

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. <i>This is a continued item from a previously scheduled hearing on December 7, 2016.</i>
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

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.

² National Restaurant Association, email correspondence with Christin Fernandez, |Director, Media Relations & Public Affairs, on 9/6/16. See also results from a 2011 survey, <http://www.restaurant.org/Pressroom/Press-Releases/Food-Trucks-Gaining-Momentum,-According-to-Nationa>.

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."³

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."⁴

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."⁵

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."⁶

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

³ Yvonne Yen Liu, *Sidewalk Stimulus: Economic and Geographic Impact of Los Angeles Street Vendors*; Economic Roundtable, 2015, pg. 20.

⁴ "Food on Wheels: Mobile Vending Goes Mainstream" 2013. National League of Cities. See <http://www.nlc.org/media-center/news-search/new-nlc-report-highlights-mobile-vending-best-practices>

⁵ "Food on Wheels: Mobile Vending Goes Mainstream" 2013. National League of Cities. See <http://www.nlc.org/media-center/news-search/new-nlc-report-highlights-mobile-vending-best-practices>

⁶ Nora Wong, "Cost of Creativity: An Economic Analysis of Mobile Vending Regulations". *George Washington Law Review*, January 2016, Volume 84, pg. 11.

“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].”⁷

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.”⁸

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

⁷ Elizabeth Kregor, "Food Trucks, Incremental Innovation, and Regulatory Ruts," 82 University of Chicago Law Review Dialogue 1 (2015).

⁸ Anenberg, Elliot and Kung, Edward, "Information Technology and Product Variety in the City: The Case of Food Trucks" (June 24, 2015). *Journal of Urban Economics*, Volume 90, November 2015, Pages 60–78

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

Provisions	Existing Regulations	Proposed new regulations
Location	Limited to private property on central and east Oakland streets: Fruitvale, High, Foothill, International, San Leandro, East 12 th , and 14 th Avenue.	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.
Regular Hours of Operation	Hours of operation shall be determined by the City, but shall not exceed: 7 a.m. to 3 a.m. every day.	7 a.m. to 10 p.m., daily.

Provisions	Existing Regulations ¹	Proposed new regulations
Late night vending	No criteria in current regulations for establishing hours of operation that end earlier than 3 a.m.	Permission for "late night vending" (past the regular permitted 10 p.m. limit to a time as determined by the City, not to exceed 3a.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.
Duration at site	Any time and duration during allowed hours of operation	Any time and duration during allowed hours of operation.
Required distance between two vendors	200 feet	300 feet
Required distance from schools	500 feet	500 feet. With permission from OUSD Nutrition Services for selling healthy food, vending closer than 500 feet to schools will be allowed.
Required distance from restaurants	200 feet (with exception allowed if vendor receives written consent from restaurant owner to vend on same lot as restaurant)	75 feet (with exception allowed if vendor receives written consent from restaurant owner to vend on same lot as restaurant)
Insurance	No requirement	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).

Provisions	Existing Regulations	Proposed new regulations
Fire Department Inspections	No requirement	Fire Department annual inspection if using liquid petroleum gas.
Number of permits per operator	One permit per operator.	Up to four permits can be issued to one operator
Number of permits overall	No limit	Limited to 100 permits in first year

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

Provisions	Existing Regulations	Proposed new regulations
Location	Not permitted.	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.
Hours of Operation	--	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.
Duration at site	--	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.
Vehicles / Facilities	--	Motorized vehicles or towed trailers only
Distance from restaurants	--	Reserved parking spaces will be selected in areas that are generally underserved by existing food outlets.
Fire Department Inspections		Fire Department annual inspection if using liquid petroleum gas.

Table 3. Push Carts and Stationary Carts Vending from Sidewalks

Provisions	Existing Regulations	Proposed new regulations
Location	Limited to sidewalks on Central and East Oakland streets: Fruitvale, High, Foothill, International, San Leandro, East 12 th , and 14 th Avenue.	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.
Sidewalk width	No regulation.	Preference for streets with 10' sidewalk width or greater
Stationary / traveling	No regulation	Stationary and traveling (roaming)
Hours of Operation	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.	7 a.m. to 10 p.m., daily
Late night vending	Not permitted; hours limited to 10 p.m.	Not permitted; hours limited to 10 p.m.
Vehicles / Facilities	No definition of "Stationary Cart" "Pushcart" 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."	<i>New definition for "Stationary Carts":</i> "Stationary cart" 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." "Pushcart" 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.

Provisions	Existing Regulations	Proposed new regulations
Distance between two vendors—including food trucks	100 feet	300 feet
Distance from schools	200 feet (limitations for primary and middle school only)	500 feet. With permission from OUSD Nutrition Services for selling healthy food, vending closer than 500 feet to schools will be allowed.
Distance from restaurants	No regulation	75 feet (with exception allowed if vendor receives written consent from restaurant owner to vend on same lot as restaurant).
Fire Department Inspections	No regulation	Fire Department annual inspection required if using liquid petroleum gas.
Insurance	No regulation	Per Schedule Q: Evidence of: Commercial General Liability (naming the City of Oakland as an insured).
Number of permits per operator	No regulation	Four permits can be issued to one operator
Number of permits overall	Maximum of 60 permits within the “pilot area” (sidewalks on Central and East Oakland streets: Fruitvale, High, Foothill, International, San Leandro, East 12 th , and 14 th Avenue)	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.

Table 4. Group Sites (i.e. "Food Pods")

Provisions	Existing Regulations	Proposed new regulations
Location	Limited to Council Districts 1, 2, 3 and 4; in those districts, certain commercial and industrial zones.	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.
Hours of Operation	Limited to four (4) hours of vending a day; Between 7:00 a.m. - 3:00 a.m. on any day of the week.	Limited to five (5) hours of vending a day; Between 7:00 a.m. – 10:00 p.m. on any day of the week.
Minimum Number of Food Vending Facilities	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.	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.
Distance between two vendors/group sites	300 feet between two group sites; No regulation between group site and single vendor	300 feet from another group site or individual food vendor
Distance from schools	100 feet from a public school, unless written consent	500 feet. With permission from OUSD Nutrition Services for selling healthy food, vending closer than 500 feet to schools will be allowed.
Distance from restaurants	100 feet (with exception allowed if vendor receives written consent from restaurant owner to vend on same lot as restaurant)	75 feet (with exception allowed if vendor receives written consent from restaurant owner to vend on same lot as restaurant)
Insurance	Proof of liability insurance in the amount required by the City.	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).
Maximum Sites per operator	Two locations	Five locations
Days of operation	Two days per week	Two days per week on public right-of-way. No limit to days of operation on private property.
"Proof of consent" from CBD/ BID	Required	Not required

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 queuing 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.

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
FV	\$58,415	\$58,294	\$68,700	\$55,976	\$47,080	\$30,307	\$2,900	\$44,652	\$34,474	\$12,378	\$8,961
FC	\$11,857	\$12,720	\$13,677	\$4,831	\$14,678	\$9,819	\$9,100	\$10,465	\$4,095	\$8,650	\$10,472

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

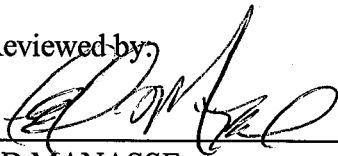
- 1) Affirm staff's environmental determination; and
- 2) Recommend that the City Council adopt the revised proposed food vending program and revised permitted areas map, and consider the Planning Commission's comments.

Prepared by:




DEVAN REIFF, AICP
Planner III

Reviewed by:



ED MANASSE
Strategic Planning Manager

Approved for forwarding to the
City Planning Commission:



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

Oakland City Planning Commission

STAFF REPORT

August 3, 2016

Location:	CITYWIDE
Proposal:	Establish a new citywide food vending permit program that would replace Oakland's existing food vending permit types and programs. The new citywide food vending program would permit, with certain restrictions, individual food vending on private property and from the public right of way in selected commercial and industrial areas. The new program would also permit group site vending citywide. Ordinance 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 Ordinance would also include revisions to other Planning and Municipal Code sections as minor conforming changes.
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 proposal to the City Council
For Further Information:	Contact case planner Devan Reiff at 510-238-3550 or dreiff@oaklandnet.com

SUMMARY

On June 1, 2016, the Planning Commission held a public hearing 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 June 1st 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;
2. Replace 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.

Staff proposes to delete OMC Chapters 5.51, "Food Vending Group Site Pilot Program", 5.49, "Pushcart Food Vending Pilot Program", and 8.09, "Vehicular Food Vending" and replace them with one new citywide Food Vending Program – that can be found in OMC Chapter 5.51 (see **Attachment B** to this report). The proposed new citywide food vending program would be accompanied by a map of the "Food Vending Program Permitted Area" (see **Attachment D** to this report). Administrative procedures to implement the program would also be included. These administrative procedures are being prepared by Bureau of Planning staff, in coordination with Oakland Public Works, the Oakland Police Department, the Oakland Fire Department, and the City Administrator's Office, and will be available to the public prior to the effective date of the program; the procedures will be approved by the Director of Planning and Building.

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

After hearing public speakers, and making comments and inquiries, the Commission closed the hearing and made a motion that included 13 changes or requests for further information, and asked staff to return to the Commission with revisions. This report represents staff's changes to the initial proposals made at the June 1, 2016 Planning Commission. Staff revised the amendments to OMC Chapter 5.51 to reflect the latest version of the proposal, which is shown as **Attachment B** of this report.

Staff is also preparing administrative rules and procedures to serve as guidelines for permit issuance and conflict resolution. These administrative rules and procedures, 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. A draft of these administrative rules and procedures is included as **Attachment C** to this report, and will be discussed by staff at the

Planning Commission hearing. In addition, the Planning Bureau, in consultation with the Council District 5 office, will hold a public meeting (in advance of the program implementation date) in order to allow food vendors and the public an opportunity to comment on the specific details related to the administration of the new permit program.

As currently proposed, Planning staff will issue food vending permits to applicants, and will help resolve potential conflicts. This is a somewhat unusual administrative arrangement, since programs and regulations outside of the Oakland Planning Code (Title 17) are not typically within the administrative jurisdiction of the Bureau of Planning. However, based on the Planning Bureau's experience in administering similar permit types, staff determined that Planning should also administer this new program. Another reason for this administrative arrangement is that the Planning Bureau already issues permits for food vending in some situations - through review of Major Conditional Use Permits (CUPs) submitted for vehicular food vending, which is currently considered a Fast Food Restaurant Commercial Activity in the Planning Code. An important implementation element of the proposed new food vending program is to consider removal of *vehicular food vending* from the definition of "Fast Food Restaurant Commercial Activities", which will remove the requirement for food vending applicants to apply for a Major CUP, which is a permanent land use entitlement for fast food on a parcel.

The proposal also recommends the addition of new City staff to help administer and enforce the new food vending program, including positions in the City Administrator's Special Activities/ Nuisance Abatement Division and the Planning and Building Department. New permit fees are proposed for the food vending program that are directly based on the cost of these proposed new staff positions.

The map of proposed food vending areas is included as **Attachment D** to this report, and includes selected commercial and industrial areas of the City.

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 A** to this report).

COMMUNITY OUTREACH

Following the June 1, 2016 Planning Commission hearing, staff spoke with representatives of the Lake Merritt Business Association (Park Blvd. and E. 18th Street) and the East Lake Merchants Association (International Blvd., from 1st to 14th Avenues). Both expressed their support for the proposed food vending changes in their neighborhoods.

Staff also spoke with the Lakeshore/Lake Park BID, which said that except for the vendors near the Saturday Farmer's Market who were unpermitted, there hadn't been much problem with mobile food vending in the area, and that they were generally supportive of new food vendors being permitted, as long as they meet the proposed buffer distances.

Prior to the August 3rd Planning Commission hearing, staff will speak with representatives from the Mobile Food Truck Association in Oakland, which sent a comment letter to the Planning Commissioners for the June 1st meeting (see **Attachment E** to this report, which also includes a separate letter from a long-standing food truck business owner). In their letter, the Mobile Food Truck Association representatives were concerned about the proposal's hours of operation (late night vending) administrative changes, additional permit fees, and newly permitted vending in the public right of way, among other concerns. Staff will report back at the August 3rd Commission the results of the meeting with the Mobile Food Truck Association.

A full accounting of previous stakeholder meetings and community outreach efforts was included in the June 1, 2016 Planning Commission report (see **Attachment A** to this report).

REVISIONS TO THE NEW CITYWIDE FOOD VENDING PROGRAM

The motion made by the Planning Commission on June 1, 2016 included 13 recommended changes or requests for further information. Each item from the Planning Commission motion is addressed below, shown in italics.

1. *Study increasing the distance from schools, except for those food vendors that are serving only healthy food.*

Staff Response: Under current Oakland food vending regulations, the distance between a food vendor and a private, public or charter school is 500 feet. Staff has studied the feasibility of increasing this distance from schools, and has determined that any increase would remove too many prime food vending opportunity areas, especially on major corridors such as on International Blvd. Therefore, the same distance is retained in the proposal.

In addition, because some of the City's major commercial streets (such as International Boulevard) are within 500 feet of a school, applying a strict 500-foot buffer in all cases would significantly limit the opportunities to vend in areas like the Fruitvale District where food vending has long-standing history. Therefore, the administrative rules have been written to allow food vending on major commercial streets within 500 feet of a school, as long as a school itself is not directly located on the major commercial street.

Also, after staff consultation with OUSD staff, the amendments to OMC Chapter 5.51 will be changed to clarify that the supervising authority for the school (as opposed to the school Principal) may permit food vending closer than 500 feet from a school, as long as the vendor meets healthy food vending guidelines. A supervising authority could be OUSD Superintendent's Office, or the OUSD Office of Charter Schools, depending on the school.

2. *Strengthen the definition of “healthy food” (in the proposed amendments).*

Staff Response: Staff is working with the Oakland Food Policy Council and OUSD wellness staff, on a specific definition of “healthy food” vending, which will be included in the administrative rules and regulations, but not in the proposed amendments. That way, as food science and nutritional advice changes over time, the City will be able to update the administrative rules and regulations in a timely fashion.

3. *Study the feasibility of reducing the permitting fees.*

Staff Response: The fees charged by the City to an applicant are required to equal but not exceed the costs of the administrative actions to issue a permit. In the case of a single food vending permit issued by the Planning Bureau, for example, staff estimates that it could take up to 2½ hours to complete the actions needed to issue a permit, and the \$350 cost of that permit reflects this. The annual fee for a mobile food truck permit today is \$1,700. The fee for the equivalent permit is proposed to be approximately \$950 - with additional costs for the excess litter fee (\$100), the City’s zoning clearance and business tax certificate (\$56 + \$88 = \$144), and Fire inspection and Liquid Petroleum Gas (LPG) permit, if applicable (\$313). The fee for annual permit renewal is expected to be approximately \$885, less than the cost of the initial permit. The two tables below show the cost of the proposed food vending permit issued by the Planning Division, and the additional City fees that a vendor can expect to pay to operate with all required permits and fees. The *total* of all these fees (including a LPG permit from the Fire Department), is approximately \$1,500 for the initial permit, and \$1,400 for the annual renewal.

Food vending permit fees	Proposed Cost	Notes
Food Vending Permit	\$350 (initial permit) \$285 (renewal fee)	Covers administrative costs by Planning staff to issue the permit
Enforcement	\$600	Funds new Special Activities Enforcement position in City Administrator's Office
<i>Totals for City of Oakland Food Vending permit</i>	<i>\$950 (initial permit)</i> <i>\$885 (renewal fee)</i>	

Additional Food vending fees	Proposed Cost	Notes
Excess Litter Fee	\$100	All businesses in Oakland with disposable items pay into this fund, which pays for street sweeping crews
Zoning Clearance and Business Tax Certificate	\$56 + \$88 = \$144	The standard business permitting applications for any new business in Oakland.
Fire inspection and LPG permit (will only apply to gas-cooking facilities)	\$313	LPG = Liquid Petroleum Gas, or propane. This will be a mandatory inspection of all vehicles which cook with gas.
Grand totals (all permits included)	\$1,508 (initial permit) \$1,443 (renewal fee)	

Note that these are the City of Oakland fees and permits. These totals do not include the fee for the Alameda County Environmental Health Permit, which is approximately \$900 for a full kitchen truck.

Staff has determined these are the correctly (estimated) costs to administer and enforce the new food vending program, keeping it cost covering. If the City Council finds additional funds to make the applications more affordable, paying down the cost of any of these components of the total cost, the Council may elect to apply other funding sources towards the mobile food vending program. If the City learns during the course of administering the first year's permits that the cost assumptions are incorrect, staff will recommend an adjustment of the fees to the Council. Note that with the proposed fee structure, \$600 of every annual permit will go to help pay for the new Special Activities officer to enforce the new regulations.

4. *Consolidate the permits (for late night vending);*

Staff Response: Under current regulations, late night vending (from 12am-3am) is allowed by right with a valid food vending permit. Approximately 20 vendors participate in late night vending. From discussions with vendors, late night vending makes up an important component of the profit from running their food vending business. It is expected that many more new vendors will seek to have later night hours, once a new permit program is available. Minimizing the impacts of late night vending (e.g., noise from customers, odors from cooking, etc.) is in the City's interest.

As shown in the Administrative Rules and Regulations, late night vending permission will not be a separate permit, but rather, an additional level of review by staff of the food vending permit. Staff has decided there will be no additional fee for this review. The criteria for allowing late night vending is described in the Administrative Rules document.

5. *Include a recommendation that once approved and implemented, the proposed amendments come back to Council (or Planning Commission), with recommendations for refinement 12 to 18 months after implementation;*

Staff Response: Staff agrees that there will be a need to return to Planning Commission and Council in about 12 to 18 months from the effective date of the new food vending program, to report on progress and discuss program details with the public.

