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AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Larry E. Reid
President Pro Tem
Oakland City Council

SUBJECT: Mobile Food Vendors

DATE:

City Administrator Approval

Date:

RECOMMENDATION

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTERS 8.09, VEHICULAR FOOD VENDING, AND 5.49, PUSH CART FOOD VENDING PILOT PROGRAM, TO PERMIT VEHICULAR FOOD VENDING ON PRIVATE PROPERTY AND WITHIN THE PUBLIC RIGHT-OF-WAY ON 85TH AVENUE BETWEEN EDES AVENUE AND SAN LEANDRO BOULEVARD AND MAKE RELATED ADMINISTRATIVE CHANGES, AND ADOPTING CEQA EXEMPTION FINDINGS

EXECUTIVE SUMMARY

Adoption of this ordinance would add 85th Avenue between Edes Avenue and San Leandro Boulevard to the areas designated in Oakland Municipal Code (OMC) Chapter 8.09 where the city can consider issuance of permits for food vending from private property (see Attachment A). The Vehicular Food Vending program is currently limited to only the following streets: Fruitvale Avenue and High Street between Interstate 880 and Foothill Boulevard; Foothill Boulevard between 19th Avenue and MacArthur Boulevard; International Boulevard between First Avenue and 105th Avenue; San Leandro Street between Fruitvale Avenue and 98th Avenue; East 12th Street between 4th Avenue and 23rd Avenue; and 14th Avenue between East 11th Street and East 19th Street.

The ordinance would also create a pilot program to allow the city to consider issuance of permits for curb-side Street vending from trucks or trailers on the portion of 85th Avenue within the program permitted area. Applicants to this new pilot program would be required to locate only at city-designated parking space locations along the portion of 85th Avenue within the program permitted area. Designated street vending spaces would be indicated by special "No Parking, (x days), (x hours), Except Mobile Food Vending" parking signs at the curb edge (see Attachment B for sign examples). Each individual parking space would be assigned by the city after applications for a food vending permit are submitted; and would allow permitted vendors to operate for one or more days at designated parking spaces during the allowed hours of

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December 6, 2016

operation. The City anticipates selecting up to five parking spaces for curb-side street food vending along the portion of 85th Avenue within the program permitted area.

City Staff, in the Bureau of Planning, are currently drafting a comprehensive food vending ordinance, which would extend food vending citywide (adding downtown, West Oakland, and North Oakland areas for vending). The comprehensive ordinance would include the section of 85th Avenue between Edes and San Leandro which is the subject of this ordinance, to the areas which will be permitted for food vending. The comprehensive ordinance is being heard by the Oakland Planning Commission on December 7, 2016, and City Council hearings are expected to follow in early 2017. The present ordinance is consistent with the proposed comprehensive food vending ordinance; and will support its future implementation by "testing" the proposed method of regulating curb-side Street vending in a limited area before the program is considered on larger citywide scale.

Adoption of this 85th Avenue food vending ordinance would also amend the permit procedure in the current food vending program to give the Bureau of Planning the role of issuing the food vending permits for both food trucks and pushcarts. Currently, the Bureau of Building issues permits for food trucks and pushcarts. This is an opportunity for the Bureau of Planning to ready its staff and internal procedures for future food vending applications, in advance of the comprehensive program changes (which is expected in Spring 2017, if adopted by Council). Adoption of this ordinance will also allow city staff to monitor public right-of-way food vending in the limited area of the 85th Avenue public right-of-way, in advance of the comprehensive food vending program, which proposes to allow food vending from designated street parking spaces citywide.

REASON FOR SUPPLEMENTAL OR REPLACEMENT

In summary, the ordinance makes the following changes to Oakland Municipal Code (OMC) Chapter 8.09 "Vehicular Food Vending":

1. Allows vehicular food vending with a city permit from private property lots facing 85th Avenue between Edes Avenue and San Leandro Boulevard;
2. Allows vehicular food vending with a city permit at city-designated parking space locations along the portion of 85th Avenue within the program permitted area;
3. Removes references to outdated zoning districts which no longer exist;
4. Changes the city unit responsible for permit review and issuance from the Bureau of Building, where it has been administered for the past 15 years, to the Bureau of Planning;
5. Updates the language on buffer distances from restaurants to current Planning Code terminology: "Full Service Restaurant, "Limited Service Restaurant" or "Fast Food Restaurant."

