**Oakland City Planning Commission**

**Case File Number ZA16009**

**Location:** CITYWIDE

**Proposal:** Establish a new citywide food vending permit program that would replace Oakland's existing food vending permit types and programs. This revised proposal for a new citywide food vending 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. The proposal would also revise the definition of “Fast Food Restaurant Commercial Activities” in Section 17.10.280 of the Oakland Planning Code; and revise the following sections of the Oakland Municipal Code (OMC): Section 5.51 (“Food Vending Group Site Pilot Program”); Section 5.49 (“Pushcart Food Vending Pilot Program”); and Section 8.09 (“Vehicular Food Vending”). The proposal would also include revisions to other Planning and Municipal Code sections as minor conforming changes. *This is a continued item from a previously scheduled hearing on December 7, 2016.*

**Applicant:** City of Oakland

**Case File Number:** ZA16009

**Environmental Determination:** The Project relies on the previous set of applicable CEQA documents including: the Coliseum Area Specific Plan EIR (2015); Broadway Valdez Specific Plan EIR (2014); West Oakland Specific Plan EIR (2014); Central Estuary Area Plan EIR (2013); Land Use and Transportation Element of the General Plan EIR (1998); the Oakland Estuary Policy Plan EIRs (1999, 2006) and Supplemental EIR (2013); the Redevelopment Area EIRs- West Oakland (2003), Central City East (2003), Coliseum (1995), and Oakland Army Base (2002); the Historic Preservation Element of the General Plan EIR (1998); the 2007-2014 Housing Element Final EIR (2010) and Addendum (2014); and various Redevelopment Plan Final EIRs (collectively, “Previous CEQA Documents”). No further environmental review is required under CEQA Guidelines Sections 15162 and 15163. Moreover, each as a separate and independent basis, this proposal is also exempt from CEQA pursuant to CEQA Guidelines Sections 15183 (projects consistent with General Plan and Zoning) and 15061(b)(3) (general rule, no significant effect on the environment).

**City Council District:** All Council Districts

**Action to be Taken:** Recommendations to the City Council

**Staff Recommendation:** Recommend forwarding proposal to the City Council

**For Further Information:** Contact case planner Devan Reiff at 510-238-3550 or dreiff@oaklandnet.com

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SUMMARY

There has been a strong interest on the part of mobile food vendors, members of the general public and various advocacy groups to increase opportunities for mobile food vendors to vend legally in Oakland. 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.

The feedback from mobile food vendors, in particular, has been that the City should establish a permanent citywide program that will allow for food vendors to vend beyond the areas of the Fruitvale and other central and east Oakland neighborhoods, where it has been concentrated by law since the first city permit programs were created in 2001.

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 (see Attachment A for the August 3rd staff report). 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 (see Attachment B to this report);
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.

The proposed new citywide Food Vending Program (see Attachment C to this report) would consolidate and replace the City’s existing food vending pilot programs in 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”. The proposed new citywide food vending program would be accompanied by a map of the “Food Vending Program Permitted Area” (see Attachment D), which is a part of the Administrative Guidelines (see Attachment E to this report for the latest administrative draft).

The proposed amendment to the definition of “Fast Food Restaurant Commercial Activities” in the Planning Code, coupled with the proposed elimination of the other existing food vending-related regulations in various chapters of the Municipal Code, would consolidate the various mobile food vending “pilot” programs into one unified Food Vending Program for the entire city.
At the August 3rd public hearing on this item, staff presented a number of revisions and changes to the proposal to address stakeholder and other concerns. Those proposals are discussed in the “Revisions to the Citywide Food Vending Program” section of this report.

After hearing public speakers, and making comments and inquiries, the Planning Commission made a motion to continue the item to October 5th.

The August 3rd Commission motion directed staff to return on October 5th with additional changes to the program, including a consideration of changes in the buffer distances between two food vendors; an explanation of how the City will prioritize long-standing vendors in the issuance of new permits; clarification of the term “longevity”; and an explanation of what is meant by the term “underserved” when referring to community food options. The Commissioners also requested that staff meet with groups that feel they have not yet been included in the process to develop this legislation.

Staff sought, and was granted, a continuation of the Planning Commission hearing from October 5th to December 7th, because a major revision to the proposal for vending from vehicles in the right-of-way was recommended and needed further development: limiting food vending in the street right-of-way to designated parking spaces only throughout the permitted areas map. The process of selecting designated parking spaces for street vending is currently underway by city staff, with the participation of the general public through a mapping program available on the City’s food vending project website.¹

This report represents changes to the proposed new food vending program that reflect comments made at the August 3, 2016 Planning Commission meeting. Staff revised the proposed amendments to OMC Chapter 5.51 to reflect the latest version of the proposal, which is shown as Attachment C of this report.

Staff has also prepared a draft of the administrative rules and procedures to serve as guidelines for permit issuance and conflict resolution. These Administrative Guidelines, which will be separate from and authorized by the ordinance amending OMC Chapter 5.51, will provide the detailed requirements, procedures and prohibitions under which the new food vending program will be operated. They will also provide the flexibility necessary to allow for timely changes to effectively implement the new food vending program. Following the August 3rd public hearing, staff met with several neighborhood and business organizations and Neighborhood Crime Prevention Council (NCPC) groups, and based on feedback received at these meetings, and from other public comments, staff has revised the proposal and the Administrative Guidelines, as shown in Attachment E to this report.

