- D. The Special Event permit program set forth in Chapter 9.52 of the Municipal Code.

The territory above referred to in this section is bounded and particularly described as follows: All that portion of the city bounded on the south by a line drawn parallel to and one hundred (100) feet southerly of the southern line of First Street, on the east by a line drawn parallel to and one hundred (100) feet easterly of the eastern line of Harrison Street, on the north by a line drawn parallel to and one hundred (100) feet northerly of the northern line of 17th Street, and on the west by a line drawn parallel to and one hundred (100) feet westerly of the western line of Jefferson Street, and also beginning at the intersection of a line drawn parallel to and one hundred (100) feet southerly of the southern line of First Street with a line drawn parallel to and one hundred (100) feet easterly of the eastern line of Alice Street; thence northerly along said last named line to a line drawn parallel to and one hundred (100) feet southerly of the southern line of 11th Street; thence easterly along said last named line to the centerline of Fallon Street; thence northerly along the centerline of Fallon Street and its production to the western shore of Lake Merritt; thence northerly and westerly along the western shore of Lake Merritt to a line drawn parallel to and one hundred (100) feet easterly of the eastern line of Harrison Boulevard; thence northerly along said last named line to a line drawn parallel to and one hundred (100) feet northerly of the northern line of 22nd Street and Grand Avenue; thence westerly along said last named line and its productions to a line drawn parallel to and one hundred (100) feet westerly of the western line of San Pablo Avenue; thence southerly along said last named line to a line drawn parallel to and one hundred (100) feet westerly of the western line of Grove Street; thence southerly along said last named line to a line drawn parallel to and one hundred (100) feet southerly of the southern line of First Street; thence easterly along said last

named line to the point of beginning.

5.48.090 - Peddling in certain districts—Construction.

Nothing in Section 5.48.080 contained shall be construed as preventing or making unlawful the prompt delivery in good faith of any of said personal property to or at any such fixed place of business (so situated and conducted in such building or store within said territory) in any case where such personal property, so being delivered is actually and in good faith consigned goods, or has actually and in good faith been theretofore purchased at a place outside of said territory by such lawful occupant of such fixed place of business, actually doing business therein, and said property is in either such case then being delivered to him or her thereat; ~~provided, however, that the Chief of Police of the city, in his or her discretion, may at any time grant a permit to any person to sell such personal property within such district and within the fire limits of the city for a limited period only, not to exceed five days.~~

Chapter 12.08 - ENCROACHMENTS

Sections:

12.08.030 - Public sidewalk encroachments—Types and definitions.

12.08.150 - Exceptions.

12.08.030 - Public sidewalk encroachments—Types and definitions.

For the purpose of this title, encroachments upon the public street, alley, or "sidewalk area" shall be of three types: major, minor, and short term. The sidewalk area shall be defined as that area between the property line and the edge of the pavement or face of the curb. "Improved streets" shall be defined as streets with concrete curbs, gutters and sidewalks. It is unlawful for any person to use the sidewalk area in the city for the display and sale of goods, wares and merchandise, except as may be permitted:

1. By regulations set forth elsewhere in the Municipal or Planning Codes;
2. By any ordinance or resolution establishing and regulating a street market in the city;
3. Within those areas of Oakland subject to the Food Vending Program set forth in Chapter 5.51 of the Municipal Code; and
4. For a limited time in accordance with the Special Event permit program set forth in Chapter 9.52 of the Municipal Code.

~~The displaying of wares, other than flowers or other aesthetically pleasing objects, and the selling of any wares on the sidewalk area shall be specifically prohibited. However, within those areas of Oakland subject to the Pusheart Food Vending Program Ordinance, pusheart food vending is regulated by Chapter 5.49 of the Municipal Code. As defined in this title, the term "aesthetically pleasing objects" excludes furniture and other utilitarian objects. Permission to~~

encroach shall be revocable at the pleasure of the City Council without recourse unless otherwise provided herein. Nothing in this section shall apply to the operation or maintenance of sidewalk cafes.

12.08.150 - Exceptions.

The requirements for encroachment permits set forth in this title do not apply to certain types of sidewalk benches, covered in Chapter 12.52; ~~nor to newspaper and periodical racks, covered in Section 12.04.080;~~ and ~~do not apply to existing fences or walls at the back line of sidewalks on improved streets; or to~~ Food Vending Facilities, covered in Chapter 5.51, as amended.

Chapter 17.10 USE CLASSIFICATIONS

Sections:

Article II - Activity Types

Part 3 - Commercial Activity Types

Part 3 Commercial Activity Types

17.10.280 Fast-Food Restaurant Commercial Activities.

17.10.280 Fast-Food Restaurant Commercial Activities.

A. ~~Fast-Food Restaurant Commercial Activities include the retail sale of ready-to-eat prepared foods and beverages, for on- or off-premises consumption, whenever the foods and beverages are available upon a short waiting time and are primarily served in or on disposable wrappers, containers, or plates. Fast-Food Restaurants may also exhibit other design and operating characteristics, including: (1) a limited menu; (2) food is typically ordered and served at a service counter; (3) food is paid for prior to consumption; (4) the facility in which the activity/use is occurring provides a take-out counter space and space for customer queuing. Examples of these activities include, but are not limited to, restaurants that do not fall under Section 17.10.272 Full Service Restaurant Commercial Activities or Section 17.10.274 Limited Service Restaurant and Cafe Commercial Activities. ~~They~~ This classification also includes certain activities accessory to the above, as specified in Section 17.10.040.~~

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

- ~~• Food is ordered and served from a take-out counter that is integral to the catering truck;~~
- ~~• Food is paid for prior to consumption;~~
- ~~• Catering trucks, pushcarts or other movable equipment from which the food is sold typically have a take-out counter and space for customer queuing;~~

- ~~• Food and beverages are served in disposable wrappers, plates or containers; and~~
- ~~• Food and beverages are prepared and sold for off-site consumption.~~

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

Section 5. Working Group. The Council directs staff from the Bureau of Planning to return to Council with a framework for the creation of “Food Vending Working Group,” with the purpose, in the first year of the new vending program, to monitor the program’s implementation, to make recommendations to staff, and to inform the larger vending community of the new program.

Section 6. California Environmental Quality Act. The City Council finds and determines the adoption of this Ordinance complies with the California Environmental Quality Act (“CEQA”), and relies on the previous set of applicable CEQA documents including: the Coliseum Area Specific Plan EIR (2015); Broadway Valdez Specific Plan EIR (2014); West Oakland Specific Plan EIR (2014); Central Estuary Area Plan EIR (2013); Land Use and Transportation Element of the General Plan EIR (1998); the Oakland Estuary Policy Plan EIRs (1999, 2006) and Supplemental EIR (2013); the Redevelopment Area EIRs- West Oakland (2003), Central City East (2003), Coliseum (1995), and Oakland Army Base (2002); the Historic Preservation Element of the General Plan EIR (1998); the 2007-2014 Housing Element Final EIR (2010) and Addendum (2014); and various Redevelopment Plan Final EIRs (collectively, “Previous CEQA Documents”). Further, the Council finds the adoption of this Ordinance is exempt, pursuant to CEQA Guidelines section 15183 (projects consistent with General Plan and Zoning) and 15061(b)(3) (general rule, no significant effect on the environment). Each of these provides a separate and independent basis for CEQA clearance and when viewed collectively provide an overall basis for CEQA clearance.

Section 7. Severability. The provisions of this Ordinance are severable. If a court of competent jurisdiction determines that any word, phrase, clause, sentence, paragraph, subsection, section, chapter or other provision (collectively called “Part”) is invalid, or that the application of any Part of this Ordinance to any person or circumstance is invalid, such decision shall not affect the validity of the remaining Parts of this Ordinance. The City Council declares that it would have adopted this Ordinance irrespective of the invalidity of any Part of this Ordinance or its application to such persons or circumstances have expressly excluded from its coverage.

Section 8. Effective Date. This Ordinance shall take effect sixty (60) days after its adoption.

Section 9. Authority. This Ordinance serves the public interest and is necessary to protect the health, safety, and/or general welfare of the citizens of Oakland, and is enacted pursuant to the City of Oakland’s general police powers, Section 106 of the Charter of the City of Oakland, Vehicle Code section 22455, and Article XI, Sections 5 and 7 of the California Constitution.

Section 10. Revenue. Fees collected pursuant this ordinance, per the Master Fee Schedule, shall be deposited and appropriated in the Development Services Fund (2415), Planning Organization (84211), Other Fees: Misc. Account (45419) and Construction and Obstruction Permit Accounts (42211 and 42315) and Contingency Account (54011), Food Vendor Projects (10000867 and 1000868); any fines or penalties collected pursuant to Oakland Municipal Code Chapters 1.08 and

1.12 and Section 5.51.270 will be deposited in the same fund.

Section 110. Conflict. Nothing in this Ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

Section 124. Notice of Exemption/Notice of Determination. The Environmental Review Officer, or designee, is directed to cause to be filed a Notice of Exemption/Notice of Determination with the appropriate agencies.

Section 1213. Record. That the record before the City Council relating to this Ordinance includes, without limitation, the following:

1. All final staff reports, decision letters and other documentation and information produced by or on behalf of the City;
2. All oral and written evidence received by the City staff, Planning Commission, and City Council before and during the public hearings on the amendments to the Oakland Municipal Code and Oakland Planning Code;
3. All matters of common knowledge and all official enactments and acts of the City, such as (a) the General Plan and the General Plan Conformity Guidelines; (b) Oakland Municipal Code; (c) Oakland Fire Code; (d) Oakland Planning Code; other applicable City policies and regulations; and (e) all applicable state and federal laws, rules and regulations.

Section 143. Conforming Changes. The City Council hereby authorizes the City Administrator or designee to make non-substantive, technical conforming changes (essentially correction of typographical and clerical errors), prior to formal publication of the amendments in the Oakland Municipal Code and Oakland Planning Code.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, CAMPBELL WASHINGTON, GALLO, GIBSON MCELHANEY, GUILLÉN, KALB, KAPLAN, AND PRESIDENT REID

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

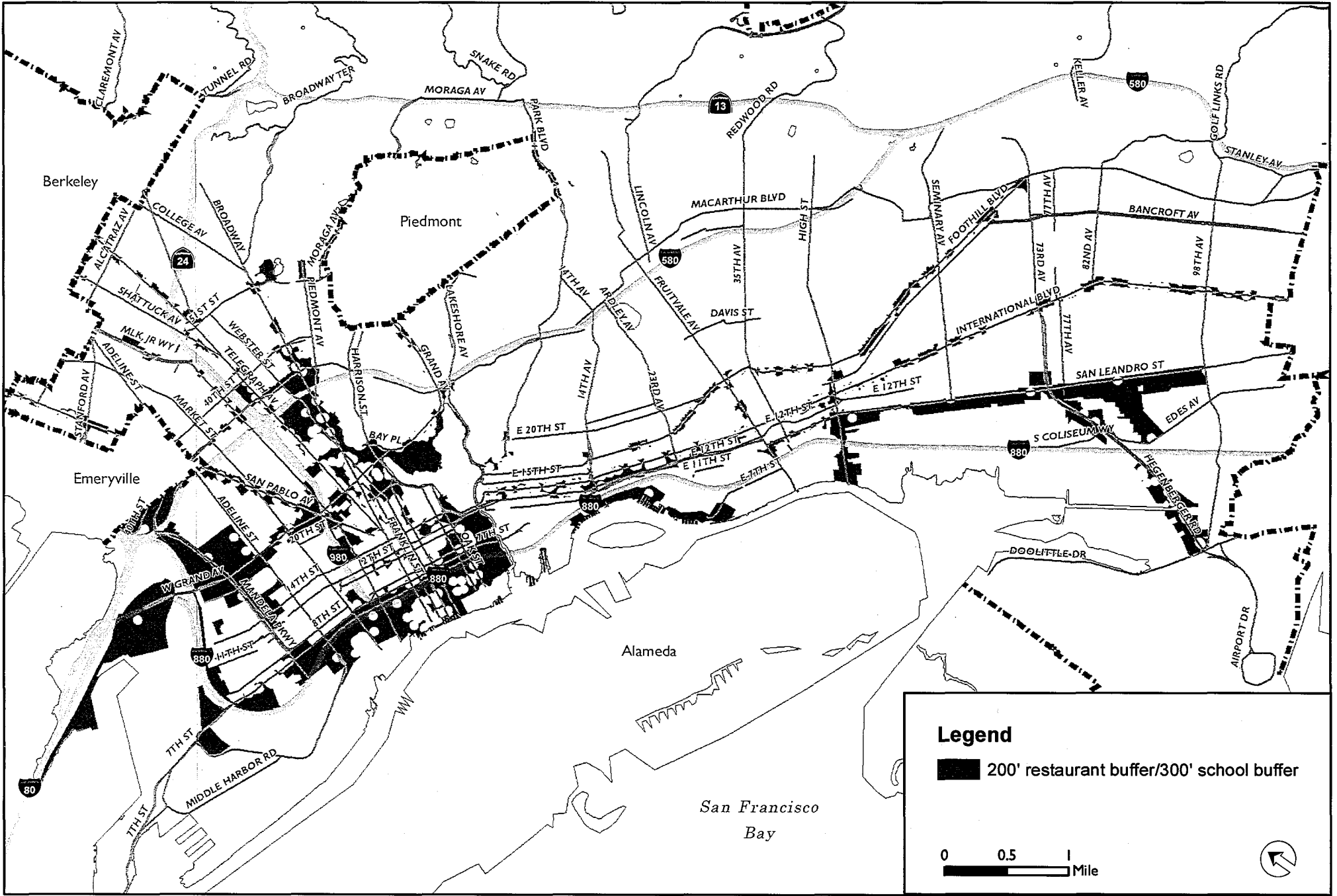
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION: _____

NOTICE AND DIGEST

ORDINANCE AMENDING THE OAKLAND MUNICIPAL CODE (“OMC”) TO ADOPT A NEW CITYWIDE FOOD VENDING PERMIT PROGRAM, DELETE OMC CHAPTERS 5.49 PUSHCART FOOD VENDING PILOT PROGRAM, 5.51 FOOD VENDING GROUP SITE PILOT PROGRAM AND 8.09 VEHICULAR FOOD VENDING, ADOPT NEW OMC CHAPTER 5.51 FOOD VENDING PROGRAM AND VARIOUS CONFORMING CHANGES TO THE OMC AND CITY PLANNING CODE, AND ADOPT CEQA FINDINGS

This Ordinance will create a new citywide food vending program which permits, with certain restrictions, individual food vending on private property and from the public right-of-way (streets and sidewalks) in designated commercial and industrial areas. The new program will also permit group site food vending (events with two or more food vendors) in more areas throughout the city. Adoption of the Ordinance would revise the definition of “Fast Food Restaurant Commercial Activities” in Oakland Planning Code Section 17.10.280; repeal the existing food vending program, located in Oakland Municipal Code (OMC) Chapter 5.49 (“Pushcart Food Vending Pilot Program”), Chapter 5.51 (“Food Vending Group Site Pilot Program”), and Chapter 8.09 (“Vehicular Food Vending”); and adopt a new comprehensive food vending program by adding language to OMC Chapter 5.51. The proposal also includes revisions to other Planning and Municipal Code sections as minor conforming changes.



