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

1. Purpose

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

2. Definitions

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

- **“Healthy foods”** include, but are not limited to: Fruits; Non-fried vegetables; dairy foods; food made from nuts, seeds, legumes, cheese; foods made from whole grains (defined as 51% or more); foods which do not contain trans-fat. Beverages for sale in this definition include: water (preferred beverage); 100% fruit or vegetable juice; nonfat and 1% milk (including nonfat chocolate milk); and non-dairy milk, such as soy. No sugar-sweetened beverages are in this definition.

- **“Public right-of-way”** means City streets or sidewalks.

- **“Late night vending”** means food vending allowed past the regular permitted hour limit of 10 p.m., to a time as determined by the city, not to exceed 3 a.m.
3. Limits on Locations, Number of Permits and Hours of Operation

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

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

i. Vending from food trucks or similar vehicles is prohibited within the International Boulevard street right-of-way and on private property, between 1st and 105th Avenues during the construction period of the Bus Rapid Transit (BRT) Line, and for one year after the start of its full operation. Only vendors with a history of permitted food vending on International Blvd. will be issued permits to continue to vend on International Boulevard in this new program.

ii. Vending from any type of food vending facility is prohibited within the Fruitvale Avenue public right-of-way (street and sidewalk) between East 12th Street and East 22nd Street. Vending from private property on Fruitvale Avenue is permitted.

iii. Vending from food trucks or similar vehicles is prohibited within the Broadway street right-of-way between Embarcadero and 27th Street. Other types of food vending on this portion of Broadway is permitted.

iv. Individual food vending will not be permitted in CN-1 Zones. Only Group Site food vending applications will be considered in CN-1 Zones.

v. Distance from schools: Per OMC Section 5.51.050, food vending is not permitted within 500 feet of any school serving children between kindergarten and high school, with the following exceptions:
   1. Food sales are permitted after 6pm, Monday through Friday and on weekends.
   2. If a food vendor receives written consent from the supervising entity of the school to serve “healthy food” (as defined in these Administrative Guidelines) during certain hours. For OUSD Schools, the supervising entity is the Executive Director of OUSD Nutritional Services.

vi. Distance from other individual food vendors or group sites: Per OMC Section 5.51.050(B), individual vendors and group sites are not permitted to operate within 300 feet of any other food vendor or group site, with the exception of individual vendors or group sites that are permitted to operate on different days of the week from the same location. Food vendors that are “grandfathered” in to a particular location as described in Subsection 4c. below may be exempted from this distance separation requirement, as long as the granting of a
Food Vending Permit for such a location will not have an adverse impact upon the public health, safety, or order.

vii. Distance from restaurants: Per O.M.C. Section 5.51.050(C), individual vendors and group sites are not permitted to operate within 75 feet of a restaurant, with the exception of individual vendors or group sites that receive written permission from a restaurant owner to operate on the same lot as the restaurant, or are permitted by the city to operate only during the hours that a restaurant is closed. Distance from a restaurant will be measured from the parcel boundary of the restaurant. Restaurants which are not street-facing, but which are within buildings (i.e. on a mezzanine), will also be measured from the parcel boundary. Individual vendors and group sites that receive a city food vending permit to vend at a particular location may be exempted from this distance separation requirement if a restaurant is to open closer than 75 feet after initial issuance of the food vending permit, as long as the renewal of a Food Vending Permit for such a location will not have an adverse impact upon the public health, safety, or order.

viii. Distance from farmer’s markets and monthly special events: There is a 100-foot distance requirement during hours of operation between a scheduled farmer’s market which features food vending as part of its regular program, and any non-affiliated food vendor; there is also a 100-foot distance separation requirement between a monthly special event (e.g. “First Fridays”) and any non-affiliated food vendor during hours of operation of the special event.