Following the stakeholder discussions, several significant revisions are proposed, for which staff is seeking Planning Commission and public comment. Each change is detailed further, below, but the significant revisions are summarized as follows:

¹ See: www.oaklandnet.com/foodvending
1) Limit expansion of the current food vending permitted area in Central and East Oakland neighborhoods to only certain recommended streets (such as 85th Avenue between Edes Avenue and San Leandro Blvd.);

2) Remove the CN-1 zones from the proposed permitted areas map;

3) Limit food vending from trucks in the public right-of-way to no more than 50 parking spaces pre-selected by the City with stakeholder input. Each selected parking space would be signed and striped for food vending activities only during allowed hours of operation. This provision will facilitate the City’s ability to effectively enforce the right-of-way portion of the new food vending program. (See Attachment D).

4) Limit the number of permits issued for individual food vending facilities and group sites on private property, and for pushcarts or stationary carts on public or private property in year one of the program (2017) to no more than 100 private property permits for food trucks; and 100 public or private property permits for stationary carts and pushcarts.

5) Change the buffer distance between two vendors from the current 200 feet for trucks and 100 feet for pushcarts to a proposed 300 feet between all food vendors.

6) Add requirement for noticing of neighboring properties.

7) Create a 75 foot buffer distance between food vendors and restaurants.

BACKGROUND

The legislative history of mobile food vending in Oakland is explained in detail in the June 1, 2016 Planning Commission staff report (see Attachment F to this report).

ECONOMIC IMPACT OF FOOD VENDING IN OAKLAND

Mobile food vending is one of the “hottest trends in the restaurant industry” according to the National Restaurant Association. The projection for 2016 is that “projected sales for the mobile caterer segment are $914 million, up 5% over 2015.”2 The benefits to Oakland from this business sector are expected to increase with a new permit program.

In order to understand what the economic benefits would be to the City from an expanded food vending program, staff performed an analysis of sales tax and Oakland business tax revenue for the last fiscal year. Based on a sample of 25 food trucks, the average amount a single food truck brought to the City in sales taxes was $3,100. Assuming that the City permits (and legalizes) 100 food trucks in year one of a new program, those food vending vehicles could generate over $300,000 in sales tax revenue per year to the City.

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EXAMPLES FROM OTHER CITIES

Staff reviewed recent reports and scholarly papers on mobile food vending which support the City’s proposal for a comprehensive food vending program. One report in 2015 by the Economic Roundtable in Los Angeles studied pushcarts and other sidewalk vendors, and found that:

“...legitimizing street vendors through a citywide comprehensive ordinance creating a permit system for sidewalks sales will bring vendors into the mainstream economy and contribute to local, state and federal tax revenue. Los Angeles will continue to lose public revenue if vending is not legalized and continues to operate informally.”

The National League of Cities reported in 2013 that:

“...mobile vending is commonly used as a means to expand economic opportunity, and enrich communities by improving access to goods and produce not otherwise available through area merchants.”

This National League of Cities report also found that:

“...for city government, balancing the interests of stakeholders is a key priority, but so is a desire for economic vibrancy and revitalization, administrative ease, effective enforcement through regulatory clarity, and options that are budget-friendly and cost-effective.”

The City of Oakland has tried to work in collaboration with the local food vending community, as well as with other stakeholders, as recommended by a 2016 article in the George Washington Law Review referring to New York City’s vending program:

“...although its services come with social costs, mobile food vending should still be nurtured. It undoubtedly occupies an important economic niche for its employees and customers. It has also inspired tourism while bolstering the City’s reputation for creativity. These benefits justify collaborative efforts by local governments and mobile vendors to solve the industry’s regulatory problems.”

Another recent report staff has reviewed, titled “Food Trucks, Incremental Innovation, and Regulatory Ruts,” notes that:

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3 Yvonne Yen Liu, Sidewalk Stimulus: Economic and Geographic Impact of Los Angeles Street Vendors; Economic Roundtable, 2015, pg. 20.
“Food trucks are a rapidly growing sector of the restaurant industry, thanks to the grassroots innovation that began [with a famous Los Angeles food truck that created a following using social media].”

In terms of economic impact, a recent study titled “Information Technology and Product Variety in the City: The Case of Food Trucks” found that:

“...in practice, food trucks do provide a large increase in variety, in part because they tend to choose locations that appear to be under served by brick-and-mortar restaurants (perhaps due to zoning restrictions, high rents, or lack of available land). In addition, using household-level data from the Consumer Expenditure Survey, we provide evidence that the growth in food trucks has increased the aggregate consumption of food-away-from-home for urban consumers. This implies that food trucks did not simply cannibalize the market for brick-and-mortar restaurants, but actually expanded the market for food-away-from-home by increasing the net variety of available food options.”

