



Office of the City Manager

March 24, 2016

To: Honorable Mayor and Members of the City Council

From: *DWR* Dee Williams-Ridley, City Manager

Subject: Food Cart Vendors on Bancroft Way

At the March 8, 2016 Council meeting, Council Member Arreguin requested an update on staff efforts to assist food cart vendors located on Bancroft Way at College Avenue. As outlined in the attached memo to Council from October 2015, permits to operate food carts at that location will expire permanently on March 31, 2016 in accordance with the 2013 agreement between the vendors, the City, and adjacent property owners.

Office of Economic Development (OED) staff has conducted outreach to the affected business owners, beginning in August 2015 and continuing through the present, to offer assistance with the transition of their businesses, including information about small business technical assistance providers, securing a permanent location, and financing options such as the City's small business revolving loan fund. Stuart Baker, Executive Director of Telegraph Business Improvement District, has also reached out to the business owners to encourage them to pursue the establishment of brick-and-mortar locations within the Telegraph District. Most recently, OED staff met with Ms. Ann Vu on Tuesday, February 16 and on Tuesday, February 23 to discuss possible next steps and resources for business transition.

City staff will continue to provide direct assistance to these business owners as needed. Any inquiries from the businesses should be relayed to Jordan Klein, Economic Development Project Coordinator, at 510-981-7534 or [jklein@cityofberkeley.info](mailto:jklein@cityofberkeley.info).

Attachment:

1. October 14, 2015 Memo: Expiration of Food Truck Permits on Bancroft Way

cc: Gil Dong, Interim Deputy City Manager  
Mark Numainville, City Clerk  
Ann-Marie Hogan, City Auditor  
Michael Caplan, Economic Development Manager  
Henry Oyekanmi, Finance Director  
Matthai Chakko, Assistant to the City Manager  
Jordan Klein, Economic Development Project Coordinator



Office of the City Manager

October 14, 2015

To: Honorable Mayor and Members of the City Council  
From: *Dee* Dee Williams-Ridley, Interim City Manager  
Subject: Expiration of Food Truck Permits on Bancroft Way

The permits that authorize three mobile food facilities (food trucks) to operate on Bancroft Way and College Avenue are set to expire on March 31, 2016. One of the vendors, Ms. Victoria Shih, contacted the Berkeley Finance Department on August 30, 2015, seeking a new permit to continue operation at that location beyond March 31, 2016.

Per Council's request of July 2, 2013, staff worked with the vendors and issued a permit for one year, with two annual options to extend the permit for one year, for a maximum period of three years, after which the permits will expire permanently on March 31, 2016. The permit application and conditions of use clearly state that the permit will not be renewed to any vendors. The City, the University, local property owners and the three vendors agreed to the conditions of use, including the permanent expiration date of the permits.

I have also received communications from the University of California, Berkeley, Telegraph Business Improvement District, and another local property and business owner in the past month supporting the termination of the mobile food vendor permits on Bancroft Way and College Avenue.

Based on staff recommendations and the conditions of use of the 2013 food vending permit, the applicant will be denied a new permit to continue operations at Bancroft Way and College Avenue.

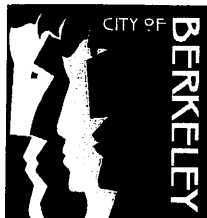
The Office of Economic Development (OED) will continue to offer technical assistance to the existing mobile food vendors. This assistance includes making connections with the Telegraph Business Improvement District, Alameda County Small Business Development Center, the Berkeley Revolving Loan Fund, Mr. Matt Cohen, the founder and operator of Off the Grid, area brokers and property owners for securing ground-floor commercial space.

The vendors may apply for use permits in other locations. Staff will review those applications for zoning requirements and compliance with Berkeley Municipal Code Chapter 9.49 (Food Vending on Sidewalks and Right of Way).

Attachments:

1. September 28, 2015 Memo to Gil Dong, Interim Deputy City Manager
2. Permit Application – Jack Huynh, Vendor 1
3. Permit Application – Jason Chou, Vendor 2
4. Permit Application – Ann Mylinh Vu, Vendor 3

cc: Gil Dong, Interim Deputy City Manager  
Mark Numainville, City Clerk  
Ann-Marie Hogan, City Auditor  
Michael Caplan, Manager, Office of Economic Development  
Henry Oyekanmi, Finance Director  
Matthai Chakko, Assistant to the City Manager/PIO



Office of Economic Development

September 28, 2015

To: Gil Dong, Deputy City Manager  
From: Michael Caplan, Economic Development Manager  
Submitted by: Jordan Klein, Economic Development Project Coordinator  
Subject: Expiration of Permits for Food Trucks on Bancroft Way

Current Situation

On August 30, 2015, Victoria Shih, the operator of one of the mobile food facilities (i.e., food trucks) that operates regularly at the intersection of College Ave and Bancroft Way, contacted City of Berkeley Finance Department staff seeking a new permit to operate at that location, as her current permit expires on March 31, 2016. This memo and attachments contain background information on this matter and analysis of possible courses of action.