C. Proposed Food Vending Program (200' /300' buffers)



Legend

■ 200' restaurant buffer/300' school buffer



**Proposed Food Vending Program (200'/300' buffers)
Downtown Detail**

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2017 MAR 16 PM 1:08

REVISED AT 2/28/17 CED COMMITTEE MEETING

APPROVED AS TO FORM AND LEGALITY

DRAFT

INTRODUCED BY COUNCILMEMBER _____

OFFICE OF THE CITY ATTORNEY

OAKLAND CITY COUNCIL
ORDINANCE No. _____ C.M.S.

ORDINANCE AMENDING THE OAKLAND MUNICIPAL CODE (“OMC”) TO ADOPT A NEW CITYWIDE FOOD VENDING PROGRAM, DELETE CHAPTERS 5.49 PUSH CART FOOD VENDING PILOT PROGRAM, 5.51 FOOD VENDING GROUP SITE PILOT PROGRAM AND 8.09 VEHICULAR FOOD VENDING, ADOPT NEW CHAPTER 5.51 FOOD VENDING PROGRAM AND VARIOUS CONFORMING CHANGES TO THE OMC AND CITY PLANNING CODE, AND ADOPTING CEQA FINDINGS

WHEREAS, on February 6, 2001, the City Council adopted Ordinance No. 12312 C.M.S., which established the Vehicular Food Vending Pilot Program, allowing food trucks to sell from private property in certain industrial and commercial areas of Central and East Oakland; and

WHEREAS, on February 17, 2004, the City Council adopted two pieces of legislation related to food vending, Ordinance No. 12579 C.M.S., which created a permanent Vehicular Food Vending Program, codified in Oakland Municipal Code (“OMC”) Chapter 8.09, Vehicular Food Vending, and Ordinance No. 12582 C.M.S., which created a permanent Pushcart Food Vending Program, codified in OMC Chapter 5.49, Pushcart Food Vending Pilot Program; and

WHEREAS, on December 20, 2011, the City Council adopted Ordinance No. 13098 C.M.S., establishing interim regulations to allow three or mobile food vendors (“Group Sites”) to operate legally in a limited area in the City of Oakland defined, in part, by Council Districts 1, 2, 3 and 4, codified in OMC Chapter 5.51, Food Vending Group Site Pilot Program; and

WHEREAS on February 5, 2013, the City Council adopted Ordinance No. 13152 C.M.S., extending the effective date of the Group Site Food Vending Pilot Program regulations until City Council adopts permanent mobile food vending regulations; and

WHEREAS, on January 17, 2017, the City Council adopted Ordinance No. 13414 C.M.S., which permitted food vending on private property and, for the first time, in the public right of way on 85th Avenue, between Edes Avenue and San Leandro Boulevard; and

WHEREAS, the City seeks to expand food vending opportunities with a comprehensive citywide

expansion of the food vending program, with the goals of adding vitality to neighborhoods, contributing to the richness of Oakland's culinary and cultural offerings, and provide economic opportunities for small business owners, many of whom are Oakland residents; and

WHEREAS, City staff has worked with stakeholders to develop a proposed new comprehensive citywide food vending program that would expand the areas in Oakland where food vending will be permitted, and address problems with the existing food vending regulations and programs; and

WHEREAS, staff from the Bureau of Planning met with many of the stakeholders who are involved with food vending in Oakland, including mobile food vendors, restaurant owners, business improvement district leaders, City staff, chambers of commerce, residents and community groups, and considered stakeholders' comments in developing new food vending legislation; and

WHEREAS, the new citywide food vending program would permit, with certain restrictions, individual food vending on private property and from the public right of way in selected commercial and industrial areas of Oakland. The new program would also permit group site vending citywide; and

WHEREAS, in connection with the new citywide food vending program, the City seeks to (1) revise the definition of "Fast Food Restaurant Commercial Activities" in Section 17.10.280 of the Oakland Planning Code, (2) replace Oakland Municipal Code Chapters 5.51 (Food Vending Group Site Pilot Program), 5.49 (Pushcart Food Vending Pilot Program) and 8.09 (Vehicular Food Vending) with a new Chapter 5.51 (Food Vending Program); (3) revise other Municipal Code sections as minor conforming changes; and (4) adopt CEQA findings; and

WHEREAS, this Ordinance serves the public interest and is necessary to protect and promote the health, safety, and/or welfare of the City of Oakland's constituents, and is enacted pursuant to the City of Oakland's general police powers, Article XI, Sections 5 and 7, of the California Constitution, Vehicle Code Section 22455, and Section 106 of the Charter of the City of Oakland; and

WHEREAS, it is in the City's interest to regulate food vending to protect public health and safety, including pedestrian, and bicyclist, motorist, and mobile food vendor safety at the new vending sites in the street right-of-way; and

WHEREAS, space on sidewalks adjacent to restaurants may be limited by crowded pedestrian areas at entrances, with customers required to stand outside, as well as by the use of outdoor seating, which warrants the inclusion of buffer distances in the regulations and administrative guidelines; and

WHEREAS, narrow sidewalk width, and existing obstructions in the sidewalk can limit accommodations for the disabled and other pedestrians to follow a safe path of travel, which are further limited with the presence of pushcarts and other mobile food vendors; and

WHEREAS, regulations that limit a single food vending facility's days to use a particular

location in the public right-of-way, during the course of a week will encourage and provide for greater opportunities for diversity of mobile food vending facilities in the locations where different vendors will appear on a rotating basis; and

WHEREAS, location restrictions and buffer distances are included in the regulations and administrative guidelines to minimize conflicts between pedestrians, and bicyclists, customers of food vending facilities, city-automobile drivers on city streets-drivers, and mobile food vendors; and to avoid double-parking and vehicular congestion which may occur when limited on-street parking is occupied by food vending facilities; to cause fewer motorist distractions and resulting accidents; to avoid causing pedestrians to be pushed into busy streets; and to prevent injuries; and

WHEREAS, funds from fees collected pursuant to this ordinance, and adopted in the Master Fee Schedule, shall be deposited and appropriated in the Development Services Fund (2415), Planning Organization (84211), Other Fees: Misc. Account(45419) and Construction and Obstruction Permit Accounts (42211 and 42315) and Contingency Account (54011), Food Vendor Projects (10000867 and 1000868) which is established for food vending administration; penalties collected pursuant to this ordinance, beyond what is needed to recover the costs of program operations, shall be deposited to the same fund; and

WHEREAS, the proposed amendments to the Oakland Municipal Code and Oakland Planning Code were considered, after a duly noticed public hearing, at a regular meeting of the City Planning Commission on December 21, 2016, and the Planning Commission recommended adoption of the proposed new comprehensive food vending program to the City Council; and

WHEREAS, this Ordinance was considered, after a duly noticed public meeting of the Community and Economic Development Committee on February 28, 2017, and the Committee recommended adoption of this Ordinance with revisions; and

WHEREAS, this Ordinance was considered, after a duly noticed public hearing, at a regular meeting of the City Council on March 21, 2017, and all interested parties were provided an ample opportunity to participate in said hearing and express their views; and

WHEREAS, this Ordinance is supported by sufficient justifications and/or evidence, including for reasons stated herein and in the record, including the February 28, 2017 City Council Agenda Report, incorporated herein by reference, and meets the appropriate legal standards, including without limitation the City's police power, constitutional standards, Vehicle Code Section 22455, and the Oakland City Charter; and

WHEREAS, the City Council finds and determines that the public safety, health, convenience, comfort, property, and general welfare will be improved with a new comprehensive food vending program; now therefore,

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

Section 1. Recitals. The recitals contained in this Ordinance are true and correct and are an integral part of the Council's decision, and are hereby adopted as findings.

Section 2. Repeal of the Existing Food Vending Program, Located in Oakland Municipal Code Chapters 5.51 (Food Vending Group Site Pilot Program), 5.49 (Pushcart Food Vending Pilot Program) and 8.09 (Vehicular Food Vending). The existing food vending program, which is located in Oakland Municipal Code Chapters 5.51 (Food Vending Group Site Pilot Program), 5.49 (Pushcart Food Vending Pilot Program), and 8.09 (Vehicular Food Vending), is hereby expressly repealed in its entirety.

Section 3. Adopt New Comprehensive Food Vending Program by Adding Language to Chapter 5.51 of Oakland Municipal Code. Chapter 5.51 of the Oakland Municipal Code is amended to read as follows (additions are shown as underlined text):

CHAPTER 5.51 FOOD VENDING PROGRAM

Sections:

Article I – General Provisions

Article II – Standards and Requirements

Article III – Enforcement, Revocation and Abatement

Article I – General Provisions

5.51.010 – Title and Purpose.

5.51.020 – Definitions.

5.51.025 – Administrative Regulations.

5.51.030 – Permit required.

5.51.040 – Conflicting Provisions.

5.51.050 – Permitted Area.

5.51.060 – Transference of a Food Vending Permit.

5.51.070 – Food Vending Permit Not a Land Use Entitlement.

5.51.080 – Maximum Number of Food Vending Permits.

5.51.090 – Application requirements for all Food Vending Permits.

5.51.100 – Additional application requirements for group sites.

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

5.51.120 – Inspections required prior to legal operation.

5.51.130 – Food Vending Permit expiration and renewal.

5.51.140– Finality of Decisions

5.51.010 – Title and purpose.

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

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

5.51.020 – Definitions.

“Administrative Guidelines” means the document prepared by the City Administrator or his/her designee, used by Bureau of Planning staff to administer the Food Vending program. The document includes the “Food Vending Program Permitted Area” map, and is revised by the City Administrator or his/her designee.

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

“Assembly area” is an indoor or outdoor place where people may gather for any permitted purpose.

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

“Food vending” means the business of selling, or causing to be sold from a food vending facility, raw or cut fruit, produce, prepared foods and non-alcoholic beverages, and/or prepackaged foods and beverages, where:

1. Food is prepared off-site in a commercial commissary and/or prepared on-site within the food vending facility, per Alameda County Health Regulations;
2. Food is ordered and served from the truck, trailer, pushcart, or other equipment or vehicle as permitted by Alameda County Environmental Health;
3. Fruit and produce is sold to customers without preparation or cooking by a vendor;
4. Food is served outdoors or under a non-permanent structure;
5. Food is paid for prior to consumption; and
6. Food and beverages are prepared and sold for on-site or off-site consumption.

“Food vending facility” means a truck, trailer, pushcart, stationary cart or other equipment or vehicle from which food vending services are provided, as permitted by the Alameda County

Environmental Health Department. Food vending trucks and trailers must be less than eighteen feet, six inches (18' 6") in length, eight feet (8' 0") in width, and ten feet, six inches (10' 6") in height, measured from bottom of tire. Not included in this definition is the preparation of food and serving of food outside of a vehicle, typically under a tent, canopy, or from a booth.

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

"Food Vending Program Permitted Area" is the map in the Administrative Guidelines which shows which areas and public right-of-ways are permitted for a Food Vending Permit. The Permitted Area map also shows specific parking spaces in the street right-of-way, designated by the City for Food vending facilities. Designated parking spaces are the only permitted areas allowed for Food vending on the street right-of-way.

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

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

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

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

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

"Healthy foods" are defined in the Administrative Guidelines.

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

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

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

"Non-food merchandise" means goods, wares, or non-food merchandise.

"Pushcart" is a type of non-motorized food vending facility that, because of its small size and operable wheels, can be easily moved by a person during hours of operation. This definition may also include a food vending facility integrated or pulled by non-motorized, pedal-powered vehicle such as a bicycle or tricycle.

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

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

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

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

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

“Stationary cart” means a type of non-motorized food vending facility that generally has a maximum length of eight (8) feet, maximum depth of six (6) feet, and a maximum height of eight (8) feet. Stationary food carts are typically larger than pushcarts; pulled or delivered by a vehicle into position; and stationary at a specific site during hours of operation, and then removed by a vehicle after operating hours. Umbrellas nine (9) feet in diameter or less are permitted with these carts.