COMMUNITY OUTREACH

Following the August 3, 2016 Planning Commission hearing, staff spoke with a number of associations and organizations which have commercial stakeholders, to hear more comment and to engage in dialogue about the proposals. Staff met with the following organizations, and presented to several Neighborhood Crime Prevention Council (NCPC) groups:

- Montclair Village Association
- Dimond Professionals and Merchants Association
- Vietnamese Chamber of Commerce
- Lake Merritt Business Association
- Oakland Metropolitan Chamber of Commerce
- Laurel District Association
- West Oakland Commerce Association
- West Oakland Neighbors
- Oakland African American Chamber of Commerce
- Fruitvale Business Improvement District

In addition to these organizations, staff met with the Oakland Food Truck Association (OFTA) twice to discuss their concerns and suggestions for the new program. The OFTA members recommended the following program elements: a 1,500 foot buffer distance between mobile food vendors and “brick and mortar” restaurants, which was subsequently changed to a request for a 1,000 foot buffer distance; prohibition of food vending in the public right-of-way; noticing of

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neighbors of food vending applications; making “late night vending” permitted without additional regulation; prioritizing Oakland-based business for new permit program; and further limiting the number of permits issued during the first year of the program. Staff has made some revisions to the proposal based on these comments, as detailed in sections below, but has not included other OFTA suggestions, as they have been determined to be inconsistent with the overall intent of increasing opportunities for mobile food vendors to vend legally in Oakland.

PROPOSED NEW CITYWIDE FOOD VENDING PROGRAM

The following tables present in summary format the major provisions of the proposed new food vending program, as compared with the current vending programs. Each table compares the various food vending permit configurations: vending from private property; vending from the designated spaces in the public right-of-way; vending from sidewalks in pushcarts; and group site vending. These tables are not a substitute for either the proposed revisions (Attachment C), or the Administrative Guidelines (Attachment E).

Table 1. Food Trucks and Trailers Vending from Private Property

<table>
<thead>
<tr>
<th>Provisions</th>
<th>Existing Regulations</th>
<th>Proposed New Regulations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Location</td>
<td>Limited to private property on central and east Oakland streets: Fruitvale, High, Foothill, International, San Leandro, East 12th, and 14th Avenue.</td>
<td>Allowed in all existing program permitted areas in Central and East Oakland, plus a few selected new Central and East Oakland street corridors; and adds new commercial and industrial areas west of Lake Merritt in Downtown, West Oakland, and North Oakland. Food vending would be allowed on both public and private property in selected commercial and industrial areas, as shown on the new permitted program areas map.</td>
</tr>
<tr>
<td>Regular Hours of Operation</td>
<td>Hours of operation shall be determined by the City, but shall not exceed: 7 a.m. to 3 a.m. every day.</td>
<td>7 a.m. to 10 p.m., daily.</td>
</tr>
<tr>
<td>Provisions</td>
<td>Existing Regulations</td>
<td>Proposed New Regulations</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>----------------------</td>
<td>-------------------------</td>
</tr>
<tr>
<td>Late night vending</td>
<td>No criteria in current regulations for establishing hours of operation that end earlier than 3 a.m.</td>
<td>Permission for “late night vending” (past the regular permitted 10 p.m. limit to a time as determined by the City, not to exceed 3 a.m.) will be considered in the following areas: Downtown (including Jack London); Eastlake; Uptown; Fruitvale; and Central and east Oakland streets formerly in the permitted food vending area. “Late night vending” requests in these areas will be reviewed based on: the location’s proximity to residences; any history of complaints or police calls against the applicant; whether there is adequate space for customer parking/queuing; and whether vending operation is likely to create noise, odors, or crowds which could cause a public nuisance.</td>
</tr>
<tr>
<td>Duration at site</td>
<td>Any time and duration during allowed hours of operation</td>
<td>Any time and duration during allowed hours of operation.</td>
</tr>
<tr>
<td>Required distance between two vendors</td>
<td>200 feet</td>
<td>300 feet</td>
</tr>
<tr>
<td>Required distance from schools</td>
<td>500 feet</td>
<td>500 feet. With permission from OUSD Nutrition Services for selling healthy food, vending closer than 500 feet to schools will be allowed.</td>
</tr>
<tr>
<td>Required distance from restaurants</td>
<td>200 feet (with exception allowed if vendor receives written consent from restaurant owner to vend on same lot as restaurant)</td>
<td>75 feet (with exception allowed if vendor receives written consent from restaurant owner to vend on same lot as restaurant)</td>
</tr>
<tr>
<td>Insurance</td>
<td>No requirement</td>
<td>Per Schedule Q: Evidence of: worker’s compensation (if vending facility owner has employees); automobile liability (if the vending facility is a motorized vehicle); and / or Commercial General Liability (naming the City of Oakland as an insured).</td>
</tr>
<tr>
<td>Provisions</td>
<td>Existing Regulations</td>
<td>Proposed New Regulations</td>
</tr>
<tr>
<td>--------------------------------</td>
<td>----------------------</td>
<td>--------------------------------------------------------------</td>
</tr>
<tr>
<td>Fire Department Inspections</td>
<td>No requirement</td>
<td>Fire Department annual inspection if using liquid petroleum gas.</td>
</tr>
<tr>
<td>Number of permits per operator</td>
<td>One permit per operator.</td>
<td>Up to four permits can be issued to one operator.</td>
</tr>
<tr>
<td>Number of permits overall</td>
<td>No limit</td>
<td>Limited to 100 permits in first year</td>
</tr>
</tbody>
</table>