Background

There are two chapters of Berkeley Municipal Code (BMC) that relate directly to this matter. In chapter 16.18 RIGHT-OF-WAY ENCROACHMENTS AND ENCROACHMENT PERMITS, section 16.18.030 prohibits for-profit enterprises in the public right of way; the City typically denies new applications for mobile vending based on this section. Chapter 9.49 FOOD VENDING ON SIDEWALKS AND RIGHTS-OF-WAY outlines the specific conditions and locations within which mobile food facilities may operate. Section 9.49.040 **Designation of sites for food vending--Cancellation of sites on University property** states:

- A. Food vending shall be allowed only in commercially zoned areas along Bancroft Way and College and Telegraph Avenues, at locations specified by the City Manager from time to time.
- B. Allocations of sites on property owned by the University of California that are outside the City's right of way are subject to cancellation upon 60 days written notice by the University of California. In such event the University or City may, but need not, offer an alternative site for relocation of any displaced food vendor(s). (Ord. 6702-NS § 1, 2002)

Mobile food facilities had, for decades, operated on University of California property along and near Bancroft Way. (Business license records in Accella show that one such facility, Heavenly Foods, has been issued a permit for operation at that site at least as far back as 1992.) In 2002, Council adopted BMC chapter 9.49 which acknowledged the University's right to cancel mobile food vending sites on their property, designated sites

within the City right-of-way where mobile food vendors may operate, and clarified the permitting process and operating standards for those facilities (see Attachment A). Subsequently, the mobile food facilities relocated to the north side of Bancroft Way at the intersection with Telegraph Avenue, adjacent to Sproul Plaza.

In 2013, to accommodate UC Berkeley's construction of the new student and community center at Lower Sproul, the mobile food facilities were relocated eastward on the north side of Bancroft Way, immediately east of College Avenue, adjacent to Boalt Hall. See Attachment B, a memo from Christine Daniel to the Mayor and City Council, for details on that relocation. The reinstatement of food vendor permits at the new location was implemented conditionally, as outlined in Attachment C. Those conditions included:

- Permits will expire permanently on March 31, 2016 and will not be renewed.
- Permits are nontransferable.
- Permit holders should take actions to avoid negative impacts on surrounding businesses.

Each of the permit holders was required to sign a statement acknowledging these conditions before their permits were reinstated.

All of the outstanding permits for mobile food facilities operating on Bancroft Way will expire on March 31, 2016 and are no longer eligible for renewal. Therefore, for the mobile food facilities to continue operating, the City would need to issue new permits.

#### Telegraph Stakeholder Concerns

The Office of the City Manager has received a number of communications from local stakeholders that oppose the issuance of any new mobile food vending permits. On August 31, 2015, Emily Marthinsen, UC Berkeley's Assistant Vice Chancellor, Physical & Environmental Planning, sent a letter to the Interim City Manager (Attachment D) identifying this as a critical issue and outlining a number of practical reasons why the food vendors should not continue to operate on Bancroft Way, including:

- The food carts disconnect campus from the adjacent commercial district.
- The food carts impede the significant flow of pedestrians and transit.
- The food carts and their ancillary impacts (e.g., lines of patrons, gear) impede emergency operations, signage and signal visibility, passenger loading, and access for people with disabilities.
- The food carts are incompatible with the City's and University's zero waste goals.

The City has received several communications (including e-mails on March 18, 2014 and August 18, 2015, included here in Attachment D) from Daryl Ross, a local property owner and operator of Caffe Strada at College Avenue and Bancroft Way, outlining his opposition to the reissuance of any permits for mobile food vendors in the Telegraph district. His arguments include:

- Brick-and-mortar businesses operate year-round and make significant contributions to the City of Berkeley, whereas the mobile food vendors do not, giving them an unfair advantage over other businesses.
- The mobile food vendors negatively impact their surrounding environment (e.g., through odors, trash) and their customers take advantage of resources provided

by surrounding businesses (e.g., seating, condiments).

- The mobile food vendors are in violation of the conditions they agreed to upon reinstatement of their permits to temporarily operate at College Avenue.

On September 22, 2015, Stuart Baker, Executive Director of Telegraph Business Improvement District, sent a letter to the Interim City Manager (Attachment D) stating the organization's opposition to the continued operation of mobile food vendors in the district, citing their unfair advantages over brick-and-mortar businesses and negative impacts on aesthetic conditions and the flow of pedestrians and traffic. TBID suggested that the mobile food vendors would be welcome in the district as storefront businesses, and offered to provide assistance to the vendors in identifying and securing ground-floor commercial spaces and pursuing the transition of their business model.

There are a number of contextual factors that can inform the City's course of action on this matter, including:

- The construction at Sproul Plaza and resulting reorientation of Bancroft Way has created conditions that are no longer compatible with the operation of mobile food facilities.
- In 2013, the City, the University, local property owners and the vendors themselves agreed that permits for mobile food facilities would not be reissued at their present location at College Avenue.
- Other locations in the district are not suitable due to the narrowness of the right-of-way of College Avenue and Telegraph Avenue, the inappropriateness of direct proximity to brick-and-mortar businesses, and lack of customer access.
- These vendors are not compatible with current priorities to support local brick-and-mortar businesses, improve public realm conditions, and reduce waste.
- The vendors are failing to comply with several of the stipulations that they agreed to upon reinstatement of their permits (Attachment C).

OED staff has visited the mobile food facilities on August 18 and on September 23 to offer assistance in identifying a ground-floor commercial space for transitioning businesses. At least one vendor has indicated that they were uninterested in identifying a retail space and would prefer to remain in operation under present conditions.