6. *Give greater clarity to the regulatory process; specifically the process for “grandfathering” of existing vendors.*

Staff Response: See the draft Administrative Rules and Regulations document (**Attachment C** to this report).

7. *Make greater efforts to streamline the one stop process as much as legally possible;*

Staff Response: As requested by the Oakland Food Policy Council and several Planning Commissioners, staff has made it a priority to make the application process easier than it is now. As described more fully in the Administrative Rules and Regulations (**Attachment C**), most of the City of Oakland’s food vending application process will be able to be accomplished at the Bureau of Planning zoning counter, with an additional stop at the Business Tax Office, and if necessary, the Fire Department.

8. *Include a breakdown of the fees and how that money has been spent in the past (e.g. how does Building Division spend the current food vending permit fees now);*

Staff Response: There are two permits issued now for the food vending program, Food Vehicles (FV) and Food Carts (FC); the revenue collected for each over the last three years are as follows:

	2014	2015	2016 (to date)
FV	\$34,475	\$12,380	\$8,960
FC	\$4,095	\$8,650	\$10,470

This revenue is not sufficient to pay for any one staff person’s salary at the Department of Planning and Building; rather, it goes towards the general operational budget for the Planning and Building Department which funds permit issuance and enforcement costs. Enforcement of food vending is currently handled by staff of the Code Enforcement section of the Building Bureau.

9. *Clarify the rationale for all the recommendations for boundary changes (i.e. buffer distances between vendors in the Fruitvale);*

Staff Response: Buffer distances between two permitted vendors is of particular importance to existing food truck operators in the permitted program areas of Central and East Oakland. Today, the distance is 200 feet apart (on private property). The proposal

had been to change that to 100 feet apart. But, after hearing comments and testimony from truck owners who proposed distances of as much as 1,500 feet, the City has revised its proposal to maintain a distance between two vendors of 200 feet, or one per single block, whichever is greater. This should ensure that there will be no more than one individual food vendor per block on the City's commercial streets.

Another concern by established vendors is that on International Boulevard, with the new streetscape changes, removal of medians and removal of some of the on-street parking spaces due to AC Transit's Bus Rapid Transit (BRT) service, that food vending from the public right of way should continue to be prohibited. In response, staff is proposing to clarify in the Administrative Rules (**Attachment C**) that food vending from the International Boulevard right of way will continue to be prohibited during the period of BRT construction and for at least the first year after its completion, to allow for an evaluation period on the potential effects of the BRT-related street changes. The City has also heard established vendors' concern about vending from the public right of way on Fruitvale Avenue, between East 12th Street and Foothill Blvd. In response, staff is proposing to likewise continue the prohibition on vending from this portion of the public right of way (vending only allowed on private property in this area). Pushcarts will be allowed on both International and Fruitvale, however, which meet the buffer distances and sidewalk width requirements.

10. Clarify that vendors which locate near schools work with (school) Principals;

Staff Response: City staff spoke with staff from the Superintendent's Office at the Oakland Unified School District (OUSD) to learn what involvement they expect to have at schools with food vending businesses on adjacent streets. OUSD staff suggest that a school's "supervising entity", such as OUSD Superintendent's office, could permit food vending closer than 500 feet of school, under certain limited circumstances, such as the sale of healthy, nutritious food. These staff discussions between the City and OUSD are ongoing, and staff will make an informational report to the OUSD Board at a future public hearing to discuss the food vending program, as it relates to schools.

11. Develop and include a recommendation for how permits are displayed;

Staff Response: Section 5.51.180(A) of the proposed OMC regulations require that "all food vending facilities and group sites shall clearly display current City of Oakland business tax certificate, Alameda County Environmental Health permit (and decal) and Food Vending Permit (and decal) in plain view and at all times on the exterior of the food

vending facility or at the group site.” The intention is that the City will issue a highly visible annual decal to permitted vehicles, for display and easy identification.

12. *Include an analysis of enforcement cost compared to being housed in the city administrator’s office versus being housed in Oakland Public Works;*

Staff Response: The full annual personnel cost of a single new enforcement staff person (“Special Activities Enforcement”) is approximately \$125,000. This cost would be the same regardless of where the position is located. After extensive discussions with other City departments, including Public Works, staff has determined that the most appropriate location for the position is in the City Administrator’s Office, with the current Special Activities/ Nuisance Abatement team.

The selection of the City Administrator’s Office for the new enforcement staff was made after a review of both the City’s existing job classifications and which department(s) had the capacity and expertise to enforce a new food vending program. The City Administrator’s Office is the only department that Planning staff has been able to identify that has both the capacity and expertise to manage food vending enforcement staff. As for the job classifications, no existing job classification in the City has the breadth of duties and authority necessary to properly enforce food vending regulations, so a new job classification is proposed: Special Activities Enforcement Officer, where the job description was written in collaboration with City Administrator’s Office (the department that already issues Special Activity Permits).

13. *Provide additional policy and administrative details for late night vending: permitting and cost, and grandfathering. Right now there are no details; just that it will happen.*

Staff Response: Late night vending will be permitted between the hours of 12 a.m. and 3 a.m., depending on certain factors. See item #4, above. Grandfathering is addressed in the Administrative Rules and Regulations (See **Attachment C**).

Map & changes to the map after community comment

After the June 1, 2016 Planning Commission hearing, and the testimony (and comment letter) from established food truck vendors in the Fruitvale, staff revised the map of the proposed permitted food vending areas, as shown in **Attachment D** to this report. See response to items #9 and #10 above, to clarify the reasoning behind the following changes made:

1. Remove International Blvd. public right of way, between First Avenue and 98th Avenue. Vending on private property on International Blvd will continue to be permitted.

2. Remove Fruitvale Avenue public right of way, between East 12th Street and East 22nd Street. Vending on private property on Fruitvale Avenue will continue to be permitted.
3. Remove streets that are adjacent to schools in the Downtown and Fruitvale Districts, but allow food vending on non-adjacent streets, with certain exceptions (such as the areas defined by 1. and 2. above).

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

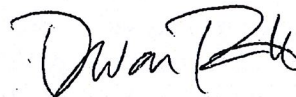
Staff revised the food vending map and proposal after hearing testimony from the June 1, 2016 Planning Commission hearing. Staff believes this proposed new food vending program and enforcement proposal is the best opportunity to have legal food vending from private property and the public right of way in designated commercial and industrial areas throughout Oakland.

Staff recommends the Planning Commission hold a second public hearing, receive public comments, give staff comments, and forward the food vending proposal and related Oakland Municipal Code and City Planning Code amendments to the City Council.

RECOMMENDATION

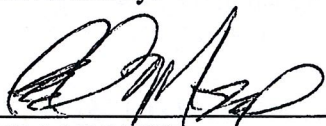
- 1) Affirm staff's environmental determination; and
- 2) Recommend that the City Council adopt the revised proposed food vending program and revised permitted areas map.

Prepared by:



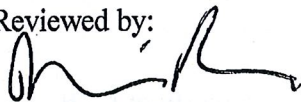
DEVAN REIFF, AICP
Planner III

Reviewed by:



ED MANASSE
Strategic Planning Manager

Reviewed by:



DARIN RANELLETTI
Deputy Director Bureau of Planning

Approved for forwarding to the
City Planning Commission:



RACHEL FLYNN, Director
Department of Planning and Building

ATTACHMENTS:

- A. June 1, 2016 Planning Commission staff report
- B. Proposed new Food vending program, revised text for O.M.C. section 5.51
- C. Proposed draft of Administrative Rules and Regulations
- D. Revised maps of proposed food vending permitted area (22 tile maps)
- E. Letters to Planning Commission from Edgar Galindo and from Mobile Food Truck Association

Attachment B to December 21, 2016 Planning Commission

Chapter 17.10 USE CLASSIFICATIONS

Sections:

Article II - Activity Types

Part 3 - Commercial Activity Types

Part 3 Commercial Activity Types

17.10.280 Fast-Food Restaurant Commercial Activities.

17.10.280 Fast-Food Restaurant Commercial Activities.

~~A. Fast-Food Restaurant Commercial Activities include the retail sale of ready-to-eat prepared foods and beverages, for on- or off-premises consumption, whenever the foods and beverages are available upon a short waiting time and are primarily served in or on disposable wrappers, containers, or plates. Fast-Food Restaurants may also exhibit other design and operating characteristics, including: (1) a limited menu; (2) food is typically ordered and served at a service counter; (3) food is paid for prior to consumption; (4) the facility in which the activity/use is occurring provides a take-out counter space and space for customer queuing. Examples of these activities include, but are not limited to, restaurants that do not fall under Section 17.10.272 Full Service Restaurant Commercial Activities or Section 17.10.274 Limited Service Restaurant and Cafe Commercial Activities. This classification also includes certain activities accessory to the above, as specified in Section 17.10.040.~~

~~B. Except as may otherwise be allowed in Oakland Municipal Code (OMC) Chapters 5.49, 5.51, 8.09, and 9.52, the sale of ready-to-consume prepared foods from trucks, pushcarts or other movable equipment located on public or private property on a semi-permanent basis during hours of operation. Vehicular food vending generally has the following characteristics:~~

- ~~• Food is ordered and served from a take-out counter that is integral to the catering truck;~~
- ~~• Food is paid for prior to consumption;~~
- ~~• Catering trucks, pushcarts or other movable equipment from which the food is sold typically have a take-out counter and space for customer queuing;~~
- ~~• Food and beverages are served in disposable wrappers, plates or containers; and~~
- ~~• Food and beverages are prepared and sold for off-site consumption.~~

~~This classification also includes certain activities accessory to the above, as specified in Section 17.10.040.~~

CHAPTER 5.51 FOOD VENDING

Sections:

Article I – General Provisions

Article II – Standards and Requirements

Article III – Enforcement, Revocation and Abatement

Article I – General Provisions

5.51.010 – Title and Purpose.

5.51.020 – Definitions.

5.51.030 – Permit required.

5.51.040 – Conflicting Provisions.

5.51.050 – Permitted Area.

5.51.060 – Transference of a Food Vending Permit.

5.51.070 – Food Vending Permit Not a Land Use Entitlement.

5.51.080 – Maximum Number of Pushcart Permits.

5.51.090 – Application requirements for all Food Vending Permits.

5.51.100 – Additional application requirements for group sites.

5.51.110 – Decisions regarding the approval and renewal of a Food Vending Permit.

5.51.120 – Inspections required prior to legal operation.

5.51.130 – Food Vending Permit expiration and renewal.

5.51.140 – Finality of Decisions

5.51.010 – Title and purpose.

This Chapter shall be known as the Food Vending Program Regulations, and establishes a citywide food vending program in Oakland.

The purpose of this Chapter is to regulate the vending of food and food products from food vending facilities on public and private property throughout the city in such a manner as to bring convenience, economic vitality, and pedestrian activity to these areas. This includes protecting the health, safety, and general welfare of the Oakland community and customers through appropriate regulation by requiring that new and existing food vendors provide the community and customers with a minimum level of cleanliness, quality and security.

5.51.020 – Definitions.

"Administrative Guidelines" means the document prepared by the City Administrator or his/her designee, used by Bureau of Planning staff to administer the Food Vending program. The document includes the "Food Vending Program Permitted Area" map, and is revised by the City Administrator or his/her designee.

"Applicant" means the responsible party who seeks a Food Vending Permit from the City of Oakland.

"Assembly area" is an indoor or outdoor place where people may gather for any permitted purpose.

"Employee" means any person hired or paid compensation by, or any person under contract to, a food vendor.

"Food vending" means the business of selling, or causing to be sold from a food vending facility, raw or cut fruit, produce, prepared foods and non-alcoholic beverages, and/or prepackaged foods and beverages, where:

1. Food is prepared off-site in a commercial commissary and/or prepared on-site within the food vending facility, per Alameda County Health Regulations;
2. Food is ordered and served from the truck, trailer, pushcart, or other equipment or vehicle as permitted by Alameda County Environmental Health;
3. Fruit and produce is sold to customers without preparation or cooking by a vendor;
4. Food is served outdoors or under a non-permanent structure;
5. Food is paid for prior to consumption; and
6. Food and beverages are prepared and sold for on-site or off-site consumption.

"Food vending facility" means a truck, trailer, pushcart, stationary cart or other equipment or vehicle from which food vending services are provided, as permitted by the Alameda County Environmental Health Department. Food vending trucks and trailers must be less than eighteen feet, six inches (18' 6") in length, eight feet (8' 0") in width, and ten feet, six inches (10' 6") in height, measured from bottom of tire. Not included in this definition is the preparation of food and serving of food outside of a vehicle, typically under a tent, canopy, or from a booth.

"Food Vending Permit" is the City of Oakland's annual or temporary permit required to place, operate, maintain, or allow an individual food vending facility or group site within the Oakland City limits.

"Food Vending Program Permitted Area" is the map in the Administrative Guidelines which shows which areas and public right-of-ways are permitted for a Food Vending Permit. The Permitted Area map also shows specific parking spaces in the street right-of-way, designated by the City for Food vending facilities. Designated parking spaces are the only permitted areas allowed for Food vending on the street right-of-way.

"Food vendor" means a person who is engaged in "food vending" as governed by this Chapter.

"Group site" or "Group site food vending" means the stationary operation of two (2) or more food vending facilities clustered together on a single site and operating at the same time.

"Group site organizer" or "responsible party" means, for the purpose of determining liability for damage to City or public facilities as a result of a group site operation, the individual

or legal entity who is directly responsible for organizing and/or conducting the group site and/or the facility manager, and his or her respective designees.

“Group site food vending facility” means a food vending facility that is operating at a “group site”.

“Group Site Food Vending Permit” means a Food Vending Permit for a group site.

“Healthy foods” are defined in the Administrative Guidelines.

“Individual food vending” means a food vending facility that is not operating at a group site.

“Individual Food Vending Permit” means a Food Vending Permit for an individual food vending facility.

“Mobile café” is a motorized food vending facility that serves coffee and tea drinks and pre-made pastries, and does not have cooking equipment.

“Non-food merchandise” means goods, wares, or non-food merchandise.

“Pushcart” is a type of non-motorized food vending facility that, because of its small size and operable wheels, can be easily moved by a 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.

“Pushcart food vendor” is a person who owns and operates a business vending from a pushcart.

“Roaming” means the movement of a food vending facility to multiple locations during vending hours.

“School” means any public, charter, or private school serving children between kindergarten and high school. For the purposes of this Chapter, pre-schools, community colleges and universities are not included in this definition.

“Site” means the specific public or private property location, including any public right-of-way, for which an applicant or responsible party has been issued a Food Vending Permit.

“Stationary” means a food vending facility which does not move during vending hours.

“Stationary cart” means a type of non-motorized food vending facility that generally has a maximum length of eight (8) feet, maximum depth of six (6) feet, and a maximum height of eight (8) feet. Stationary food carts are typically larger than pushcarts; pulled or delivered by a vehicle into position; and stationary at a specific site during hours of operation, and then removed by a vehicle after operating hours. Umbrellas nine (9) feet in diameter or less are permitted with these carts.

“Stationary food cart vendor” is a person who owns and operates a business vending from a stationary food cart.

5.51.030 – Permit required.

- A. Except as may be allowed by a previously granted Conditional Use Permit for the use under Title 17, or by any ordinance or resolution establishing and regulating a street market or farmer’s market in the City; or for a limited period by a Special Event Permit issued in accordance with Chapter 9.52, it shall be unlawful for any individual, group, or legal entity to sell, offer for sale, or solicit offers to purchase food from food vending facilities in the City of

Oakland without first obtaining a Food Vending Permit as specified in this Chapter. Conducting a food vending operation in the City of Oakland without such a valid form of city permission is a public nuisance, as defined in this Code.

- B. The City Administrator or his/her designee is authorized to issue Administrative Guidelines, not inconsistent with this Chapter, governing the issuance of Food Vending Permits.
- C. Any individual, group, or legal entity desiring to engage in food vending in the City shall first file an application with the Bureau of Planning pursuant to procedures established in this Chapter and/or in the Administrative Guidelines to this Chapter.
- D. Issuance of an Encroachment or Obstruction Permit from the City of Oakland is not required to operate an individual food vending facility or group site in the public right-of-way.
- E. The individual, group, or legal entity desiring to engage in food vending shall obtain and maintain all required permits from the Alameda County Environmental Health Department the City of Oakland, and other regulatory agencies, including, but not limited to Electrical Permits or Fire Department permits.

5.51.040 – Conflicting provisions.

Where a conflict exists between the regulations or requirements in this Chapter and applicable regulations or requirements contained in other Chapters and Titles of the Oakland Municipal Code, including but not limited to the Oakland Planning Code (Title 17), the applicable regulations or requirements in this Chapter shall prevail.

5.51.050 – Permitted area.