The ordinance also makes the following change to OMC Chapter 5.49 "Pushcart Food Vending Pilot Program":

1. Changes the city unit responsible for permit review and issuance from the Bureau of Building, where the program has been administered for the past 15 years, to the Bureau of Planning;
2. Clarifies the 100-foot buffer distance currently applies between a pushcart and any other food vendor, including a food truck.
3. Removes references to outdated zoning districts which no longer exist.
4. Makes the permit issuance timing for pushcarts the same as for food trucks: within ten business days from the date on which the application is deemed complete; to allow sufficient time for a staff site visit, if necessary.

BACKGROUND / LEGISLATIVE HISTORY

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

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

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

At the March 19, 2015 Rules and Legislation Committee of the City Council, the Committee moved to place an item on the July 14, 2015 Community and Economic Development (CED) Committee agenda to: "adopt an ordinance amending Ordinance No. 12579 C.M.S. which establishes a permanent vehicular food vending program, and for staff to provide recommendations on expanding the vehicular food vending program citywide."

Planning staff presented an informational report to the CED Committee and described the present permitting and enforcement situation for food vending in Oakland, assessed programs elsewhere in the country, and highlighted considerations for future expansion. At the July 14,

2015 meeting, the CED Committee directed staff to develop a comprehensive food vending program proposal.

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

On June 1 and August 3, 2016, the Planning Commission held two public hearings to consider a proposed new citywide food vending permit program to replace Oakland's existing food vending permit types and programs. The proposed new Citywide Food Vending program will require the following city code amendments:

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

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

ANALYSIS AND POLICY ALTERNATIVES

FISCAL IMPACT

PUBLIC OUTREACH / INTEREST

COORDINATION

This Report and the Actions Discussed above have been coordinated with the Planning Department Staff as well as representatives from the Mayor's Office, Vendors who operate in

this area, and District 5 Council Members Staff, The City Administrators Office, The City Attorney's Office, and Building Services.

PAST PERFORMANCE, EVALUATION AND FOLLOW-UP

SUSTAINABLE OPPORTUNITIES

Economic: This proposed Action creates additional tax revenue, sustains jobs, and increases commercial/sales activities.

Environmental: *This Proposed Action does not provide any environmental benefits.*

Social Equity:

**CEQA **

This action is exempt from CEQA pursuant to CEQA Guidelines sections 15183 (projects consistent with General Plan and Zoning), 15061(b)(3) (general rule, no significant effect on the environment), and 15060(c)(2) (no direct or reasonably foreseeable indirect physical change on the environment), each of which provides a separate and independent basis for CEQA clearance and when viewed collectively provide an overall basis for CEQA clearance.

ACTION REQUESTED OF THE CITY COUNCIL

The Council Member recommends that the City Council Adopt an Ordinance:

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTERS 8.09, VEHICULAR FOOD VENDING, AND 5.49, PUSH CART FOOD VENDING PILOT PROGRAM, TO PERMIT VEHICULAR FOOD VENDING ON PRIVATE PROPERTY AND WITHIN THE PUBLIC RIGHT-OF-WAY ON 85TH AVENUE BETWEEN EDES AVENUE AND SAN LEANDRO BOULEVARD AND MAKE RELATED ADMINISTRATIVE CHANGES, AND ADOPTING CEQA EXEMPTION FINDINGS

For questions regarding this report, please contact Council Member Larry Reid at 510-238-7007.

Respectfully submitted,

Item: _____
Community and Economic Development Committee
December 6, 2106

Larry E. Reid
President Pro Tem
Council Member, District 7

Prepared by:
Ray Leon, Policy Analyst
Office of Council Member Larry Reid

Attachments (#):

OAKLAND CITY COUNCIL

ORDINANCE No. _____ C.M.S.

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTERS 8.09, VEHICULAR FOOD VENDING, AND 5.49, PUSH CART FOOD VENDING PILOT PROGRAM, TO PERMIT VEHICULAR FOOD VENDING ON PRIVATE PROPERTY AND WITHIN THE PUBLIC RIGHT-OF-WAY ON 85TH AVENUE BETWEEN EDES AVENUE AND SAN LEANDRO BOULEVARD AND MAKE RELATED ADMINISTRATIVE CHANGES, AND ADOPTING CEQA EXEMPTION 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 ("O.M.C.") Chapter 8.09, Vehicular Food Vending, and Ordinance No. 12582 C.M.S., which created a permanent Pushcart Vending Program, codified in O.M.C. Chapter 5.49, Pushcart Food Vending Pilot Program; and