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

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

c. Limitations of Food Vending Facilities in the street right-of-way.
   i. The City will designate, sign and stripe up to 50 curb-side parking spaces in the street right-of-way for food vehicles, within the permitted program area map. These sites will be the only sites permitted for food vending in the street right-of-way.
   ii. Food Vehicles and trailers must obey the vending limitations and regulations in these guidelines. Vendors must pay the parking meter, if any, at regular rates during their hours of vending from the designated spaces.
   iii. The City will select the designated parking spaces for food vending in the street right-of-way according to the following criteria:
      1. The buffer distances between parks, schools, farmers’ markets and other vendors will be maintained.
      2. Prioritize curbside parking spaces in areas of the City which are currently underserved by food outlets (i.e. restaurants, cafes and grocery stores). For the purposes of this subsection, “underserved” means areas of the city with no more than one (1) existing approved food outlet within a 300-foot radius.
      3. Street parking spaces chosen will be at least one space away (if not further) from an AC Transit bus stop on one of AC Transit’s “Major Corridors.” Also, parking spaces adjacent to street corners where AC Transit buses on “Major Corridors” make regular turns will not be selected. These criteria will reduce conflict between routine transit operations, and Food Vehicles and their patrons.
   iv. Permits to vend from the designated spaces in the street right-of-way will be granted in these configurations:
      1. Five (5)-day per week permits, granted to a single vendor;
      2. Two (2)- and three (3)-day per week permits, where two individual vendors “share” five vending days per week; and
      3. One (1)-day per week permits.
At no point will vending from designated parking spaces in the street right-of-way be permitted for longer than five (5) days per week. Vendors will be allowed to apply for multiple designated street parking locations, based on the three configurations above. The City will consider whether all designated street parking spaces be eligible for the maximum 5-day per week permit.

v. Each food vending facility at a group site must be sited in a manner to insure that the customer queue maintains a minimum five (5) feet of unobstructed clear path along any public sidewalk or right-of-way when the service window faces the street or sidewalk.

d. **Limits on the number of certain types of Food Vending Permits issued.** The following establishes a limit on the number of Food Vending Permits that the city may issue for individual food vending facilities and group sites on private property, and for pushcarts or stationary carts on public or private property during the first year of the new food vending program (2017):

i. A maximum of one hundred (100) Food Vending Permits may be issued for individual food vending facilities and group sites on private property. No more than one hundred (100) such permits may be active at any one time.

ii. Separately, a maximum of one hundred (100) Food Vending Permits may be issued for pushcarts or stationary carts to operate on public or private property within the City. No more than one hundred (100) such permits may be active at any one time. In addition, no more than thirty (30) such Permits may be issued for pushcarts or stationary carts to operate within the following boundaries: Fruitvale Avenue and High Street between Interstate-880 to the west and Foothill Boulevard to the east, Foothill Boulevard between 19th Avenue to the north and MacArthur Boulevard to the south, International Boulevard between First Avenue to the north and 105th Avenue to the south, and San Leandro Street between Fruitvale Avenue to the north and 98th Avenue to the south. East 12th Street between 4th Avenue to the west and 23rd Avenue to the east, 14th Avenue between East 11th Street in the south and East 19th Street in the north.

e. **Hours of operation and late-night vending.**

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

i. The regular permitted hours for all food vending facilities (including trucks, trailers, stationary carts and pushcarts) and group sites is 7 a.m. to 10 p.m., daily.

ii. Permission for “late night vending” (past the regular permitted hour limit of 10 p.m. to a time as determined by the city, not to exceed 3 a.m.) will be considered in the following geographic areas:

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

iii. “Late night vending” requests in these areas will be reviewed based on the following factors:
   1. The location’s proximity to homes and residences;
   2. Any history of complaints or Police calls for service against the vendor/applicant;
   3. Whether there is adequate space for customer parking and queuing; and
   4. Whether the vending operation is likely to create noise, odors, or crowds which could cause a public nuisance.

Stationary carts and pushcarts are excluded from late night vending.