### Next Steps

Possible courses of action include:

- The City Manager could determine that, as a result of the Sproul Plaza construction project, there are no longer any suitable locations for mobile food vending in the Telegraph district, and direct Finance Department staff to respond to any inquiries from current vendors seeking to have permits reissued with notification that the City does not plan to reissue mobile food facility permits in the Telegraph district.
- The City could choose to issue new permits for mobile food vendors in to-be-determined locations within the Telegraph district (e.g., on Bancroft Way). In this case, the City would likely alienate Telegraph district stakeholders and strain 'Town-Gown' relations. In addition, UC Berkeley transportation planners warn that this course of action would negatively impact traffic flow, public transit

access and pedestrian safety.

In any case, OED staff will continue to offer technical assistance to the existing mobile food vendors, including:

- Connect vendors with TBID, Alameda County Small Business Development Center, Berkeley Revolving Loan Fund, and other organizations and tools that can assist in identifying a location or transitioning their business.
- Inquire to area brokers and property owners that might be interested in helping the businesses secure a lease for ground-floor commercial space.
- Offer to make an introduction between vendors and Matt Cohen, the founder and operator of Off the Grid, the series of mobile food facility markets that occur around the Bay Area.

Attachments

A: 5/21/2002 Staff Report on Adoption of BMC Chapter 9.49

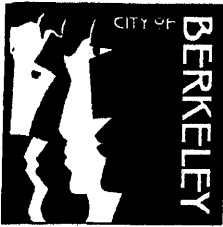
B: 7/24/2013 Memo to Council Regarding Relocation of Food Vendors

C: 2013 Stipulations for Reinstatement of Food Vendor Permits

D: Communications from Stakeholders (UC Berkeley, Daryl Ross, Telegraph Business Improvement District)

Cc: Dee Williams-Ridley, Interim City Manager

Henry Oyekanmi, Interim Director of Finance



## ATTACHMENT A

Office of the City Manager

### ACTION CALENDAR

May 21, 2002

CF # 178-01

To: Honorable Mayor and  
Members of the City Council

From: Weldon Rucker, City Manager

Subject: REPEAL AND REENACT BERKELEY MUNICIPAL CODE CHAPTER 9.49  
REGULATING FOOD VENDING ON SIDEWALKS AND RIGHTS-OF-WAY  
AND APPROVE RESOLUTION ESTABLISHING ALL NECESSARY FEES

### RECOMMENDATION

1. That Council complete the public hearing that began on April 16, 2002 on the resolution establishing food vending fees;
2. Adopt first reading of an ordinance repealing and reenacting Chapter 9.49 of the Berkeley Municipal Code regulating Food Vending on Sidewalks and Rights-of-Way; and
3. Adopt a resolution establishing food vending licensing fees, effective concurrently with the effective date of the ordinance.

### REPORT UPDATE – RECENT EVENTS AND COMMUNICATIONS

On April 16, 2002 Council received the promised food vending report, recommended ordinance and fee resolution from staff. At that time, Council opened a public hearing on the resolution to establish food vending fees and heard comments from the public, in addition to communications they had received, requesting that the hearing be continued to allow for additional community input into the process. Specifically, representatives of the Telegraph Area Association (TAA), the Telegraph Property & Business Management Corporation (Business Improvement District, TBID), and the University of California requested opportunities for input. Council complied with these requests and continued the public hearing until now.

As stated by staff in April, the food vending report, recommended ordinance and fee resolution were prepared within a very short timeframe, and staff regrets not taking the time to meet with these organizations during that process. As also stated, the historic concerns and objections of these organizations have been known for years. Furthermore, staff's recommendation was guided by Council's September 25, 2001 request to "re-establish support for maintaining the presence of food carts in the City" as well as to "clarify or initiate a process and criteria for beginning or continuing a food cart license and site reservation." For additional details on the background,



process and ordinance recommended to Council, please refer to the Action Calendar report and attachments for the Council meeting of April 16, 2002.

Since the public hearing was continued from the April Council meeting, staff has met with the boards of directors of both TAA and TBID, and has been in communication with representatives of the University. The concerns raised and actions that have been taken by these organizations are summarized as follows (see also the written correspondence mentioned, attached):

Concerns and objections raised by Telegraph area representatives from TAA, TBID and UC:

1. The number of food vendors at Bancroft and Telegraph (there are currently three vendors operating here, and another at Bancroft and College).
2. Litter and refuse generated by food vendors and/or evident in their vicinity.
3. Health and safety related to the preparation of food being sold.
4. Tacky appearance of the food vending facilities (carts).
5. Traffic congestion/disruption of traffic, primarily related to when vendors deliver and remove their vending facilities from the location.
6. Enforcement of ordinance. City staff emphasize that enforcement is a high priority for administration of the proposed new regulations.
7. Unfair competition to storefront food businesses; also expressed as, or related to, comments that the City subsidizes food vendors by allowing them to use rights-of-way.
8. "Intent of original ordinance" for sidewalk food vending to be an "incubator" business is not included in the ordinance. The ordinance regulating the vending of food and food products on public sidewalks was enacted in 1981, at which time it was separated from the original street vending ordinance passed in 1973, and while an incubator intent may have been discussed, it is not written in any version of the ordinance to date.

Telegraph Area Association:

Since the April 16<sup>th</sup> Council meeting, when Council responded to the request from TAA to "postpone or continue the public hearing," staff attended the TAA board meeting on May 7<sup>th</sup> to provide information and answer questions. At that time, the board expressed appreciation for the opportunity to be in the "communications loop" for the community, but had no substantive comments and took no further action.