WHEREAS, under the City's current regulations, pushcart food vending is authorized on sidewalks, but vehicular food vending is not allowed in the public right of way; and

WHEREAS, vehicular and pushcart food vendors provide commercial variety and a service to the Oakland community, encourage additional pedestrian traffic, and provide additional visual interest to established commercial activities, thereby strengthening commercial districts and/or locations; and

WHEREAS, vehicular and pushcart food vending provides an opportunity for individuals to be self-employed and contribute to the community. Such vendors are licensed and pay taxes to the City, thereby expanding the City's tax base; and

WHEREAS, the City of Oakland supports entrepreneurial development; and

WHEREAS, the City proposes to authorize vehicular food vending on private property and in the public right of way on the portion of 85th Avenue between Edes Avenue and San Leandro Boulevard, which has commercial and industrial zoning designations; and

WHEREAS, the permitting, administration and enforcement of vehicular food vending in the public right of way on this portion of 85th Avenue will inform and guide the upcoming expansion of the City's food vending program; and

WHEREAS, the City is currently working on separate legislation that proposes comprehensive citywide expansion of the food vending program, which will include food vending from the public right-of-way on selected streets in Downtown, West Oakland and North Oakland, in addition to selected streets in the current program area; and

WHEREAS, since 2004, the Bureau of Building has issued permits for both the Vehicular Food Vending Program in O.M.C. Chapter 8.09 and the Pushcart Food Vending Pilot Program in the O.M.C. Chapter 5.49, and the City now seeks to transfer the administration of both programs from the Bureau of Building to the Bureau of Planning in advance of the comprehensive food vending program being proposed under separate legislation; and

WHEREAS, the City seeks to delete outdated zoning code designations in O.M.C. Chapters 5.49 and 8.09; and

WHEREAS, the City Council finds and determines that the public safety, health, convenience, comfort, property, and general welfare will be furthered by the proposed amendments to the both the Vehicular Food Vending Program and Pushcart Food Vending Program; now therefore,

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

Section 1. Recitals. The City Council finds and determines the foregoing recitals are true and correct and are an integral part of the City Council's decision, and are hereby adopted as findings.

Section 2. Amendment of Chapter 8.09 of the Oakland Municipal Code. The following sections of Oakland Municipal Code Chapter 8.09 are hereby amended to read as follows (additions are shown as double underline and deletions are shown as ~~strikethrough~~):

Chapter 8.09 - VEHICULAR FOOD VENDING

8.09.020 - Definitions.

For the purposes of this chapter, certain words and phrases are defined, and certain provisions shall be construed, as herein set out unless it shall be apparent from the context that they have a different meaning:

"Loitering" means remaining on any property under such circumstances that a reasonable person would conclude that the person who remains on the property does not have a purpose connected with the usual and ordinary use to which such property is put, does not have bona fide intent to exercise a constitutional right, and is causing public inconvenience or annoyance.

"Private Property Vehicular food vending" means the sale of ready-to-consume prepared foods from trucks or trailers located on private property on a semi-permanent basis during hours of operation. Private property vehicular food vending generally has the following characteristics:

1. Food is ordered and served from a take-out counter that is integral to the catering truck or trailer;
2. Food is paid for prior to consumption;
3. Catering trucks or trailers from which the food is sold typically have a take-out counter and space for customer queuing;
4. Food and beverages are served in disposable wrappers, plates or containers; and

5. Food and beverages are prepared and sold for off-site consumption.

"Public Property Vehicular food vending" means the sale of ready-to-consume prepared foods from trucks or trailers located on city-designated public property locations on a semi-permanent basis during hours of operation. Public property vehicular food vending generally has the following characteristics:

1. Food is ordered and served from a take-out counter that is integral to the catering truck or trailer;
2. Food is paid for prior to consumption;
3. Catering trucks or trailers from which the food is sold typically have a take-out counter and space for customer queuing;
4. Food and beverages are served in disposable wrappers, plates or containers; and
5. Food and beverages are prepared and sold for off-site consumption.

"Vehicular food vendor" (vendor herein) means a person who is engaged in "vehicular food vending."

8.09.030 - Permitted area.

Streets: Vehicular food vending shall be permitted on private property located on 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 to the south and East 19th Street to the north;~~ and 85th Avenue between Edes Avenue to the south and San Leandro Street to the north. Within the program permitted area, private property vehicular food vendors shall be required to locate only on private property with an address on and visible from the above-listed public streets. Public property vehicular food vendors are only permitted on the portion of 85th Avenue within the program permitted area, and shall be required to locate only at city-designated parking space locations along the public right-of-way.