“Stationary food cart vendor” is a person who owns and operates a business vending from a stationary food cart.

5.51.025 – Administrative Regulations.

The City Administrator or his/her designee is hereby authorized to adopt rules and regulations consistent with this Chapter as needed to implement this Chapter, subject to the review and approval of the Office of the City Attorney, and to develop all related forms and/or other materials and take other steps as needed to implement this Chapter, and make such interpretations of this Chapter as he or she may consider necessary to achieve the purposes of this Chapter.

5.51.030 – Permit required.

- A. Except as may be allowed by a previously granted Conditional Use Permit for the use under Title 17, or by any ordinance or resolution establishing and regulating a street market or farmer’s market in the City; or for a limited period by a Special Event Permit issued in accordance with Chapter 9.52, it shall be unlawful for any individual, group, or legal entity to sell, offer for sale, or solicit offers to purchase food from food vending facilities in the City of Oakland without first obtaining a Food Vending Permit as specified in this Chapter. Conducting a food vending operation in the City of Oakland without such a valid form of city permission is a public nuisance, as defined in this Code.
- B. Any individual, group, or legal entity desiring to engage in food vending in the City shall first file an application with the Bureau of Planning pursuant to procedures established in this Chapter and/or in the Administrative Guidelines to this Chapter.
- C. Issuance of an Encroachment or Obstruction Permit from the City of Oakland is not required to operate an individual food vending facility or group site in the public right-of-way.
- D. The individual, group, or legal entity desiring to engage in food vending shall obtain and maintain all required permits from the Alameda County Environmental Health Department the City of Oakland, and other regulatory agencies, including, but not limited to Electrical Permits or Fire Department permits.

5.51.040 – Conflicting provisions.

Where a conflict exists between the regulations or requirements in this Chapter and applicable regulations or requirements contained in other Chapters and Titles of the Oakland Municipal Code, including but not limited to the Oakland Planning Code (Title 17), the applicable regulations or requirements in this Chapter shall prevail.

5.51.050 – Permitted area.

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

- A. Food vending shall only be located in the Food Vending Program Permitted Area, and may be located on private property, on publicly-owned property, or in the public right-of-way. Food vending in the street right-of-way is restricted to designed parking spots as shown on the Food Vending Program Permitted Area map. The City Administrator or his or her designee is authorized to adopt a Food Vending Program Permitted Area Map and make amendments or correct administrative errors to such map.
- B. A location for an individual food vending facility or group site shall not be permitted if it is proposed to be closer than the distances specified below.
 1. Three hundred (300) feet from another individual food vending facility or group site, unless individual food vending facilities or group sites are permitted to operate at designated parking spaces on the street right-of-way, or separate individual vending facilities or group sites are permitted to operate on different days of the week from the same location;
 2. Vending within ~~five~~ three hundred (3500) feet from the parcel boundary of a school serving children between kindergarten and high school between the hours of 7 a.m. and 6 p.m. Monday through Friday is restricted as per the Administrative Guidelines to this Chapter;
 3. ~~One~~ Two hundred (2400) feet from the primary entrance of a Full Service or Limited Service Restaurant; as an exception, food vending facilities may locate within ~~one~~ two hundred (2400) feet of a Full Service or Limited Service Restaurant if the restaurant owner has provided the vehicular food vendor with permission to locate on the same lot; or if the restaurant is closed during the permitted hours of food vending operation; and
 3. Any additional location requirements, as determined by the City Administrator or his/her designee, per Section 5.51.030(B) of this Chapter.
- C. Individual food vending facilities or group sites cannot block or impede access to:
 1. Required parking or driveways;
 2. Bicycle racks;
 3. Signal crossings;
 4. Required off street parking;
 5. Parking meters;
 6. Pedestrian or bicycle routes;
 7. Emergency vehicle routes;
 8. Building entrances and exits;

- 9. Required accessibility routes and curb cuts;
- 10. Easements;
- 11. Trash enclosure areas or access to trash bins/trash enclosures; or
- 12. Other City facilities, as determined by the City Administrator or his/her designee.
- D. Individual food vending facilities and group sites shall maintain site circulation and access consistent with the Americans with Disabilities Act (ADA).
- E. Each stationary individual food vending facility and group site shall be located within two hundred (200) feet of a restroom facility that employees can legally access.
- F. All stationary food vending facilities on public sidewalks shall be located and operated such that a minimum of five and one-half (5½) feet of unobstructed improved sidewalk or fifty percent (50%) of the overall improved sidewalk width, whichever is greater, is provided and maintained at all times from all building entrances, as well as from parking meters, traffic signs, trees, tree wells, sidewalk planter strips, and all similar sidewalk obstacles.

5.51.060 – Transferability of a Food Vending Permit.

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

5.51.070 – Food vending permit not a land use entitlement.

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

5.51.080 – Maximum number of Food Vending Permits.

The maximum number of the different types of Food Vending Permits which may be issued shall be set by the City Administrator in the Administrative Guidelines to this Chapter, and reviewed annually. At no time shall more than the maximum number of the specified types of Food Vending Permits be active.

5.51.090 – Application requirements for all Food Vending Permits

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

- A. Name, contact information, and copy of a photo ID of the applicant;
- B. A non-refundable application fee in an amount set in the Master Fee Schedule;
- C. If proposed location is on private property, written consent in a form approved by the City

from the property owner (if other than self) permitting the individual food vending facility or group site to locate on the property; or, if owned by applicant, proof of ownership;

D. A map or illustration, showing:

1. The proposed location(s);
2. The address and Assessor's Parcel Number of the subject or nearest parcel, and/or specific section of the public right-of-way in a designated parking space; and
3. The two (2) nearest street intersections.

E. A site plan for each proposed location, containing:

1. If on a parcel, the location and dimensions of all proposed food vending facility(s), any public seating or other site amenities (including chairs and tables), buildings or other structures on site, paved areas, driveways, trash receptacles, garages, parking spaces, maneuvering aisles, and pavement striping;
2. If in the public right-of-way in a designated parking space, location and dimensions of the proposed food vending facility(s), sidewalks, curb cuts, trash receptacles, and obstructions such as parking meters, telecommunication boxes, street trees, and light poles.

F. Photographs of the site(s) and food vending facility(s);

G. Sample, photo, or rendering of proposed signs;

H. The proposed menu of items to be offered at the food vending facility(s);

I. Proof of all required approvals from the Alameda County Department of Environmental Health for the proposed food vending facility(s) and/or group site;

J. Proof that the food vendor(s) and, if applicable, group site organizer, has a valid City of Oakland Business Tax Certificate;

K. The proposed schedule for the individual food vending facility or group site, including dates, and starting and ending times of the vending period;

L. Maintenance plan, including litter pickup and cleaning in the vicinity of the individual food vending facility or group site;

M. The address where the food vending facility(s) will be stored and serviced during non-operating hours;

N. The following information shall be provided regarding the commercial kitchen or commissary to be used by the applicant, if any:

1. Proof of all required approvals from the Alameda County Department of Environmental Health;
2. A valid lease between the facility operator(s) and a commercial kitchen or commissary; and
3. For a commissary in Oakland, evidence of a valid City of Oakland Business Tax Certificate and Zoning Clearance.

O. A signed statement from the applicant that they will abide by all local, state and federal requirements, including, but not limited to, those relating to the minimum wage and sick leave.

P. Proof of liability insurance in the amount required by the City's Administrative Guidelines.

Q. Any other reasonable information regarding time, place, and manner of the individual food vending facility or group site operation that the City Administrator or his/her designee requires to evaluate the proposal.

5.51.100– Additional application requirements for group sites.

A. The application for a Group Site Food Vending Permit shall include the items in Section 5.51.090, and the following additional information:

1. Legal and business name and mailing address for each food vendor; and
2. Designation of a manager to be responsible for the day-to-day site management of the group site.

5.51.110 – Decisions regarding the approval, approval with conditions, or denial of a Food Vending Permit.

A. The Director of City Planning, or his or her designee, shall determine whether the proposal meets the requirements for a Food Vending Permit as set forth in this Chapter and/or in the Administrative Guidelines to this Chapter.

1. During the first year of the program, the Director of City Planning, or his or her designee, shall review and issue Food Vending Permits in the following order of priority:
 - i. Priority Group One: Vendors with valid, unexpired Oakland Food Vending permits (i.e. 2016-2017 Food Cart “FC” or Food Vehicle “FV” permits);
 - ii. Priority Group Two: Vendors with expired Oakland Food Vending permits (i.e. 2001-2015 Food Cart “FC” or Food Vehicle “FV” permits);
 - iii. Priority Group Three: Vendors applying for City-designated parking spaces in the street right-of-way; and
 - iv. Priority Group Four: All other vending applicants.
2. During this first year of the program, applications in Priority Groups One and Two with current or expired Oakland Food Vending permits shall be reviewed based on the buffering standards that applied at the time of their initial issuance of an Oakland Food Vending permit, as described in the Administrative Guidelines to this Chapter. As a result, permits may be granted for a previously permitted location that does not meet the current buffer distances in Section 5.51.050.
3. After the first year of the program, all new permit applications in Priority Groups Three and Four shall be reviewed with equal priority and according to the current requirements for a Food Vending Permit as set forth in this Chapter and/or in the Administrative Guidelines to this Chapter. However, all permits that are renewed on an annual basis shall continue to be evaluated according to the standards that applied at the time of the initial permit issuance.

B. At the time of Food Vending Permit application, the applicant vendor or group site organizer shall obtain from the Bureau of City Planning, a list of names and mailing addresses of all persons shown on the last available equalized assessment roll as owning the City of Oakland lot or lots adjacent to the project site and directly across the street abutting the project site; and a Notice to Neighboring Property Owners form which includes the project description and contact information.

C. Prior to the subject application being deemed complete, the applicant shall provide by certificate of mailing or certified delivery to all persons shown on the last available equalized assessment roll as owning the City of Oakland lot or lots adjacent to the project site and directly across the street abutting the project site, a copy of the completed project notice form.

as well as a site plan that shows the proposed vending location.

- D. All required notification of adjacent and across the street property owners shall be completed by the project applicant not less than ten (10) days prior to the earliest date for final decision on the application.
- E. Decision by the Director of City Planning. The Director of City Planning or his/her designee shall approve, approve with conditions, or deny a Food Vending Permit application based on the standards and criteria set forth in this Chapter and/or in the Administrative Guidelines to this Chapter. The Director of City Planning or his/her designee may impose conditions of approval on a Food Vending Permit in the exercise of his or her reasonable discretion. The applicant shall be notified of any conditions of approval in writing.
- F. The Administrative Guidelines shall include such reasonable rules and regulations as are necessary to hold any lottery the city may utilize in the issuance of permits.
- GF. A Food Vending Permit application may be denied upon evidence that:
1. Information contained in the application, or supplementary information requested from the applicant, is false in any material detail; or
 2. The applicant has failed to ensure conformity with the operating standards and/ or permitted area location requirements in this Chapter and/or in the Administrative Guidelines to this Chapter; or
 3. The applicant has failed to provide a complete application form after having been notified of the requirement of producing additional information or documents; or
 4. The applicant has previously been cited by the City of Oakland for causing a public nuisance, or causing an unlawful or criminal activity during the operation of a food vending activity; or
 5. 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
 6. The granting of the Food Vending Permit will have an adverse impact upon the public health, safety, or order.

5.51.120 – Inspections required prior to legal operation.

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

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

5.51.130 – Food Vending Permit expiration and renewal.

- A. Unless renewed as described in Subsection B. below, each Annual Food Vending Permit shall be valid for twelve (12) months from the month of issuance, and expire and become null and void annually on the anniversary of its month of issuance. Each Temporary Food Vending Permit shall expire and become null and void after ninety (90) days, and may be renewed for one additional consecutive ninety (90)-day time period.
- B. An individual food vending facility or group site organizer may apply to the Director of City Planning, or his or her designee, for a Food Vending Permit renewal on a form provided by the City prior to the expiration of their active Food Vending Permit. All renewal applications shall be filed with the Bureau of Planning pursuant to procedures established in this Chapter and/or in the Administrative Guidelines to this Chapter. As stated in Section 5.51.110.A, all Food Vending Permits that are renewed on an annual basis shall continue to be evaluated according to the standards that applied at the time of the initial permit issuance.

5.51.140 – Finality of decisions

Decisions regarding a Food Vending Permit application shall be effective immediately and are not appealable.

Article II – Standards and Requirements

5.51.150 – Hours of operation

5.51.160 – Appearance and Operating Standards

5.51.170 – Liability and Indemnification

5.51.150 – Hours of operation

- A. The regular permitted hours of operation for all individual food vending facilities and group sites are 7 a.m. to 10 p.m., daily.
- B. If an applicant is granted permission for late night vending, as described in the Administrative Guidelines to this Chapter, the City may allow an individual food vending facility or group site to operate later than the regular permitted hours, but no later than 3 a.m.
- C. For Group Sites in the public right-of-way, the specific hours of operation shall be determined by the City, and shall not exceed more than five (5) hours of food vending operation on any day of permitted group site activity, unless specified otherwise at the discretion of the Director of City Planning or his or her designee.

5.51.160 – Appearance and operating standards.

- A. Appearance and condition of the food vending facility.
 - 1. All food vending facilities and group sites shall clearly display a current City of Oakland business tax certificate, Alameda County Environmental Health permit (and decal), and

City of Oakland Food Vending Permit (and decal) in plain view and at all times on the exterior of the food vending facility or at the group site.