Telegraph Property & Business Management Corporation (Business Improvement District):

City staff attended the special meeting of TBID on April 22<sup>nd</sup> to provide information and discuss the ordinance. The TBID board did take action, which is communicated in their letter to Council (attached). The essence of this letter is that they object "to the number of permitted food vendor carts allowed for at the corner of Telegraph Avenue and Bancroft Way" and wish "to see the number of food vendor carts and their placement to be more strictly limited and ultimately decided jointly by the City, the University, the Telegraph Area Association, and the Telegraph Business Improvement District." In closing, they ask the Council to "reject the draft ordinance and return it to staff for refinement." While this letter specifically addresses food vending at Bancroft and Telegraph, it makes no mention of locations at Bancroft and College, or any other commercially zoned area in the City.

University of California:

In addition to University representation at the TAA and TBID meetings attended by City staff, there have been individual communications between both City and University staff and senior

management. These conversations addressed concerns consistent with those of other Telegraph area representatives, as well as the concept of reconfiguring Lower Sproul Plaza to include food vending. However, the latest written message from the University, dated May 8, 2002, is to comply with the 60 day notice required in the 1982 agreement between the University and the City "regarding the licensing of certain food vendors and "notify the City that the campus wishes to terminate this agreement effective January 1, 2003." The agreement identifies ten food vending sites along Bancroft Way: seven at Telegraph, four of which are in the public right-of-way; and three at College. (As already mentioned, there are currently three vendors operating at Telegraph and one at College.)

The University's letter also says they "feel it is not wise to expand the number of carts on campus at present or for the City to enact a new ordinance which includes provisions pertaining to University property." These provisions include: "Use of sites on property owned by the University of California that are not within the public right of way shall be subject to approval by the University" in section 9.49.070; and the newly revised section 9.49.040 stating "Allocations of sites on property owned by the University of California that are outside the City's right of way are subject to cancellation upon 60 days written notice by the University of California," which in the version submitted in April read cancellation only "in the event of major reconfiguration of the area by the University of California." Retaining these clauses in the ordinance allows for further discussion and decisions about any sites on University property to be made on a case-by-case basis.

It is important to note that, while there have been extensive meetings and discussions about food vending in the City since the mid 1990s and, as a result of these deliberations, several attempts to enact substantive changes in the 1981 ordinance, this is the first time any recommendation has reached the Council for legislative action. The message from the City Council action in September 2001 was clear: "re-establish support for maintaining the presence of food carts in the City" and "clarify or initiate a process and criteria for beginning or continuing a food cart license and site reservation." While this new ordinance did not anticipate completely eliminating vending sites on University property, it does address historical and current concerns, is consistent with Council's September directive to staff, and meets staff's objective to bring all vendors into full compliance with all relevant City regulations.

### ORDINANCE

Incorporating the input from the community process in recent weeks, staff has made several revisions to Berkeley Municipal Code Chapter 9.49 regulating Food Vending on Sidewalks and Rights-of-Way since it was presented in April. As before, the proposed ordinance recommended for Council adoption repeals the existing Chapter and reenacts a new Chapter. Staff now requests Council to complete the public hearing and adopt the fees recommended to administer this food vending licencing program, and approve the first reading of the ordinance.

Adopting these new regulations will, as directed by Council, clarify criteria and procedures for food vending on any site designated for this use by the City Manager in commercially zoned areas of the City, which are not limited to vending at locations on University property. In addition, the ordinance supports food vending services that meet required health and safety codes, present an appearance compatible with the City's standards, are based on reasonable selection criteria, and can provide an

option for convenient and low-cost meals and entrepreneurial ventures. For descriptions of the key features of the new ordinance, please refer to the Council report dated April 16, 2002, attached.

With notice by the University of California to terminate the 1982 agreement "regarding the licensing of certain food vendors," (see letter, attached) the City cannot approve, license or allocate a site for any food vendor located on University property beyond December 2002. While the notice says "in the future the campus will work directly with the food vendors and will permit, regulate, and inspect their operation," it did not indicate how many vendors or for what duration this applies. Of the four food vendors with active businesses at the time this report is being prepared, one is located in the right-of-way on Bancroft at Telegraph, and three are on UC property, two at Bancroft and Telegraph and one at Bancroft at College.

#### Summary of revisions to ordinance since April:

The ordinance submitted for your approval has been revised since April in response to input from Telegraph area constituents, especially by notice of the University's intention to terminate the existing agreement. While the ordinance did not anticipate the loss of vending sites on UC property, it does address critical concerns as well as Council's directive to staff, and it meets staff's objective to bring all vendors into full compliance with all relevant City regulations. The complete text of the proposed ordinance, as revised, is attached as Exhibit A.