Consistent with existing regulations related to Fast-Food Restaurant Commercial Activities in Title 17 of the Oakland Municipal Code and with Section 5.48.080 of the Oakland Municipal Code, vehicular food vending shall continue to be conditionally permitted outside of the pilot program area in designated zoning districts.

~~Zoning Districts: On the streets listed above, vehicular food vending shall be permitted only in the C-20 Shopping Center Commercial, C-28 Commercial Shopping District, C-30 District Thoroughfare Commercial, C-40 Community Thoroughfare Commercial, M-20 Light Industrial, M-30 General Industrial, and M-40 Heavy Industrial zoning districts.1 Vehicular food vending shall not be permitted in any other zoning district.~~

No vehicular food vending use shall be located or maintained on public property inconsistent with any other city of Oakland regulations.

~~1 Consistent with existing regulations related to fast food restaurant activities and with Section 5.48.080 of the Municipal Code, vehicular food vending will continue to be conditionally permitted outside of the pilot program area in the following zoning districts: C-20 Shopping Center Commercial; C-25 Office Commercial; C-27 Village Commercial; C-28 Commercial Shopping District; C-30 District Thoroughfare Commercial; C-31 Special Retail Commercial; C-35 District~~

~~Shopping Commercial; C-36 Gateway Boulevard Service Commercial; C-40 Community Thoroughfare Commercial; C-45 Community Shopping Commercial; C-51 Central Business Service Commercial; C-55 Central Core Commercial; C-60 City Service Commercial; M-10 Special Industrial; M-20 Light Industrial; M-30 General Industrial; M-40 Heavy Industrial; S-1 Medical Center; and S-2 Civic Center.~~

8.09.040 - Permit application.

New and existing vehicular food vendors shall possess a valid vehicular food vending permit issued by the Bureau of Planning in Building Services Division of the Planning and Building Department, Community and Economic Development Agency (CEDA).

A. Vehicular food vendors shall submit the following information in order to qualify for a vehicular food vending permit:

1. The applicant shall obtain a vehicular food vending permit application from the city of Oakland Planning building services counter (planning building counter), located at 250 Frank H. Ogawa Plaza, Second Floor. The completed application shall be submitted to the Bureau of Planning, Building Division.
2. In order for the vehicular food vending permit application to be deemed complete, the applicant shall provide the Bureau of Planning building division with the following:
 - a. Completed vehicular food vending permit application;
 - b. Mailing address for notification;
 - c. Address, or assessor parcel number (APN), or city-designated parking space location for the proposed vehicular food vending site;
 - d. Signed and notarized affidavit in a form approved by the city of Oakland from the property owner (if other than self) permitting the vehicular food vendor to locate on the site;
 - e. Legal names of vehicular food vending business owner(s);
 - f. Proof of valid city of Oakland business tax certificate;
 - g. Proof of valid county of Alameda Health Agency, Environmental Health Services Health Permit;
 - h. Photocopy of valid California Driver's License for business owner and all employees;
 - i. Scaled or dimensioned site plan depicting location of vehicular food vending vehicle and any existing structures on proposed site;
 - j. Six photographs (showing different views) of the proposed site;
 - k. Four photographs (showing different exterior views) of the vehicular food vending vehicle;
 - l. Sample, photograph or rendering of advertising signs;
 - m. Facsimile of logo to be applied to all disposable paper products to be provided to customers;
 - n. If the vehicular food vendor is not able to provide employee access to restrooms, affidavit from property owner within two hundred (200) feet of the vehicular food

vending vehicle permitting use of restroom facilities by the vehicular food vendor; and

- o. Nonrefundable application fee per the city of Oakland master fee schedule. The application fee shall be applied to the permit fee upon application approval.
3. The Bureau of Planning Building Division shall process the vehicular food vending permit application (application) within ten (10) business days from the date on which the application is deemed complete.

8.09.050 - Permit conditions and issuance.