Individual food vending facilities and group sites shall be subject to the following location requirements:

- A. Food vending shall only be located in the Food Vending Program Permitted Area, and may be located on private property, on publically-owned property, or in the public right-of-way. Food vending in the public right-of-way (streets) is restricted to designed spots as shown on the Food Vending Program Permitted Area map. The City Administrator or his or her designee is authorized to make amendments or correct administrative errors in the Program Permitted Area map.
- B. A location for an individual food vending facility or group site shall not be permitted if it is proposed to be closer than the distances specified below.
 - 1. Three hundred (300) feet from another individual food vending facility or group site, unless individual food vending facilities or group sites are permitted to operate at designated parking spaces on the street right-of-way, or separate individual vending facilities or group sites are permitted to operate on different days of the week from the same location;
 - 2. Vending within five hundred (500) feet from the parcel boundary of a school serving children between kindergarten and high school between the hours of 7 a.m. and 6 p.m. Monday through Friday is restricted as per the Administrative Guidelines to this Chapter;
 - 3. Seventy-five (75) feet from any restaurant, as measured from the parcel boundary; as an exception, food vending facilities may locate within seventy-five (75) feet of a restaurant if the restaurant owner has provided the vehicular food vendor with permission to locate on the same lot; or if the restaurant is closed during the permitted hours of food vending operation; and

3. Any additional location requirements, as determined by the City Administrator or his/her designee, per Section 5.51.030(B) of this Chapter.
- C. Individual food vending facilities or group sites cannot block or impede access to:
 1. Required parking or driveways;
 2. Bicycle racks;
 3. Signal crossings;
 4. Required off street parking;
 5. Parking meters;
 6. Pedestrian or bicycle routes;
 7. Emergency vehicle routes;
 8. Building entrances and exits;
 9. Required accessibility routes and curb cuts;
 10. Easements;
 11. Trash enclosure areas or access to trash bins/trash enclosures; or
 12. Other City facilities, as determined by the City Administrator or his/her designee.
 - D. Individual food vending facilities and group sites shall maintain site circulation and access consistent with the Americans with Disabilities Act (ADA).
 - E. Each stationary individual food vending facility and group site shall be located within two hundred (200) feet of a restroom facility that employees can legally access.
 - F. All stationary food vending facilities on public sidewalks shall be located and operated such that a minimum of five and one-half (5½) feet of unobstructed improved sidewalk or fifty percent (50%) of the overall improved sidewalk width, whichever is greater, is provided and maintained at all times from all building entrances, as well as from parking meters, traffic signs, trees, tree wells, sidewalk planter strips, and all similar sidewalk obstacles.

5.51.060 – Transference of a Food Vending Permit.

A Food Vending Permit cannot be transferred or conveyed from the permit applicant, or otherwise assigned to another person or entity without written permission from the Director of City Planning or his or her designee.

5.51.070 – Food vending permit not a land use entitlement.

No City action related to issuance and/or renewal of a Food Vending Permit for an individual food vendor or a group site shall be interpreted to confer any form of permanent land use entitlement to the person, group, entity, or property associated with such permit.

5.51.080 – Maximum number of Food Vending Permits.

The maximum number of the different types of Food Vending Permits which may be issued shall be set by the City Administrator in the Administrative Guidelines to this Chapter, and reviewed annually. At no time shall more than the maximum number of the specified types of Food Vending Permits be active.

5.51.090 – Application requirements for all Food Vending Permits

Application for an Individual Food Vending Permit shall be made by the owner of the affected food vending facility, or his or her authorized agent, or in the case of a Group Site Food Vending Permit, by the group site organizer, or his or her authorized agent, on a form prescribed by the Bureau of Planning. Each application for an Individual or Group Site Food Vending Permit shall include:

- A. Name, contact information, and copy of a photo ID of the applicant;
- B. A non-refundable application fee in an amount set on the Master Fee Schedule;
- C. If proposed location is on private property, written consent in a form approved by the City from the property owner (if other than self) permitting the individual food vending facility or group site to locate on the property;
- D. A map or illustration, showing:
 - 1. The proposed location(s);
 - 2. The address and Assessor's Parcel Number of the subject or nearest parcel, and/or specific section of the public right-of-way; and
 - 3. The two (2) nearest street intersections.
- E. A site plan for each proposed location, containing:
 - 1. If on a parcel, the location and dimensions of all proposed food vending facility(s), any public seating or other site amenities (including chairs and tables), buildings or other structures on site, paved areas, driveways, trash receptacles, garages, parking spaces, maneuvering aisles, and pavement striping;
 - 2. If in the public right-of-way, location and dimensions of the proposed food vending facility(s), sidewalks, curb cuts, trash receptacles, and obstructions such as parking meters, telecommunication boxes, street trees, and light poles.
- F. Photographs of the site(s) and food vending facility(s);
- G. Sample, photo, or rendering of proposed signs;
- H. The proposed menu of items to be offered at the food vending facility(s);
- I. Proof of all required approvals from the Alameda County Department of Environmental Health for the proposed food vending facility(s) and/or group site;
- J. Proof that the food vendor(s) and, if applicable, group site organizer has a valid City of Oakland Business Tax Certificate;
- K. The proposed schedule for the individual food vending facility or group site, including dates, and starting and ending times of the vending period;
- L. Maintenance plan, including litter pickup and cleaning in the vicinity of the individual food vending facility or group site;
- M. The address where the food vending facility(s) will be stored and serviced during non-operating hours;
- N. The following information shall be provided regarding the commercial kitchen or commissary to be used by the applicant, if any:
 - 1. Proof of all required approvals from the Alameda County Department of Environmental Health;
 - 2. A valid lease between the facility operator(s) and a commercial kitchen or commissary; and
 - 3. For a commissary in Oakland, evidence of a valid City of Oakland Business Tax Certificate and Zoning Clearance.
- O. A signed statement from the applicant that they will abide by all local and federal requirements, including, but not limited to, those relating to the minimum wage and sick leave.
- P. Proof of liability insurance in the amount required by the City's Administrative Guidelines.

- Q. Any other reasonable information regarding time, place, and manner of the individual food vending facility or group site operation that the City Administrator or his/her designee requires to evaluate the proposal.

5.51.100– Additional application requirements for group sites.

- A. The application for a Group Site Food Vending Permit shall include the items in Section 5.51.090, and the following additional information:
1. Legal and business name and mailing address for each food vendor; and
 2. Designation of a manager to be responsible for the day-to-day site management of the group site.

5.51.110 – Decisions regarding the approval, approval with conditions, or denial of a Food Vending Permit.

- A. The Director of City Planning, or his or her designee, shall determine whether the proposal meets the requirements for a Food Vending Permit as set forth in this Chapter and/or In the Administrative Guidelines to this Chapter.
1. During the first year of the program, the Director of City Planning, or his or her designee, shall 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 street right-of-way; and
 - iv. Priority Group Four: All other vending applicants.
 2. During this first year of the program, applicants with current or expired Oakland Food Vending permits shall have their applications reviewed based on the buffering standards that applied at the time of the initial permit issuance, as described in the Administrative Guidelines to this Chapter. As a result, permits may be granted for a previously permitted location that does not meet the current buffer distances in Section 5.51.050.
 3. After the first year of the program, all new permit applications shall be reviewed with equal priority and according to the current requirements for a Food Vending Permit as set forth in this Chapter and/or In the Administrative Guidelines to this Chapter. However, all permits that are renewed on an annual basis shall continue to be evaluated according to the standards that applied at the time of the initial permit issuance.
- B. At the time of Food Vending Permit application, the applicant vendor or group site organizer shall obtain from the Bureau of City Planning, a list of names and mailing addresses of all persons shown on the last available equalized assessment roll as owning the City of Oakland lot or lots adjacent to the project site and directly across the street abutting the project site; and a Notice to Neighboring Property Owners form which includes the project description and contact information.
- C. Prior to the subject application being deemed complete, the applicant shall provide by certificate of mailing or certified delivery to all persons shown on the last available equalized assessment roll as owning the City of Oakland lot or lots adjacent to the project site and directly across the street abutting the project site, a copy of the completed project notice form, as well as a site plan that shows the proposed vending location.

- D. All required notification of adjacent and across the street property owners shall be completed by the project applicant not less than ten (10) days prior to the earliest date for final decision on the application.
- E. Decision by the Director of City Planning. The Director of City Planning or his/her designee shall approve, approve with conditions, or deny a Food Vending Permit application based on the standards and criteria set forth in this Chapter and/or in the Administrative Guidelines to this Chapter. 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 shall be notified of any conditions of approval in writing.
- F. A Food Vending Permit application may be denied upon evidence that:
 - 1. Information contained in the application, or supplementary information requested from the applicant, is false in any material detail; or
 - 2. The applicant has failed to ensure conformity with the operating standards in this Chapter and/or in the Administrative Guidelines to this Chapter; or
 - 3. The applicant has failed to provide a complete application form after having been notified of the requirement of producing additional information or documents; or
 - 4. The applicant has previously been cited by the City of Oakland for causing a public nuisance, or causing an unlawful or criminal activity during the operation of a food vending activity; or
 - 5. The applicant has previously had a food vending permit revoked in Oakland or in another jurisdiction, for violating food vending permit conditions or for unlawful conduct relating thereto; or
 - 6. The granting of the Food Vending Permit will have an adverse impact upon the public health, safety, or order.

5.51.120 –Inspections required prior to legal operation.

Upon issuance of the permit, the applicant shall not commence business activities until:

- A. An Oakland Fire Department designee has inspected all food vending facilities for safety that involve the use of gas for cooking onsite, and a liquid petroleum gas permit has been received by the applicant.
- B. Once the food vending facility or group site has passed all required inspections and can legally operate, the applicant shall affix an issued City of Oakland Food Vending Permit seal/placard/sticker at a clearly visible location on the individual food vending facility, or display such Permit seal/placard/sticker at a prominent place at a group site. The City of Oakland Food Vending Permit seal/placard/sticker shall contain the permit number, the expiration date, and an indication that the individual food vending facility or group site is legal to operate.

5.51.130 – Food Vending Permit expiration and renewal.

- A. Unless renewed as described in Subsection B, below, each Annual Food Vending Permit shall be valid for twelve (12) months from the month of issuance, and expire and become null and void annually on the anniversary of its month of issuance. Each Temporary Food Vending Permit shall expire and become null and void after ninety (90) days, and may be renewed for one additional consecutive 90-day time period.
- B. An individual food vending facility or group site organizer may apply to the Director of City Planning, or his or her designee for a Food Vending Permit renewal on a form provided by the city prior to the expiration of their active Food Vending Permit. All renewal applications

shall be filed with the Bureau of Planning pursuant to procedures established in this Chapter and/or in the Administrative Guidelines to this Chapter. As stated in Section 5.51.110.A, all Food Vending Permits that are renewed on an annual basis shall continue to be evaluated according to the standards that applied at the time of the initial permit issuance.

5.51.140 – Finality of decisions

Decisions regarding a Food Vending Permit application shall be effective immediately and are not appealable.

Article II – Standards and Requirements

5.51.150 – Hours of operation

5.51.160 – Appearance and Operating Standards

5.51.170 – Liability and Indemnification

5.51.150 – Hours of operation

- A. The regular permitted hours of operation for all individual food vending facilities and group sites are 7 a.m. to 10 p.m., daily.
- B. If an applicant is granted permission for late night vending, as described in the Administrative Guidelines to this Chapter, the city may allow an individual food vending facility or group site, with the exception of a stationary cart or pushcart, to operate later than the regular permitted hours, but no later than 3 a.m.
- C. For Group Sites in the public right-of-way, the specific hours of operation shall be determined by the City, and shall 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 Director of City Planning or his or her designee.

5.51.160 – Appearance and operating standards.

- A. Appearance and condition of the food vending facility.
 - 1. All food vending facilities and group sites shall clearly display current City of Oakland business tax certificate, Alameda County Environmental Health permit (and decal), and City of Oakland Food Vending Permit (and decal) in plain view and at all times on the exterior of the food vending facility or at the group site.
 - 2. No more than three (3) signs shall be attached to any food vending facility, with a maximum aggregate display surface of thirty (30) square feet of signage per food vending facility.
- B. Utilities.
 - 1. Individual food vending facilities and group sites shall either be entirely self-sufficient in regards to gas, electricity, water, and telecommunications, or the food vending facility shall be required to apply for appropriate permits for any utility hook-ups or connections

to on-site utilities to ensure building and public safety and consistency with applicable building codes.

C. Refuse, trash and litter maintenance.

1. The food vending facility or group site organizer shall not throw, deposit, discharge, leave, or permit to be thrown, deposited, discharged, or left, any fat, oil, grease, refuse, garbage, or other discarded or abandoned objects, articles, and accumulations, in or upon any street, alley, sidewalk, gutter, storm drain, inlet, catch basin, conduit or other drainage structure, or upon any public or private lot of land in the city, so that the same might be or become a pollutant.
2. Other than roaming food vending facilities, a minimum of one thirty-two (32)-gallon litter receptacle shall be within fifteen (15) feet of each individual food vending facility for customers and employees.
3. Individual food vending facilities and group site organizers shall maintain the subject site and adjacent public right-of-way free of litter on and within one hundred (100) feet of their site.
4. At a minimum, all refuse shall be removed from the individual food vending facility location or group site, and properly disposed of after each vending period.
5. Failure to adequately clean up after a food vending operation shall be grounds for denying an applicant's request for permit renewal as set forth in Section 5.51.120.

D. Seating, chairs and tables.

1. Depending on site size, configuration and location, a plan for site amenities, including but not limited to tables and chairs, portable restroom facilities, and/or temporary shade structures, may be permitted in conjunction with the operation of a food vending site. A site plan depicting the proposed location of any site amenities shall be submitted for review and approval in conjunction with a food vending permit application.

E. Performance standards.

1. Noise levels from food vending facilities shall not exceed the city's noise ordinance standards. Vendors should use low-noise emission generators.
2. Noise and odors from food vending facilities shall be contained within immediate area of the permitted food vending location.
3. The vehicular food vendor shall maintain site circulation for pedestrians and access consistent with the Americans with Disabilities Act.

F. Security.

1. The site shall be maintained in a safe and clean manner at all times.
2. Food vending facilities and group sites shall have adequate lighting to ensure customer safety. Lighting shall be directed downwards and away from public streets and adjacent properties.

G. Other requirements.

1. Food vending facilities shall be maintained in operating condition at all times, and shall be movable at all times.
2. No food vending vehicle shall become a permanent fixture on the site and shall not be considered an improvement to real property.
3. The food vendor shall maintain a valid Alameda County Environmental Health Permit at all times. If the permit expires, or is suspended or revoked, then all food sales shall cease until the permit is reinstated.
4. The organizer of a group site or their representative shall be personally present at all times during group site operations.
5. Proof of liability insurance in the amount required by the City shall be maintained by the individual food vendor or group site organizer.
6. The posting of the food vending permit at the site is required at all times.

7. The individual food vendor or group site organizer shall have a working telephone where he/she can be reached directly at all times during food vending.
8. The vending site shall be paved.

5.51.170 – Liability and Indemnification

- A. To the fullest extent permitted by law, any actions taken by a public officer or employee under the provisions of this Chapter shall not become a personal liability of any public officer or employee of the City.
- B. To the maximum extent permitted by law, the permittees under this Chapter shall defend (with counsel acceptable to the City, indemnify and hold harmless the City of Oakland, the Oakland City Council, and its respective officials, officers, employees, representatives, agents and volunteers (hereafter collectively called "City") from any liability, damages, actions, claims, demands, litigation, loss (direct or indirect), causes of action, proceedings or judgment (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs (collectively called "Action") against the City to attack, set aside, void or annul, any food vending- related approvals and actions and comply with the conditions under which such permit is granted, if any. The City may elect, in its sole discretion, to participate in the defense of said Action and the permittee shall reimburse the City for its reasonable legal costs and attorneys' fees.
- C. Within ten (10) calendar days of the service of the pleadings upon the City of any Action as specified in Subsection B above, the permittee shall execute a Letter of Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations and the Letter of Agreement shall survive termination, extinguishment or invalidation of the food vending-related approval. Failure to timely execute the Letter of Agreement does not relieve the applicant of any of the obligations contained in this Section or any other requirements or performance or operating standards that may be imposed by the City.

Article III. Enforcement, Revocation and Abatement

5.51.180 – Enforcement.

5.51.190 – Violation.

5.51.200 – Responsibility.

5.51.210 – Revocation of Food Vending Permits.

5.51.220 – Penalties for violation of Food Vending Permit requirements.

5.51.230 – Abatement generally.

5.51.240 – Notice to abate.

5.51.250 – Abatement procedure.

5.51.260 – Violations constituting infractions.

5.51.270 – Penalty for violation.

5.51.180 – Enforcement.

The City Administrator or his/her designee shall be responsible for enforcing this Chapter. If periodic inspections are necessary to monitor compliance, reinspection fees per the master fee schedule shall be assessed against the responsible party.

5.51.190 – Violation.

Failure to comply with any of the provisions of this Chapter is declared to be prima facie evidence of an existing violation, a continuing blight and a declared public nuisance and shall be abated by the City Administrator or his/her designee, in accordance with the provisions of this Chapter. Any person in violation will be subject to administrative penalties, citations, civil action and/or other legal remedies, including seizure of a food vending facility, and/or food and drink merchandise

5.51.200 – Responsibility.

If a food vending facility is on a privately owned parcel, the parcel owner and the individual food vending facility or group site organizer have joint and several liability for compliance with this Chapter, including fees, administrative citations, civil actions, and/or legal remedies relating to an individual food vending facility or group site. The parcel owner remains liable for any violation of duties imposed by this Chapter even if the parcel owner has, by agreement, imposed on the individual food vending facility or group site organizer the duty of complying with the provisions of this Chapter.

5.51.210 – Revocation of Food Vending Permits.

The City of Oakland reserves the right to revoke this permit at any time if it is found that the approved activity is violating any of the provisions of the City of Oakland Municipal Code or causing a public nuisance, in accordance with Section 5.02.080 OMC for:

- A. Violating any of the required operating standards set forth in Section 5.51.180; or
- B. Violating any of the imposed permit conditions; or
- C. Causing a public nuisance, or causing an unlawful or criminal activity occurring during the operation a food vending activity or group site; or any other violation of this Chapter.

Revocation shall be immediately effective upon written notice of the revocation by the City Administrator or his/her designee. Revocation hearings and appeals shall be done in accordance with Sections 5.02.090 (Hearings) and 5.02.100 (Appeals).

Should a food vending permit be revoked, the vendor shall be required to cease operation immediately or be subject to action which may include impounding of vehicle and/or citation.

5.51.220– Penalties for violation of Food Vending Permit requirements.