- **Initial implementation of the ordinance:** Staff anticipates relocation of the current vendors to sites on the public right-of-way as of January 2003, and a transitional application process that will approve new food vending licenses and site allocations for use as of July 2003. It is presently unknown how many sites will be available during this transitional period.
- **Vending locations:** In addition to what has already been reported on food vending sites impacted by the University's termination of the agreement, the City Manager may specify locations in commercially zoned districts where food vending will be allowed, and vendors may be required to move to different sites over time. In making this determination, access, safety, aesthetics, cleanliness and similar factors, as well as the input of local businesses, will be considered. Amended references to the University have been retained in the ordinance, should they be relevant for any alternative arrangements.
- **Applications criteria:** Section 9.49.050 D has been revised to with several additions. These include: the "intended cuisine to be offered" as part of the business plan submitted, along with financial statements and plan of operations; whether the applicant's food vending business would be a new business, as opposed to an outlet for, or associated with an existing business; and the quality and features of the food vending facility proposed to be used, as submitted with the application.
- **Transitional procedures:** Section 9.49.055 is amended to reflect UC's termination of the agreement. To the extent sites are available, food vendors in operation as of February 1, 2002 may continue to operate through June 30, 2003 – not December 31, 2003. This still gives them more than another year to operate with their existing facilities, as long as they remain in compliance with all City regulations governing a food vending business. Their current licenses will expire without further option for renewal on June 30, 2003 and they must vacate their sites at that time, unless they are issued a food vending license and site allocation during a subsequent application review process. In addition, the City Manager will establish a process and timeline for accepting and processing applications for available sites to be allocated as of

July 1, 2003, or prior to that date should any sites be designated and available for allocation. This will provide an adequate opportunity for interested persons to prepare their applications, and, between applications that are otherwise ranked equally, shall give preference to applicants who were on the Food Vendors Waiting List as of February 1, 2002.

Status of food vending through June 2003:

- Currently active food vendors have been informed that the University is terminating the agreement effective January 2003.
- Staff is identifying sites within the right-of-way along Bancroft at Telegraph that could be used for the current and/or other food vendors who the City licenses. (The area at Bancroft and College does not have sufficient easement for food vending sites off of University property.)
- To the extent there are sites available, the current food vendors will be located within the public right-of-way as of January 1, 2003 and licensed to operate through June 2003, at which time their licenses and site allocations will expire. Alternatively, if they choose to do so, these vendors may exercise the option, if granted by the University, to remain on UC property during this time. In any case, these vendors must inform the City of their intention no later than September 1, 2002.
- Unless UC is willing to consider an alternative procedure that allows City regulated food vending on UC property, or additional locations for food vending are designated in other commercially zoned areas of the City, staff will postpone all food vending license applications, reviews and approvals until January 2003. At that time, the schedule for implementing the new application and review process will be available for license approvals and site allocations as of July 1, 2003.
- For details about the application process and approval procedures, see attached proposed new ordinance, section 9.49.050; and for transitional procedures, including waiting list and holdovers, see section 9.49.055.

FEES

There are no changes from those recommended in April. For details, see the April 16, 2002 report and its attached Exhibit C: Basis for Fees.

	<b>Kind of Fee</b>	<b>Current Fee</b>	<b>Proposed Fee</b>
A	<b>Application Processing – License application</b>	\$0.0	\$150.00
B	<b>License Renewal Processing – Annual requests for renewal</b>	\$0.0	\$10.00
C	<b>Food Vending License – Annual license fee</b>	\$100.00	\$240.00
D	<b>Transfer Application Processing – Request to transfer a food vending business</b>	\$0.00	\$25.00
E	<b>Site Allocation – Use of sidewalks and rights-of-way</b>		
	Category A sites (high traffic areas)	\$1,400.00	\$1,750.00
	Category B sites (less intensely trafficked areas)	\$600.00	\$1,400.00
F	<b>Employee Identification Card</b>	\$5.00	\$5.00
G	<b>Identification Card Replacement</b>	\$5.00	\$5.00

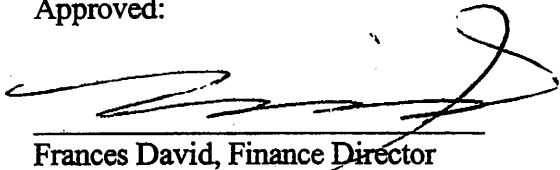
FINANCIAL IMPLICATIONS

There are four food vendors still operating under the current regulations. The precise financial implications for implementing the new ordinance will depend on several factors: the number of sites available as of January 2003, existing and new sites designated for food vending as of July 2003, the number of applications received, processed, approved and issued for new food vending licenses, the enforcement required to maintain the program, and the fees submitted for approval by Council along with the new ordinance. With no substantial increase in the number or locations of sites for food vending, we anticipate existing staff will manage implementation and enforcement of the ordinance. If additional sites are designated in other commercial areas of the City, there will likely be a need for additional staffing.

CONTACT PERSON

A.Robin Orden, Senior Management Analyst – Finance	981-7323
Zach Cowan, Assistant City Attorney	981-6983

Approved:

  
\_\_\_\_\_  
Frances David, Finance Director

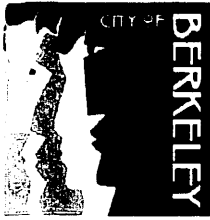
## Attachments:

Exhibit A: Proposed New Ordinance

Exhibit B: Fee Resolution

Exhibit C: Correspondence from Telegraph Area representatives

1. Telegraph Property & Business Management Corporation (Business Improvement District)
2. University of California



Office of the City Manager

July 24, 2013

To: Honorable Mayor and Members of the City Council

From: Christine Daniel, City Manager

Submitted by: *MS* Michael Caplan, Economic Development Manager  
*BH* Bob Hicks, Director of Finance

Subject: Communications with Telegraph Area Food Vendors

Per Council's request of July 2, 2013, staff has reviewed the communications between City staff and the three street food vendors whose permits were not renewed at their former Telegraph and Bancroft locations in December 2012, but rather were offered a new location at College and Bancroft.

