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OAKLAND

2015 JUL -2 AM 11:06

AGENDA REPORT

TO: Sabrina B. Landreth
CITY ADMINISTRATOR

FROM: Rachel Flynn

SUBJECT: Informational Report on a
Citywide Food vending Program

DATE: June 26, 2015

City Administrator
Approval

Date 7/2/15

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

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

OUTCOME

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

EXECUTIVE SUMMARY

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

A proposed schedule for consideration and possible adoption is:

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

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

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

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

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

BACKGROUND/LEGISLATIVE HISTORY

In 2001, the City of Oakland adopted its first pilot program to permit vehicular food vending on private property and pushcart vending on sidewalks¹ (per Oakland Municipal Code (OMC) Chapters 5.49 and 8.09), in limited areas along certain major corridors east of Lake Merritt. This 2001 pilot

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

program was then revised and made permanent in 2004², when the Council decided to establish permanent pushcart and vehicular food vending programs in the same limited areas. In 2011, the City adopted an “interim” program, which allowed mobile food vendors to apply to sell in group sites, defined as “*the stationary operation of three or more mobile food vendors clustered together on a single site,*” within limited areas of Council Districts 1, 2, 3 and 4.³ These food vendor groupings are sometimes referred to as “food pods.” More recently, in 2013, the City Council made the Interim Regulations to permit Mobile Food Vending Group Sites effective until “the City Council adopts permanent mobile food vending regulations.”⁴

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

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

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

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

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

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

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

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

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

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

ANALYSIS

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

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

- A. Agency/Department issuing permit(s)
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- Meet the clear demand for additional food vending areas in Oakland, outside of the existing program areas;
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- Strive to ensure greater access to healthy, affordable food in many underserved Oakland neighborhoods.

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

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

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

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

There are several options for the designation of permitting authority:

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

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

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

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

B. Permit Types

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

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

- 1) The "pilot program," which is limited to the Fruitvale area and designated commercial streets in central and east Oakland, has two permit categories, both issued by the Building Services division: a) Vehicular Food Vending (i.e. food trucks), and b) Pushcart Food Vending for carts or "peddler's carts." Pushcarts are limited by ordinance⁶ to 60 total permits issued; which has since the adoption of the ordinance been administered as 30 permittees in the Fruitvale neighborhood, and 30 more in the central and east Oakland commercial streets. At no point in any given year have all sixty pushcart permits been issued.
- 2) Citywide, on all other private property, where fast food is conditionally permitted, a vendor can apply for a Major CUP from the Planning Division. The Oakland Planning Code includes "Vehicular Food Vending" in the definition of "Fast Food restaurant commercial activities,"

⁵ See California Health and Safety Code, Part 7.

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

which is conditionally permitted in most commercial zones.⁷ The CUP is a comparatively lengthy and expensive process and is seen as a barrier to vendors, although there are a few vendors who have successfully received CUPs for mobile food⁸.

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

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

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

C. Permit Duration

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

⁷ See 17.10.280 (B) Fast-food restaurant commercial activities.

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

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

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

D. Permit Application and Cost

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

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

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

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

Fee	Oakland⁹	San Francisco	San Jose
Mobile Food Facility permit – <i>pushcart (in pilot program area)</i>	\$530	\$764	\$328
Mobile Food Facility permit – <i>vehicle/food truck</i>	\$1,959 (<i>in pilot program area, only</i>)	\$764	\$328
County Health permit -- <i>pushcart</i>	\$314	\$490	\$438
County Health permit – <i>vehicle/food truck</i>	\$609	\$701	\$635
Business Licensing	\$100	\$76	\$150
Other fees (Fire, etc.)	\$0	\$674	\$217
Totals-- <i>pushcart</i>	\$944	\$2,004	\$1,133
Totals – <i>vehicle/ food truck</i>	\$2,668	\$2,215	\$1,330