Any violation of this Chapter may be charged as a civil penalty or administrative citation as provided for in Chapters 1.08 and 1.12 of this Code. Enforcement action specifically authorized by this Section may be utilized in conjunction with, or in addition to, any other statutory, code, administrative or regulatory procedure applicable to this Chapter, including confiscation of merchandise and food for sale, and/or impoundment of the food vending facility. In addition,

nothing in this Section shall be interpreted to preclude or limit the City from seeking injunctive or other judicial relief.

5.51.230 – Abatement generally.

- A. Failure to permanently remove a food vending facility or group site and failure to cease operation as a food vending facility or group site after the termination, revocation, expiration, or suspension of any permit issued pursuant to this Chapter shall constitute a public nuisance, and shall be subject to enforcement and abatement procedures set forth in Chapter 1.16 of this Code.
- B. When the City Administrator or his/her designee determines that an individual food vending facility or a group site has been used as an instrument for, or has contributed substantially to a violation of this Chapter, the City Administrator or his/her designee may deem the violation a public nuisance and issue a notice to abate the food vending facility or group site operation, and direct the responsible party to:
 - 1. Comply with the notice to abate;
 - 2. Comply with a time schedule for compliance; and
 - 3. Take appropriate remedial or preventive action to prevent the violation from recurring.

5.51.240 – Notice to abate.

Upon declaring and deeming a violation of this Chapter a nuisance, the City Administrator or his/her designee shall send a notice of abatement to the property owner, individual food vendor, and/or responsible party. The notice of abatement shall contain the following:

- A. The street address and a legal description of the site sufficient for identification of the premises or property upon which the nuisance condition(s) is located;
- B. A statement that the enforcement official has determined pursuant to this Chapter that the applicant, as well as the property owner if the activity is located on private property, are in violation of this Chapter;
- C. A statement specifying the condition that has been deemed a public nuisance;
- D. A statement ordering the property owner, individual food vendor, and/or responsible party to abate the condition(s), and specifying the manner in which the same shall be abated, and the period within which such abatement shall be accomplished.

Service of said notice may be made by delivery to the property owner, individual food vendor, and/or responsible party and to the applicant or person in possession personally or by enclosing the same in a sealed envelope, addressed to the occupant at such premises, or to the property owner at the address provided in the food vending permit application, postage prepaid, registered or certified mail, return receipt requested, and depositing same in the United States mail. Service shall be deemed complete at the time of the deposit in the United States mail.

It is unlawful for the property owner, individual food vendor, and/or responsible party to fail or neglect to comply with such order or notice of abatement. In the event that the property owner, individual food vendor, and/or responsible party shall not promptly proceed to abate said

nuisance condition(s), that is to say within seven (7) days of notice to abate, as ordered by the enforcing official, the abatement procedure set forth in Section 5.51.260 may be undertaken.

5.51.250 – Abatement procedure.

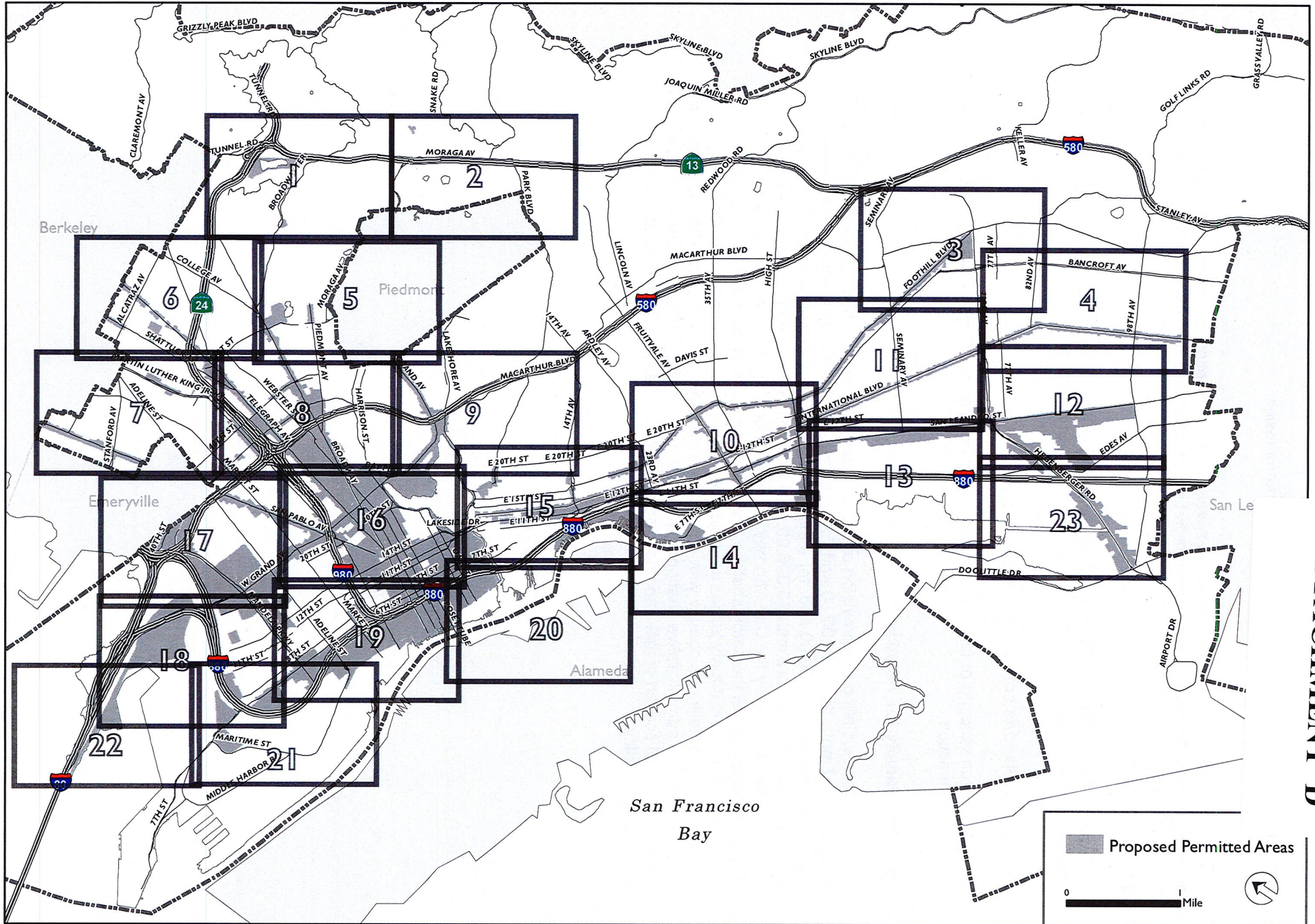
Any person violating or failing to comply with any of the provisions of this Chapter shall be subject to the abatement procedure set forth in Title 1 of this Code.

5.51.260 – Violations constituting infractions.

Any person violating or failing to comply with any of the provisions of this Chapter shall be guilty of an infraction.

5.51.270 – Penalty for violation.

Any person violating any provision of this Chapter shall be punished upon a first violation by a fine of not more than \$1,000.00 and, for a second violation within a period of one year, by a fine of not more than \$2,000.00 and, for a third or any subsequent violation within a one-year period, by a fine of not more than \$5,000.00. Any violation beyond the third, within a one-year period may be charged by the City Attorney or the District Attorney as a misdemeanor and the penalty for conviction of the same shall be punishable by a fine of not more than \$10,000.00 or by imprisonment in the county jail for a period of not more than six months or by both. Any person violating or failing to comply with any of the provisions of this Chapter shall be subject to civil penalties and administrative citations per Chapters 1.08 and 1.12 of this Code, and could be subject to confiscation of their merchandise and food for sale, and/or impoundment of the food vending facility.



ATTACHMENT D

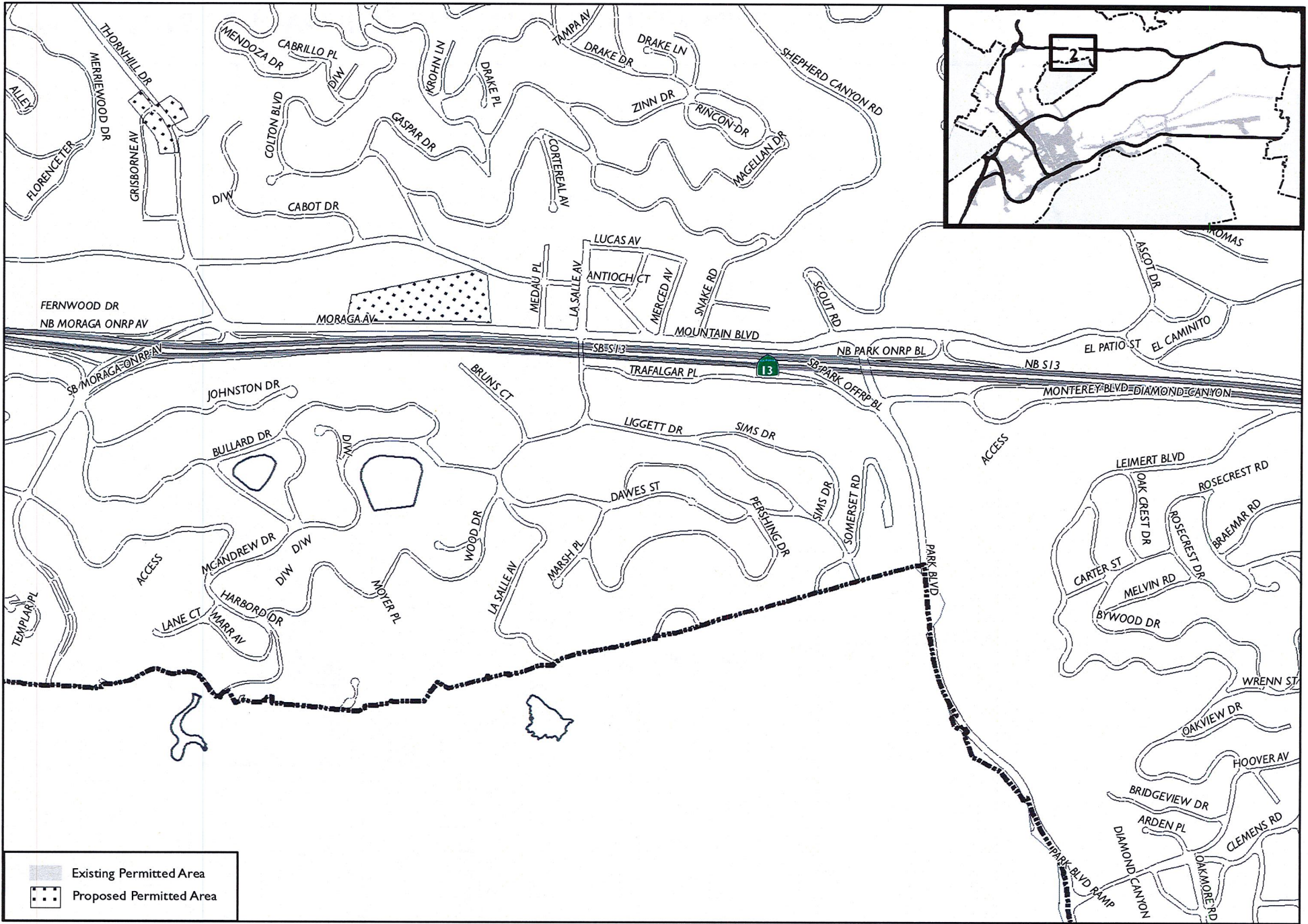




2016 Food Vending Program Permitted Area

Attachment D to December 21, 2016 Planning Commission

Planning and Building Department
November 30, 2016

Index Map



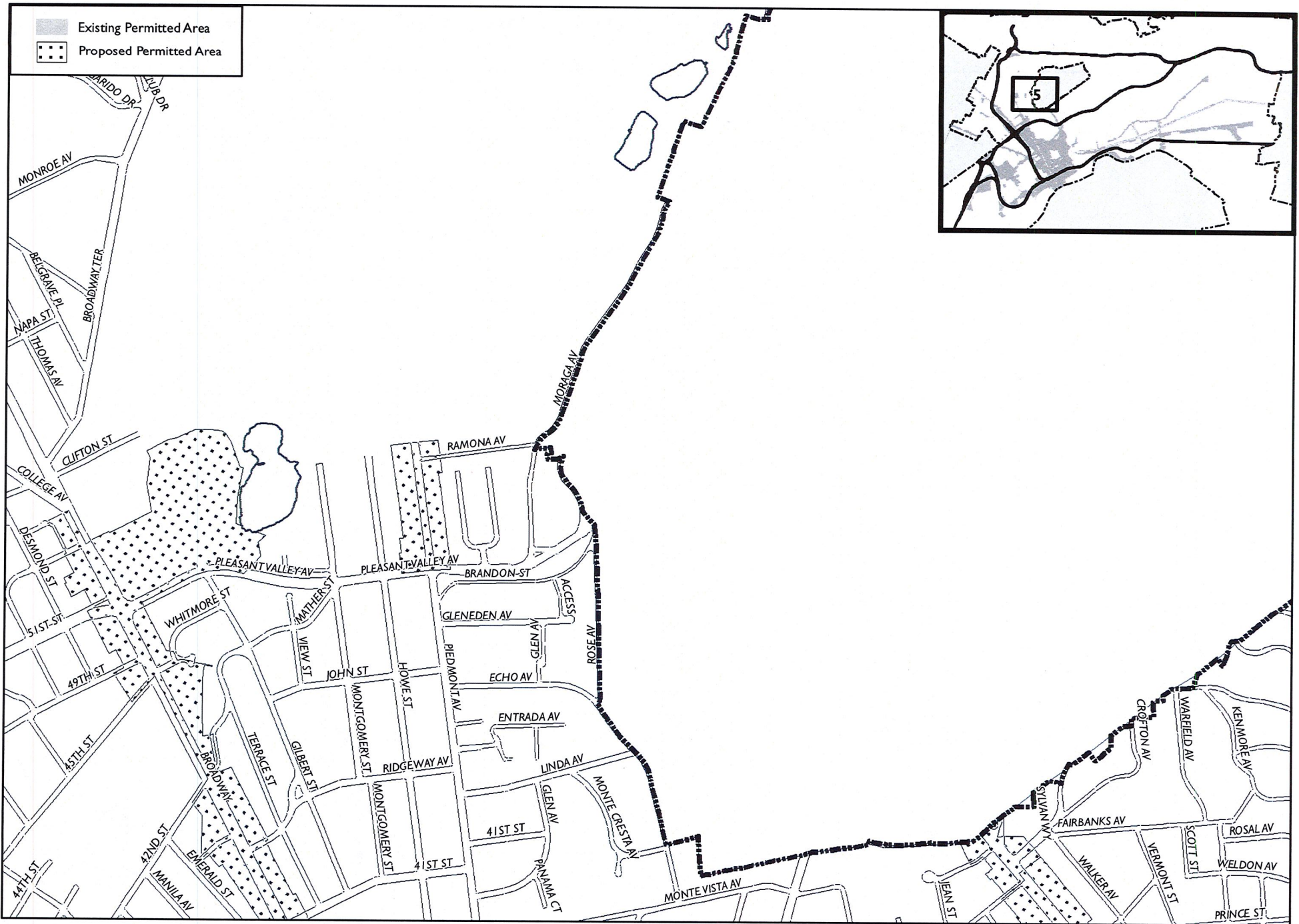
	Existing Permitted Area
	Proposed Permitted Area



2016 Food Vending Program Permitted Area



Planning and Building Department
November 30, 2016



2016 Food Vending Program Permitted Area

0 500 Feet



Planning and Building Department
November 30, 2016

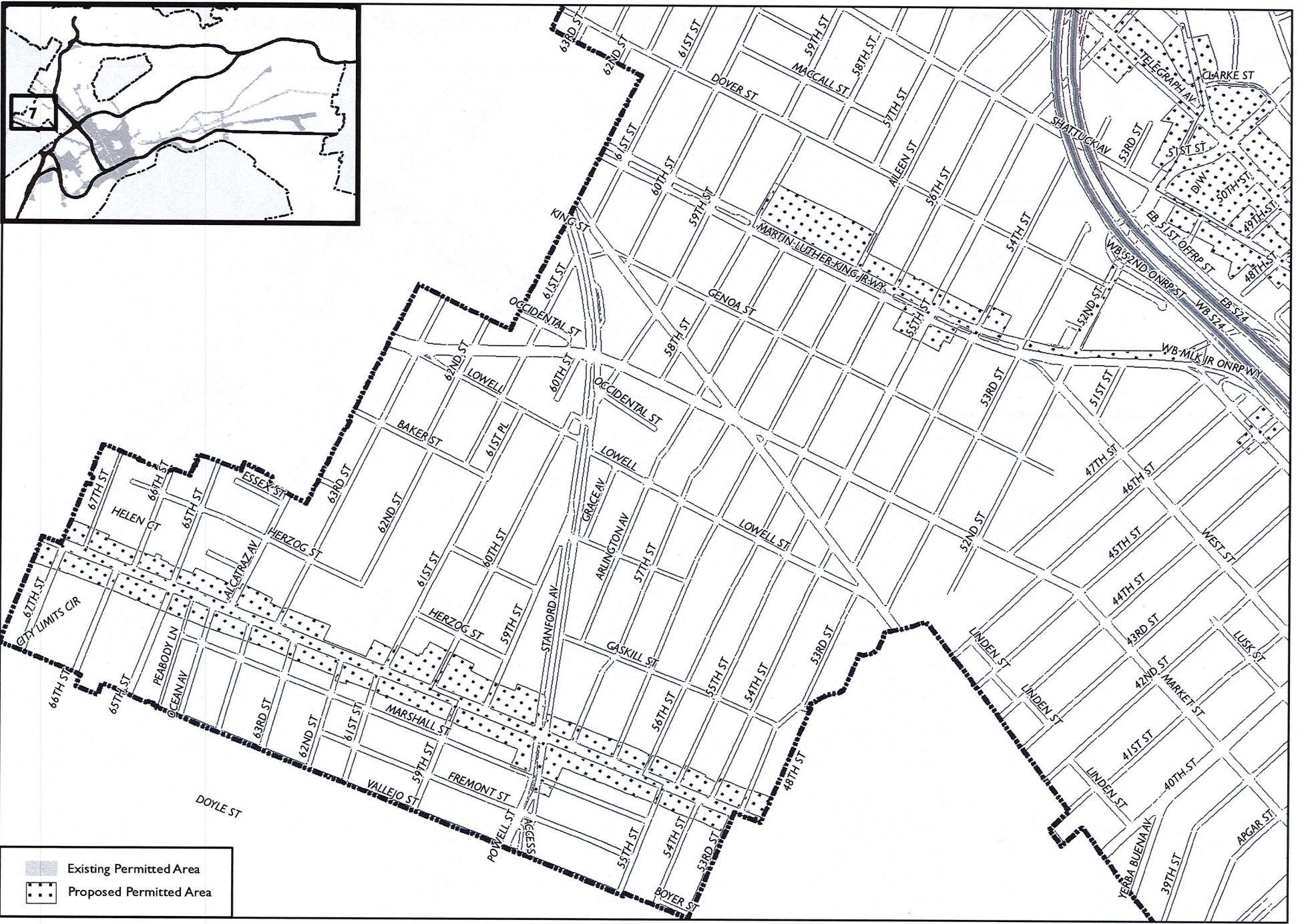
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2016 Food Vending Program Permitted Area

