City of Oakland, Food Vending Public meeting, Cesar Chavez Branch Library

July 28, 2016, 3:00 –5:30 p.m.

City staff: Devan Reiff, Bo Chung (intern), Department of Planning and Building
City officials: Noel Gallo (Councilmember), Jose Corona (Mayor’s Office)

Questions/Statements from audience, and Answers from City staff. (*Comments in italics added later for clarity*).

1. **Question; “Grandfathering” process: will those applicants considered for the permission to keep their current location need to have been permitted every year?**
   - **Answer:** Grandfathering rules are still being drafted, but the process will involve looking at the history of the food truck in its location, through permit records at Alameda County Environmental Health; even though the vendor may not have a City permit for every consecutive year, the City will look for other evidence to support the claim of a particular location. The intent is not to penalize vendors.

2. **What are the guidelines for “grandfathering”? What about vending in non-permitted areas? What is contestation?**
   - The City will focus on the history of the food vendor to determine whether the “grandfathering” conditions have been met. Contestation is two vendors vying for the same spot to vend, or seeking to vend closer to each other than the 200 feet allowed right now under the current program.

3. **Why is the proposed buffer distance from mobile food vendors to schools from schools so far (500 feet)?**
   - This distance reflects the intention of the schools (OUSD) to serve healthier foods to their students, either in their cafeteria, or at farmer’s markets at the schools. A provision will be in the administrative guidelines that says a vendor selling healthy food can sell closer to schools than 500 feet, with OUSD permission.

4. **How can the vendor expand into new markets?**
   - Page 4, Section 4E of the draft administrative rules and regulations states that an individual can apply for up to 5 permits (1 owner, up to 5 mobile food vending apparatuses).
There will be two types of permits, annual, or temporary (90 days, allowing summer vending for example)

5. What are the fees? What is the rationale behind a maximum of 30 carts in all of East Oakland (all areas east of Lake Merritt)
   - The fees will all be documented clearly, but will be approximately the same as the current program.
   - The reason for the proposed limit of 30 food carts (food vending not based in a vehicle, generally set up on sidewalk space) is to ensure ADA access through sidewalks, and for pedestrian safety reasons.

6. Grandfathering – we want a program that helps people understand the new laws. We also want a process to create an internal preference for long-standing vendors.
   - In the draft Administrative Rules and Regulations document (on Page 4, Section 4C), in those cases where multiple applications for the same parcel are made, priority will be given to those who have a history of permitted activity (including the Alameda County health permit)
   - At an upcoming Planning Commission hearing (in October), the City will have revised the “grandfathering” provisions of the Administrative Rules.

7. Is favoring longstanding businesses fair? Shouldn’t newer businesses be given an opportunity?
   - “Grandfathering” will only occur in cases where there is a contest for a specific site.

8. The current food truck trend has not benefitted existing businesses.
   - City staff have heard this opinion before; however, other cities have successfully managed a food vending program without harm to existing businesses, such as San Francisco, and it is staff’s opinion that it can be a successful co-existence, when the regulations are clear, and when the program is enforced properly.

9. How can Oakland residents get priority (for permits)?
   - Legally, the City is constrained from giving a priority, or a fee discount, to an Oakland resident. Staff is confirming this with the City Attorney, and will explain more fully in the October Planning Commission report.

10. The mobile food movement started in 1998; 2001 was when the first MFV ordinance was created. We (Mobile Food Association) knew that this is the future, and wanted the City to be open to this. The Association wants to defend existing vendors; the crafting of the new ordinance should respect the Association and the work it has put in over the years to create this
business. We want to offer more business-making opportunities, but need to recognize the contributions of people who have been here.

- Point noted by staff.

11. Add the history of food vending into the ordinance.

- Staff will describe in full the history of permitted food vending in the next Planning Commission report.

12. Alameda County Environmental Health permit should count in the “grandfathering” approval methods.

- What the vendor is saying is that even if a vendor does not have a City of Oakland permit history, as long as they have an Alameda County Environmental Health permit/s, they should be granted a new City permit. The City is considering if this is a legally valid method for issuing new permits.

13. What is “clustering” food trucks?

- These are group sites, permitted locations where once or twice a week groups of food trucks may legally vend for a few hours. For example, Friday nights at the Oakland Museum. None of the group sites are City sponsored, but they are permitted by the City.

14. What about the enforcement of minimum wage laws? If restaurants have to abide by this law, trucks should not be able to access commissaries outside of the city to skirt this minimum wage labor law

- The City has staff which enforces compliance with the Minimum Wage law, based in the Contracts and Compliance division.

- Enforcement of MFV in general has been a problem, currently the estimated number of revenue from new fees can fund a single new position, but the City is looking to fund 3 positions – “business permits enforcement officers”.

  - They will be Spanish speaking and work some nights and weekends

- Regarding commissaries outside of Oakland, and requiring that they pay the same minimum wage, the ordinance is not nuanced to this degree.

15. Need to ensure fairness to brick and mortar restaurants; commissaries outside of Oakland can skirt many of the labor laws applied to brick and mortar establishments.

- The City will enforce the minimum wage laws for Oakland-based businesses.
16. What about private property owners who don’t want food vending? Can we give veto power to neighborhoods to remove their block from the map?
   - Staff is not considering allowing a “veto” from neighboring businesses on food permit applications. To clarify, City staff sees the new food vending permit as similar to a business license: one business owner does not have the ability to “veto” another business which chooses to locate next to them.