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

E. Locations

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

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

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

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

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

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

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

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

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

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

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

F. Public Health and Safety

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

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

¹¹ See Ord. 12579 § 2 (part), 2004 and Ord. 12312 § 2 (part), 2001

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

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

G. Vendor Parking

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

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

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

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

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

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

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

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

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

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

H. Restrictions

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

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

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

Schools: There are reports of unpermitted vendors at Oakland's elementary schools, some within the 500-foot buffer, and some just outside it, who sell snacks, ice cream, fruit and prepared foods, and compete with the Oakland Unified School District's attempts to make healthy food accessible to students and families. Staff recommends stricter enforcement of a buffer from elementary schools, except in those cases where "healthy" foods (such as fruits and vegetables) are sold by vendors.¹² The City wants to support OUSD's efforts to allow students and parents to have access to healthy food¹³.

Other cities: in San Francisco, to get a permit from the Department of Public works to vend in the right-of-way, vendors must be 1,500 feet away from middle schools, junior high schools, and high schools¹⁴.

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

I. Permit Application

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

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

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

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

¹⁴ There is no distance restriction from elementary schools in San Francisco.

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

J. Enforcement

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

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

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

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Suggestions about enforcement made to staff during stakeholder interviews:

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

K. Special Events

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

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

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

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

PUBLIC OUTREACH/INTEREST

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

COORDINATION

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

A proposed schedule for adoption includes:

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

Planning Commission hearing in **September 2015**;

CED hearing in **October 2015**; and

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

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

COST SUMMARY/IMPLICATIONS

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

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

FISCAL IMPACT

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

SUSTAINABLE OPPORTUNITIES

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

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

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

CEQA

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

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

Respectfully submitted,



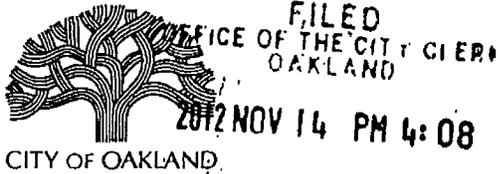
Rachel Flynn, Director
Planning and Building Department

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

Devan Reiff, AICP, Planner III

Attachments

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



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ATTACHMENT A

AGENDA REPORT

TO: DEANNA J. SANTANA
CITY ADMINISTRATOR

FROM: Fred Blackwell

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

DATE: November 5, 2012

City Administrator
Approval

Deanna Santana

Date

11/10/12

COUNCIL DISTRICT: 1, 2, 3 and 4

RECOMMENDATION

Staff recommends that the City Council approve:

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

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

EXECUTIVE SUMMARY

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

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

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

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

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

² OMC Section 5.51.040.

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

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

OUTCOME

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

BACKGROUND/LEGISLATIVE HISTORY

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

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

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

⁵ Ordinance No. 12582 C.M.S. and 12583 established a permanent Pushcart Vending Program and amended the Master Fee Schedule, respectively; Ordinance No. 12580 and 12581 amended the Master Fee Schedule and established a permanent Vehicular Vending program, respectively.

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

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

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

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

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

⁶ OMC Section 5.51.040.

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

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

ANALYSIS

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

The evaluation was based on surveys and meetings conducted with:

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

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

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

Group Site Patron Survey

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

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

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

Adjacent Businesses to Group Sites Survey

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

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

Table 1.

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

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

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

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

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

Group Organizer/Vendor Survey

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

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

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

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

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

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

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

Regarding consistency with the original intent:

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

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

Conclusions and Recommendations

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

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

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

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

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

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

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

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

PUBLIC OUTREACH/INTEREST

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

COORDINATION

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

COST SUMMARY/IMPLICATIONS

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

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

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

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

SUSTAINABLE OPPORTUNITIES

Economic:

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

Environmental:

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

Social Equity:

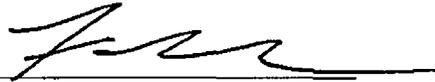
- Encourage greater access to healthy, affordable food in underserved Oakland neighborhoods, while encouraging self-employment opportunities.