Planning and Building Department
November 30, 2016





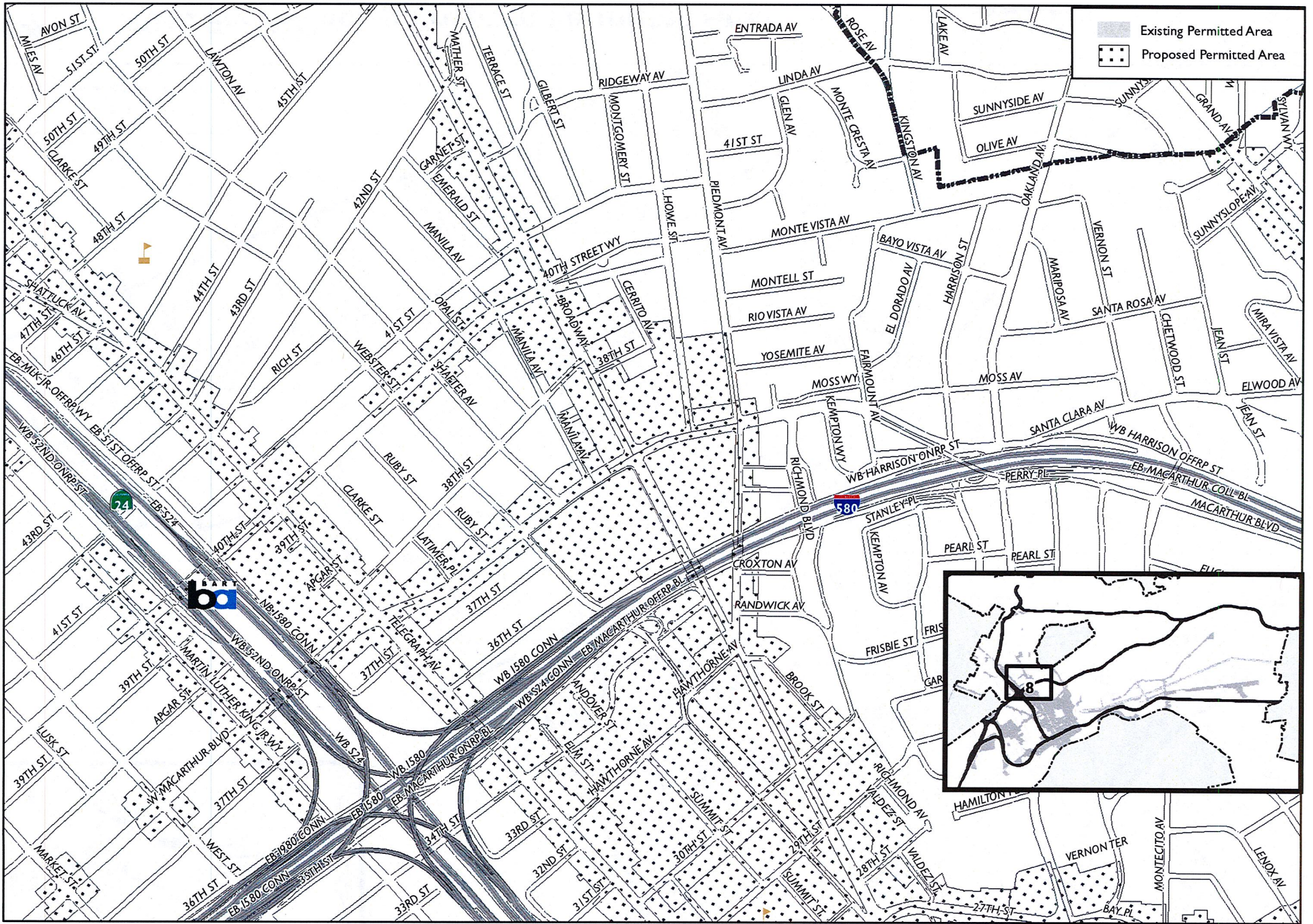
2016 Food Vending Program Permitted Area

0 500 Feet



Planning and Building Department
November 30, 2016

Tile 7

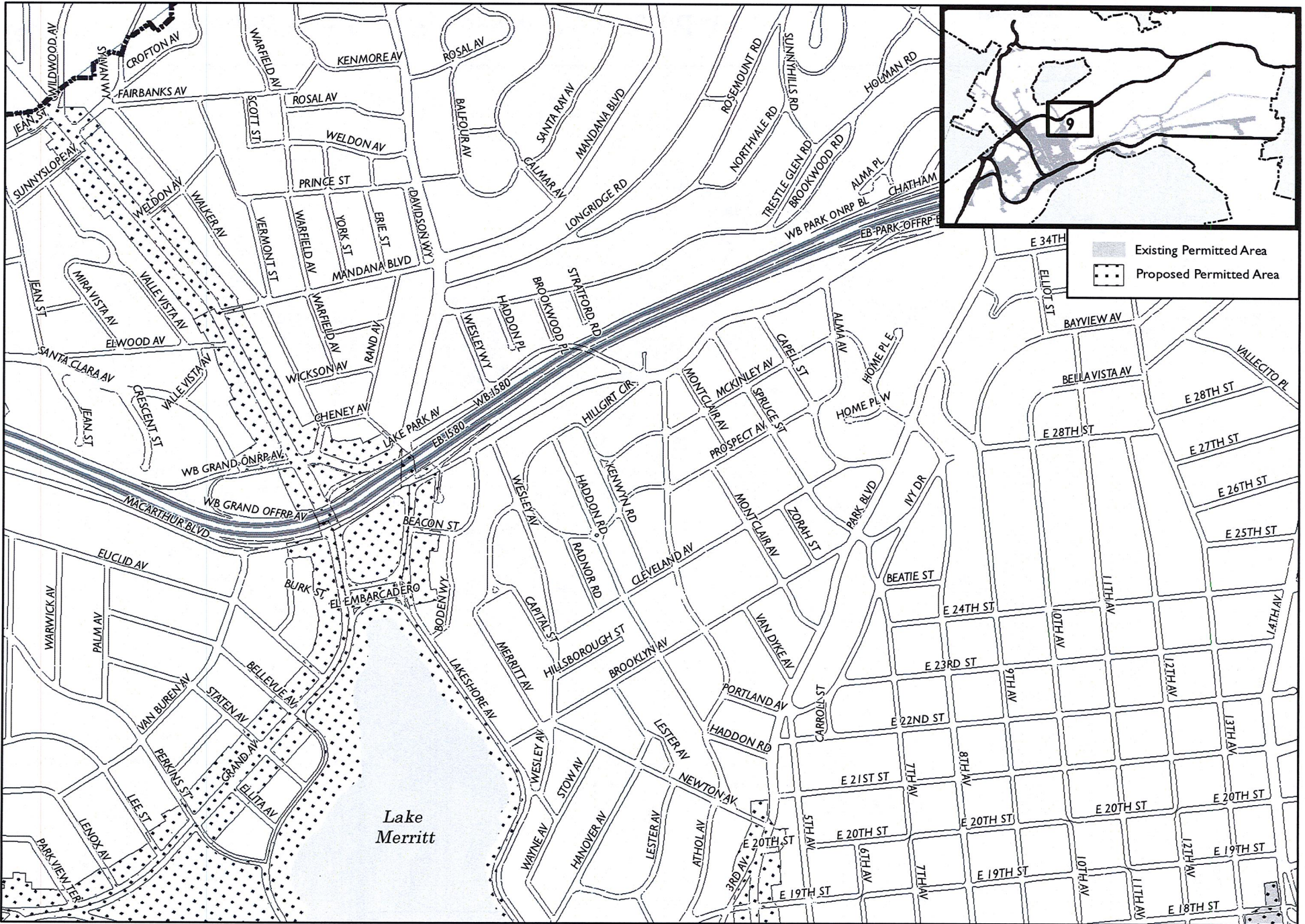


2016 Food Vending Program Permitted Area

Planning and Building Department
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Tile 8



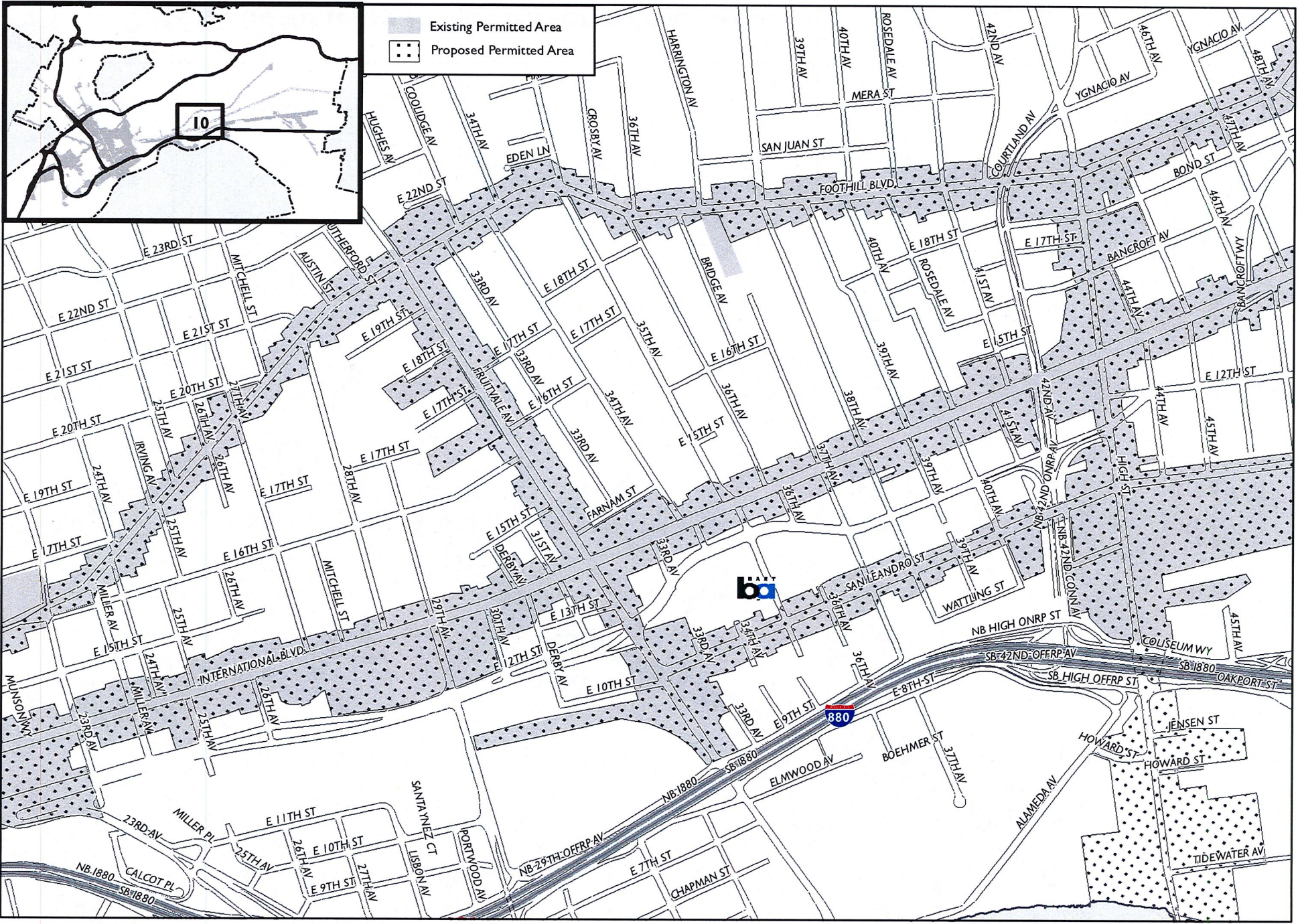
2016 Food Vending Program Permitted Area

0 500 Feet



Planning and Building Department
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Tile 9