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

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

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

Each food vending applicant may be granted no more than four (4) individual Food Vending Permits in one year. A separate Food Vending Permit is required for each vending apparatus under common ownership (e.g. permit #1 for a pushcart, permit #2 for a food truck, etc.).

Each Group Site Organizer may be granted no more than five (5) group site permits/locations in one year. A separate Food Vending Permit is required for each group site location.

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

a. Types of Permits

There are two types of Food Vending Permits, Annual and Temporary:
i. Annual Food Vending Permits expire after one (1) year unless renewed under the provisions of Section 5.51.140.

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

### b. Priority for Issuance

During the first year of the program, the Bureau of Planning will review and issue Food Vending Permits in the following order of priority:

i. **Priority Group One:** Vendors with valid, unexpired Oakland Food Vending permits (i.e. 2016-2017 Food Cart “FC” or Food Vehicle “FV” permits);

ii. **Priority Group Two:** Vendors with expired Oakland Food Vending permits (i.e. 2001-2015 Food Cart “FC” or Food Vehicle “FV” permits);

iii. **Priority Group Three:** Vendors applying for City-designated parking spaces in the public right-of-way; and

iv. **Priority Group Four:** All other vending applicants.

During this first year of the program, applicants with current or expired Oakland Food Vending permits will have their applications reviewed based on the buffering standards that applied at the time of the initial permit issuance (that is, a 200-foot distance between two trucks and a 100-foot distance between a pushcart and all other food vendors). As a result, permits may be granted for a previously permitted location that does not meet the current buffer distances in OMC Section 5.51.050.

After the first year of the program, all new permit applications will be reviewed with equal priority and according to the current requirements for a Food Vending Permit in OMC Chapter 5.51 and/or in these Administrative Guidelines. However, all permits that are renewed on an annual basis will continue to be evaluated according to the standards that applied at the time of the initial permit issuance.

### c. “Grandfathering”

In the process of administering the criteria above for issuing Food Vending Permits during the first year of the program the city may issue permits for vending locations that do not meet the current buffer distance requirements, as long as the vending applicant already possesses a valid, unexpired Oakland Food Vending permit for the requested location (i.e. 2016 Food Cart “FC” or Food Vehicle “FV” permits), or has a history of prior Oakland Food Vending permits for the requested location, but which have since expired.
During the first year of the program, staff will review the new applications by current or previous food vending permit holders based on the buffering standards that applied at the time of the initial permit issuance; that is; a 200-foot distance between two trucks; and a 100-foot distance between a pushcart and all other food vendors. Staff will only “grandfather” in locations which were permitted within the original program permit area. The details of this procedure are in OMC Section 15.51.110.

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

d. Lottery system

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

e. Proof of Insurance

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

i. “Commercial General Liability insurance shall cover bodily injury, property damage and personal injury liability for premises operations, independent contractors, products-completed operations personal & advertising injury and contractual liability.” And, vendor “shall provide insured status naming the City of Oakland, its Councilmembers, directors, officers, agents, employees and volunteers as insured’s under the Commercial General Liability policy.”

ii. Vendor “shall maintain automobile liability insurance for bodily injury and property damage liability with a limit of not less than $1,000,000 each accident.”

iii. Vendor “certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code, which requires every employer to provide Workers' Compensation coverage, or to undertake self-insurance in accordance with the provisions of that Code.”

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\(^1\) See Schedule Q, at the City’s website, http://www2.oaklandnet.com/oakca1/groups/contracting/documents/form/oak023255.pdf
5. **Food Vending Permit approval, approval with conditions, or denial.**

   a. For the first calendar year of the program, the Bureau of Planning will accept Food Vending Permit applications during one or more designated application periods only. The application period(s) during the first year of the program will be one (1) calendar month in length; and if more than one application period is designated, will be set at different times throughout the first calendar year at approximately 2- to 6-month intervals.

   b. After the first year of the program and ongoing, the Bureau of Planning will accept new Food Vending Permit applications at any time throughout the calendar year.