Background

*Staff met with the vendors after their permits expired and worked creatively to find them a new location*

With the impending start of construction on the University's Lower Sproul Project, the public-right-of-way on the north side of Bancroft Way at Telegraph at the entrance to the UC Berkeley Campus was determined to be needed for construction-related activities. Accordingly, on December 13, 2012 staff provided a letter to the three food vendors notifying them that the City was not renewing their licenses to operate at that location. Staff acknowledges that the vendors were given very short notice of non-renewal prior to the expiration of their permits.

Because of the short notice, and also due to the fact that they wished to continue operations during construction, staff met with the vendors and UC staff to consider possible alternate locations. Initially it appeared that no suitable alternative locations were available since the City-sidewalk on the north side of Bancroft Way was too narrow and the University chose not to locate vending on its property. Nevertheless, after further discussions with the vendors, City staff, UC staff and AC Transit staff worked creatively to establish a site in a red zone near the corner of College and Bancroft. The new location was intended to allow continued vending operations for the remainder of calendar year 2013, as well as two additional one year renewals, which would be the equivalent of the three- year period the vendors might have sustained in their old location had their original permits been renewed each year (those permits were valid for a one year period and renewable for up to three additional years).

## **ATTACHMENT B**

### Communications between City staff and the vendors

The food vendors have indicated they believed that they would be allowed to return to the Telegraph and Bancroft location. However, City staff did not, and could not, assure them that they could return to that location when construction is finished. The reconstruction of the ASUC complex and changes to the heavily-used AC Transit stop on Bancroft will cause major changes to pedestrian circulation at Bancroft and Telegraph. At minimum, staff would need to evaluate future conditions, post-construction, before any decision could be made to allow the food carts to be established at that location.

The staff/vendor communication history since December 2012 was essentially as follows:

1. Finance staff informed the three food vendors on December 13, 2012 that the City was not renewing their food vendor licenses in their Bancroft and Telegraph location for calendar year 2013 because of pending construction.
2. On January 18, 2013, staff from Finance, Transportation Engineering and OED met with the vendors to scout for sites on the north side of Bancroft Way. None of the staff people present at this meeting assured the vendors of their ability to return to their former location.
3. There were several subsequent meetings by staff to assess the technical feasibility of alternative vendor spaces that were not attended by vendors themselves.
4. After the relocation site at Bancroft at College was identified, OED staff informed the vendors about it by email on March 20<sup>th</sup>, 2013 and provided a copy of conditions that would be attached to the permits for this location in order to mitigate impacts on adjacent uses. (See Attachment A.) Two responses by Jack Huynh of Kettle Corn Star asked for the right to return to their original location after the completion of construction. OED staff responded on April 8<sup>th</sup>, 2013 by email and described the reason for the permit conditions and, the process and stakeholder input that had gone into establishing them. OED further tried to reassure Mr. Huynh about the new site, which was very close to a former vendor site that operated successfully for years. Again, staff gave no assurances that the vendors would be able to return to their former site.
5. Most recently, Finance staff had several interactions with the vendors at the counter when they came in to apply for and learn about their new permit locations and required conditions. Staff does not believe there were any communications with the vendors where assurances of return to the previous location were given.

### City food vending permits are always location-specific and time-limited

Vending permits are always location-specific and time-limited. The permits that the vendors once had at Bancroft and Telegraph expired and were not renewed because of pending construction. The new permits that have been offered for Bancroft and College are for that location only and are, by definition, not transferable.

Next Steps

If, at the end of construction of the Lower Sproul project, the vendors wish to re-apply for a permit at the Bancroft and Telegraph location, they may do so. Staff will review any future applications of that sort in light of the current conditions in the area and Council policy priorities pertaining to Telegraph District revitalization.

In the meantime, staff has encouraged the vendors to take advantage of the opportunity that has been created for them to continue their food sales operations at the College/ Bancroft location. For many years food vendors successfully operated in this vicinity, which has high pedestrian traffic, yet has less access to food service than the Telegraph/Bancroft location.

Attachment A: Conditions for operation at College and Bancroft





Department of Finance  
Revenue Collection

# ATTACHMENT C

The three Food Vendor Permits will be reinstated based on the following stipulations:

- Permit holders must place a sign that is plainly visible to customers at eye level on the outside front of their vending carts that reads as follows: **“Please respect neighboring food service businesses – do not use their seating to consume food purchased here”**.
- Permit holder’s customers must not negatively impact neighboring food service establishments through patterns of nuisance behavior.
- The new permits are specifically issued for the location on Bancroft near College in the area that is specifically assigned for your use.
- Vendors may not, at any time, place any objects, materials, boxes, trash, food, tanks, in the cross-hatched area on the pavement.
- The new permits will be for a one year period with two annual options to extend for one year. The vendors may operate at Bancroft near College location for a maximum period of 3 years after which the permits will expire permanently on March 31, 2016.
- The new vendor spaces will only be occupied until the permit expires on March 31, 2016 and will not be renewed to any vendors.
- The new permits may not be transferred to any other location.
- Permit is not transferable.
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  - keeping the area in the vicinity of their carts clean,
  - managing appropriate containment and disposal of trash,
  - Not encroaching on the sidewalk with garbage cans, tables, chairs or other obstructions
- In the event any operational issues come up, the vendors shall contact staff from the **Office of Economic Development** at 510.981.CITY (2489) as their principal liaison relationship with the City.