A permit issued pursuant to the provisions of this chapter shall be subject to the following conditions:

- A. Applications approved for issuance shall expire in thirty (30) days if unclaimed.
- B. A permit fee of per the city of Oakland master fee schedule, shall be paid prior to issuance of the permit. The application fee shall be applied to the permit fee upon application approval. A late fee per the city of Oakland master fee schedule will be assessed if the annual renewal is not paid in a timely manner.
- C. Upon issuance of the permit, the applicant shall not commence business activities until the Bureau of Planning building services division has inspected and approved all conditions of the permit.
- D. Location:
 1. The vehicular food vendor shall be located within the vehicular food vending program area as identified on the program permitted area attached map. (~~see Attachment A~~).
 2. The private property vehicular food vendor shall locate on private property only, and must receive written consent from the property owner (if not self) to occupy the property and conform to the conditions of the permit.
 3. The vehicular food vendor shall submit the written consent with the application.
 4. The private property vehicular food vendor shall not locate within two hundred (200) feet (as measured from the parcel boundary) of any Full Service, Limited Service, or Fast-Food Restaurant ~~2~~ or other vehicular food vendor, ~~3~~, full service restaurant ~~4~~ or delicatessen ~~5~~. As an exception to this requirement, public property vehicular food vendors may locate at city-designated parking space locations along the public right-of-way on the portion of 85th Avenue within the program permitted area, regardless of distance to a restaurant or other vehicular food vendor; and private property vehicular food vendors may locate within two hundred (200) feet of a restaurant or other vehicular food vendor if the restaurant property owner has provided the vehicular food vendor or vendors with written consent to locate on the same lot.
 5. ~~The vehicular food vendor shall not locate~~ within five hundred (500) feet of any public park, or primary or secondary school.
 65. Except as may be approved for the portion of 85th Avenue only within the program permitted area, ~~t~~The vehicular food vendor shall not locate in the public right-of-way.
 76. The vehicular food vendor shall not locate in parking spaces required to meet minimum parking requirements for any other business.

87. The vehicular food vendor shall be located within two hundred (200) feet of a restroom facility and shall demonstrate legal access for employees.
98. The vehicle shall not block any parking required to adequately serve other businesses, driveways or drive aisles, and shall be visible from the street.
109. Except as may be approved for the portion of 85th Avenue only within the program permitted area, ~~t~~The vehicular food vending vehicle shall be set back a minimum of ten (10) feet from any public sidewalk or right-of-way when the service window faces the street. Less obstructive orientations shall insure that the queue does not encroach upon the public right-of-way.

E. Condition/Appearance of Vehicle.

1. The vehicular food vendor shall display current business tax certificate, health department permit (and decal) and vehicular food vending permit in plain view and at all times on the exterior of the food vending vehicle.
2. The vehicular food vending permit and business tax certificate shall be displayed on or immediately adjacent to the front, passenger-side window.
3. The health decal shall be located on the left rear of the vehicle.
4. The vehicular food vendor shall maintain a valid 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.
5. The applicant shall display no more than three (3) signs attached to the vehicle (including the signage pertaining to loitering), with a maximum aggregate display surface of thirty (30) square feet per sign.
6. The vehicular food vending vehicle and use shall be entirely self-sufficient in regards to gas, water, and telecommunications. Should any utility hook-ups or connections to on-site utilities be required, the vehicular food vendor shall be required to apply for appropriate permits to ensure building and public safety and consistency with applicable building codes.
7. Electrical service to vehicular food vending vehicles shall be reviewed and approved on a case-by-case basis by the building division.
8. The vehicular food vending vehicle shall be a ~~self-propelled vehicle~~ maintained in operating condition at all times.
9. The vehicle shall not become a fixture of the site and shall not be considered an improvement to real property.
10. The vendor shall not discharge items onto the sidewalk, gutter or storm inlets.

F. Condition/Appearance of Site.

1. The site shall be maintained in a safe and clean manner at all times.
2. Exterior storage of refuse, equipment or materials associated with the vehicular food vending enterprise is prohibited.
3. The vending site ~~lot~~ shall be paved.
4. The vehicular food vendor shall maintain site circulation and access consistent with the Americans with Disabilities Act.

5. Up to four (4) tall stand-up cocktail-type tables shall be permitted; however, no chairs, ~~no~~ fences, or other site furniture (permanent or otherwise) shall be permitted in conjunction with vehicular food vending establishments.

G. Lighting. The vehicular food vendor shall provide adequate lighting to ensure customer safety. Lighting shall be directed downwards and away from ~~public streets and adjacent~~ properties.

H. Noise Control. Noise levels measured at the property line shall not exceed the city's noise ordinance standards.

I. Litter Control.

1. The vehicular food vendor shall provide a minimum of two thirty-two (32)-gallon litter receptacles within fifteen (15) feet of the vehicular food vending vehicle. The receptacles will serve both employees and customers.
2. The vehicular food vendor shall maintain the subject site property and adjacent right-of-way free of litter on and within two hundred (200) feet of the subject vending site.
3. All refuse shall be removed from the site and properly disposed of on a daily basis.