CEQA

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

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

Respectfully submitted,



Fred Blackwell
Assistant City Administrator

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

Ed Manasse, Strategic Planning Manager

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Item: _____
CED Committee
Nov. 27, 2012

California Mobile Food Vending Programs

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San Francisco

San Francisco has perhaps the most comprehensive mobile food program of those investigated. Changes were made to both its Planning Code and Public Works Code over the past several years in response to the recent boom in mobile food. The city appears to have captured the thriving market for mobile food in a variety of forms, from pushcarts to classic taco *loncherias* to gourmet pop-up vendors to group vending sites on public and private property. San Francisco has a unique governing structure, in that it is both a city and county, and has chosen to divide its mobile food program essentially into two independent entities.

One thing all mobile food vendors seeking to operate in San Francisco need is clearance from the Department of Public Health (DPH). Because of the city-county structure of San Francisco, this agency has the exact same jurisdiction of other municipal players, an important difference from LA, San Jose, and Oakland that allows SF to align policies across all agencies and synchronize the permitting process. However, the path towards DPH approval has two very different starting points in San Francisco, depending on where a vendor seeks to operate, and this even impacts elements required in the eventual Plan Check by the health department.

Vendors looking to sell in the *Public Right-of-Way* (streets and sidewalks) start with the Department of Public Works (DPW). The DPW rewrote its code to accommodate the growing interest in mobile food, and updated it most recently in 2013 with specific location and noticing requirements. They have done an excellent job providing resources and upfront information to the public, with a web page dedicated to Mobile Food Facilities, a map showing restricted areas of the city, and a handy diagram to help applicants navigate through the permit process¹. This is quite helpful, because the process has a number of phases and checkpoints, and this is simply one component of the overall path towards a permit. The DPW review process includes a public notification period (with potential public hearing) and an appeal period, all of which extend to the length of the application and make it expensive to an applicant (\$764 in fees to DPW, alone). This notification mechanism was developed to allow established residents and businesses a means to voice concerns before a vendor became permitted.

Vendors selling on *private property*, and *public property* that is not public streets or sidewalks, are directed to the SF Planning Department. Planning Code amendments in 2013 accommodate the growing mobile food trend, essentially incorporating it into the existing Planning permitting processes for temporary uses (the mobile food permit is called a "Temporary Use Authorization" or TUA). Like DPW, Planning has a notification process which a vendor may trigger. Unlike DPW, the application process can be much swifter at Planning, so that a prepared applicant can obtain their authorization over the counter the same day they come in. The Planning Department reviews the location of the proposed vending site, and if it is not in an area requiring noticing, the department can issue the permit on the same day, if all application materials are properly submitted and all fees are paid. If the vending site is located in a noticing requirement zone, the application must be properly noticed during a noticing period, much like a permanent use applicant. It is still possible, if a food truck does not intend to move and operate elsewhere, but essentially seeks to function as a fixed restaurant on wheels, to apply as a

¹ See <http://sfdpw.org/index.aspx?page=1376>

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permanent use. This is a more difficult, lengthy, and costly process, which is why the temporary use authorization was created in the San Francisco Planning Code. A caveat is that the landowner's permission is required for the food vending application, and if the property owner is a public agency like Rec and Parks, there may be additional requirements.

In addition to Public Health, Public Works, Planning, and any agency holding land where a vendor seeks to locate, the Fire Department can also be required to permit certain vehicles that may present a fire hazard. The Fire Department, along with Public Health, also enforces and verifies public safety regulations. In terms of enforcing legal vending, the Police Department is often called, but they are no longer involved in the permitting process. Instead, Police will refer issues or complaints to Public Works for vendors in the public Right-of-Way (ROW), and a dedicated "district inspection team" from Public Works performs enforcement duties; and Planning if on parcels; both agencies have staff to inspect permit violations, though lack citation authority or significant power to prevent an unpermitted vendor from continual operation. For example, DPW inspectors do not have authority to ask for vendors' personal identification, but the police, if they are present, do. If the vendor is unpermitted, there is not much DPW staff alone can do, if there is no other identifying marks on a vehicle. Sometimes, DPW inspectors collaborate with SF Police and SF Public Health, but those relationships and Memorandums of Understanding are still being negotiated.