I \_\_\_\_\_ understand and agree to all of the conditions above.  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**UNIVERSITY OF CALIFORNIA, BERKELEY**

BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO



SANTA BARBARA • SANTA CRUZ

REAL ESTATE PHYSICAL &amp; ENVIRONMENTAL PLANNING

BERKELEY, CALIFORNIA 94720-1380

August 31, 2015  
via electronic mail

Ms. Dee Williams-Ridley  
Interim City Manager  
City of Berkeley  
2180 Milvia Street  
Berkeley, CA 94704

Re: Request to Discontinue Permitting of Bancroft Way Food Carts

Dear Manager Williams-Ridley:

It was good to meet you last month at DBA's farewell event for Christine Daniel. On behalf of UC Berkeley's Real Estate Division, welcome (again!) to Berkeley. We are all looking forward to working with you.

I am sending this memo to brief you about city and campus agreements related to city permitting of food carts on the north side of Bancroft Way at Telegraph Avenue. With the completion of both the Lower Sproul project and significant public realm improvements along Bancroft Way, I believe it is timely to restate the goals of those agreements and to underscore their importance.

You may know that the City previously permitted food carts to operate at Bancroft and Telegraph. The City and the University worked together to find a new location for the carts displaced by construction of our new student community center. Our understanding was that the University and the City agreed that, when existing permits expire in March, 2016, no permits will be renewed or again extended and no new permits will be issued. We worked closely with Michael Caplan and City economic development staff to develop this strategy. At the time the area around the Bancroft/Telegraph intersection was closed for construction the food carts moved, on a temporary basis, to Bancroft Way at College Avenue. Please see the attached document prepared by the City and in our records regarding these food carts; our understanding is that all the vendors currently operating on the north side of Bancroft Way at College Avenue have signed this document.

We share the view of many in the City, the business district, transit personnel, campus staff and the ASUC Student Union that the food carts should not continue to operate at the Bancroft Way/College Avenue location nor should they be relocated east or west of Telegraph on the campus side of Bancroft Way. We have never felt the food carts presented an appropriate "front door" to the Berkeley campus. They disconnect Sproul Plaza, with its tremendous foot traffic, from the business district beyond.

But our concerns today are even more practical, as outlined below.

- Bancroft Avenue between Barrow Lane and Dana Street serves as many as thirteen AC Transit lines and four campus shuttles during peak hours. Operating high volumes of moving buses through a congested area is challenging; adding the potential danger of a generator-powered food cart adds further risk in the event of collisions.

August 31, 2015

**ATTACHMENT D**

Interim City Manager Williams-Ridley  
Page 2

- The north (campus) side of Bancroft Way between Barrow Lane and Dana Street serves large numbers of commuters and pedestrians, in addition to transit. The area also provides emergency egress from the Lower Sproul complex and fire department access into the campus. The brick paved zone entry to Upper Sproul from Bancroft and Telegraph, in particular, needs to remain clear of obstructions as it serves as an emergency entry for the City's fire and emergency vehicles.
- A mid-block crossing traffic light will be re-installed in front of a major pathway into Lower Sproul. This crossing serves as an emergency exit from the Lower Sproul complex, and cannot have any obstructions blocking the flow of building and plaza occupants. In addition, the zone around the signal poles at the pedestrian crosswalks on Bancroft needs to remain clear of obstructions that can block the view of on-coming buses on Bancroft.
- Passenger loading is allowed at designated portions of the north sidewalk area, east of Telegraph, to allow buses full operational use of the rest of the block. Using this passenger loading area for food trucks would push passenger loading elsewhere where it would disrupt transit. Sidewalk space is needed to allow buses to deploy ADA accessible ramps and ideally would not be blocked by additional objects.
- Both the City and the University are working towards zero waste by 2020 goals. Without responsibility for brick and mortar facilities and related infrastructure, the food carts rely upon campus and city infrastructure for their waste and clean up. Noise and generator exhaust also have deleterious effect to the vicinity of their operations.
- Incidental aspects of the food carts, such as lines, folding tables and other temporary furnishings brought by owners, exacerbates navigational difficulties for disabled visitors to this already congested campus entrance.

Please let me know if you have any questions. I would, of course, be happy to discuss further with you. This is a critical issue for both campus and City as we work together to create a dynamic south side commercial district. I will look forward to our work together.

Best,



Emily Marthinsen, AIA  
Assistant Vice Chancellor, Physical & Environmental Planning  
Campus Architect

Cc: Vice Chancellor Real Estate Robert Lalanne  
Executive Director ASUC Kelsey Finn  
Chair, Commercial Student Services Board John Ready

**Harris, Leslie D.**

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**From:** Daryl Ross [dwr@stradagroup.com]  
**Sent:** Tuesday, March 18, 2014 7:51 AM  
**To:** Berkeley Mayor's Office; Wozniak, Gordon; Worthington, Kriss; Wengraf, Susan; Capitelli, Laurie; Arreguin, Jesse L.; Anderson, Maxwell; Moore, Darryl; Maio, Linda  
**Cc:** City Clerk; Fogarty, David; Caplan, Michael; Manager, C; Fong, Calvin  
**Subject:** Update on Food Carts on Colleege and Bancroft  
**Attachments:** photo.jpg

March 18, 2014

Dear Mayor and Councilmembers—

I wrote to you back in August regarding the food carts that were moved to Colleege and Bancroft without prior notice. I wanted to give you a brief update regarding the carts and make clear that indeed, they are still negatively impacting this corner.