17. Food trucks do pay permits and taxes to the City, and food vendors not only benefit vendors and consumers; the City gets tax revenue from these sales.

18. The City must figure out a way to enforce these laws without police.
   - The City is creating new positions in the City Administrator’s office of Special Activities/Nuisance Abatement to enforce mobile food vending regulations.

19. Ways to exclude areas needs to be discussed.
   - Highland Hospital area is an example of an area which was excluded, because of lack of metered parking on the streets surrounding the Hospital.
   - The public which might want to suggest other revisions to the permitted program areas map, has until the first CED meeting to do so (tentatively scheduled for mid-November).
     Send comments to Devan Reiff, dreiff@oaklandnet.com.

20. What about the speed of enforcement? Only 2 hours is needed for a business to be impacted by unpermitted food vending, the speed of enforcement needs to be considered. Also, why is there no noticing to neighboring businesses and residents, in the new food vending ordinance?
   - The staff hired for enforcement is will be responsive to the public. Also, the City is looking to partner with Business Improvement Districts, and other neighborhood organizations, to be the “eyes and ears” in those neighborhoods that might have unpermitted vending. That should address the timing concerns. As for noticing, staff removed the noticing provisions under direction to make the permitting as simple as possible. But some level of notification seems to be justified, and staff will consider revising this part of the proposal.

21. Currently there is no one to speak with or number to dial to complain about illegal food vending.
   - If the vendor is on private property, contact the Code Enforcement Division, 510-238-3381. If the vendor is on public property, contact the Nuisance Abatement division, 510-238-3294.

22. Fines need to be set up for unpermitted vendors, citizens shouldn’t have to be involved
- **Enforcement will happen in different stages, with education first.** Educational materials will be made (in numerous languages), so the rules and process are clear. **Repeated violations will result in fines, and possibly impoundment of food or vehicles.**

23. All parties including the City, mobile vendors, and brick and mortar establishment operators need to be sensitive to the dynamics of the neighborhood, the existing Business Improvement Association can help mediate conflicts.

- **Staff agrees with this statement.**

24. About enforcement, three new staff, at a cost of about $120,000 each to the City, will that be enough enforcement positions? Does the income generated from the permits amount to enough to support this many positions?

- **The current revenue projections won’t entirely cost-cover the new enforcement positions. The City will have to find other sources of funds, beyond the revenue generated from permits, if it wants to hire a more robust enforcement staff.**

25. The Oakland mobile food truck association prefers co-existence of vendors and restaurants/establishments.

- **Staff notes the point made.**

26. The Mobile Food Truck Association must also compete with other businesses that are under the radar (and are not permitted)

- How can the city better inform all permitted and un-permitted vendors that the rules are proposed to be changed? Staff is open to suggestions. **Staff will be mailing a notice of the October Planning Commission hearing to each vendor in the Alameda County and City of Oakland permittees.**

27. How can we define “appropriate” areas for MFV? Fruitvale for example, is over-served by vendors and restaurants, yet it is thriving.

- Selected commercial/industrial areas of the City were chosen for the proposed permitted areas map. Staff chose these areas because they permit or conditionally permit food business now, under the current zoning.

28. The Dimond Business & Professionals Association does not support new food vending rules that would permit mobile food vending in the boundary of the Dimond commercial district.
All commercial/industrial areas on the proposed permitted areas map can be discussed. Staff chose these areas initially, because they permit or conditionally permit food business now, under the current zoning.

29. Mobile Food Vendors do not intentionally seek out conflict.
   - This is an important point, and is well-taken.

30. What are rights of food vendors? Protection from harassment?
   - Protection will be same as any other permitted business
   - Problems arise when a vendor is not licensed or the cart/truck blocks access to the public right of way, with coolers, lines of customers, umbrellas.

31. Can enforcement be handled by traffic/parking enforcement staff at the City?
   - Not solely, but Parking enforcement staff has been engaged in discussion about the role they can play aiding enforcement of food vending. Some BID ambassador programs could also assist with the education side of enforcement.

32. Group sites without Oakland food vendors should pay more. (An informal poll was taken of people in the room: a majority voted for a surcharge to food vending applicants that are not from Oakland).
   - Staff explained that legally, the City can’t impose requirements on vendors who are not based in Oakland, such as extra fees. Fees must represent the cost of providing the service, and an application fee to any vendor will take the same amount of staff time, regardless of their business location. The City understands the desire by the community that the benefit of new food vending regulations should accrue to Oakland residents first, but there may be other ways of promoting food vending to Oakland residents, beyond additional fees for vendors outside of Oakland.

33. Discount the application fees for healthy food vendors, and to Oakland-based vendors.
   - The City is only allowed to charge a fee that covers the cost of providing the service, so there won’t be a fee discount for Oakland-based vendors, or for vendors who sell "healthy" food. But there are other ways to incentivize those two desirable outcomes, which the City is exploring (i.e. allowing healthy food vending within 500 feet of a School, with OUSD permission).

34. Permit decal suggestions: permitted address should be on the permit, different neighborhoods should have different colors, permit should be different colors for different neighborhoods.
   - Staff will consider these ideas when designing the decal, or permit sticker.
35. Easy identification that vendor is in permitted area
   o The City will design an easily identifiable sticker.