2. No more than three (3) signs shall be attached to any food vending facility, with a maximum aggregate display surface of thirty (30) square feet of signage per food vending facility.

B. Utilities.

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

C. Refuse, trash and litter maintenance.

1. The food vending facility or group site organizer shall not throw, deposit, discharge, leave, or permit to be thrown, deposited, discharged, or left, any fat, oil, grease, refuse, garbage, or other discarded or abandoned objects, articles, and accumulations, in or upon any street, alley, sidewalk, gutter, storm drain, inlet, catch basin, conduit or other drainage structure, or upon any public or private lot of land in the City, so that the same might be or become a pollutant.
2. Other than roaming food vending facilities, a minimum of one thirty-two (32)-gallon litter receptacle shall be within fifteen (15) feet of each individual food vending facility for customers and employees.
3. Individual food vending facilities and group site organizers shall maintain the subject site and adjacent public right-of-way free of litter on and within one hundred (100) feet of their site.
4. At a minimum, all refuse shall be removed from the individual food vending facility location or group site, and properly disposed of after each vending period.
5. Failure to adequately clean up after a food vending operation date shall be grounds for denying an applicant's request for permit renewal as set forth in Section 5.51.130.

D. Seating, chairs and tables.

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

E. Performance standards.

1. Noise levels from food vending facilities shall not exceed the City's noise ordinance standards. Vendors should use low-noise emission generators.
2. Noise and odors from food vending facilities shall be contained within immediate area of the permitted food vending location.
3. The vehicular food vendor shall maintain site circulation for pedestrians and access consistent with the Americans with Disabilities Act.

F. Security.

1. The site shall be maintained in a safe and clean manner at all times.
2. Food vending facilities and group sites shall have adequate lighting to ensure customer safety. Lighting shall be directed downwards and away from public streets and adjacent

properties.

G. Other requirements.

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

5.51.170 – Liability and Indemnification

- A. To the fullest extent permitted by law, any actions taken by a public officer or employee under the provisions of this Chapter shall not become a personal liability of any public officer or employee of the City.
- B. To the maximum extent permitted by law, the permittees under this Chapter shall defend (with counsel acceptable to the City), indemnify and hold harmless the City of Oakland, the Oakland City Council, the Oakland City Planning Commission, and their respective officials, officers, employees, representatives, agents and volunteers (hereafter collectively called “City”) from any liability, damages, actions, claims, demands, litigation, loss (direct or indirect), causes of action, proceedings or judgment (including legal costs, attorneys’ fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called “Action”) against the City to attack, set aside, void or annul, any food vending-related approvals and actions or implementation of such approvals and actions, including conditions of approval, if any. The City may elect, in its sole discretion, to participate in the defense of said Action and the permittee shall reimburse the City for its reasonable legal costs and attorneys’ fees.
- C. Within ten (10) calendar days of the service of the pleadings upon the City of any Action as specified in Subsection B above, the permittee shall execute a Letter of Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations and the Letter of Agreement shall survive termination, extinguishment or invalidation of the food vending-related approval. Failure to timely execute the Letter of Agreement does not relieve the permittee of any of the obligations contained in this Section or any other requirements or performance or operating standards that may be imposed by the City.

Article III. Enforcement, Revocation and Abatement

5.51.180 – Enforcement.

5.51.190 – Violation.

5.51.200 – Responsibility.

5.51.210 – Revocation of Food Vending Permits.

5.51.220 – Penalties for violation of Food Vending Permit requirements.

5.51.230 – Abatement generally.

5.51.240 – Notice to abate.

5.51.250 – Abatement procedure.

5.51.260 – Violations constituting infractions.

5.51.270 – Penalty for violation.

5.51.180 – Enforcement.

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

5.51.190 – Violation.

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

5.51.200 – Responsibility.

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

5.51.210 – Revocation of Food Vending Permits.

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

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

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

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

5.51.220– Penalties for violation of Food Vending Permit requirements.

Any violation of this Chapter may be charged as a civil penalty or administrative citation as provided for in Chapters 1.08 and 1.12 of this Code. Enforcement action specifically authorized by this Section may be utilized in conjunction with, or in addition to, any other statutory, code, administrative or regulatory procedure applicable to this Chapter, including confiscation of merchandise and food for sale, and/or impoundment of the food vending facility. In addition, nothing in this Section shall be interpreted to preclude or limit the City from seeking injunctive or other judicial relief.

5.51.230 – Abatement generally.

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

5.51.240 – Notice to abate.

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

- A. The street address and legal description of the site 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 applicant, as well as the property owner if the activity is located on private property, are in violation of this Chapter;
- C. A statement specifying the condition that has been deemed a public nuisance;
- D. A statement ordering the property owner, individual food vendor, and/or responsible party to abate the condition(s), and specifying the manner in which the same shall be abated, and the period within which such abatement shall be accomplished.

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

It is unlawful for the property owner, individual food vendor, and/or responsible party to fail or neglect to comply with such order or notice of abatement. In the event that the property owner, individual food vendor, and/or responsible party shall not promptly proceed to abate said nuisance condition(s) within seven (7) days of notice to abate, as ordered by the enforcing official, the abatement procedure set forth in Section 5.51.250 may be undertaken.

5.51.250 – Abatement procedure.

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

5.51.260 – Violations constituting infractions.

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

5.51.270 – Penalty for violation.

Any person violating any provision of this Chapter shall be punished upon a first violation by a fine of not more than \$1,000.00 and, for a second violation within a period of one year, by a fine of not more than \$2,000.00 and, for a third or any subsequent violation within a one-year period, by a fine of not more than \$5,000.00. Any violation beyond the third, within a one-year

period may be charged by the City Attorney or the District Attorney as a misdemeanor and the penalty for conviction of the same shall be punishable by a fine of not more than \$10,000.00 or by imprisonment in the county jail for a period of not more than six months or by both. Any person violating or failing to comply with any of the provisions of this Chapter shall be subject to civil penalties and administrative citations per Chapters 1.08 and 1.12 of this Code, and could be subject to confiscation of their merchandise and food for sale, and/or impoundment of the food vending facility.

Section 4. Conforming Changes in the Oakland Municipal Code and Oakland Planning Code. Chapters 1.08 (Civil Penalties), 1.12 (Administrative Citations), 1.16 (Alternative Administrative Procedure for Abatement of Certain Violations), ~~(5.02 (Business Permits Generally), 5.48 (Peddlers and Solicitors), and 12.08 (Encroachments)~~ of the Oakland Municipal Code, and Chapter 17.10 (Use Classifications) of the Oakland Planning Code, are hereby amended to bring these chapters into conformity with the new comprehensive food vending program (additions are shown as underlined text and deletions are shown as ~~strikethrough~~):

Chapter 1.08 - CIVIL PENALTIES

1.08.020 - Scope

A. This chapter authorizes the administrative assessment of civil penalties to effect abatement of:

1. Any violations of provisions of the following Oakland Municipal Codes: Oakland Building Code (OMC Chapter 15.04), the Oakland Housing Code (OMC Chapter 15.08), Uniform Fire Code (OMC Chapter 15.12), Fire Damaged Area Protection & Improvement Code (OMC Chapter 15.16) Bedroom Window Security Bar & Smoke Detector Permit Code (OMC Chapter 15.64), Oakland Planning Code (OMC Title 17), Transient Occupancy Tax Code (OMC Chapter 4.24), Hotel Rates & Register Code (OMC Chapter 5.34), Food Vending Program (OMC Chapter 5.51); Animal Code (OMC Title 6), Health & Safety Code (OMC Title 8), Public Peace, Morals and Welfare Code (OMC Title 9), Vehicles and Traffic Code (OMC Title 10), Streets, Sidewalks & Public Places Code (OMC Title 12), Creek Protection, Storm Water Management and Discharge Control Code (OMC Chapter 13.16), Affordable Housing Impact Fees (OMC Chapter 15.72), Transportation and Capital Improvements Impact Fees (OMC Chapter 15.74), and the Oakland Sign Code (OMC Chapter 14); or,

2. The occurrence of anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, which affects-at-the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal; or

3. The occurrence of any public nuisance as known at common law or in equity jurisprudence, or

4. The violation of any state or federal law or regulations under which such violation is deemed a public nuisance.

B. Civil penalties established in this chapter are in addition to any other administrative or legal remedy which may be pursued by the city to address violations of the codes and ordinances identified in this chapter.

Chapter 1.12 - ADMINISTRATIVE CITATIONS

1.12.020 - Scope.

A. This chapter authorizes the administrative assessment of citations to effect abatement of:

1. Any violations of the following provisions of the Oakland Municipal Code: the Oakland Building Code (CIVIC Chapter 15.04), the Oakland Housing Code (OMC Chapter 15.08), Uniform Fire Code (CIVIC Chapter 15.12), Fire Damaged Area Protection & Improvement Code (CIVIC Chapter 15.16) Bedroom Window Security Bar & Smoke Detector Permit Code (CIVIC Chapter 15.64), Oakland Planning Code (CIVIC Title 17), Oakland Sign Code (OMC Chapter 146), Transient Occupancy Tax Code (OMC Chapter 4.24), Unattended Donation/Collection Boxes (OMC Chapter 5.19), Hotel Rates & Register Code (CIVIC Chapter 5.34), Food Vending Program (OMC Chapter 5.51); Animal Code (OMC Title 6), Health & Safety Code (OMC Title 8), Public Peace, Morals and Welfare Code (OMC Title 9), Vehicles and Traffic Code (OMC Title 10), Streets, Sidewalks & Public Places Code (OMC Title 12) and Creek Protection, Storm Water Management and Discharge Control Code (OMC Chapter 13.16); or

2. The occurrence of anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal; or

3. The occurrence of any public nuisance as known at common law or in equity jurisprudence.

4. The violation of any state or federal law or regulations under which such violation is deemed a public nuisance.

B. Administrative citations established in this chapter are in addition to any other administrative or legal remedy which may be pursued by the city to address violations of the codes and ordinances identified in this chapter.

Chapter 1.16 - ALTERNATIVE ADMINISTRATIVE PROCEDURE FOR ABATEMENT OF CERTAIN VIOLATIONS

1.16.020 - Scope.

A. This chapter permits the administrative limitation of the use of property by authorizing the recordation of notices of violation and by authorizing the revocation, suspension, and/or withholding of permits as appropriate to effect abatement of:

1. Any violations of the Oakland Building Code (OMC Chapter 15.04), Oakland Housing Code (OMC Chapter 15.08), Uniform Fire Code (OMC Chapter 15.12), Fire Damaged Area Protection & Improvement Code (OMC Chapter 15.16) Bedroom Window Security Bar & Smoke Detector Permit Code (OMC Chapter 15.64), the Oakland Planning Code (OMC Title 17), Transient Occupancy Tax Code (OMC Chapter 4.24), Hotel Rates & Register Code (OMC Chapter 5.34), Food Vending Program (OMC Chapter 5.51); Animal Code (OMC Title 6), Health & Safety Code (OMC Title 8), Public Peace, Morals and Welfare Code (OMC Title 9), Vehicles and Traffic Code (OMC Title 10), Streets, Sidewalks & Public Places Code (OMC Title 12), Creek Protection, Storm Water Management and Discharge Control Code (OMC Chapter 13.16) and Oakland Sign Code (OMC Chapter 14; or
2. The occurrence of anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal; or
3. The occurrence of any public nuisance as known at common law or in equity jurisprudence.
4. The violation of any state or federal law or regulations under which such violation is deemed a public nuisance.

Chapter 5.02 - BUSINESS PERMITS GENERALLY

Sections:

5.02.010 - Permits generally.

5.02.020 - Application.

5.02.030 - Procedure on application.

5.02.040 - Chief of Police as the investigating official.

5.02.050 - Notice of hearing on application.

5.02.060 - Action on application.

5.02.070 - Transfer of permits.

5.02.080 - Revocation and suspension of permit.

5.02.090 - Hearings.

5.02.100 - Appeals.

5.02.110 - Inspection of premises.

5.02.120 - Permits to be exhibited.

5.02.130 - ~~City Clerk~~ Planning Director, or his or her designee, to examine applications as to zone.

5.02.140 - City Administrator, or his or her designee, ~~Clerk~~ to be notified of actions on permits.

5.02.150 - Expiration of permit.

5.02.010 - Permits generally.

Whenever, by the provisions of this Chapter, a permit from the city is a prerequisite to the operation or maintenance of any business, establishment or place, or to the furtherance of any undertaking or the doing of any thing, unless otherwise specifically provided, such permit shall be procured in the manner, and be subject to the provisions, hereinafter in this Chapter set forth.

5.02.020 - Application.

Application for any permit referred to in Section 5.02.010 shall be filed with the City Addministrator, or his or her designee, ~~City Clerk~~ in triplicate, the original of which shall be duly acknowledged before some person lawfully authorized to administer oaths, and upon forms to be furnished by said City official, ~~Clerk~~, and shall set forth the following information:

- A. A full identification of the applicant and all persons to be directly or indirectly interested in the permit if granted;

- B. The residence and business address and the citizenship of the applicant, including all members of any firm or partnership, or all officers and directors of any corporation applying;
- C. The location of the proposed business, establishment, place, thing, etc., for which the permit is requested, and the name of the owner and the present use of such premises;
- D. The exact nature of the proposed business, establishment, place, thing, etc., for which the permit is requested, and the name under which it is to be operated;
- E. The past experience of the applicant in the matter to which the requested permit appertains; and the name, address, and past experience in such business or matter of the person to be in charge of the premises or business;
- F. Whether or not any permit has been revoked, and if so, the circumstances of such revocation;
- G. Such further information as the City Administrator, Manager, or such official of the city to whom the application may be referred, may require.