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

   c. Prior to the subject application being deemed complete, the applicant must provide a completed copy of the Notice form, as well as a site plan that shows the proposed vending location to all persons shown on the last available assessment roll as owning the City of Oakland lot or lots adjacent to the vending site and directly across the street.

   d. All required notification of adjacent and across the street property owners must be completed by the project applicant not less than ten (10) days prior to the earliest date for final decision on the application.

   e. The Bureau of Planning will determine whether the subject application meets the requirements for a Food Vending Permit in OMC Chapter 5.51 and/or in these Administrative Guidelines.

   f. Decision by the Director of City Planning. The Director of City Planning or his/her designee will approve, approve with conditions, or deny a Food Vending Permit application based on the standards and criteria in OMC Chapter 5.51 and/or in these Administrative Guidelines. The Director of City Planning or his/her designee may impose conditions of approval on a Food Vending Permit in the exercise of his or her reasonable discretion. The applicant will be notified of any conditions of approval in writing.

6. **Food Vending Permit expiration and renewal.**

   a. Each Annual Food Vending Permit will be valid for twelve (12) months from the month of issuance, and expire and become null and void on the anniversary of its issuance if not renewed as described in Subsection b. below.

   b. Holders of an Annual Food Vending Permit who wish to vend in the city on a multi-year or ongoing basis will need to apply annually to the Bureau of Planning for a Food Vending Permit renewal prior to the expiration of their active Food Vending Permit. All renewal applications need to be filed with the Bureau of Planning pursuant to the procedures in OMC Chapter 5.51 and/or in these Administrative Guidelines. As stated in OMC Section 5.51.110.A, all Food Vending Permits that are renewed on an annual basis will continue to be evaluated according to the standards that applied at the time of the initial permit issuance.

   c. Each Temporary Food Vending Permit will expire and become null and void after ninety (90) days, and may only be renewed for one additional consecutive 90-day time period. As
mentioned earlier in these Administrative Guidelines, Temporary Food Vending Permits will not be issued during year one of the program (2017).

7. City Departments—Responsibilities

a. **City Administrator.** Under OMC Section 5.51.030, “the City Administrator or his/her designee is authorized to issue such Administrative Guidelines, not inconsistent with this Chapter, governing the issuance of Food Vending Permits.” The City Administrator has designated the Bureau of Planning, within the Planning and Building Department, to administer and issue Food Vending Permits. The City Administrator or his/her designee may periodically revise these Administrative Guidelines and the Program Permitted Areas map, following the procedure described in Section 11 of these Guidelines.

b. **City Administrator’s Office, Special Activities and Nuisance Abatement staff.** The Special Activities and Nuisance Abatement staff of the City Administrator will enforce the regulations, including citation and possible impoundment for violations. Newly created and newly hired Enforcement officers are to be hired for this role.

c. **Bureau of Planning.** The Bureau of Planning will administer and issue Food Vending Permits, through the planning and zoning counter, at 250 Frank Ogawa Plaza, 2nd Floor. The Bureau will maintain the website, [www.oaklandnet.com/foodvending](http://www.oaklandnet.com/foodvending), provide outreach and informational materials, and will conduct trainings for the public and interested parties, and publicize a phone number and email address for people to contact for more information. The Bureau will maintain an “applications on file” list for interested parties. The Bureau will recommend to the City Administrator when revisions to the Guidelines, or to the Program permitted areas map are necessary, and report back to City Planning Commission and the City Council on such revisions, as well as the permit and enforcement activity of the Food Vending Program during the previous year.

d. **Business Tax Office (Revenue):** The Business Tax Office will issue Business Tax Certificates to individual food vendors/applicants.

e. **Oakland Fire Department:** The Oakland Fire Department will inspect propane and other gas tanks on a vehicle, during an initial inspection, before the City’s permit is granted. One annual inspection will be completed at the time of application or renewal.