### Table 2. Food Trucks and Trailers Vending from Street Right-Of-Way

<table>
<thead>
<tr>
<th>Provisions</th>
<th>Existing Regulations</th>
<th>Proposed New Regulations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Location</td>
<td>Not permitted.</td>
<td>Food vending from trucks and trailers in the street right-of-way would be allowed at no more than 50 parking spaces citywide, pre-selected by the City with stakeholder input. Each selected parking space would be signed and striped for food vending activities only during allowed days and hours of operation.</td>
</tr>
<tr>
<td>Hours of Operation</td>
<td>--</td>
<td>Days and hours allowed at each parking space to be determined, based on input from the Dept. of Transportation, proximity to residences, and other factors.</td>
</tr>
<tr>
<td>Duration at site</td>
<td>--</td>
<td>Limited to hours of operation; vendor applies for a permit to operate either: 5 days a week; 3 days a week, 2 days a week, or 1 day a week.</td>
</tr>
<tr>
<td>Vehicles / Facilities</td>
<td>--</td>
<td>Motorized vehicles or towed trailers only</td>
</tr>
<tr>
<td>Distance from restaurants</td>
<td>--</td>
<td>Reserved parking spaces will be selected in areas that are generally underserved by existing food outlets.</td>
</tr>
<tr>
<td>Fire Department Inspections</td>
<td></td>
<td>Fire Department annual inspection if using liquid petroleum gas.</td>
</tr>
</tbody>
</table>
Table 3. Push Carts and Stationary Carts Vending from Sidewalks

<table>
<thead>
<tr>
<th>Provisions</th>
<th>Existing Regulations</th>
<th>Proposed new regulations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Location</td>
<td>Limited to sidewalks on Central and East Oakland streets: Fruitvale, High, Foothill, International, San Leandro, East 12th, and 14th Avenue.</td>
<td>Allowed in all existing program permitted areas in Central and East Oakland, plus a few selected new Central and East Oakland street corridors; and adds new commercial and industrial areas west of Lake Merritt in Downtown, West Oakland, and North Oakland.</td>
</tr>
<tr>
<td>Sidewalk width</td>
<td>No regulation.</td>
<td>Preference for streets with 10' sidewalk width or greater</td>
</tr>
<tr>
<td>Stationary / traveling</td>
<td>No regulation</td>
<td>Stationary and traveling (roaming)</td>
</tr>
<tr>
<td>Hours of Operation</td>
<td>Vending shall only occur within the hours of seven a.m. to ten p.m. Monday through Friday, and eight a.m. to ten p.m. Saturday and Sunday.</td>
<td>7 a.m. to 10 p.m., daily</td>
</tr>
<tr>
<td>Late night vending</td>
<td>Not permitted; hours limited to 10 p.m.</td>
<td>Not permitted; hours limited to 10 p.m.</td>
</tr>
<tr>
<td>Vehicles / Facilities</td>
<td>No definition of “Stationary Cart”</td>
<td><em>New definition for “Stationary Carts”:</em></td>
</tr>
<tr>
<td></td>
<td>&quot;Pushcart&quot; is a piece of vending equipment with a maximum length of eight (8) feet, maximum depth of six (6) feet, and a maximum height of eight (8) feet. Pushcarts are intended to store all materials and merchandise related to the vending activity, and to be easily moved by a person or vehicle.&quot;</td>
<td>&quot;Stationary cart&quot; means a type of non-motorized food vending facility that is typically larger than pushcarts; pulled or delivered by a vehicle into position; and stationary at a specific site during hours of operation.”</td>
</tr>
<tr>
<td></td>
<td></td>
<td>&quot;Pushcart&quot; is a type of non-motorized food vending facility that, because of its small size and operable wheels, can be easily moved by a single person during operation. This definition may also include a food vending facility integrated or pulled by non-motorized, pedal-powered vehicle such as a bicycle or tricycle.</td>
</tr>
<tr>
<td>Provisions</td>
<td>Existing Regulations</td>
<td>Proposed new regulations</td>
</tr>
<tr>
<td>-------------------------------------------------</td>
<td>----------------------</td>
<td>-------------------------</td>
</tr>
<tr>
<td>Distance between two vendors—including food trucks</td>
<td>100 feet</td>
<td>300 feet</td>
</tr>
<tr>
<td>Distance from schools</td>
<td>200 feet (limitations for primary and middle school only)</td>
<td>500 feet. With permission from OUSD Nutrition Services for selling healthy food, vending closer than 500 feet to schools will be allowed.</td>
</tr>
<tr>
<td>Distance from restaurants</td>
<td>No regulation</td>
<td>75 feet (with exception allowed if vendor receives written consent from restaurant owner to vend on same lot as restaurant).</td>
</tr>
<tr>
<td>Fire Department Inspections</td>
<td>No regulation</td>
<td>Fire Department annual inspection required if using liquid petroleum gas.</td>
</tr>
<tr>
<td>Insurance</td>
<td>No regulation</td>
<td>Per Schedule Q: Evidence of: Commercial General Liability (naming the City of Oakland as an insured).</td>
</tr>
<tr>
<td>Number of permits per operator</td>
<td>No regulation</td>
<td>Four permits can be issued to one operator</td>
</tr>
<tr>
<td>Number of permits overall</td>
<td>Maximum of 60 permits within the “pilot area” (sidewalks on Central and East Oakland streets: Fruitvale, High, Foothill, International, San Leandro, East 12th, and 14th Avenue)</td>
<td>Maximum of 100 permits in the first year of the program for the entire expanded program area, which includes the original “pilot area”, plus a few selected new Central and East Oakland street corridors; and adds new commercial and industrial areas west of Lake Merritt in Downtown, West Oakland, and North Oakland.</td>
</tr>
<tr>
<td>Provision</td>
<td>Existing Regulations</td>
<td>Proposed New Regulations</td>
</tr>
<tr>
<td>-----------------------------------</td>
<td>--------------------------------------------------------------------------------------</td>
<td>------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td><strong>Location</strong></td>
<td>Limited to Council Districts 1, 2, 3 and 4; in those districts, certain commercial and industrial zones.</td>
<td>Allowed in existing Food Vending permitted areas in Central and East Oakland, plus a few selected new Central and East Oakland street corridors; and includes commercial and industrial areas west of Lake Merritt in Downtown, West Oakland, and North Oakland.</td>
</tr>
<tr>
<td><strong>Hours of Operation</strong></td>
<td>Limited to four (4) hours of vending a day; Between 7:00 a.m. - 3:00 a.m. on any day of the week.</td>
<td>Limited to five (5) hours of vending a day; Between 7:00 a.m. – 10:00 p.m. on any day of the week.</td>
</tr>
<tr>
<td><strong>Minimum Number of Food Vending Facilities</strong></td>
<td>Three (3) or more “trucks, trailers, or other movable wheeled equipment or vehicles” clustered together on a single site, and operating at the same time.</td>
<td>Two (2) or more “trucks, trailers, or other movable wheeled equipment or vehicles” clustered together on a single site, and operating at the same time.</td>
</tr>
<tr>
<td><strong>Distance between two vendors/group sites</strong></td>
<td>300 feet between two group sites; No regulation between group site and single vendor</td>
<td>300 feet from another group site or individual food vendor</td>
</tr>
<tr>
<td><strong>Distance from schools</strong></td>
<td>100 feet from a public school, unless written consent</td>
<td>500 feet. With permission from OUSD Nutrition Services for selling healthy food, vending closer than 500 feet to schools will be allowed.</td>
</tr>
<tr>
<td><strong>Distance from restaurants</strong></td>
<td>100 feet (with exception allowed if vendor receives written consent from restaurant owner to vend on same lot as restaurant)</td>
<td>75 feet (with exception allowed if vendor receives written consent from restaurant owner to vend on same lot as restaurant)</td>
</tr>
<tr>
<td><strong>Insurance</strong></td>
<td>Proof of liability insurance in the amount required by the City.</td>
<td>Per Schedule Q: Evidence of: worker’s compensation (if vending facility owner has employees); automobile liability (if the vending facility is a motorized vehicle); and/or Commercial General Liability (naming the City of Oakland as an insured).</td>
</tr>
<tr>
<td><strong>Maximum Sites per operator</strong></td>
<td>Two locations</td>
<td>Five locations</td>
</tr>
<tr>
<td><strong>Days of operation</strong></td>
<td>Two days per week</td>
<td>Two days per week on public right-of-way. No limit to days of operation on private property.</td>
</tr>
<tr>
<td><strong>“Proof of consent” from CBD/BID</strong></td>
<td>Required</td>
<td>Not required</td>
</tr>
</tbody>
</table>
August 3, 2016 Planning Commission Motion and staff response. The motion made by the Planning Commission on August 3, 2016 to continue the hearing until October 5, 2016 included five recommendations; each item from the Planning Commission motion is addressed below, shown in italics.