San Francisco has limits on where vendors can sell, depending on the type of property they are on. Planning has few distance restrictions for vendors on lots, though zoning may restrict vending or trigger a noticing process. This means mobile vendors can potentially locate in a lot next to brick and mortar restaurants. DPW has a number of specific buffers, on the other hand, such as 75 feet from restaurants and 500-1000 feet from schools; there are a physical location requirements where the vendor must be at least 12 feet from a disabled parking space; a push cart vendor must be seven feet away from a fire hydrant and there must be a six-foot path of travel allowed for pedestrians on the sidewalk. For sidewalk pushcart vending, a minimum sidewalk width of 15 feet is recommended. There have been a number of complaints from restaurant owners with mobile vendors operating in the public ROW, but as long as they maintain a distance and have their permit in order there is little the DPW will do to restrict their vending. San Francisco does not reserve, or issue "no parking" signs for vendors with their permitted parking spaces (as Oakland does for the Group Site program). Reportedly, some vendors in San Francisco use their own private automobiles to reserve the permitted parking space, in advance of their selling hours.

As noted, permitting can be expensive in San Francisco, and cost of permits may be an opportunity for Oakland to distinguish itself for vendors intimidated by high application costs in San Francisco. Though Oakland's Pushcart vending permit fee of \$530 for a site in the pilot program area is less than SF DPW's \$764 permit fee, all vendors applying in San Francisco still must pay a SF DPH Plan Check fee that can range from \$300 to \$700, and a license fee from \$200 to \$800. San Francisco's program is comprehensive and transparent, but does involve a relatively lengthy application process, and up-front permit costs which are higher than San Jose's or Oakland's pilot program.

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San Jose

San Jose regulates mobile food in all forms, from pushcarts to food trucks, to clusters of vendors, whether on public or private land. This appears to be the result of either good advance planning or flexible code regulations, because from all accounts it does not appear that San Jose has made any adjustments to its mobile food program in recent years in response to the modern mobile food trends. In fact, it may be a misnomer to refer to a “mobile food program” in the City of San Jose, as three separate agencies handle mobile food depending on the type of vending and location, but not in any coordinated fashion. Instead, it appears the unifying entity overseeing mobile food vending in San Jose is the Santa Clara County Department of Environmental Health. Of course, this agency is not only focused on San Jose but the entire county; still, because most mobile food is sold in the City of San Jose, the county mobile food permit program acts as a *de facto* permit program for the city.

In San Jose, the Santa Clara County Department of Environmental Health is the starting point for mobile food permits, with a vendor applying for a “Mobile Food Facility.” Staff in the department are specifically assigned to work on mobile food vending. As is the case elsewhere, signed commissary agreements and truck clearance from the California State Department of Housing and Community Development (HCD) are prerequisites. All vendors, pushcarts or vehicles, in San Jose require a Permit to Operate from the county health department. For those without, county staff will come out to enforce regulations when complaints are received. Though the San Jose approach to mobile food is not coordinated within the city *per se*, the one unifying element for all legal vendors is that they must go through the county application and permitting process.

The City of San Jose is involved in permitting mobile food vendors through three different departments, with three separate permitting approaches. 1) The Police Department manages all mobile vending in the *public realm* (including both right-of-way and publically owned parcels). Because most pushcart, food truck, and pop-up sales occur in this space (in San Jose and elsewhere), the majority of San Jose Mobile Food Vending (MFV) permitting funnels through what is known as the Peddler Permit process at the Police Department. The program was created through an ordinance, and the code specifies a number of details pertaining to fixed or mobile peddlers, from noise to hours of operation to location requirements. Unique requirements include fingerprinting and employee licenses. Presumably an advantage of having the vending permitting go through the police department is that there is a direct and established link between staff distributing permits and those officers enforcing them (mobile food permitting through the police department is fairly uncommon in other cities).