5.02.030 - Procedure on application.

Immediately on the filing of any application for a permit as provided in Sections 5.02.010 and 5.02.020, the City Administrator, Clerk or his or her designee, shall place the acknowledged copy in the permanent records of his or her office, refer one copy to ~~the City Administrator and one copy to~~ such official of the city the administrative functions of whom are those primarily concerned with the granting or denying of such permit, which latter official, hereinafter in this Chapter referred to as the "investigating official," shall make such investigation of the applicant and of the facts set forth in such application as he or she shall deem advisable, and shall make a written report of such investigations, together with his or her recommendations relative to disposal of the application, to the City Administrator, who shall proceed to act upon said application after a hearing set by the City Administrator, or his or her designee, Clerk for a day certain, not more than forty-five (45) days from the date of filing completed said application. At such hearing, all persons interested shall be entitled to file objections, protests or recommendations in the premises. Such hearing may, by the City Administrator, be continued over from time to time as circumstances may require; provided, however, that if hereinafter in this Chapter specifically provided, the investigating official may grant the permit applied for without referring the same to the City Administrator, and with or without a hearing thereon, as may be provided.

5.02.040 - Chief of Police as the investigating official.

Whenever the Chief of Police is the investigating official pursuant to this Chapter, the applicant shall pay ~~to the City Clerk~~ upon filing the application or an application for renewal, a fee to pay for the cost of such investigation.

5.02.050 - Notice of hearing on application.

The City Administrator, or his or her designee, Clerk shall in every case of application for a permit notify the applicant of the time and place of such hearing to be held therein as in Section 5.02.030 provided, and such notice shall be given at least thirty (30) days before the date of such hearing.

In the event that a public notice of the hearing on any application for a permit may be hereinafter in this Chapter required, the City Administrator, or his or her designee, Clerk shall cause a notice to be published once in the official newspaper of the city at least thirty (30) days before said hearing date, and cause a copy thereof to be posted upon the premises to be primarily affected by the granting of such permit, and a copy on the bulletin board near the Council Chambers. Such notice shall set forth the fact that such application has been filed, the name of the applicant, the nature of the thing to be permitted, and the time and place of hearing upon such application.

For applications involving the ongoing use of property, notice of the hearing shall be given by posting notices thereof on within three hundred (300) feet of the property involved in the application. Notice of the hearing shall also be given by mail or delivery to all persons shown on the last available equalized assessment roll as owning real property in the city within three hundred (300) feet of the property involved and to all addresses within three hundred (300) feet of the property and to registered community groups. All such notices shall be given not less than seventeen (17) days prior to the date set for the hearing. The fee for the notification process, as established by the master fee schedule, shall be a separate charge in addition to the application fee.

5.02.060 - Action on application.

The City Administrator, or the investigating official acting thereon, shall deny the granting of any permit applied for if it shall appear to his or her satisfaction that the applicant ~~is not a fit and proper person, either for financial, moral, or other reasons, to conduct or maintain the business, establishment, place, or other thing, to which the application appertains; that the applicant has not complied with the provisions of this Code which directly appertain to the maintenance or conduct of the business, establishment, place, or other thing in question or for the violation of any law appertaining thereto; or for any other reason hereinafter in this Chapter more specifically set forth.~~

In granting or denying such permit, and in specifying the conditions, if any, upon which it is granted, the City Administrator or other official acting thereon, shall consider ~~the character of the applicant as respects morality, honesty and integrity, and all pertinent facts which may concern the health, safety, and general welfare of the public, and shall exercise a reasonable and sound discretion in the premises.~~ The City Administrator, or other official acting thereon, in acting upon an application for a permit, shall notify the investigating official to whom such application was referred, of such action.

5.02.070 - Transfer of permits.

No permit in this Chapter required shall be transferable, nor apply to any premises other

than those originally specified as the location of the thing permitted, except upon written permission of the City ~~Administrator, Manager,~~ or other official originally granting such permit, granted upon written application by the transferor, made in the same manner as may be required in the instance of the original application for such permit.

5.02.080 - Revocation and suspension of permit.

Any permit granted pursuant to the provisions of this ~~C~~chapter may be revoked or suspended by the City ~~Administrator, Manager,~~ as in his or her discretion may seem meet and just, for any reason for which a granting of such permit might be lawfully denied, or for any other reason hereinafter in this ~~C~~chapter specifically provided. Such revocation or suspension shall be made only upon a hearing granted to the holder of the permit so revoked or suspended, held before the City ~~Administrator, Manager,~~ after five (5) days' notice to such permit holder, stating generally the grounds of complaint against him or her and stating the time and place where such hearing will be held. In the event of such revocation or suspension, any certificate issued in connection with the granting of such permit shall, by the holder thereof, be forthwith surrendered to the City ~~Administrator, Manager.~~

Such revocation or suspension of any permit shall be in addition to any other penalties more specifically provided in this ~~C~~chapter.

5.02.090 - Hearings.

Any investigation, inquiry or hearing which the City ~~Administrator, Manager,~~ has power to undertake or to hold may be undertaken or held by such member of the City ~~Administrator's~~ ~~Manager's~~ staff as he or she may designate and to whom the matter is assigned. The person to whom a matter is assigned shall be deemed a "Hearing Officer." In any matter so assigned the Hearing Officer conducting the investigation, inquiry or hearing shall report within thirty (30) days after the conclusion of the investigation, inquiry or hearing his or her findings and recommendations to the City ~~Administrator, Manager.~~

Within sixty (60) days after the filing of the findings and recommendations of the Hearing Officer, the City ~~Administrator, Manager,~~ shall confirm, adopt, modify or set aside the findings of the Hearing Officer and with or without notice enter his or her order, findings, decision or award based upon the record in the case.

In such hearings, investigations, and inquiries by the City ~~Administrator, Manager,~~ or a Hearing Officer, he or she shall not be bound in the conduct thereof by the common law or statutory rules of evidence and procedure but inquiry shall be made in the manner, through oral testimony and records, which is best calculated to ascertain the substantial rights of the public parties and carry out justly the spirit and provisions of this ~~C~~chapter.

No informality in any proceeding or the manner of taking testimony shall invalidate any other decision, award or rule made as specified in this ~~C~~chapter. No order, decision, award or rule shall be invalidated because of the admission into the record and the use as any proof of any fact in dispute or any evidence not admissible under the common law or statutory rules of evidence and

procedure.

5.02.100 - Appeals.

Any person excepting to any denial, suspension or revocation of a permit applied for or held by him or her pursuant to the provisions of this Cehapter, or pursuant to the provisions of this code where the application for said permit is made to, or the issuance thereof is by the City Administrator, Manager, or any person excepting to the granting of, or to the refusal to suspend or revoke, a permit issued to another pursuant to the provisions of this Cehapter, or issued to another by the City Administrator Manager pursuant to the provisions of this Code, may appeal in writing to the City Council by filing with the City Administrator, or his or her designee, Clerk a written notice of such appeal setting forth the specific grounds thereof. Such notice must be filed within fourteen (14) days after notice of such action appealed from is posted in the United States mail. Upon receipt of such notice of appeal, the Council shall set the time for consideration thereof. The City Administrator, or his or her designee, Clerk shall cause notice thereof to be given (A) to the appellant and (B) to the adverse party or parties, or to the attorney, spokesman, or representative of such party or parties, not less than five (5) days prior to such hearing. At such hearing the appellant shall show cause on the grounds specified in the notice of appeal why the action excepted to should not be approved. Such hearing ~~may, by the Council, be continued over from time to time~~ and its findings on the appeal shall be final and conclusive in the matter.

5.02.110 - Inspection of premises.

Any officer of the city charged with the enforcement or administration of any of the provisions of this Cehapter shall be permitted to enter and inspect at any reasonable time, without charge or other restraint, any premises to which any permit granted under the provisions of this Cehapter may pertain, or which are directly affected by such permit, for the purpose of ascertaining whether or not any of the provisions of this Cehapter applicable thereto are being violated.

5.02.120 - Permits to be exhibited.

Any permit required under the provisions of this Cehapter shall be exhibited in a conspicuous place in that part, to which the public has access, of the premises to which such permit appertains.

5.02.130 - City Clerk-Planning Director, or his or her designee, to examine applications as to zone.

~~Upon~~ Prior to the filing of any application for a permit as in this Cehapter provided for, the City Clerk-Planning Director, or his or her designee, shall examine the same for the purpose of ascertaining whether the business, establishment or place for which such permit is desired is proposed to be located within a zone in which the same is permitted pursuant to the provisions of this code and the ordinances and laws of the city. If such location is not within such approved zone, the City Administrator, or his or her designee, City Clerk shall refuse to accept such application.

5.02.140 - City Administrator, or his or her designee, Clerk to be notified of actions on permits.

Any official of the city taking any action upon any application for a permit or upon any permit to operate or maintain any business, establishment or place within the city as in this Chapter provided for, shall notify the City Administrator, or his or her designee, Clerk of such action, and shall, so far as possible, supply the City Administrator, or his or her designee, Clerk with copies of all communications, findings and records pertaining to such applications and permits, and the City Administrator, or his or her designee, Clerk shall place the same on file with the applications and permits to which they pertain.

5.02.150 - Expiration of permit.

Any permit granted pursuant to the provisions of this Chapter but under which the thing herein permitted has not been done, carried on or maintained within six (6) months from the time of the issuance of such permit, shall expire by limitation and cease to be valid for any purpose. Provided, however, that the City Administrator, or his or her designee, Manager may renew such permit upon written application being made prior to its expiration.

Chapter 5.48 - PEDDLERS AND SOLICITORS

Sections:

5.48.020 - Peddlers and solicitors—Police certificate.

5.48.050 - Peddling foodstuffs from vehicles.

5.48.070 - Peddlers' carts, stands.

5.48.080 - Peddling in certain districts.

5.48.090 - Peddling in certain districts—Construction.

5.48.020 - Peddlers and solicitors—Police certificate.

It is unlawful for any person to solicit or take orders from house to house, or upon any public street, grounds or squares, or within any public buildings, within the city, for the sale of any article, merchandise or other thing of value; or to peddle the same or solicit in such manner any moneys, funds, articles, merchandise, or other thing of value for any charitable, religious, business or other purpose, without a police certificate, provided, however, that no such certificate shall be required of ~~drummers~~, traveling salespersons, or other persons engaged in soliciting or taking orders exclusively from the trade, or established retail dealers, for the delivery of goods, wares or merchandise by wholesale.

An application for a police certificate required by the provisions of this section shall be made in writing to the Chief of Police, shall be presented in person, and shall set forth the nature of the business of the applicant, the firm or corporation which the applicant represents, the kind of goods or property to be sold, solicited or dealt in, and such further information as the Chief of Police may require. ~~Such application shall be accompanied by the written recommendation of not less than five citizens of the city, concerning the moral character, honesty and integrity of the applicant.~~ The applicant, upon filing his or her application, may shall be fingerprinted by the Bureau of Identification at the request of the Oakland Police Department.

The Chief of Police, if satisfied as to the ~~moral character, honesty and integrity~~ business practices of the applicant, shall issue to him or her a police certificate to engage in the said business within the city, which certificate shall be effective for a period of one (1) year from date of issuance, and any renewal thereof shall be made upon application made as herein required in the instance of the original application. Such police certificate, together with any license otherwise required of such person by the provisions of this Code, shall be at all times carried by the person therein certified when he or she is engaged in said business. The Chief of Police shall at all times maintain in his or her office a complete list of all persons to whom such police certificates have been issued.

5.48.050 - Peddling foodstuffs from vehicles.

It is unlawful for ~~farmers, hawksters or vendors~~ of fruits, vegetables, fish or dairy products to display for sale such goods, wares and merchandise to the passing public in or from wagons, vehicles or portable stands on the streets or sidewalks of the city, except; ~~provided, however, that nothing in this section contained shall be construed as forbidding the peddling of such goods, wares or merchandise from house to house in wagons or other vehicles as may be permitted;~~

- A. By regulations set forth elsewhere set forth in the Municipal or Planning Codes;
- B. By any ordinance or resolution establishing and regulating a farmer's market or street market in the city;
- C. Within those areas of Oakland subject to the Food Vending Program set forth in Chapter 5.51 of the Municipal Code; and this title. However, within those areas of Oakland subject to the pusheart food vending program ordinance, pusheart food vending is regulated by Chapter 5.49 of the municipal code.
- D. For a limited time in accordance with the Special Event permit program set forth in Chapter 9.52 of the Municipal Code.

5.48.070 - Peddlers' carts, stands.

It is unlawful for any person having charge or control of a ~~cart, wagon or~~ any vehicle used for the vending of goods, wares, merchandise, foods, confections, refreshments or other article, therefrom commonly known as peddlers' carts, ~~wagons or~~ vehicles to occupy, or permit to be occupied, as a stand for such cart, ~~wagon or~~ vehicle, any portion of any street, lane, alley or sidewalk in the city, or to cause or permit such cart, wagon or vehicle to stand within five hundred (500) feet of any entrance or exit to any public park, public building or public grounds for the purpose of peddling such goods or merchandise therefrom except as may be permitted:-

- A. By regulations set forth elsewhere in the Municipal or Planning Codes;

- B. By any ordinance or resolution establishing and regulating a farmer's market or street market in the city;
- C. Within those areas of Oakland subject to the Food Vending Program set forth in Chapter 5.51 of the Municipal Code; and
- D. For a limited time in accordance with the Special Event permit program set forth in Chapter 9.52 of the Municipal Code.