1. *Study increasing the buffer distances between two permitted vendors.*

**Staff response:** Buffer distances between two vendors are necessary to limit the overall number of permitted vendors and potential locations in the City. Larger buffer distances mean fewer potential vending locations, since all vendors must fit within the permitted areas map, and will not be allowed to overlap each other’s buffer distance. Limiting the overall number of potential vending locations in the City promotes public health and safety because the public’s health is protected when only permitted vendors sell food in Oakland. It is staff’s opinion that the proposed 300-foot buffer distance between vendors is sufficient to limit the number of potential vending locations to a number that can be enforced for compliance with the program. Public health and safety is protected when the City can verify through its own permit that all vendors who sell food in Oakland have an Alameda County health permit and the proposed vending location meets all operational requirements.

In order to learn how many potential locations would be available under different buffer distances, staff prepared maps analyzing different scenarios, to evaluate how many potential locations would be available in the program permitted area. Under the scenario initially proposed by the Oakland Food Truck Association of a 1,500-foot buffer between vendors, (and avoiding the 500-foot buffer area around schools), there would only be 120 potential locations for all types of vendors in the entire permitted area citywide. Subsequently, the Association changed its request to a 1,000-foot buffer distance between vendors, which could result in 160 potential locations. The 120–160 potential locations under the OFTA’s two buffer scenarios is less than the total number of permits that staff is recommending for issuance in year one of the new food vending permit program. In addition, staff assumes that many of the site options in this limited pool would be viewed by vendors as a poor location to run a successful business. Therefore, in order to provide the vending community with a sufficient number of viable site options, staff feels that the program area must include a much larger set of potential sites than the actual number of vending permits the City will be issuing *(the proposed limit on the total number of permits the City will be issuing outside of the street ROW in year one of the program is 100 private property permits for food trucks, and 100 public or private property permits for stationary carts and pushcarts).*

In contrast, under a 500-foot buffer scenario between vendors, there would be up to 300 potential location options for food vendors in the program permitted area. And under the recommended 300-foot buffer between vendors, there would be up to 590 potential location options for food vendors. It is staff’s opinion that a 300- to 500-foot buffer distance is likely the maximum that could be required and still allow for a sufficient number of viable site options for the vending community. Therefore, considering that
one of the overall purposes of the new food vending program is to increase opportunities to vend legally in Oakland, staff recommends a buffer distance of 300 feet between vendors. When compared to existing food vending regulations, a 300-foot buffer distance would increase the required distance between vehicular food vendors by 100 feet, and between pushcart vendors by 200 feet.