J. Security.

1. The vehicular food vendor shall install signage indicating that loitering is not permitted and customers may only remain on the lot for up to fifteen (15) minutes after receiving their food.
2. The vehicular food vendor shall enforce the no-loitering rule.
3. The serving or consumption of alcohol shall be prohibited at vehicular food vending sites.

K. Hours of Operation. Hours of operation shall be determined by the city but shall not exceed: seven a.m. to three a.m., everyday.

~~2—As an exception, vehicular food vendors may locate within two hundred (200) feet of a restaurant of which the owner has provided the vehicular food vendor with permission to locate on the same lot.~~

~~3—See Footnote 2, above.~~

~~4—See Footnote 2, above.~~

~~5—See Footnote 2, above.~~

8.09.060 - Permit expiration and revocation.

Vehicular food vending shall be permitted only while the permit is valid pursuant to the provisions of this chapter.

A. Permit Revocation. The city of Oakland reserves the right to revoke this permit at any time if it is found that the approved activity is violating any provision of this chapter, or any other ~~of the provisions of the city of Oakland Planning or Municipal Code, any provision of this chapter,~~ or causing a public nuisance. Should a vehicular food vending permit be revoked, the vendor shall be required to cease operation immediately or be subject to police action which may include impounding of vehicle, ticketing and/or arrest.

- B. Site Improvements. All applicable site improvements shall be installed no later than thirty (30) days from the date of issuance of the permit for this approval to be valid. If improvements have not been made within the thirty (30) days, the permit shall be revoked.
- C. Permit Limitations. The vehicular food vending permit shall be valid for twelve (12) months from the date of issuance. The permit must be renewed on or before its expiration date.

Section 3. Amendment of Chapter 5.49 of the Oakland Municipal Code. The following sections of Oakland Municipal Code Chapter 5.49 are hereby amended to read as follows (additions are shown as double underline and deletions are shown as ~~strikethrough~~):

Chapter 5.49 - PUSH CART FOOD VENDING PILOT PROGRAM

5.49.040 - Permit required.

Any new or existing pushcart food vendor who desires to vend in the city of Oakland shall apply for and obtain a pushcart food vending permit prior to conducting pushcart food vending. It shall be unlawful to sell, offer for sale, or solicit offers to purchase food from a pushcart in the program area without first obtaining a pushcart food vending permit from the Building Bureau of Planning in the Planning and Building Department. ~~Division~~. All applicants shall be required to submit the following information in order to qualify for a pushcart food vending permit.

- A. The applicant shall obtain a pushcart food vending permit application from the city of Oakland ~~Building Services Division~~ Bureau of Planning.
- B. In order for the pushcart food vending permit application to be deemed complete, the applicant shall provide the ~~Building Division~~ Bureau of Planning with the following:
 1. Completed pushcart food vending permit application;
 2. Mailing address for notification;
 3. Legal names of pushcart food vending business owner/operator;
 4. Proof of valid city of Oakland Business Tax Certificate;
 5. Proof of valid county of Alameda Health Agency, Environmental Health Services Health Permit;
 6. Photocopy of valid California Driver's License for business owner/operator;
 7. Four photographs (showing different views) of the pushcart;
 8. Sample or rendering or photograph of advertising signs; and
 9. An application fee per the city of Oakland master fee schedule. A permit fee per the city of Oakland master fee schedule shall be paid prior to issuance of the permit. The application fee shall be credited toward payment of the permit fee. A late fee will be assessed per the city of Oakland master fee schedule if the annual renewal is not paid in a timely manner.
 10. If a vendor proposes to vend from a single location for more than four (4) consecutive hours at a time, the vendor must identify the location and an available restroom to be used by the vendor, and written permission to use the bathroom from its owner.

- C. ~~The building division shall issue a~~Up to sixty (60) permits shall be issued. Permit issuance will be prioritized as follows:
1. Holders of Alameda Health Agency, Environmental Health Services Health Permits will be given priority for available permits.
 2. Permit applications shall be accepted and deemed complete on a first-come, first-served basis.
 3. Upon issuance of sixty (60) permits, the ~~Building Division~~ Bureau of Planning will accept applications on a first-come, first-served basis for entry onto a permit waiting list. Should a permit be revoked or otherwise become available, the first applicant on the permit waiting list shall be contacted immediately and offered the available permit.
 4. At no time shall more than sixty (60) permits be active.
 5. The permit applicant shall obtain the permit within fourteen (14) days of permit availability or said permit application shall expire.
- D. The Bureau of Planning shall process the permit application (application) within ten (10) business days from the date on which the application is deemed complete. ~~The Building Division shall process permit applications at the time of receipt at the permit counter.~~

5.49.050 - Geographic area.