However, within those areas of Oakland subject to the pusheart food vending program ordinance, pusheart food vending is regulated by Chapter 5.49 of the municipal code.

Nothing in this section shall be so construed as to conflict with, or repeal, any provision of this code or any ordinance establishing and regulating a street market in the city.

5.48.080 - Peddling in certain districts.

It is unlawful for any person to traffic in, vend or sell, or attempt to, or offer to, traffic in, vend or sell, any goods, wares, merchandise, meats, vegetables, fruits, berries, produce or any article of household, family or domestic supplies, ~~within the territory hereinafter in this section defined~~, unless the same is done by such person at a fixed place of business conducted in a building or store lawfully occupied by him or her, or is permitted by:

- A. Regulations set forth elsewhere in the Municipal or Planning Codes;
- B. Any ordinance or resolution establishing and regulating a farmer's market or street market in the city;
- C. The Food Vending Program set forth in Chapter 5.51 of the Municipal Code; and
- D. The Special Event permit program set forth in Chapter 9.52 of the Municipal Code.

~~The territory above referred to in this section is bounded and particularly described as follows: All that portion of the city bounded on the south by a line drawn parallel to and one hundred (100) feet southerly of the southern line of First Street, on the east by a line drawn parallel to and one hundred (100) feet easterly of the eastern line of Harrison Street, on the north by a line drawn parallel to and one hundred (100) feet northerly of the northern line of 17th Street, and on the west by a line drawn parallel to and one hundred (100) feet westerly of the western line of Jefferson Street, and also beginning at the intersection of a line drawn parallel to and one hundred (100) feet southerly of the southern line of First Street with a line drawn parallel to and one hundred (100) feet easterly of the eastern line of Alice Street; thence northerly along said last named line to a line drawn parallel to and one hundred (100) feet southerly of the southern line of 11th Street; thence easterly along said last named line to the centerline of Fallon Street; thence northerly along the centerline of Fallon Street and its production to the western shore of Lake Merritt; thence northerly and westerly along the western shore of Lake Merritt to a line drawn parallel to and one hundred (100) feet easterly of the eastern line of Harrison Boulevard; thence northerly along said last named line to a line drawn parallel to and one hundred (100) feet northerly of the northern line of 22nd Street and Grand Avenue; thence westerly along said last named line and its productions to a line drawn parallel to and one hundred (100) feet westerly of the western line of San Pablo Avenue; thence southerly along said last named line to a line drawn parallel to and one hundred (100) feet westerly of the western line of Grove Street; thence southerly along said last named line to a line drawn parallel to and one hundred (100) feet southerly of the southern line of First Street; thence easterly along said last~~

named line to the point of beginning.

5.48.090 - Peddling in certain districts—Construction.

Nothing in Section 5.48.080 contained shall be construed as preventing or making unlawful the prompt delivery in good faith of any of said personal property to or at any such fixed place of business (so situated and conducted in such building or store within said territory) in any case where such personal property, so being delivered is actually and in good faith consigned goods, or has actually and in good faith been theretofore purchased at a place outside of said territory by such lawful occupant of such fixed place of business, actually doing business therein, and said property is in either such case then being delivered to him or her thereat; ~~provided, however, that the Chief of Police of the city, in his or her discretion, may at any time grant a permit to any person to sell such personal property within such district and within the fire limits of the city for a limited period only, not to exceed five days.~~

Chapter 12.08 - ENCROACHMENTS

Sections:

12.08.030 - Public sidewalk encroachments—Types and definitions.

12.08.150 - Exceptions.

12.08.030 - Public sidewalk encroachments—Types and definitions.

For the purpose of this title, encroachments upon the public street, alley, or "sidewalk area" shall be of three types: major, minor, and short term. The sidewalk area shall be defined as that area between the property line and the edge of the pavement or face of the curb. "Improved streets" shall be defined as streets with concrete curbs, gutters and sidewalks. It is unlawful for any person to use the sidewalk area in the city for the display and sale of goods, wares and merchandise, except as may be permitted:

1. By regulations set forth elsewhere in the Municipal or Planning Codes;
2. By any ordinance or resolution establishing and regulating a street market in the city;
3. Within those areas of Oakland subject to the Food Vending Program set forth in Chapter 5.51 of the Municipal Code; and
4. For a limited time in accordance with the Special Event permit program set forth in Chapter 9.52 of the Municipal Code.

~~The displaying of wares, other than flowers or other aesthetically pleasing objects, and the selling of any wares on the sidewalk area shall be specifically prohibited. However, within those areas of Oakland subject to the Pusheart Food Vending Program Ordinance, pusheart food vending is regulated by Chapter 5.49 of the Municipal Code. As defined in this title, the term "aesthetically pleasing objects" excludes furniture and other utilitarian objects. Permission to~~

encroach shall be revocable at the pleasure of the City Council without recourse unless otherwise provided herein. Nothing in this section shall apply to the operation or maintenance of sidewalk cafes.

12.08.150 - Exceptions.

The requirements for encroachment permits set forth in this title do not apply to certain types of sidewalk benches, covered in Chapter 12.52; ~~nor to newspaper and periodical racks, covered in Section 12.04.080; and do not apply to existing fences or walls at the back line of sidewalks on improved streets; or to~~ Food Vending Facilities, covered in Chapter 5.51, as amended.

Chapter 17.10 USE CLASSIFICATIONS

Sections:

Article II - Activity Types

Part 3 - Commercial Activity Types

Part 3 Commercial Activity Types

17.10.280 Fast-Food Restaurant Commercial Activities.

17.10.280 Fast-Food Restaurant Commercial Activities.

A. ~~Fast-Food Restaurant Commercial Activities include the retail sale of ready-to-eat prepared foods and beverages, for on- or off-premises consumption, whenever the foods and beverages are available upon a short waiting time and are primarily served in or on disposable wrappers, containers, or plates. Fast-Food Restaurants may also exhibit other design and operating characteristics, including: (1) a limited menu; (2) food is typically ordered and served at a service counter; (3) food is paid for prior to consumption; (4) the facility in which the activity/use is occurring provides a take-out counter space and space for customer queuing. Examples of these activities include, but are not limited to, restaurants that do not fall under Section 17.10.272 Full Service Restaurant Commercial Activities or Section 17.10.274 Limited Service Restaurant and Cafe Commercial Activities. They ~~This classification also includes~~ certain activities accessory to the above, as specified in Section 17.10.040.~~

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

- ~~• Food is ordered and served from a take-out counter that is integral to the catering truck;~~
- ~~• Food is paid for prior to consumption;~~

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

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

Section 5. Working Group. The Council directs staff from the Bureau of Planning to return to Council with a framework for the creation of “Food Vending Working Group,” with the purpose, in the first year of the new vending program, to monitor the program’s implementation, to make recommendations to staff, and to inform the larger vending community of the new program.

Section 6. California Environmental Quality Act. The City Council finds and determines the adoption of this Ordinance complies with the California Environmental Quality Act (“CEQA”), and relies on the previous set of applicable CEQA documents including: the Coliseum Area Specific Plan EIR (2015); Broadway Valdez Specific Plan EIR (2014); West Oakland Specific Plan EIR (2014); Central Estuary Area Plan EIR (2013); Land Use and Transportation Element of the General Plan EIR (1998); the Oakland Estuary Policy Plan EIRs (1999, 2006) and Supplemental EIR (2013); the Redevelopment Area EIRs- West Oakland (2003), Central City East (2003), Coliseum (1995), and Oakland Army Base (2002); the Historic Preservation Element of the General Plan EIR (1998); the 2007-2014 Housing Element Final EIR (2010) and Addendum (2014); and various Redevelopment Plan Final EIRs (collectively, “Previous CEQA Documents”). Further, the Council finds the adoption of this Ordinance is exempt, pursuant to CEQA Guidelines section 15183 (projects consistent with General Plan and Zoning) and 15061(b)(3) (general rule, no significant effect on the environment). Each of these provides a separate and independent basis for CEQA clearance and when viewed collectively provide an overall basis for CEQA clearance.

Section 7. Severability. The provisions of this Ordinance are severable. If a court of competent jurisdiction determines that any word, phrase, clause, sentence, paragraph, subsection, section, chapter or other provision (collectively called “Part”) is invalid, or that the application of any Part of this Ordinance to any person or circumstance is invalid, such decision shall not affect the validity of the remaining Parts of this Ordinance. The City Council declares that it would have adopted this Ordinance irrespective of the invalidity of any Part of this Ordinance or its application to such persons or circumstances have expressly excluded from its coverage.

Section 8. Effective Date. This Ordinance shall take effect sixty (60) days after its adoption.

Section 9. Authority. This Ordinance serves the public interest and is necessary to protect the health, safety, and/or general welfare of the citizens of Oakland, and is enacted pursuant to the City of Oakland’s general police powers, Section 106 of the Charter of the City of Oakland, Vehicle Code section 22455, and Article XI, Sections 5 and 7 of the California Constitution.

Section 10. Revenue. Fees collected pursuant this ordinance, per the Master Fee Schedule, shall be deposited and appropriated in the Development Services Fund (2415), Planning Organization

(84211), Other Fees: Misc. Account (45419) and Construction and Obstruction Permit Accounts (42211 and 42315) and Contingency Account (54011), Food Vendor Projects (10000867 and 1000868); any fines or penalties collected pursuant to Oakland Municipal Code Chapters 1.08 and 1.12 and Section 5.51.270 will be deposited in the same fund.

Section 110. Conflict. Nothing in this Ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

Section 124. Notice of Exemption/Notice of Determination. The Environmental Review Officer, or designee, is directed to cause to be filed a Notice of Exemption/Notice of Determination with the appropriate agencies.

Section 132. Record. That the record before the City Council relating to this Ordinance includes, without limitation, the following:

1. All final staff reports, decision letters and other documentation and information produced by or on behalf of the City;
2. All oral and written evidence received by the City staff, Planning Commission, and City Council before and during the public hearings on the amendments to the Oakland Municipal Code and Oakland Planning Code;
3. All matters of common knowledge and all official enactments and acts of the City, such as (a) the General Plan and the General Plan Conformity Guidelines; (b) Oakland Municipal Code; (c) Oakland Fire Code; (d) Oakland Planning Code; other applicable City policies and regulations; and (e) all applicable state and federal laws, rules and regulations.

Section 143. Conforming Changes. The City Council hereby authorizes the City Administrator or designee to make non-substantive, technical conforming changes (essentially correction of typographical and clerical errors), prior to formal publication of the amendments in the Oakland Municipal Code and Oakland Planning Code.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, CAMPBELL WASHINGTON, GALLO, GIBSON MCELHANEY, GUILLÉN, KALB, KAPLAN, AND PRESIDENT REID

NOES-

ABSENT-

ABSTENTION-

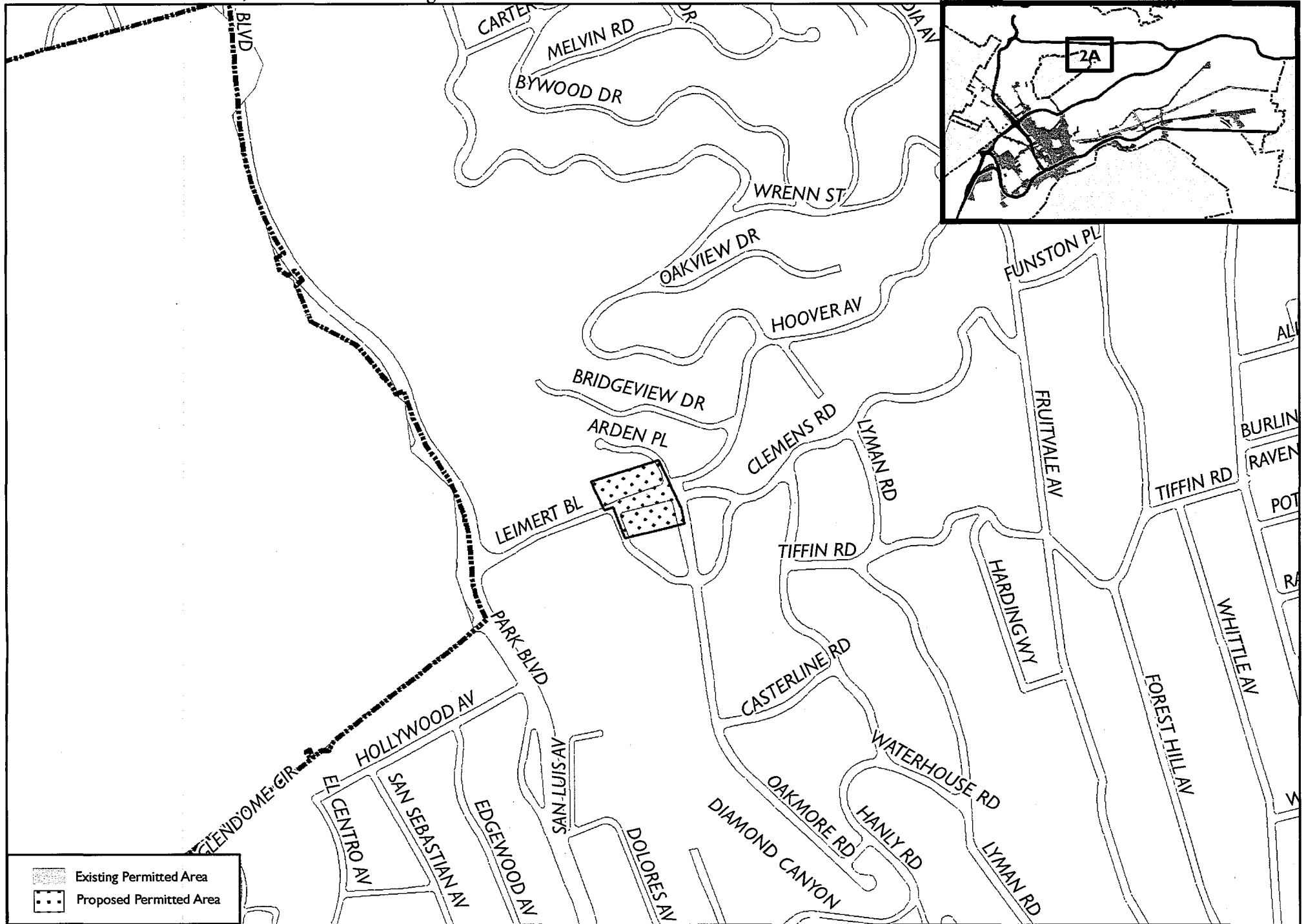
ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION: _____