2. **What are the different prioritization scenarios? Can the City incentivize Oakland-based businesses, or healthy food vending as it grants new permits?**

**Staff response:** Staff proposes to work with the City’s existing Oakland Business Assistance Center and the Alameda County Environmental Health department and other job-training organizations to offer trainings to potential Oakland-based vendors; staff is also in discussion with an economic development non-profit organization, to explore the concept of a loan pool for the start-up costs associated with food vending businesses.

Healthy food vending is incentivized in one provision in the proposal: vendors seeking to sell food closer than 500 feet of a school may be granted a permit if they have a menu with healthy foods and if they have the permission of Oakland Unified School District (OUSD).

3. **Further define “underserved” communities, in terms of access to food.**

**Staff response:** At the August 3rd public hearing, staff noted that a new priority in the Administrative Guidelines would be to grant permits in areas of the city which are currently underserved by other food choices, including grocery stores and other food outlets. For the purpose of this regulation, “underserved” means areas of the city with no more than one existing approved food outlet within a 300-foot radius. There are public health and safety benefits when food choices are in close proximity to all residential neighborhoods: people require less auto trips to acquire food; have food options which are healthier than pre-packaged and highly processed foods; and participate in neighborhood-based commercial activity which can activate vacant or underused sites which, without food vending, might be used for illegal dumping or possibly, criminal activity.

4. **Consider the longevity of a current vendor when establishing the priority for who is granted a permit under the proposed administrative guidelines.**

**Staff response:** Administrative Guidelines have been drafted that establish the order of priority for permit issuance under the proposed new food vending program. The first priority will be to issue new permits to vendors who currently hold City food vending permits (i.e. 2016 Food Cart “FC” or Food Vehicle “FV” permits). The second priority will be to issue new permits to vendors with a history of prior Oakland Food Vending permits, but whose permits have expired. The third priority will be to issue permits to vendors applying for City-designated parking spaces in the street right-of-way. All other applications for new food vending permits will be considered equally, regardless of an
applicant’s longevity of vending in Oakland. Thus, vendors who don’t have either a current or previous City food vending permit will not be given a “grandfathering” privilege, and will have to apply for their preferred locations in the newly adopted permitted program area. If there are multiple applications submitted for the same location, the City will institute a lottery system to ensure fairness.

City staff does not agree with the premise, held by many long-time vendors and some stakeholders, that lack of enforcement of the current permitted vending area map over the last ten years means the City has granted tacit approval for vending in unpermitted locations, and that the City now should give priority in the new program to long-time vendors that have operated without city permits at these unpermitted locations.

Upon adoption of a new comprehensive food vending program, it is the city’s intent to establish a new, level, “playing field” that allows food vending in only permitted locations and only by permitted vendors.

5. **Staff to hold additional stakeholder meetings with interested parties and groups.**

**Staff response:** As noted above and in previous reports, City staff has met with a broad spectrum of stakeholders and business associations, who have presented their comments on an expanded food vending program. A letter alerting food vendors of this hearing was sent in English and Spanish in November. In response to these comments, staff has made a number of changes to the proposal, as detailed below.

**Changes made to the proposed ordinance, the Administrative Guidelines, and the program permitted areas map following the August 3rd hearing.** Following the August 3rd Planning Commission hearing, staff met with stakeholders and subsequently revised the proposal, the Administrative Guidelines, and the program permitted areas map. The revised mapping criteria removes areas where a restaurant requires a conditional use permit (i.e. CN-1 zones). Changes to the proposal and guidelines include:

1) Limiting the new program permitted areas in Central and East Oakland to the existing “pilot areas”, plus a few selected new Central and East Oakland street corridors, such as 85th Avenue between Edes Avenue and San Leandro Boulevard; High Street between I-880 and the waterfront; First Avenue and First Avenue Place between International Boulevard and East 15th Street; E. 18th Street, between 2nd Avenue and Park; Park Blvd between E. 18th Street and Newton; and private property on Hegenberger Drive between Coliseum BART parking lots and Doolittle. This current proposal limits the areas where new food vending can be permitted in Central and East Oakland neighborhoods compared with earlier proposals.

2) Limiting food vending from trucks and trailers in the street right-of-way to selected curbside parking spaces throughout the program permitted area. The City believes the public right-of-way can be an appropriate place for food vending. The new proposal is to
allow for up to 50 street parking spaces to be pre-selected by the City with stakeholder input, and to be signed and striped for “food vending activities only” during designated days and hours. This will allow the City to effectively enforce the street vending portion of the new citywide program by limiting the number of potential locations where a food truck or trailer can operate legally in the street right-of-way. The previous proposal would have given food vendors the ability to select their locations in the public right-of-way within a set of limitations. Instead, the current proposal will allow the City to pre-select those spaces which are most appropriate for food vending in the public right-of-way. Vending from the pre-selected spaces would be limited certain hours, no more than five days a week—and made available to one to five vendors per space per week, depending on whether the city receives requests for the available days split between multiple vendors. During the food vending hours posted on the sign, no automotive parking would be allowed at these locations.