Pushcart food vending shall only occur in the following geographic areas of Oakland:

- A. Sidewalks. Pushcart food vending shall be permitted on public sidewalks located on Fruitvale Avenue and High Street between Interstate 880 to the south and Foothill Boulevard to the east; Foothill Boulevard between 19th Avenue to the west and MacArthur Boulevard to the east; International Boulevard between First Avenue to the west and 105th Avenue to the east; San Leandro Street between Fruitvale Avenue to the north and 98th Avenue to the south; East 12th Street between 4th Avenue ~~to in~~ the west and 23rd Avenue ~~to in~~ the east; and 14th Avenue between East 11th Street ~~to in~~ the south and East 19th Street ~~to in~~ the north. Vendors may transport pushcart vending equipment throughout the city of Oakland. However, vending, including selling, offering for sale, or soliciting offers to purchase food, is restricted outside of the streets and zones identified in this section.
- B. Zones. Along the street sections described above, pushcart food vending shall be permitted in Commercial and Industrial Zoning districts only, ~~the C-20 Shopping Center Commercial, C-28 Commercial Shopping District, C-30 District Thoroughfare Commercial, C-40 Community Thoroughfare Commercial, M-20 Light Industrial, M-30 General Industrial, and M-40 Heavy Industrial zoning districts.~~
- C. Locations.
1. Vendors may vend at any location within permitted zones and along permitted sidewalks. However, vendors shall maintain a one hundred (100)-foot distance from any other food vendor ~~between one another~~ while selling, offering for sale, or soliciting offers to purchase food.
 2. The pushcart food vendor shall not locate within two hundred (200) feet of any primary or middle school or public park.
 3. Pushcart food vendors shall not vend or locate equipment adjacent to entries and exits from buildings or facilities, on-street parking spaces reserved for disabled access,

driveways, ~~entries and exits from buildings or facilities,~~ or adjacent to street intersections where equipment may obstruct vehicle and pedestrian sight distance.

4. Pushcart food vendors may vend at assemblies within two blocks of the permitted locations.

D. Travel. Pushcart food vendors may travel along any public right-of-way within the city of Oakland. However, vending shall be limited to the permitted locations. Pushcart food vendors shall not be allowed to vend, expose or otherwise advertise merchandise, solicit sales, or loiter outside of the permitted locations.

5.49.060 - Regulations for pushcart food vendors.

A. Pushcart food vendors shall sell, offer for sale or solicit offers to purchase only in the area(s) designated by the City Manager or his or her designee. The designation of any area in a public place under jurisdiction is subject to approval of and to any rules and regulations imposed by such office.

B. Vending shall only occur within the hours of seven (7) a.m. to ten (10) p.m. Monday through Friday, and eight (8) a.m. to ten (10) p.m. Saturday and Sunday. The city of Oakland may require additional restrictions to abate nuisances.

C. All pushcart food vendors shall adhere to designated time and day requirements and shall be allotted one hour set-up and one hour breakdown and travel time before and after stated selling hours.

D. No pushcart food vendor shall sell, offer for sale, or solicit offers to purchase from any automobile or truck.

E. Pushcart food vendors shall engage in their activities in designated areas of the city of Oakland in such a manner that at all times there shall remain an open pedestrian passage of at least six (6) feet in width, as measured from the line perpendicular to the pushcart food vending activity and end of walkway, and consistent with the Americans with Disabilities Act.

F. Vending equipment and merchandise shall occupy the pushcart only and shall not be stored, displayed or otherwise placed in the public right-of-way or on public property.

G. Vending equipment shall be regulated in the following manner:

1. The pushcart food vending permit shall be affixed to the pushcart in a readily visible location at all times.
2. Vending equipment, merchandise offered for sale or otherwise associated with the pushcart food vendor shall not block, impede or in any way hamper ingress or egress for parked vehicles, pedestrian movement or cause or allow to cause any hazard to pedestrians.
3. Vending equipment shall be easily moved and shall be self-supporting; at no time shall vending equipment be attached, tied or locked to trees, hydrants or any other permanent vertical structure or bench.
4. Any vending equipment shall have the maximum length of eight (8) feet, maximum depth of six (6) feet and a maximum height of eight (8) feet.
5. Up to two signs may be attached to the pushcart, with a maximum aggregate display surface of five (5) square feet per sign.