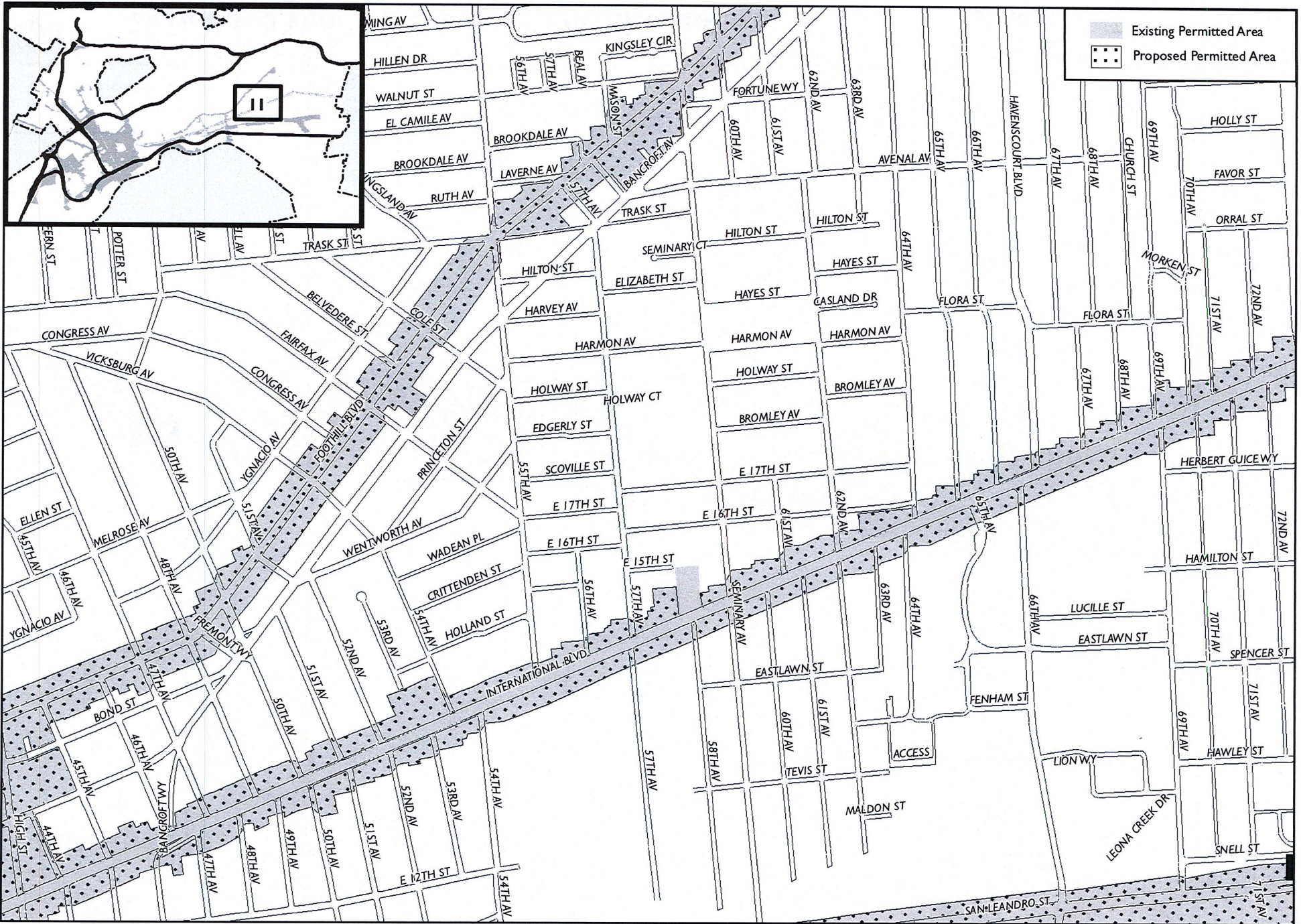


2016 Food Vending Program Permitted Area



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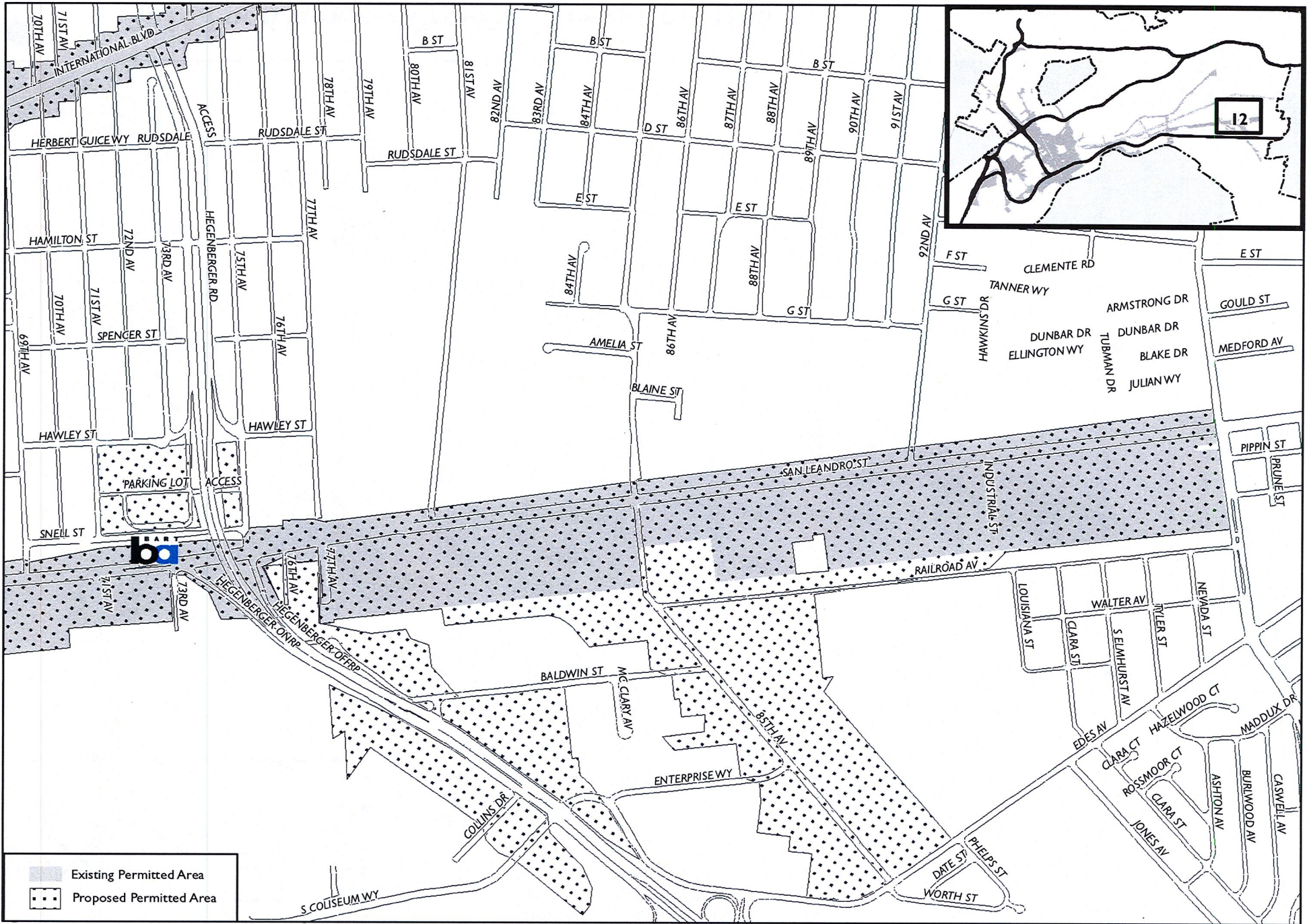
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2016 Food Vending Program Permitted Area

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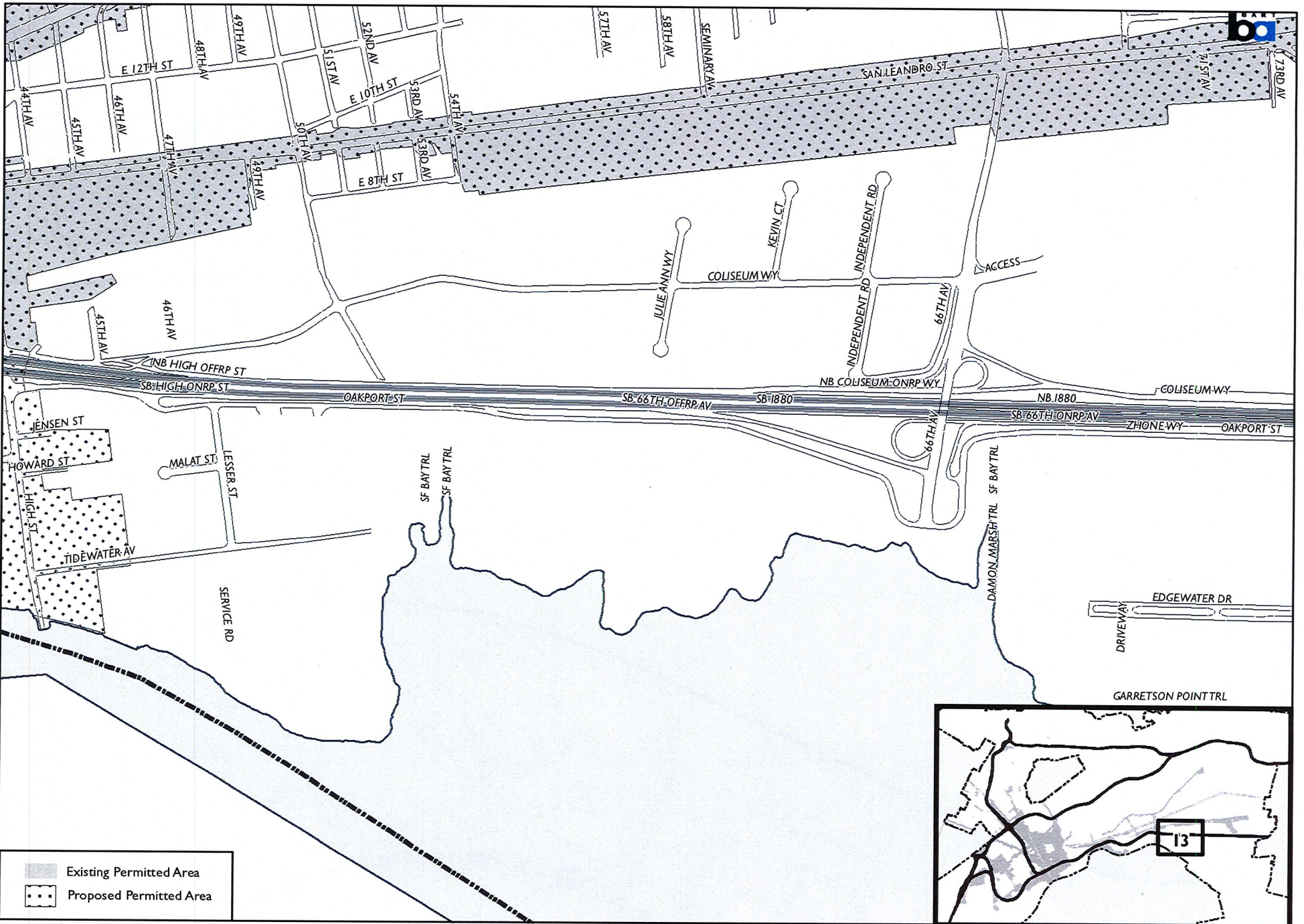




2016 Food Vending Program Permitted Area



Planning and Building Department
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2016 Food Vending Program Permitted Area

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Tile 13



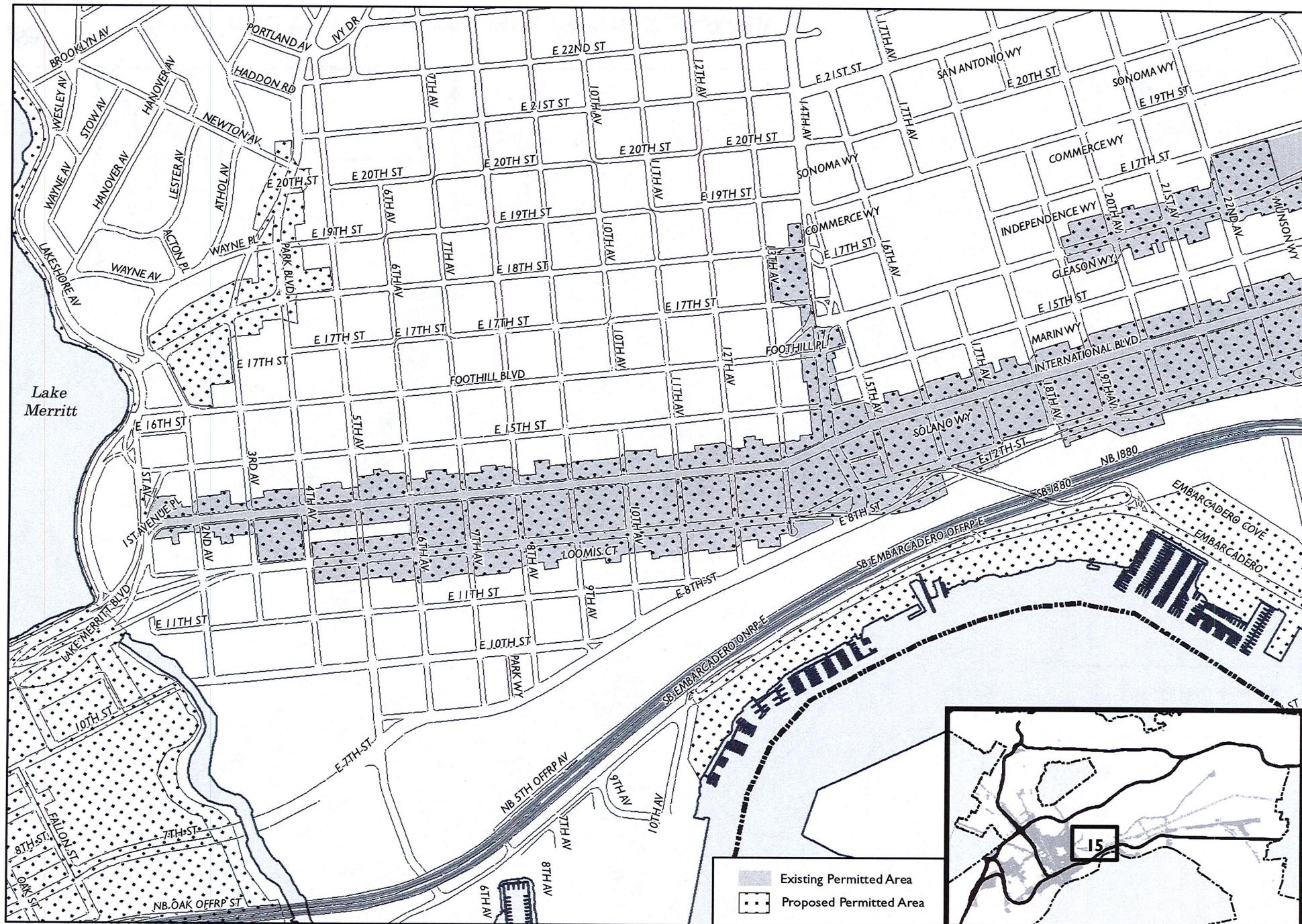
2016 Food Vending Program Permitted Area

0 500 Feet



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Tile 14

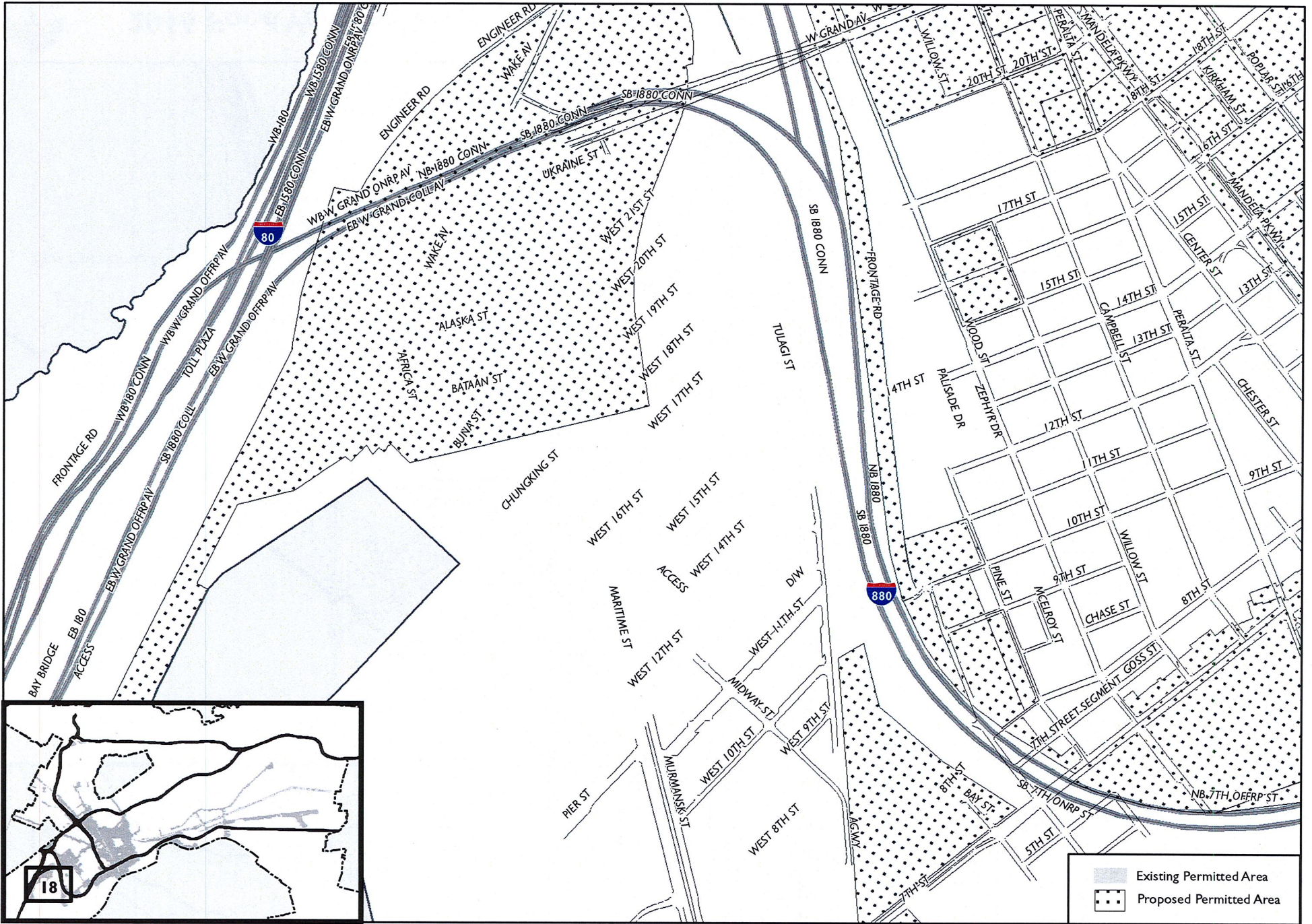


2016 Food Vending Program Permitted Area



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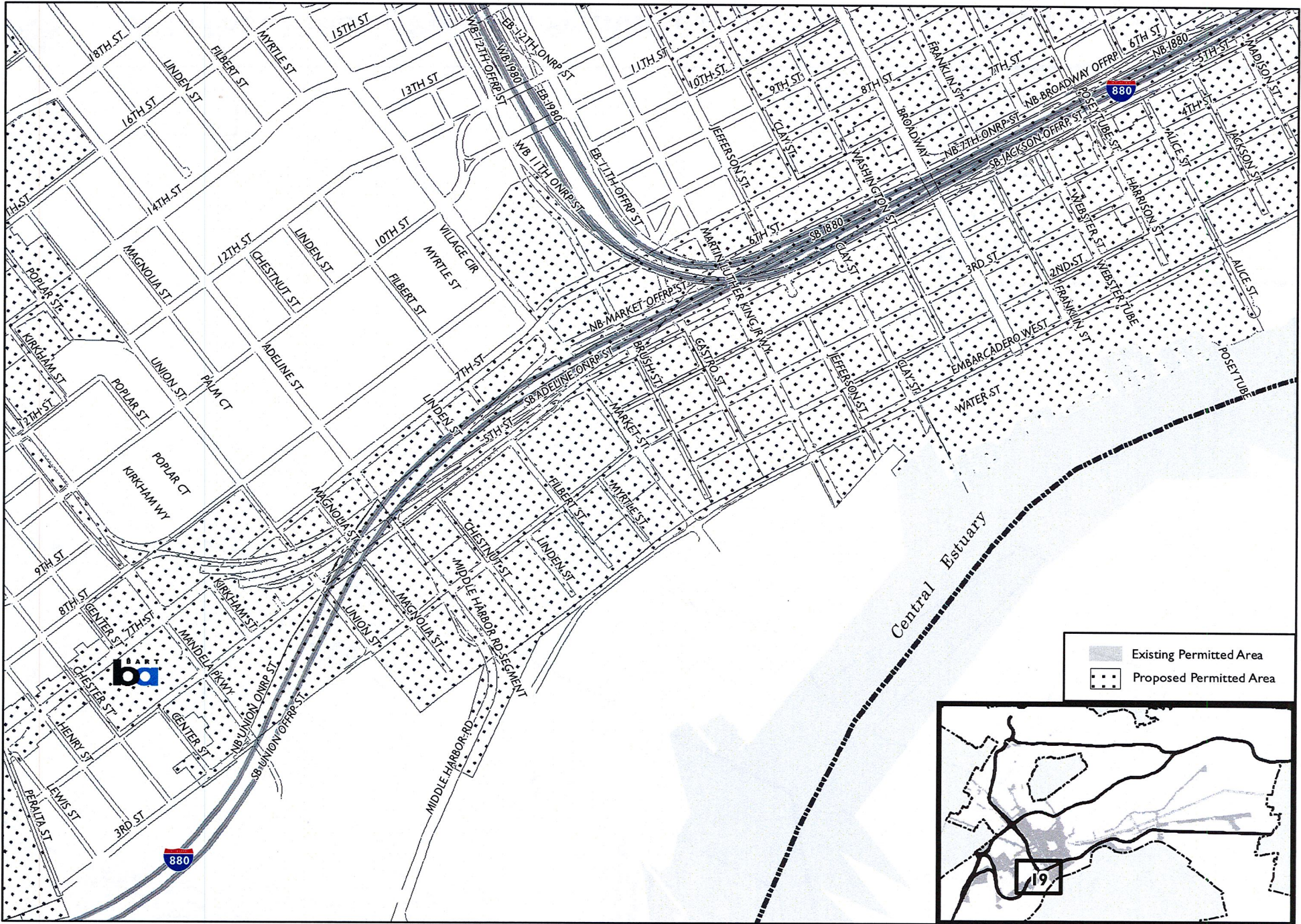
Tile 15