In the case where multiple food trucks assemble together in a “*pod*” or *group site*, San Jose considers this a special event and the Fire Department becomes involved, instead of the police. (The exception is if the trucks are constantly in rotation during the event, or if the trucks involve no cooking). In this case, the Peddler Permit Ordinance would not apply to the food trucks, and instead the food trucks are subsumed within a Special Events Permit (this permit can also include other activities if there is indeed a broader event such as a festival or block party). Food trucks with cooking apparatuses will need to be inspected by the Fire Department, and this can require an hourly charge that some vendors have found burdensome. An added requirement in these group scenarios, is that they must maintain a buffer between each other of 5 feet, in order to prevent kitchen fires.

For mobile vending on *privately-owned parcels*, San Jose’s Department of Planning, Building and Code Enforcement issues a permit. An applicant applies for an Outdoor Vending Facilities Administrative

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Permit, which, like the Peddler Permit, is a broader permit that was not specifically designed solely for food sales (mobile or fixed). The application has a number of specific elements, such as photographs and a site plan, and details several location requirements. An important distinction between this San Jose permit and the San Francisco TUA—also distributed to mobile vendors on private property by the planning department—is that the San Jose permit forbids a vendor from locating on a completely empty parcel or vacant lot; there must be a “fixed-base host” business, and the mobile vendor cannot even be on site if the business is closed.

The primary enforcement bodies are the Santa Clara County Department of Environmental Health and the San Jose Police Department. Santa Clara County Health Department will inspect a vendor if they receive complaint; sometimes accompanied by San Jose police. The code enforcement division will inspect vendors on private property. . However, from conversations with city and county staff, it appears that the county officials are the primary enforcement body, and that at times they will coordinate with the city police department to jointly enforce the regulations on unpermitted vendors.

From all accounts, there is no buffer requirement between mobile vendors on public property, including sidewalks and streets, and brick and mortar restaurants. This is fairly uncommon among other cities studied, but provides a useful precedent in case Oakland chooses to have limited buffers. There is, however, a buffer required between vendors on private property and all other private businesses—500 feet. There are other buffers, mostly to help safely orient the vendor within the private lot. No vendor in any location can vend within 150 feet of a residence, though (except for two specific zones). Public space vendors can locate near restaurants, but have buffers from other mobile vendors. There is also an requirement that vendors on public property stay at least 500 feet from a school.

Within the city of San Jose, there is only one designated area where vendors cannot locate—the “Arena Peddling Prohibition Zone” surrounding the SAP Center where the San Jose Sharks play—but two zones that have more lax requirements than elsewhere: downtown and around the San Jose State college campus. From a time perspective, vendors on public property can sell only between 10am and 7pm (or sunset, if that occurs earlier). Vendors on Private property can only sell between 6am and 10pm, and only if the host business is open during those hours.

The cost of being fully permitted in San Jose has a range, depending on a variety of factors. The annual county Permit to Operate ranges from \$138 to \$635, based on the level of food preparation. This is on top of fees paid to the relevant city department. If locating on private property, the fee for the administrative permit costs approximately \$850. Peddler permits for public property cost \$219, plus a \$109 Employee License fee. If multiple food trucks are involved for a special event, the permit instead costs \$217, but an hourly fire inspection can cost \$108 per hour, if required.

Of note: vendors selling whole, uncut fresh fruits and vegetables on private lots are exempt from applying for the administrative permit from the city planning department, a subtle, but useful way to potentially encourage more health food vending. It is not clear how well-publicized this fact is, and whether there is a strong outreach campaign associated with it.

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