3) Limiting the number of permits issued in year one of the program (2017) to: 100 private property permits for food trucks; and 100 stationary cart and pushcart permits on sidewalks, parks, plazas and on private property. If all allowable permits are issued after year one, the City Administrator can consider revising the Administrative Guidelines to allow for more permits to be issued.

4) After discussions with various stakeholder groups, the buffer distance between two vendors is proposed to be 300 feet. When compared to existing food vending regulations, this 300-foot buffer distance would increase the required distance between food truck vendors by 100 feet and between pushcart vendors by 200 feet. As noted in a previous section of this report, when the city limits the number of potential vending locations and the total number of issued permits, there is a public health and safety benefits, since the smaller number of potential vending locations ensures that the city can enforce the program within its limited resources, and can verify through its own permit that all vendors who sell food in Oakland have an Alameda County health permit and the proposed vending location meets all operational requirements.

5) In West Oakland, the Adeline Street corridor would be removed from the program permitted areas map between 30th Street and West Grand Avenue. Staff has determined that much of the private property on this section of Adeline Street is already within the 500-foot buffer distance to a school, or is in a predominantly residential section of the street. In addition, the City is expecting to start significant roadway work on Adeline Street soon that will reduce auto lanes and add bike lanes, thereby restricting the availability of many viable street-side vending options. Therefore for these public safety reasons, food vending has been determined to not be appropriate in this area.

6) In Downtown Oakland, remove the Broadway street right-of-way from Embarcadero (Jack London) to 27th Street. This proposed change ensures that food vending does not interfere with Broadway’s role as a major transit corridor for the City; and food vending doesn’t create a public safety conflict between food vendors, their customers, and the
significant number of regularly scheduled bus service and operation of the “Free B” shuttle system.

7) Certain underpass areas under Caltrans facilities (I-880 and I-980) will be either included or excluded from the permitted areas maps. There are many sites at major intersections under the two freeways where mobile food vending may be appropriate.

California Vehicle Code section 22455(b) limits a City’s authority to regulate food vending in a street right-of-way. Under Vehicle Code section 22455, the City may adopt public safety requirements regulating the type of vending and the time, place, and manner of vending. The proposal adds, for the first time, the street right-of-way as a site for food vending. The proposed Administrative Guidelines specify that the city will prioritize and pre-select parking spaces in areas of Oakland which are currently underserved by other food outlets. There are public health benefits to having more food choices in areas of Oakland which are currently underserved; as noted above, people require less auto trips to acquire food and have food options which are healthier than pre-packaged and highly processed foods. Also, vending is occurring in the right of way today, without the public health benefit of a City of Oakland permit. By creating a permitted program which is enforced, the City can control the time, place and manner of vending in the right-of-way. A public safety benefit for vending in the right of way is that residents participate in neighborhood-based commercial activity which can activate vacant or underused areas of the City.

As previously discussed, there are public health and safety benefits when food choices are in close proximity to all residential neighborhoods: people require less auto trips to acquire food; have food options which are healthier than pre-packaged and highly processed foods; and participate in neighborhood-based commercial activity which can activate vacant or underused sites which, without food vending, might be used for illegal dumping or criminal activity.

8) Insurance: Add new language that specifies “appropriate liability insurance shall be required for vending” in the public right-of-way. This will apply to pushcarts, stationary carts, and food trucks and trailers, as advised by the Risk Management Division of the City. Insurance costs for General Liability are approximately $450 per year, and for Worker’s Compensation, which are based on a percentage of payroll, start at approximately $500 per year.

9) “Late night vending” is proposed to be a request made by the applicant to the City, a privilege granted and potentially revoked if a public nuisance emerges during the hours after 10 p.m. The City has a public safety concern with vending after 10 p.m., particularly in areas which haven’t had permitted food vending late at night. Food vending during hours after other neighboring commercial activity has ceased creates a potential for noise and pedestrian activity close to residences, where there is an expectation of peace and quiet during the evening hours. At the same time, there has been a history of successful permitted late night food vending in Fruitvale and in other neighborhoods which have not
resulted in calls for police service or other nuisances, and the City seeks to allow the possibility of late night vending with this proposal, in areas where it is deemed appropriate.

Additionally, late night vending is not proposed for pushcarts because of increased safety and enforcement concerns. For example, the safety of late night vending by pushcarts is compromised, because pushcarts may lack proper lights and other visibility mechanisms. Enforcement is complicated by a pushcart’s inherent ability to move around and not maintain a fixed vending location.

10) Fire Department inspections. The public is safer when food vending facilities which use gas for cooking are regularly inspected. The proposal adds an annual fire inspection of food trucks, trailers and carts, as a requirement for the permit to be issued by the city for vendors using gas fuel.