2016 Food Vending Program Permitted Area



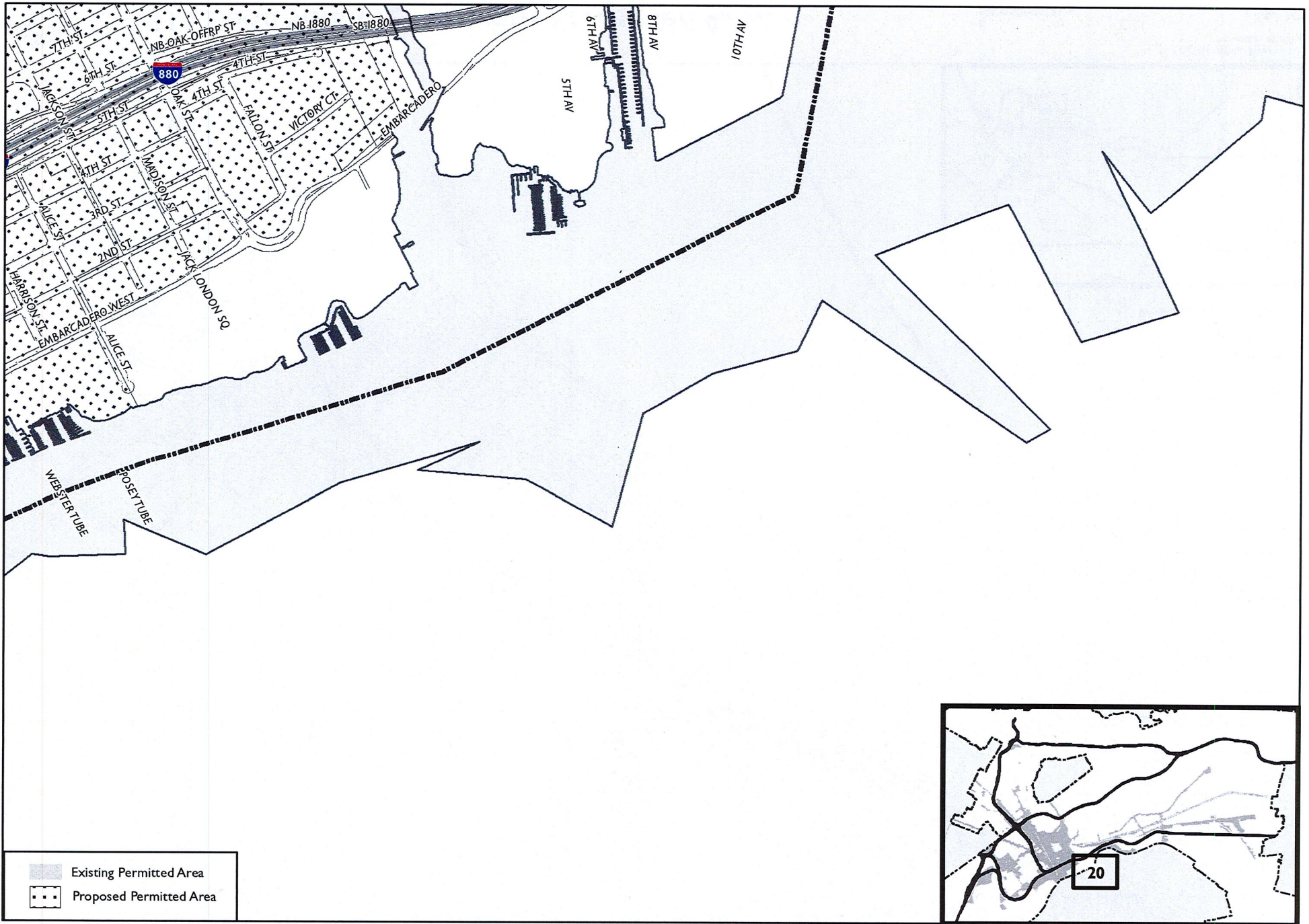
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2016 Food Vending Program Permitted Area



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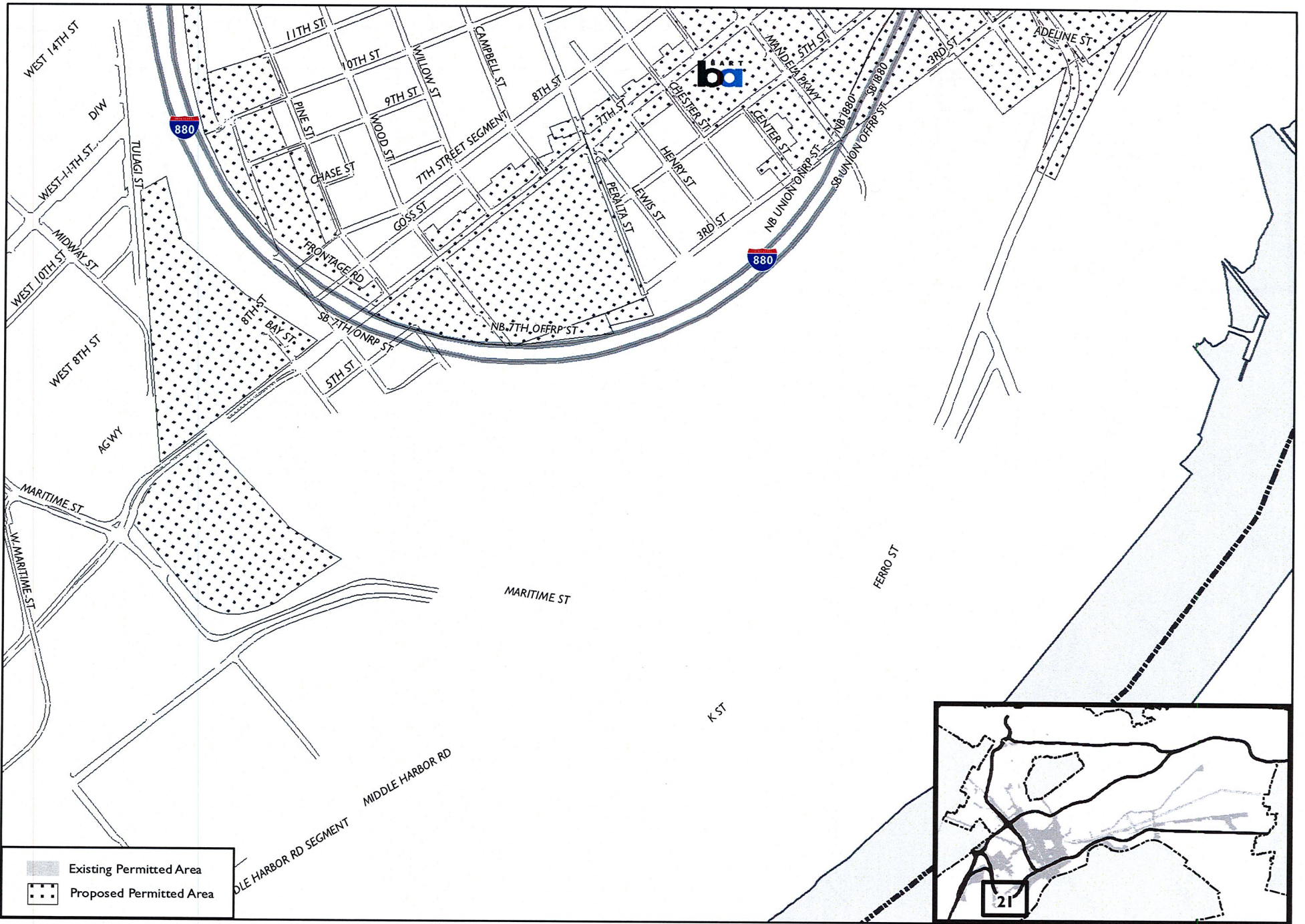
2016 Food Vending Program Permitted Area



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Planning and Building Department
November 30, 2016

Tile 20



-  Existing Permitted Area
-  Proposed Permitted Area

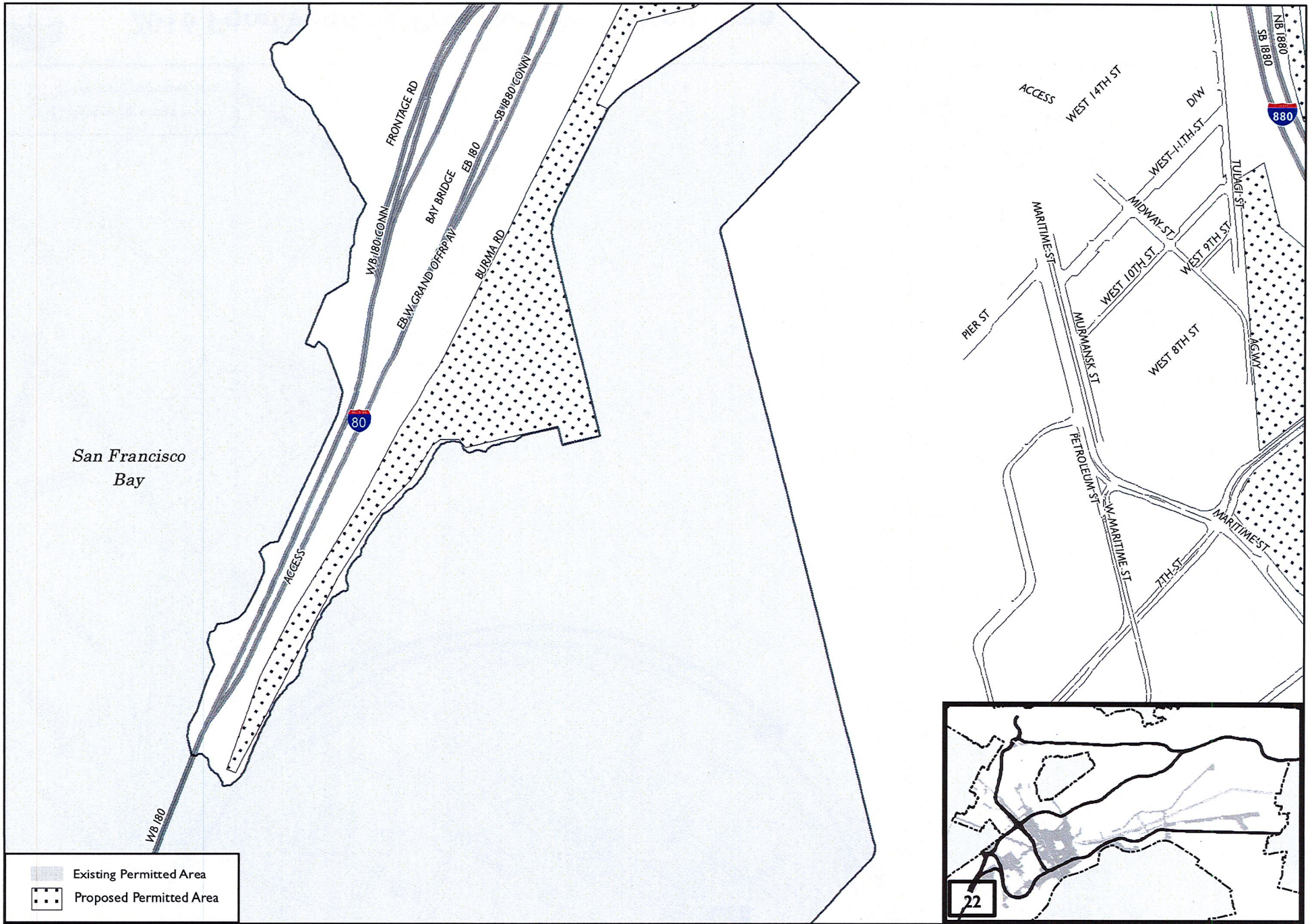


2016 Food Vending Program Permitted Area



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Tile 21



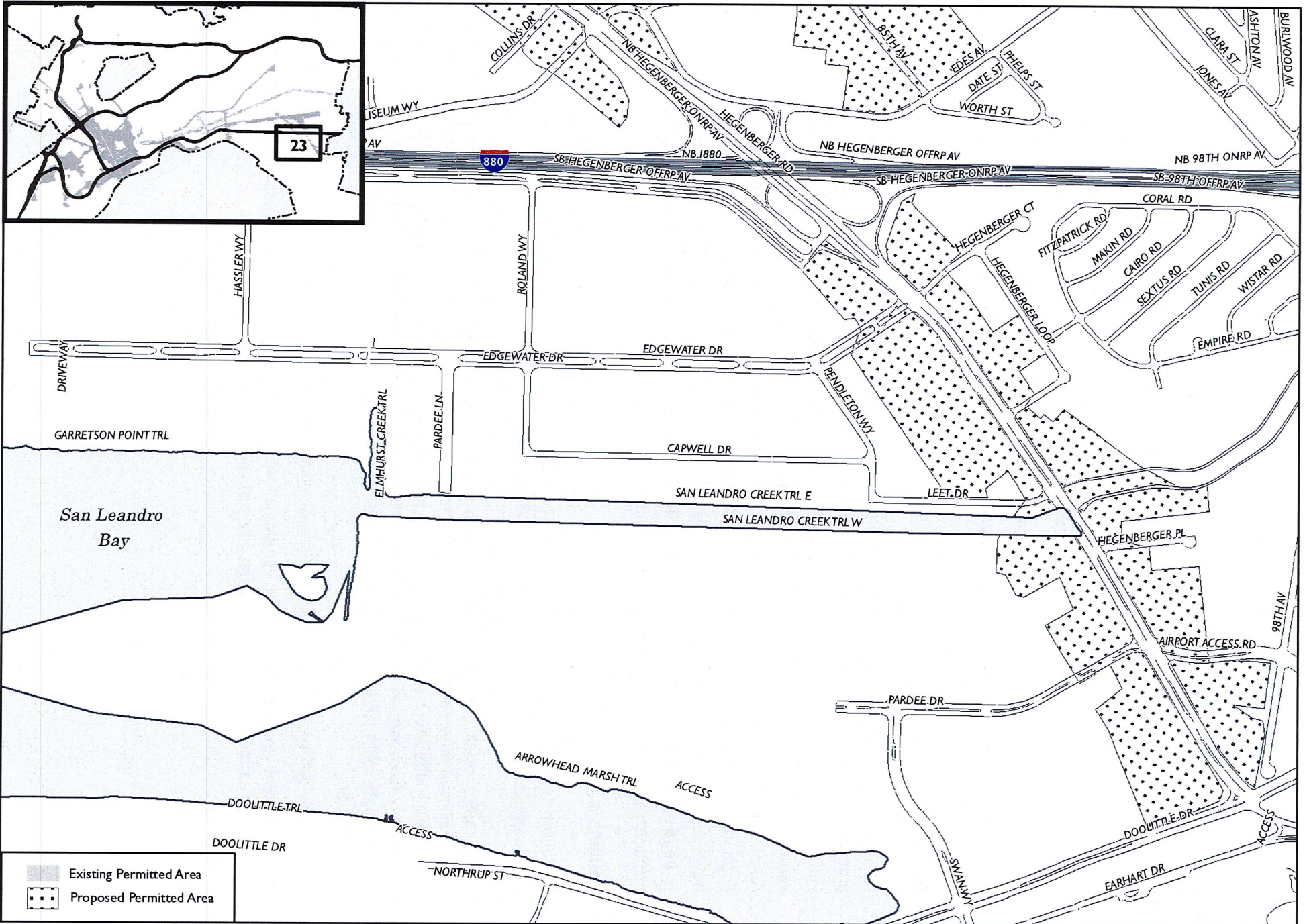
2016 Food Vending Program Permitted Area

0 500 Feet



Planning and Building Department
November 30, 2016

Tile 22



2016 Food Vending Program Permitted Area

Planning and Building Department
November 30, 2016





***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.”

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, 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

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Oakland City Planning Commission**STAFF REPORT****June 1, 2016**

Location:	CITYWIDE
Proposal:	<p>Establish a new citywide food vending permit program that would replace Oakland's existing food vending permit types and programs. The new citywide food vending program would permit, with certain restrictions, individual food vending on private property and from the public right of way in selected commercial and industrial areas. The new program would also permit group site vending citywide. Ordinance would 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: 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 Ordinance would also include revisions to other Planning and Municipal Code sections as minor conforming changes.</p>
Applicant:	City of Oakland
Case File Number:	ZA16009
Environmental Determination:	<p>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).</p>
City Council District:	All Council Districts
Action to be Taken:	Recommendations to the City Council
Staff Recommendation:	Recommend proposal to the City Council
For Further Information:	Contact case planner Devan Reiff at 510-238-3550 or dreiff@oaklandnet.com

ATTACHMENT F

SUMMARY

The proposed new citywide food vending permit program will replace Oakland's existing food vending permit types and programs. The program would permit, with certain restrictions, individual food vending on private property and from the public right of way in selected commercial and industrial areas. The new program will permit group site vending citywide. The proposal revises the definition of "Fast Food Restaurant Commercial Activities" in Section 17.10.280 of the Oakland Planning Code; and revises the following sections of the Oakland Municipal Code: 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 also includes revisions to other Planning and Municipal Code sections as minor conforming changes.