6. The pushcart vending equipment shall be entirely self-sufficient in regards to gas, electricity, water, and telecommunications.
7. No tables, chairs, fences or other site furniture (temporary or otherwise) are permitted in conjunction with the pushcart vending equipment.
8. Vendors shall remove all equipment upon order of city of Oakland.
9. Vendors shall not locate or create a vending activity that will negatively impact adjacent businesses or residences.

5.49.090 - Suspension, revocation or denial of permit.

- A. Any permit issued pursuant to this chapter may be revoked or suspended for good cause or upon violation of any provision of this chapter. Any person whose permit has been revoked or suspended shall receive in writing an explanation of such action by the permit inspector. The reasons for denial, suspension and revocation include:
 1. Fraud or misrepresentation in the application for the certificate; or
 2. Fraud or misrepresentation in the course of conducting the business of vending; or
 3. Conducting the business of vending contrary to the criteria for the permit and/or regulations; or
 4. Conducting the business of vending in such a manner as to create a public nuisance or to constitute a danger to the public; or
 5. Public use/repair of right-of-way.
- B. The following factors shall be considered in determining whether a permit should be suspended or revoked upon noncompliance with these regulations:
 1. The number of citations for violation of this chapter previously received by the vendor; and
 2. The number of previous suspensions and/or revocations imposed upon the vendor; and
 3. The number of occasions for which the vendor's permit was subject to suspension or revocation and was not suspended or revoked; and
 4. The seriousness of the violation or misrepresentation and the danger to the health and/or safety of the public presented by the vendor's misrepresentation, noncompliance and/or misconduct; and
 5. Whether or not the condition subjecting the vendor to suspension or revocation is of a nature that can be and/or has been corrected.
- C. Any permit holder or applicant whose permit is suspended or revoked or whose application for a permit is denied may, within fifteen (15) days of the date of action, notify the ~~building~~ Bureau of Planning division that the permit holder desires reconsideration of that decision. A hearing before the City Manager of the request shall be scheduled. The suspension or revocation will remain in effect pending the hearing. At the hearing, the permit holder or applicant will be afforded the opportunity to be heard and present facts and witnesses on his or her behalf. At that time, the City Manager or his or her designee will make a final decision.

Section 4. California Environmental Quality Act. The City Council independently finds and determines that this action is exempt from CEQA pursuant to CEQA Guidelines sections 15183 (projects consistent with General Plan and Zoning), 15061(b)(3) (general rule, no significant effect on the environment), and 15060(c)(2) (no direct or reasonably foreseeable indirect physical change on the environment), each of which provides a separate and independent basis for CEQA clearance and when viewed collectively provide an overall basis for CEQA clearance.

Section 5. 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 6. Effective Date. This Ordinance shall take effect ten (10) days after its adoption.

Section 7. Authority. This Ordinance serves the public interest, is necessary to protect the health, safety, and 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, and Article XI of the California Constitution.

Section 8. 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 10. Notice of Exemption. The Environmental Review Officer, or designee, is directed to cause to be filed a Notice of Exemption with the appropriate agencies.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

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

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 OAKLAND MUNICIPAL CODE CHAPTERS 8.09, VEHICULAR FOOD VENDING, AND 5.49, PUSHCART FOOD VENDING PILOT PROGRAM, TO PERMIT VEHICULAR FOOD VENDING ON PRIVATE PROPERTY AND WITHIN THE PUBLIC RIGHT-OF-WAY ON 85TH AVENUE BETWEEN EDES AVENUE AND SAN LEANDRO BOULEVARD AND MAKE RELATED ADMINISTRATIVE CHANGES, AND ADOPTING CEQA EXEMPTION FINDINGS

This ordinance would amend Oakland Municipal Code Chapter 8.09 "Vehicular Food Vending" to add 85th Avenue between Edes Avenue and San Leandro Boulevard to the areas where mobile food vending from trucks or trailers is permitted on private property. The ordinance also creates a new pilot program that would allow food vending from trucks or trailers at pre-designated parking spaces in the public right-of-way on 85th Avenue between Edes Avenue and San Leandro Boulevard. In addition, the ordinance makes administrative changes to both the Vehicular Food Vending and Pushcart Food Vending programs to change the city department which issues these permits from the Bureau of Building to the Bureau of Planning.