11) Healthy food vending, and vending near schools. The proposal allows food trucks and pushcarts to locate closer to schools if they agree to a basic set of “healthy” food choices and are approved by OUSD Nutrition Services (or, the operating entity of a private or charter school). Public health is improved when school-age children eat healthy meals and snacks, which is why OUSD has set up twenty farmer’s markets at their schools to sell fresh fruit and vegetables. In contrast, many unpermitted food vendors today seek school-age children as customers for sale of unhealthy meals and snacks. With the proposal, the city is creating a permit process to limit these unhealthy food sales, and instead, offers an incentive for vendors who want to sell healthy food. A public safety benefit of the new regulations is that the 500-foot school buffer will help prevent accidents involving school children and food vendors near schools, by reducing the chance of collisions between trucks and children, or customers in automobiles and children, because fewer vendors will be selling near schools.

12) Group site vending program changes. There are public safety advantages to a permitted program of active group vending sites throughout the city. Food vending from a collection of food vending facilities a few days a week adds community livability, and activates underused lots and streets with new pedestrian activity. The vending rules for group sites are standardized to match that of individual food vendors, and to promote public health and safety by limiting the potential impacts from food vending from two or more trucks (i.e. potential noise, odors, customer queueing and automobile parking).

13) Noticing. The revised proposal adds a noticing procedure for every vending application: following a similar noticing procedure in the Oakland Planning Code for Small Project Design Review, neighbors on either side of the proposed vending location and across the street from the location will be notified that a food vending application is being considered by the City. Neighbors will have the opportunity to review the application prior to its approval or denial.
14) Finality of Decision. The decision by the City on an applicant’s permit approval or denial will be final immediately and not appealable.

15) Buffer distance from restaurants. The City is proposing to add a minimum 75-foot buffer distance between food vendors and restaurants. For food vending in the street right-of-way, the City will select parking spaces which are in areas underserved by other food choices, as well as at least 75 feet from restaurants.

A 75-foot buffer distance between food vendors and restaurants will protect public safety by ensuring that customer queuing for both establishments doesn’t limit pedestrian access to a sidewalk, particularly access for the disabled, due to outdoor seating, utilities, street furniture and other obstructions typically found on sidewalks near restaurants. This buffer distance also allows for regular turnover of street parking spaces, and reduces the risk of customer double parking which could lead to potential bicycle collisions. An Administrative Guideline clarifies that vending closer than 75 feet to a restaurant will be permitted on the same lot, with the permission of the restaurant owner, subject to certain findings for pedestrian safety; or, where vendors are permitted by the city to operate only during the hours that a restaurant is closed.

For background purposes, the Oakland Food Truck Association inquired as to the amount of revenue generated from the last ten years of permit fees for food trucks (“FV”) and pushcarts (“FC”) at the City. In order to share this information widely, and to correct misunderstandings about the amount collected, this table shows the permit fees collected for ten years of the program. The totals equal approximately $425,000 for trucks, and $110,000 for pushcarts. All of these funds paid for staff in the Building Division to administer the program, and for Code Enforcement staff to enforce the regulations.

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ENVIRONMENTAL DETERMINATION

The Project relies on the previous set of applicable CEQA documents including: the Coliseum Area Specific Plan EIR (2015); Broadway Valdez Specific Plan EIR (2014); West Oakland Specific Plan EIR (2014); Central Estuary Area Plan EIR (2013); Land Use and Transportation Element of the General Plan EIR (1998); the Oakland Estuary Policy Plan EIRs (1999, 2006) and Supplemental EIR (2013); the Redevelopment Area EIRs- West Oakland (2003), Central City East (2003), Coliseum (1995), and Oakland Army Base (2002); the Historic Preservation Element of the General
Plan EIR (1998); the 2007-2014 Housing Element Final EIR (2010) and Addendum (2014); and various Redevelopment Plan Final EIRs (collectively, “Previous CEQA Documents”).

No further environmental review is required under CEQA Guidelines Sections 15162 and 15163. Moreover, each as a separate and independent basis, this proposal is also exempt from CEQA pursuant to CEQA Guidelines Sections 15183 (projects consistent with General Plan and Zoning) and 15061(b)(3) (general rule, no significant effect on the environment).

CONCLUSION

Staff has revised the food vending map and proposal after hearing testimony from the June 1 and August 3, 2016 Planning Commission hearings, and after meeting with stakeholders. Staff believes this new food vending program and enforcement proposal meets the intent of increasing opportunities for mobile food vendors to vend legally in Oakland, while ensuring the public’s health and safety.

Staff recommends the Planning Commission forward the food vending proposal and related Planning Code amendment to the City Council.
RECOMMENDATION

1) Affirm staff's environmental determination; and
2) Recommend that the City Council adopt the revised proposed food vending program and revised permitted areas map, and consider the Planning Commission's comments.

Prepared by:

[Signature]

DEVAN REIFF, AICP
Planner III

Reviewed by:

[Signature]

ED MANASSE
Strategic Planning Manager

Approved for forwarding to the
City Planning Commission:

[Signature]

DARIN RANELLETTI
Interim Director
Department of Planning and Building

ATTACHMENTS:

A. August 3, 2016 Planning Commission Staff Report
B. Amendment to the definition of “Fast-Food Restaurant Commercial Activities” in Planning Code Section 17.10.280
C. New proposed Oakland Municipal Code (OMC) Chapter 5.51 text
D. Maps of the proposed Food Vending Program Permitted Area
E. Draft of proposed Administrative Guidelines
F. June 1, 2016 Planning Commission Staff Report