This proposal comes after a year of significant community outreach to merchants, restaurant owners, mobile food vendors, community members, neighborhood groups, business improvement district directors, as well as review by City staff in the Parks and Recreation department, Oakland Public Works, the Oakland Police Department, the Oakland Fire Department, and the City Administrator's office.

Staff is also preparing administrative rules and procedures to serve as guidelines for permit issuance and conflict resolution. These rules and procedures 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 make timely changes to effectively implement the new food vending program. These rules and procedures will be presented to the public in advance of the program implementation date, and approved by the Director of Planning and Building.

The proposal also requires the addition of new City staff to help administer and enforce the new food vending program, including positions in the City Administrator's Nuisance Abatement Division and the Planning and Zoning Division. New permit fees are proposed for the food vending program to cover the cost of these staff positions.

The map of proposed food vending areas includes selected commercial and industrial areas of the City.

The proposed new food vending program provides an important opportunity to increase neighborhood small-business opportunities, increase food choice options and access to affordable food in many underserved Oakland neighborhoods, and address problems with the existing food vending regulations and programs.

Without the new program, or the newly proposed enforcement and administrative staff, the current enforcement difficulties will continue.

BACKGROUND

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

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

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

At the March 19, 2015 Rules and Legislation Committee of the City Council, the Committee moved to place an item on the July 14, 2015 Community and Economic Development (CED) Committee agenda to: “adopt an ordinance amending Ordinance No. 12579 C.M.S. which establishes a permanent vehicular food vending program, and for staff to provide recommendations on expanding the vehicular food vending program citywide.” Planning staff presented an informational report to the CED Committee and described the present permitting and enforcement situation for food vending in Oakland, assessed programs elsewhere in the country, and highlighted considerations for future expansion (see **Attachment A** to this report¹). At the July 14th meeting, the CED Committee directed staff to develop a comprehensive food vending program proposal. This report contains the elements of that requested program.

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

COMMUNITY OUTREACH

Planning Bureau staff has met with a variety of stakeholders to gain diverse perspectives on the various current food vending programs, and to brainstorm ideas for an expanded citywide program. Meetings have been held with the following interested parties:

- Individual food truck and pushcart vendors;
- Group Site organizers;

¹ The July 14, 2015 Agenda report addresses other program details not covered in this report.

- Restaurant owners;
- Leadership of business improvement districts in Downtown, Koreatown/Northgate, Temescal and Fruitvale;
- Chinatown merchants;
- Oakland Chamber of Commerce;
- Chinatown Chamber of Commerce;
- Oakland Unified School District (OUSD) staff;
- Alameda County Environmental Health Department;
- Unity Council;
- Oakland Food Policy Council;
- HOPE Collaborative; and
- Community groups, including the West Oakland Neighbors and Hoover Residents Advisory Committee.

In addition, staff has coordinated five community meetings for the public and interested parties to discuss the major proposed components of a citywide mobile food program. The most recent community meeting with Central and East Oakland residents was held on May 9, 2016.

Staff collected feedback at these meetings through verbal discussion and written comment cards. This feedback has influenced policy recommendations by staff. Staff also created digital forms for input and developed a dedicated food vending webpage, which includes a listserv to provide updates on the proposed program. Throughout the planning process, feedback has also been welcomed through a publicized phone number and email address where the public can give additional comments.

NEW CITYWIDE FOOD VENDING PROGRAM

The proposed new Citywide Food Vending program will require the following city code amendments:

1. Revise the definition of “Fast Food Restaurant Commercial Activities” in Section 17.10.280 of the Oakland Planning Code, to remove the portions referring to vehicular food vending;
2. Replace 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.

Staff proposes to delete OMC chapters 5.51, “Food Vending Group Site Pilot Program”, 5.49, “Pushcart Food Vending Pilot Program”, and 8.09, “Vehicular Food Vending” and replace them with one new citywide Food Vending Program – that can be found in OMC Chapter 5.51 (see **Attachment B** to this report). The proposed new citywide food vending program would be accompanied by a map of the “Food Vending Program Permitted Area” (see **Attachment C** to this report). Administrative procedures to implement the program would also be included. These

administrative procedures are being prepared by Bureau of Planning staff, in coordination with Oakland Public Works, the Oakland Police Department, the Oakland Fire Department, and the City Administrator's Office, and will be available to the public prior to the effective date of the program; the procedures will be approved by the Director of Planning and Building.

As currently proposed, Planning staff will issue food vending permits to applicants, and will help resolve potential conflicts. This is a somewhat unusual administrative arrangement, since programs and regulations outside of the Oakland Planning Code (Title 17) are not typically within the administrative jurisdiction of the Bureau of Planning. However, based on the Planning Bureau's experience in administering similar permit types, staff determined that Planning should also administer this new program. Another reason for this administrative arrangement is that the Planning Bureau already issues permits for food vending in some situations - through review of Major Conditional Use Permits (CUPs) submitted for vehicular food vending, which is currently considered a Fast Food Restaurant Commercial Activity in the Planning Code. An important implementation element of the proposed new food vending program is to consider removal of *vehicular food vending* from the definition of "Fast Food Restaurant Commercial Activities" (see Page 9 in this report for more discussion on this item), which will remove the ability of food vending applicants to apply for a conditional use permit, which is a permanent land use entitlement for fast food on a parcel.

This 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 allow for the consolidation of regulatory authority over the permitting of mobile food vending in a single municipal code chapter, and thereby establish one unified Food Vending Program for the entire city.

Comparison of current regulations to new regulations.

In February 2016, the City posted a memo to the food vending project website which explained the major changes to the mobile food vending programs. The proposed changes include:

- **Expansion of Vending areas:** Staff proposes to greatly expand the areas where an individual food vendor, or a group of food vendors clustered together on a single site, also known as a "Group Site" ("food pod") event can locate, by authorizing food vending in selected industrial and commercial areas of the City. Individual food vendors would be able to apply to sell in downtown, West Oakland and North Oakland. Currently, the areas where an individual vendor can sell are limited to private property in the Fruitvale neighborhood and commercial streets in Central and East Oakland (International Blvd, Fruitvale, Foothill, and San Leandro Street). Under the proposal, these streets will continue as permitted food vending areas. The proposal also expands food vending to the commercial sections of MacArthur Boulevard in the Laurel and Dimond neighborhoods. Group Sites would be allowed in the Fruitvale neighborhood, and on commercial streets of Central and East Oakland (the proposal allows group sites in Council Districts 5, 6 and 7, where currently there are prohibitions).

- **Food sales from the street and sidewalk allowed:** Proposal would allow food vendors permission to sell from public streets and sidewalks. On-Street vendors will have to pay all applicable parking meters and observe parking regulations (such as yellow curbs or parking time limits). Currently, no on-street food vending is permitted in Oakland.

Sidewalk food vending, such as from roaming Pushcarts and stationary “hot dog cart” type trailers, would also be permitted, preferably, on wider sidewalks, only where there is enough pedestrian clearance and ADA access. Currently, no stationary sidewalk vending is permitted in Oakland.

- **Expanded number of Group Site locations:** Group sites (also known as “food pods”) will be defined as two or more food vendors selling together on the same site. The proposal would allow Group site organizers to apply for up to five different locations in Oakland. Currently, the regulation limits two locations per organizer. Also, each Group site would be allowed to conduct sales up to three times a week (an increase from two times per week currently). On private property, group sites would be allowed to sell with no limitation on the number of days. This is to encourage food pods, or a food vending gathering to be permanently housed on a surface lot, similar to those in San Francisco² and in Portland, OR.
- **Required Fire Inspections:** An annual inspection by the Oakland Fire Department will be required for individual food trucks or trailers/pushcarts which use gas for cooking. This is not currently required, and is an important health and safety consideration, given recent explosions in other cities.³
- **Healthy Food Vending:** The selling of healthy foods, which include, but are not limited to: fruits, vegetables, as well as 100% fruit and vegetable juices; whole grain products; dairy products; and non-dairy milks (made from soy, coconut, rice and/ or almonds), will be encouraged. Healthy food vendors will be given incentives in the proposal, particularly the ability to sell within 500 feet of a school, which is currently prohibited.
- **Grandfathering:** The proposed program, in certain circumstances, would allow long-standing food vendors to continue to sell from current locations (known as “grandfathering”). The administrative procedures will list the criteria for granting this special permission.
- **Enforcement:** The program proposes the creation of new staff in the City Administrator’s office who will be given enforcement and citation authority for food vending.
- **Limits to number of pushcart vendors:** A maximum of 100 food vending permits will be issued for pushcarts to operate within the City. At no time shall more than one hundred

² The SoMA StrEat Food Park, at 11th Street and Division, is one example.

³ The City of Philadelphia in 2014 experienced a propane tank explosion in a mobile food truck.

permits be active. This is in an increase from the current limit of 60 pushcarts, to allow these types of vendors to be permitted in areas of West Oakland, North Oakland, and downtown. The definition of a pushcart includes “hot dog stand” type carts, which are pulled on wheels to a location and dropped off, typically on a sidewalk, or in a corner of a parking lot.

Of the total 100 Food Vending Permits available for issuance to pushcarts, no more than 30 permits will be issued for pushcarts 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.

- **Annual and Temporary permits:** The program will create two types of permits, annual permits renewed every 12 months, and temporary permits which are effective for 90 days. There will be a reduced fee for the temporary permit. This is intended to create an opportunity for vendors new to Oakland to try different areas of the City, or to sell seasonal products.
- **Fees for Permits:** The current permit fee for a food truck to operate on private property in the “pilot” area is \$1,800; for a pushcart on the sidewalk in the permit area, the fee is \$850⁴. The fees for the proposed program are intended to cover new positions at the City Administrator and Bureau of Planning for enforcement and administration, and are intended to approximate the same amount as the current program, for both food trucks and pushcarts. However, the proposed program will likely have additional permit fees which are not in the current program: 1) fire department inspection of gas-burning facilities; and 2) payment into the City’s excess litter fee program.

Map & changes to the map after community comment

In early 2016, City staff initially proposed a map for the new food vending program which included all commercial and industrial zones of the City, as well as open space areas such as larger parks, neighborhood parks, and athletic fields. After extensive community comment, staff has reviewed and revised the proposed Food Vending Program Permitted Area (**Attachment C** to this report), and removed some of the initial areas for food vending, in order to limit the expansion of food vending in areas which are primarily residential, or where there is a high likelihood that negative impacts could occur from introducing food vending activities (such as at the intersections with narrow streets). These revisions include removing certain neighborhood parks and athletic fields; the streets around Highland Hospital; the sections of MacArthur Boulevard from 73rd Avenue to the San Leandro border, as well as International and San Leandro

⁴ Both amounts include the cost of a \$56 zoning clearance.

Streets, between 98th Avenue and the San Leandro border in East Oakland; the section of Martin Luther King Jr. Way in Downtown from 14th to 7th Streets; and smaller shopping centers in the Oakland hills surrounded by residential development. Nothing precludes the Commission or the Council from adding, or removing, additional areas on the proposed Food Vending Program Permitted Area map as are deemed appropriate, or not appropriate for food vending.

Separately, an option is presented to remove the area of Frank Ogawa Plaza, and many of the streets bordering it, including Latham Square, from the Program Permitted Area (**Attachment D**). Frank Ogawa Plaza is a unique commercial area in the City, where: 1) the land and many of the buildings are publically owned; and 2) existing restaurants and stores are only accessed by customers from within the Plaza -- there are few customers coming from the primary streets of Broadway or Telegraph Avenue. Latham Square will soon open with specific design features (such as lowered curbs) that will allow for occasional closure of Telegraph Avenue for special events, which might include food vending.

Location Requirements

Individual food vending facilities or Group Sites will not be permitted to block or impede access to:

- Required parking or driveways;
- Bicycle racks;
- Signal crossings;
- Required on-site parking;
- Parking meters;
- Pedestrian or bicycle routes;
- Emergency vehicle routes;
- Building ingress and egress;
- Required handicapped accessibility routes and curb cuts;
- Easements;
- Trash enclosure areas or access to trash bins/trash enclosures; or
- Other City facilities, as determined by the City Administrator.

Individual food vending facilities and Group Sites must maintain site circulation and access consistent with the Americans with Disabilities Act (ADA).

All food vending facilities on public sidewalks are to be located such that a minimum of 5½ feet of unobstructed improved sidewalk or 50% of the overall improved sidewalk width, whichever is greater, is provided. For purposes of the minimum clear path, parking meters, traffic signs, trees, tree wells, sidewalk planter strips, and all similar obstacles shall constitute obstruction. Sidewalks with greater than 10 feet of width will be given preference for pushcart vending.

Each individual food vending facility and Group Site will need to locate within 200 feet of a restroom facility that employees have permission to access. This is already a requirement of the Alameda County Environmental Health Department permit for food vendors.

CHANGES PROPOSED FOR THE OAKLAND PLANNING CODE

As mentioned earlier in this report, the proposed program would remove “mobile food vending” from the definition of “Fast Food Restaurant Commercial Activities” in Section 17.10.280 of the Oakland Planning Code. If adopted, this would remove the current conditional use permit requirement for mobile food vending, a land use entitlement, and replace it with the requirement for an administrative permit under the authority of the citywide food vending program. The proposed amendments to Section 17.10.280 are shown below (deletions are shown in ~~strikethrough~~ and additions are shown in underline):

17.10.280 Fast-Food Restaurant Commercial Activities.

A. Fast-Food Restaurant Commercial Activities include the retail sale of ready-to-eat prepared foods and beverages, for on- or off-premises consumption, whenever the foods and beverages are available upon a short waiting time and are primarily served in or on disposable wrappers, containers, or plates. Fast-Food Restaurants may also exhibit other design and operating characteristics, including: (1) a limited menu; (2) food is typically ordered and served at a service counter; (3) food is paid for prior to consumption; (4) the facility in which the activity/use is occurring provides a take-out counter space and space for customer queuing. This classification ~~They also includes~~ certain activities accessory to the above, as specified in Section 17.10.040.

~~B. Except as may otherwise be allowed in Oakland Municipal Code (OMC) Chapters 5.49, 5.51, 8.09, and 9.52, the sale of ready-to-consume prepared foods from trucks, pushcarts or other movable equipment located on public or private property on a semi-permanent basis during hours of operation. Vehicular food vending generally has the following characteristics:~~

- ~~• Food is ordered and served from a take-out counter that is integral to the catering truck;~~
- ~~• Food is paid for prior to consumption;~~
- ~~• Catering trucks, pushcarts or other movable equipment from which the food is sold typically have a take-out counter and space for customer queuing;~~
- ~~• Food and beverages are served in disposable wrappers, plates or containers; and~~
- ~~• Food and beverages are prepared and sold for off-site consumption.~~

~~This classification also includes certain activities accessory to the above, as specified in Section 17.10.040.~~

Other changes to the Planning Code have also been identified to support implementation of the new food vending program, including:

- Adding *mobile food commissary* to the definition of “Custom Manufacturing Industrial Activity”. Currently, there is no explicit definition of this business activity in the Planning Code, leading to different interpretations of this unique business type. Every food vendor is required by Alameda County Environmental Health to have a commissary, in order to clean and store vehicles after vending. Adding a limitation note to each

Permitted Activity chart in all Commercial and Industrial Zones in the Planning Code, indicating that Commissaries meeting certain standards and used for mobile food vending are a permitted activity in all zones which allow Custom Manufacturing and do not require a conditional use permit.

Unfortunately, due to other code amendment initiatives currently underway that will be proposing amendments to many of these same Planning Code sections, it is not feasible to move forward at the present time with the recommended commissary-related Planning Code changes above in support of the new food vending program. Instead, the proposal is to include only the recommended change to the definition of “Fast Food Restaurant Commercial Activities” in Section 17.10.280 at the present time, and defer the Planning Code changes related to commissaries to the next code update package that staff is planning to bring forward for review later this year.

CHANGES TO THE OAKLAND MUNICIPAL CODE

The new Citywide food vending program being proposed will be located in Oakland Municipal Code, Chapter 5.51. The new program will replace the current Chapter 5.51, “Food Vending Group Site Program” in its entirety; as well as the current programs in Chapters 5.49 “Pushcart Food Vending Pilot Program” and Chapter 8.09 “Vehicular Food Vending”. These programs, including the Group Site program, would be revised and combined into one Chapter, 5.51, to be called “Food Vending.”

Ancillary changes throughout the Municipal Code are also proposed. Those changes will be made available for the Community and Economic Development Committee hearing.

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

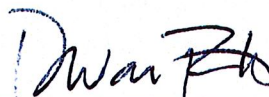
Staff has heard from business owners, associations and community groups and residents, made revisions to the original proposal, and presents this proposed new food vending program and enforcement proposal as the best opportunity to have legal food vending from private property and the public right of way in designated commercial and industrial areas throughout Oakland.

Staff recommends the Planning Commission hold a public hearing, hear public comments, give staff comments, and forward the food vending proposal and related Oakland Municipal code and City Planning Code amendments to the City Council.

RECOMMENDATION

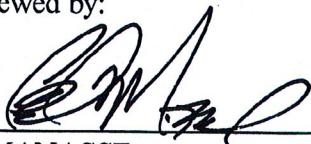
- 1) Affirm staff's environmental determination; and
- 2) Recommend that the City Council adopt the proposed food vending program and permitted areas map.

Prepared by:



DEVAN REIFF, AICP
Planner III

Reviewed by:



ED MANASSE
Strategic Planning Manager

Reviewed by:



DARIN RANELLETTI
Deputy Director Bureau of Planning

Approved for forwarding to the
City Planning Commission:



RACHEL FLYNN, Director
Department of Planning and Building

ATTACHMENTS:

- A. July 14, 2015 CED Agenda Report
- B. Proposed new Food vending program, new text for O.M.C. 5.51.
- C. Food Vending Program Permitted Area map
- D. Frank Ogawa Plaza Proposal