NOTICE AND DIGEST

ORDINANCE AMENDING THE OAKLAND MUNICIPAL CODE (“OMC”) TO ADOPT A NEW CITYWIDE FOOD VENDING PERMIT PROGRAM, DELETE OMC CHAPTERS 5.49 PUSHCART FOOD VENDING PILOT PROGRAM, 5.51 FOOD VENDING GROUP SITE PILOT PROGRAM AND 8.09 VEHICULAR FOOD VENDING, ADOPT NEW OMC CHAPTER 5.51 FOOD VENDING PROGRAM AND VARIOUS CONFORMING CHANGES TO THE OMC AND CITY PLANNING CODE, AND ADOPT CEQA FINDINGS

This Ordinance will create a new citywide food vending program which permits, with certain restrictions, individual food vending on private property and from the public right-of-way (streets and sidewalks) in designated commercial and industrial areas. The new program will also permit group site food vending (events with two or more food vendors) in more areas throughout the city. Adoption of the Ordinance would revise the definition of “Fast Food Restaurant Commercial Activities” in Oakland Planning Code Section 17.10.280; repeal the existing food vending program, located in Oakland Municipal Code (OMC) Chapter 5.49 (“Pushcart Food Vending Pilot Program”), Chapter 5.51 (“Food Vending Group Site Pilot Program”), and Chapter 8.09 (“Vehicular Food Vending”); and adopt a new comprehensive food vending program by adding language to OMC Chapter 5.51. The proposal also includes revisions to other Planning and Municipal Code sections as minor conforming changes.



E. Food Vending Program Permitted Area-- Leimert Addition

0 300 Feet



Planning and Building Department
February 28, 2017



***Guidelines for the issuance of Food Vending Permits,
operating on private property and within public rights of way***

1. Purpose

On _____, 2017, the Oakland City Council adopted Ordinance No. _____ C.M.S., which amended the Oakland Municipal Code (OMC) and Planning Code to create a new citywide food vending program in OMC Chapter 5.51. The new regulations replace the previous interim food vending programs which were in effect in Oakland for fifteen years. The purpose of these Administrative Guidelines (“Guidelines”) is to assist staff with the issuance and enforcement of Food Vending Permits. These Guidelines provide flexibility in administering the permit program; however, the OMC prevails in cases where the Guidelines and OMC conflict. These Guidelines are to be made available to the public; are administrative in nature; and can be changed at the City Administrator’s or his or her designee’s discretion.

2. Definitions

Definitions pertaining to Food Vending are found in OMC Section 5.51.020. Below are additional explanations that supplement the adopted definitions.

- **“Healthy foods”** include, but are not limited to: Fruits; Non-fried vegetables; dairy foods; food made from nuts, seeds, legumes, cheese; foods made from whole grains (defined as 51% or more); foods which do not contain trans-fat. Beverages for sale in this definition include: water (preferred beverage); 100% fruit or vegetable juice; nonfat and 1% milk (including nonfat chocolate milk); and non-dairy milk, such as soy. No sugar-sweetened beverages are in this definition.
- **“Public right-of-way”** means City streets or sidewalks.
- **“Late night vending”** means food vending allowed past the regular permitted hour limit of 10 p.m., to a time as determined by the city, not to exceed 3 a.m.

3. Limits on Locations, Number of Permits and Hours of Operation

- a. **The Food Vending Program Permitted Area** is defined by a set of maps of locations, as referred to in OMC Section 5.51.050. These maps are attached to the end of this document and are incorporated by reference.

In general, the food vending permitted area allows food vending in selected Commercial, Industrial, and Open Space Zones. Specific exceptions are:

- i. Vending from food trucks or similar vehicles is prohibited within the International Boulevard street right-of-way and on private property, between 1st and 105th Avenues during the construction period of the Bus Rapid Transit (BRT) Line, and for one year after the start of its full operation. Only vendors with a history of permitted food vending on International Blvd. will be issued permits to continue to vend on International Boulevard in this new program.
- ii. Vending from any type of food vending facility is prohibited within the Fruitvale Avenue public right-of-way (street and sidewalk) between East 12th Street and East 22nd Street. Vending from private property on Fruitvale Avenue is permitted.
- iii. Vending from food trucks or similar vehicles is prohibited within the Broadway street right-of-way between Embarcadero and 27th Street. Other types of food vending on this portion of Broadway is permitted.
- iv. Individual food vending will not be permitted in CN-1 Zones. Only Group Site food vending applications will be considered in CN-1 Zones.
- v. Distance from schools: Per OMC Section 5.51.050, food vending is not permitted within 300 feet of any school serving children between kindergarten and high school, with the following exceptions:
 1. Food sales are permitted after 6pm, Monday through Friday and on weekends.
 2. If a food vendor receives written consent from the supervising entity of the school to serve “healthy food” (as defined in these Administrative Guidelines) during certain hours. For OUSD Schools, the supervising entity is the Executive Director of OUSD Nutritional Services.
- vi. Distance from other individual food vendors or group sites: Per OMC Section 5.51.050(B), individual vendors and group sites are not permitted to operate within 300 feet of any other food vendor or group site, with the exception of individual vendors or group sites that are permitted to operate on different days of the week from the same location. Food vendors that are “grandfathered” in to a particular location as described in Subsection 4c. below may be exempted from this distance separation requirement, as long as the granting of a

Food Vending Permit for such a location will not have an adverse impact upon the public health, safety, or order.

- vii. Distance from restaurants: Per O.M.C. Section 5.51.050(B), individual vendors and group sites are not permitted to operate within 300 feet of a Limited or Full-Service Restaurant, with the exception of individual vendors or group sites that receive written permission from a restaurant owner to operate on the same lot as the restaurant, or are permitted by the city to operate only during the hours that a restaurant is closed. Distance from a restaurant will be measured to the front door of the restaurant. Restaurants which are not street-facing, but which are within buildings (i.e. on a mezzanine), will be measured from the parcel boundary. Individual vendors and group sites that receive a city food vending permit to vend at a particular location may be exempted from this distance separation requirement if a restaurant is to open closer than 300 feet after initial issuance of the food vending permit, as long as the renewal of a Food Vending Permit for such a location will not have an adverse impact upon the public health, safety, or order.
- viii. Distance from farmer's markets and monthly special events: There is a 100-foot distance requirement during hours of operation between a scheduled farmer's market which features food vending as part of its regular program, and any non-affiliated food vendor; there is also a 100-foot distance separation requirement between a monthly special event (e.g. "First Fridays") and any non-affiliated food vendor during hours of operation of the special event.

- b. Stationary cart locations on sidewalks:** Food carts may be stationary (OMC Section 5.51.020). The preferred location for stationary food carts vending from a fixed location are on sidewalks ten (10) feet wide or greater. A map of sidewalk widths in the permitted area is available to staff and the public. Individual food vending facilities or group sites cannot block or impede access under the Americans with Disabilities Act (ADA) to the public facilities listed in OMC Section 5.51.050(c). In addition, stationary carts must maintain a minimum clearance of:
 - 1. Fifty (50) feet of any vehicle entrance of any fire station, police department, hospital, or any other building with a health and safety activity;
 - 2. Fifteen (15) feet from the angular return of any sidewalk, and may not obstruct the use of any corner or mid-block accessible curb ramps, or any access ramp designed for persons with disabilities;
 - 3. Fifteen (15) feet from any building entrance or exit, intersection, or driveway;
 - 4. Fifteen (15) feet from any delineated bus zone / bus stop;
 - 5. Fifteen (15) feet from fire hydrants or a fire escape;
 - 6. Fifteen (15) feet from any outdoor seating area of a restaurant or café; or parklet;
 - 7. Fifteen (15) feet from a red-zone/ stripped curb;
 - 8. Ten (10) feet from the area in front of display windows of fixed location businesses;

9. Six (6) feet from existing street equipment, including but not limited to parking meters, pedestrian signal crossings, fire alarms, news racks, kiosks, benches, bike racks, etc.;
10. Two (2) foot clearance is required along the curbside for pushcarts operating adjacent to existing on-street parallel parking.

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

c. Limitations of Food Vending Facilities in the street right-of-way.

- i. In the first year of the program, City will designate, sign and stripe up to 25 curb-side parking spaces in the street right-of-way for food vehicles, within the permitted program area map. These sites will be the only parking spaces permitted for food vending in the street right-of-way.
- ii. Food Vehicles and trailers must obey the vending limitations and regulations in these guidelines. Vendors must pay the parking meter, if any, at regular rates during their hours of vending from the designated spaces.
- iii. The City will select the designated parking spaces for food vending in the street right-of-way according to the following criteria:
 1. The buffer distances between parks, schools, farmers' markets and other vendors will be maintained.
 2. Prioritize curbside parking spaces in areas of the City which are currently underserved by food outlets (i.e. restaurants, cafes and grocery stores). For the purposes of this subsection, "underserved" means areas of the city with no more than one (1) existing approved food outlet within a 300-foot radius.
 3. Street parking spaces chosen will be at least one space away (if not further) from an AC Transit bus stop on one of AC Transit's "Major Corridors." Also, parking spaces adjacent to street corners where AC Transit buses on "Major Corridors" make regular turns will not be selected. These criteria will reduce conflict between routine transit operations, and Food Vehicles and their patrons.
- iv. Permits to vend from the designated spaces in the street right-of-way will be granted in these configurations:
 1. Five (5)-day per week permits, granted to a single vendor;
 2. Two (2)- and three (3)-day per week permits, where two individual vendors "share" five vending days per week; and
 3. One (1)-day per week permits.

At no point will vending from designated parking spaces in the street right-of-way be permitted for longer than five (5) days per week. Vendors will be allowed to apply for multiple designated street parking locations, based on the three configurations above. The City will consider whether all designated street parking spaces be eligible for the maximum 5-day per week permit.

- v. Each food vending facility at a group site must 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.
- d. Limits on the number of certain types of Food Vending Permits issued.** The following establishes a limit on the number of Food Vending Permits that the city may issue for individual food vending facilities and group sites on private property, and for pushcarts or stationary carts on public or private property during the first year of the new food vending program (2017):
- i. A maximum of seventy-five (75) Food Vending Permits may be issued for individual food vending facilities and group sites on private property. No more than seventy-five (75) such permits may be active at any one time.
 - ii. Separately, a maximum of seventy-five (75) Food Vending Permits may be issued for pushcarts or stationary carts to operate on public or private property within the City. No more than seventy-five (75) such permits may be active at any one time.

In addition, no more than thirty (30) such Permits may be issued for pushcarts or stationary carts to operate within the following boundaries: Fruitvale Avenue and High Street between Interstate-880 to the west and Foothill Boulevard to the east, Foothill Boulevard between 19th Avenue to the north and MacArthur Boulevard to the south, International Boulevard between First Avenue to the north and 105th Avenue to the south, and San Leandro Street between Fruitvale Avenue to the north and 98th Avenue to the south. East 12th Street between 4th Avenue to the west and 23rd Avenue to the east, 14th Avenue between East 11th Street in the south and East 19th Street in the north.

e. Hours of operation and late-night vending.

OMC Section 5.51.170 regulates hours of operation. Further administrative guidelines are:

- i. The regular permitted hours for all food vending facilities (including trucks, trailers, stationary carts and pushcarts) and group sites is 7 a.m. to 10 p.m., daily.
- ii. Permission for “late night vending” (past the regular permitted hour limit of 10 p.m. to a time as determined by the city, not to exceed 3 a.m.) will be considered in the following geographic areas:

1. Downtown (including Jack London);
2. Eastlake;
3. Uptown;
4. Fruitvale;
5. Central and east Oakland streets formerly in the permitted food vending area.

iii. “Late night vending” requests in these areas will be reviewed based on the following factors:

1. The location’s proximity to homes and residences;
2. Any history of complaints or Police calls for service against the vendor/applicant;
3. Whether there is adequate space for customer parking and queuing; and
4. Whether the vending operation is likely to create noise, odors, or crowds which could cause a public nuisance.

During the first year of the program, stationary carts and pushcarts are excluded from late night vending, except for locations downtown.

iv. Group sites in the public right-of-way will have specific hours determined by the City Administrator or his/her designee, and may not exceed more than five (5) hours of food vending operation on any day of permitted group site activity, unless specified otherwise at the discretion of the City Administrator or his her designee. For group sites in the public right-of-way, the number of vending dates allowed under a food vending group site permit will not exceed two (2) dates per week.