f. **Oakland Police Department (OPD):** OPD will be on call to support the enforcement efforts of the City Administrator’s Office. The OPD is not expected to initiate enforcement efforts, but rather to coordinate as needed with the City Administrator and/or Alameda County Environmental Health.

g. **Oakland Parks and Recreation (OPR):** OPR will issue a separate parks permit, for an additional fee, to vendors who seek a permit to vend in a park within the permitted area (such as Lakeshore Park/Lake Merritt). See Section 8, below.
h. **Department of Transportation – parking enforcement division:** will assist with identifying and citing violations of parking meter usage and painted curbs, along with permit placards identification.

8. **Good Neighbor Policies**

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

a. Vendor will maintain a quiet, safe and clean selling location.

b. Vendor will provide adequate storage and disposal of garbage and trash.

c. Noise and odors will not become a nuisance or burden on neighbors. This includes noise from food truck generators, motors and fans, and from customer’s automobiles and radios, particularly at night.

d. Vendors or their employees will walk a one hundred (100) foot radius from the food vending site after close of business, and dispose of beverage and serving materials or other trash left by their customers.

9. **Parks**

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

a. The Park must be within the permitted vending area.

b. Any proposed vending location in a Park which is also within 500 feet of a school will be evaluated according to the OUSD procedure in Section 3(a) of these Administrative Guidelines.

c. Vending inside Parks is limited to four (4) hours daily.

d. The vending location in a Park should be oriented away from residences (some Parks are adjacent to residences); locations for vending should preferably be in the section of a Park which front onto a major street, or on the public right-of-way (parking spaces) that are adjacent to Parks, when possible.

e. Fees to OPR are those in the 2017-2018 Master Fee Schedule.
10. Revisions and changes to Food Vending Program, including Program Permitted areas map

Changes to the adopted Food Vending Program in Chapter 5.51 O.M.C. may only be done by an ordinance adopted by the City Council. Changes to these Administrative Guidelines and to the Program Permitted areas map will follow a separate adoption sequence, to ensure the public has an opportunity to review and comment on the changes:

a. Any proposed changes to the Administrative Guidelines and to the Program Permitted areas map will be coordinated by the City Administrator or his/her designee with the departments listed in Section 6 of this report.

b. Any proposed changes will be posted on the city Food Vending web page, and made available for inspection and copying by the public at the Bureau of Planning.

c. A copy of any proposed changes to the Administrative Guidelines and to the Program Permitted areas map will also be mailed to each holder of a permit or license issued under this program.

d. A thirty-day (30) public comment period to receive comments on the proposed changes to the Administrative Guidelines and to the Program Permitted areas map will commence on the date the notice of the proposed changes is sent to those permitted or licensed under this program. During the comment period, any person may submit written comments regarding the proposed changes to the City Administrator or his/her designee.

e. After the close of the public comment period, the City Administrator or his/her designee will consider all reasonable public comments on the proposed changes to the Administrative Guidelines and to the Program Permitted areas map; and will approve the final changes.

f. The final changes to the Administrative Guidelines and to the Program Permitted areas map approved by the City Administrator or his/her designee will become final on the date the changes are posted on the City’s food vending webpage.

11. Reports to Planning Commission and City Council

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

- Numbers of Food Vending permits issued and outstanding in the previous year;
- Revenue collected from permit fees, from enforcement action and from business tax;
- Changes made by staff to the Administrative Guidelines;
- Changes made by staff to the Program Permitted Area maps;
- Summary of community meetings, staff discussions with vendors and the public;
- Recommendations from Staff for future changes and adjustments to the program.
12. Contacts for further information
- City Administrator Office/Special Activities: 510-238-3294
- Planning Bureau: Devan Reiff, 510-238-3550 / Aubrey Rose, 510-238-2071
- Fire Department: Inspector, 510-238-3851
- Alameda County Environmental Health: 510-567-6700

Attachments

Program Permitted Area maps