There is no limit to the number of days that Group Sites can vend on private property.

f. Limits to number of Individual Vending and Group Site permits

During the first year of the program, each food vending applicant may hold no more than four (4) individual Food Vending Permits. A separate Food Vending Permit is required for each vending apparatus under common ownership (e.g. permit #1 for a pushcart, permit #2 for a food truck, etc.).

Also during the first year of the program, each Group Site Organizer may hold no more than five (5) group site permits/locations. A separate Food Vending Permit is required for each group site location.

4. Types of Permits, Priority for Issuance; “Grandfathering”; Lottery system; Proof of Insurance

a. Types of Permits

There are two types of Food Vending Permits, Annual and Temporary:

- i. Annual Food Vending Permits expire after one (1) year unless renewed under the provisions of Section 5.51.140.
- ii. Temporary Food Vending Permits expire after ninety (90) days and may be renewed for one additional 90-day time period. A renewal will require a new application and fee. *Temporary food vending permits will not be issued during year one of the program (2017).*

b. Priority for Issuance

The Bureau of Planning will review and issue Food Vending Permits in the following order of priority:

- i. Priority Group One: Vendors with valid, unexpired Oakland Food Vending permits (i.e. 2016-2017 Food Cart “FC” or Food Vehicle “FV” permits);
- ii. Priority Group Two: Vendors with expired Oakland Food Vending permits (i.e. 2001-2015 Food Cart “FC” or Food Vehicle “FV” permits);
- iii. Priority Group Three: Vendors applying for City-designated parking spaces in the public right-of-way; and
- iv. Priority Group Four: All other vending applicants.

Applications in Priority Groups One and Two will be reviewed based on the buffering standards that applied at the time of the initial permit issuance (that is, a 200-foot distance between two trucks and a 100-foot distance between a pushcart and all other food vendors). As a result, permits may be granted for a previously permitted location that does not meet the current buffer distances in OMC Section 5.51.050.

Applications in Priority Groups Three and Four will be reviewed according to the current requirements for a Food Vending Permit in OMC Chapter 5.51 and/or in these Administrative Guidelines. However, all permits that are renewed on an annual basis will continue to be evaluated according to the standards that applied at the time of the initial permit issuance.

c. “Grandfathering”

In the process of administering the criteria above for issuing Food Vending Permits, the city may issue permits for vending locations that do not meet the current buffer distance requirements, as long as the vending applicant already possesses a valid, unexpired Oakland Food Vending permit for the requested location (i.e. 2016 Food Cart “FC” or Food Vehicle “FV” permits), or has a history of prior Oakland Food Vending permits for the requested location, but which have since expired.

Staff will review the new applications by current or previous food vending permit holders based on the buffering standards that applied at the time of the initial permit issuance; that is; a 200-foot distance between two trucks; and a 100-foot distance between a pushcart and all other food vendors. Staff will only “grandfather” in locations which were permitted within the original program permit area. The details of this procedure are in OMC Section 5.51.110.

If multiple applications are submitted for the same vending location, staff will first issue Food Vending Permits in the order of priority above in Section 4b. If applications submitted for the same location meet the same level of permit priority, the City will institute a lottery system to ensure fairness and equity.

d. Lottery system

The Planning Bureau will administer a lottery procedure for applications for sites where two (2) or more vendors are seeking to locate, and none have established previous permit approvals for that specific site, per Section 4c, above.

e. Proof of Insurance

Vendors who operate in the public right-of-way (streets and sidewalks) must show proof of, and maintain adequate commercial general liability insurance, automobile liability insurance, and, worker’s compensation insurance (if there are employees). The City of Oakland sets insurance requirements in “Schedule Q”¹ which are summarized here for reference:

- i. “Commercial General Liability insurance shall cover bodily injury, property damage and personal injury liability for premises operations, independent contractors, products-completed operations personal & advertising injury and contractual liability.” And, vendor “shall provide insured status naming the City of Oakland, its Councilmembers, directors, officers, agents, employees and volunteers as insured’s under the Commercial General Liability policy.”
- ii. Vendor “shall maintain automobile liability insurance for bodily injury and property damage liability with a limit of not less than \$1,000,000 each accident.”
- iii. Vendor “certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code, which requires every employer to provide Workers’ Compensation coverage, or to undertake self-insurance in accordance with the provisions of that Code.”

¹ See Schedule Q, at the City’s website, <http://www2.oaklandnet.com/oakca1/groups/contracting/documents/form/oak023255.pdf>

5. Food Vending Permit approval, approval with conditions, or denial

- a. For the first calendar year of the program, the Bureau of Planning will accept Food Vending Permit applications during one or more designated application periods only. The application period(s) during the first year of the program will be one (1) calendar month in length; and if more than one application period is designated, will be set at different times throughout the first calendar year at approximately 2- to 6-month intervals. No “pre-applications” will be accepted. Applications will be date stamped upon receipt by the Planning and Zoning staff, and will be deemed complete when all required application materials are contained in the project file. No permits will be issued until after the close of each application period, which is necessary to allow time for staff to perform field visits, map the location of each application, and apply the priority process to each application to determine which vendors will be permitted in which locations.
- b. After the first year of the program, the Bureau of Planning will re-evaluate the above application procedure, and consider the feasibility of accepting new Food Vending Permit applications at any time throughout the calendar year.
- c. At the time of Food Vending Permit application, the applicant vendor or group site organizer will obtain from the Bureau of City Planning, a list of names and mailing addresses of all persons shown on the last available assessment roll as owning the City of Oakland lot or lots adjacent to the vending site and directly across the street; and a Notice to Neighboring Property Owners form which includes a description of the proposed vending operation and contact information.
- d. Prior to the subject application being deemed complete, the applicant must provide a completed copy of the Notice form, as well as a site plan that shows the proposed vending location to all persons shown on the last available assessment roll as owning the City of Oakland lot or lots adjacent to the vending site and directly across the street.
- e. All required notification of adjacent and across the street property owners must be completed by the project applicant not less than ten (10) days prior to the earliest date for final decision on the application.
- f. The Bureau of Planning will determine whether the subject application meets the requirements for a Food Vending Permit in OMC Chapter 5.51 and/or in these Administrative Guidelines.
- g. Decision by the Director of City Planning. The Director of City Planning or his/her designee will approve, approve with conditions, or deny a Food Vending Permit application based on the standards and criteria in OMC Chapter 5.51 and/or in these Administrative Guidelines. The Director of City Planning or his/her designee may impose conditions of approval on a Food Vending Permit in the exercise of his or her reasonable discretion. The applicant will be notified of any conditions of approval in writing.

6. Food Vending Permit expiration, renewal and abandonment

- a. Each Annual Food Vending Permit will be valid for twelve (12) months from the month of issuance, and expire and become null and void on the anniversary of its issuance if not renewed as described in Subsection b. below.
- b. Holders of an Annual Food Vending Permit who wish to vend in the city on a multi-year or ongoing basis will need to apply annually to the Bureau of Planning for a Food Vending Permit

renewal prior to the expiration of their active Food Vending Permit. All renewal applications need to be filed with the Bureau of Planning pursuant to the procedures in OMC Chapter 5.51 and/or in these Administrative Guidelines. As stated in OMC Section 5.51.110.A, all Food Vending Permits that are renewed on an annual basis will continue to be evaluated according to the standards that applied at the time of the initial permit issuance.

- c. Each Temporary Food Vending Permit will expire and become null and void after ninety (90) days, and may only be renewed for one additional consecutive 90-day time period. As mentioned earlier in these Administrative Guidelines, Temporary Food Vending Permits will not be issued during year one of the program (2017).
- d. Vendors with permits issued by the City who choose to abandon a valid permit during the year it was issued may do so, upon the permission of the City Administrator, or his/her designee. This abandonment procedure will allow the vending site to become available for other applicants.

7. City Departments—Responsibilities

- a. **City Administrator.** Under OMC Section 5.51.030, “the City Administrator or his/her designee is authorized to issue such Administrative Guidelines, not inconsistent with this Chapter, governing the issuance of Food Vending Permits.” The City Administrator has designated the Bureau of Planning, within the Planning and Building Department, to administer and issue Food Vending Permits. The City Administrator or his/her designee may periodically revise these Administrative Guidelines and the Program Permitted Areas map, following the procedure described in Section 11 of these Guidelines.
- b. **City Administrator’s Office, Special Activities and Nuisance Abatement staff.** The Special Activities and Nuisance Abatement staff of the City Administrator will enforce the regulations, including citation and possible impoundment for violations. Newly created and newly hired Enforcement officers are to be hired for this role.
- c. **Bureau of Planning.** The Bureau of Planning will administer and issue Food Vending Permits, through the planning and zoning counter, at 250 Frank Ogawa Plaza, 2nd Floor. The Bureau will maintain the website, www.oaklandnet.com/foodvending, provide outreach and informational materials, and will conduct trainings for the public and interested parties, and publicize a phone number and email address for people to contact for more information. The Bureau will maintain an “applications on file” list for interested parties. The Bureau will recommend to the City Administrator when revisions to the Guidelines, or to the Program permitted areas map are necessary, and report back to City Planning Commission and the City Council on such revisions, as well as the permit and enforcement activity of the Food Vending Program during the previous year.
- d. **Business Tax Office (Revenue):** The Business Tax Office will issue Business Tax Certificates to individual food vendors/applicants.

- e. **Oakland Fire Department:** The Oakland Fire Department will inspect propane and other gas tanks on a vehicle, during an initial inspection, before the City's permit is granted. One annual inspection will be completed at the time of application or renewal.
- f. **Oakland Police Department (OPD):** OPD will be on call to support the enforcement efforts of the City Administrator's Office. The OPD is not expected to initiate enforcement efforts, but rather to coordinate as needed with the City Administrator and/or Alameda County Environmental Health.
- g. **Oakland Parks and Recreation (OPR):** OPR will issue a separate parks permit, for an additional fee, to vendors who seek a permit to vend in a park within the permitted area (such as Lakeshore Park/Lake Merritt). See Section 8, below.
- h. **Department of Transportation – parking enforcement division:** will assist with identifying and citing violations of parking meter usage and painted curbs, along with permit placards identification.

8. Good Neighbor Policies

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

- a. Vendor will maintain a quiet, safe and clean selling location.
- b. Vendor will provide adequate storage and disposal of garbage and trash.
- c. Noise and odors will not become a nuisance or burden on neighbors. This includes noise from food truck generators, motors and fans, and from customer's automobiles and radios, particularly at night.
- d. Vendors or their employees will walk a one hundred (100) foot radius from the food vending site after close of business, and dispose of beverage and serving materials or other trash left by their customers.

9. Parks

Food vending is allowed in, and adjacent to, larger Oakland parks, and neighborhood parks Downtown with the permission of the Central Reservation office of Oakland Parks and Recreation. There will be an additional fee for food vending in Parks. Food vending applications for locations in Parks will be evaluated and permitted by staff under the following criteria:

- a. The Park must be within the permitted vending area.
- b. Any proposed vending location in a Park which is also within 300 feet of a school will be evaluated according to the OUSD procedure in Section 3(a) of these Administrative Guidelines.
- c. Vending inside Parks is limited to four (4) hours daily.

- d. The vending location in a Park should be oriented away from residences (some Parks are adjacent to residences); locations for vending should preferably be in the section of a Park which front onto a major street, when possible.
- e. Fees to OPR are those in the 2017-2018 Master Fee Schedule.

10. Revisions and changes to these Administrative Guidelines and the Program Permitted areas map

Changes to these Administrative Guidelines and to the Program Permitted areas map will follow the following adoption sequence, to ensure the public has an opportunity to review and comment on the changes:

- a. Any proposed changes to the Administrative Guidelines and to the Program Permitted areas map will be coordinated by the City Administrator or his/her designee with the departments listed in Section 6 of this report.
- b. Any proposed changes will be posted on the city Food Vending web page, and made available for inspection and copying by the public at the Bureau of Planning.
- c. A copy of any proposed changes to the Administrative Guidelines and to the Program Permitted areas map will also be mailed to each holder of a permit or license issued under this program.
- d. A thirty-day (30) public comment period to receive comments on the proposed changes to the Administrative Guidelines and to the Program Permitted areas map will commence on the date the notice of the proposed changes is sent to those permitted or licensed under this program. During the comment period, any person may submit written comments regarding the proposed changes to the City Administrator or his/her designee.
- e. After the close of the public comment period, the City Administrator or his/her designee will consider all reasonable public comments on the proposed changes to the Administrative Guidelines and to the Program Permitted areas map; and will approve the final changes.
- f. The final changes to the Administrative Guidelines and to the Program Permitted areas map approved by the City Administrator or his/her designee will become final on the date the changes are posted on the City's food vending webpage.

11. Reports to Planning Commission and City Council

Planning Bureau staff agreed during the public hearing process to make annual informational reports at public hearings before the Planning Commission and the full City Council. The informational reports will contain at least the following items:

- Numbers of Food Vending permits issued and outstanding in the previous year;
- Revenue collected from permit fees, from enforcement action and from business tax;
- Changes made to the Administrative Guidelines;
- Changes made to the Program Permitted Area maps;
- Summary of community meetings, staff discussions with vendors and the public ;

- Recommendations for future changes and adjustments to the program.

12. Contacts for further information

- City Administrator Office/Special Activities: 510-238-3294
- Planning Bureau: Devan Reiff, 510-238-3550/ Aubrey Rose, 510-238-2071
- Fire Department: Inspector, 510-238-3851
- Alameda County Environmental Health: 510-567-6700

Attachments

Program Permitted Area maps

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