We recently had our regular slowdown during the late December holidays. During that time, most of the students are gone and business slows way down. Only Berkeley (non-student) residents are around and they are few in number. Despite this, as we have been for the last 25 years, we are open. Open to serve the Berkeley community despite sales that might justify closing shop for a few weeks. This is our business ethic. We are here to serve the Berkeley community through busy times and slow times.

And during this time, where were the food carts? Heavenly Food, Dojo Dog and the other cart picked themselves up and parked elsewhere. They felt no obligation to this community. Nothing tied them to this corner. They may have taken a break, or they may have moved to greener pastures during this time. We are anchored to this corner, through thick and thin and we take that privilege seriously. The owners of those carts feel no such obligation.

We are currently experiencing sidewalk repair in front of Caffe Strada and the Bancroft Hotel. Many month ago, I was sent a paper my Michael Roshal from the City of Berkeley requiring me to pledge that I would pay for half of the repairs that were needed (the City paying the other half). I gladly did this because we are the bricks and mortar that make up this corner and it is our obligation to share the responsibility for the upkeep and public safety of the sidewalk.

The food carts benefit from the sidewalk and infrastructure that is all around them, but they don't contribute to it in any way. They also don't contribute to my restrooms, tables and chairs and condiments.

There are now two carts that are regularly set up (Dojo Dog and Heavenly Foods) and often three. Patrons of these businesses regularly use the tables at Caffe Strada as well as the condiments and bathrooms. They also utilize benches and tables at the Law School. Everyday strong cooking odors and smoke come from the low vent on the cart. Unlike the required clearances that I have to conform to, this vent is low to the ground and therefore the smoke is often at head-level and quite irritating. As you can see from the photo attached, one of the carts often sets up a canopy across the sidewalk. I'm sure this is not conforming to their restrictions, but they do it anyway.

I appreciate your time and consideration and once again ask that these carts not be allowed to stay on this corner.

Daryl Ross  
Caffe Strada  
Bancroft Hotel

**ATTACHMENT D**

**Klein, Jordan**

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**From:** Daryl Ross <dwr@stradagroup.com>  
**Sent:** Tuesday, August 18, 2015 9:14 AM  
**To:** City Clerk; Maio, Linda; Moore, Darryl; Anderson, Maxwell; Capitelli, Laurie; Capitelli, Laurie; Worthington, Kriss; Droste, Lori; Berkeley Mayor's Office; Caplan, Michael; Klein, Jordan  
**Subject:** Food Carts on College and Bancroft  
**Attachments:** New folder.zip

Dear Mayor Bates, Councilmembers and Mr. Caplan—

I have written to you several times over the last couple of years regarding the food trucks that were relocated to the corner of College and Bancroft. It is my understanding that their permit expires on March 31, 2016 and after that they will no longer be allowed to set up at this location. I want to confirm that this will indeed occur and that, as Mr. Caplan and Mr. Worthington have promised me, they will not be permitted to stay past that date.

The entire time the food trucks have been on this corner they have been a nuisance to the neighborhood, violated the conditions of their permit and negatively impacted my businesses as well as the University building (Law School) near them. Almost every day customers of these businesses bring their food to the tables of Caffe Strada and Freehouse Restaurant to eat. They don't purchase anything from me, but do help themselves to our condiments, napkins, plates and cups. Their customers (and business owners) use our bathrooms and our trash containers. The businesses also use our address! Several times we have received mail addressed to them at our address which they have used without permission.

The proprietors set up temporary tents (see photos) on the sidewalk blocking pedestrians. They store propane tanks on the street and sidewalk next to their carts. In many ways they have violated the conditions of their permit and they have made no effort to remedy these violations. It also appears that a new food truck has been allowed at this location (see photo). I do not know if this truck is related to the original three trucks that were allowed to be here, or if it is indeed a new business.

I would appreciate someone getting back to me to confirm that the trucks will no longer be allowed at this location after the above date or sooner. As the Lower Sproul project is almost complete, perhaps the trucks can move back to Telegraph and Bancroft for the remainder of their permit.

I am attaching a zip folder with some photos of truck's violations.

Thank you for your attention to this,  
Daryl Ross



**Telegraph Business Improvement District**

2437 Durant Street Suite 206  
Berkeley, CA 94704

Dee Williams-Ridley  
Office of the City Manager, City of Berkeley  
2180 Milvia Street, 5th Floor  
Berkeley, CA 94704

Re: Food vendors on Bancroft Way

Dear Mrs. Williams-Ridley:

The Telegraph Business Improvement District (TBID) supports the termination of mobile food vendor permits on Bancroft Way. These mobile food vendors, operating without the costs related to rent and property management, have an unfair competitive advantage over storefront businesses in the district. We also believe that more open spaces would improve aesthetic conditions and pedestrian and transit flow in this very compact and dense district. And, notably, property owners and merchants in the district consistently complain about the food vendors' negative impacts on the area, despite efforts to mitigate those impacts.

We believe that these vendors would better serve our community by converting their operations to storefronts in the district. We have proactively reached out to the current mobile food vendors at Bancroft and College to offer assistance in transitioning their business by identifying an appropriate storefront location. TBID would be happy to provide assistance to these vendors as is possible, throughout the transition process.

Please note that TBID does support the continued presence of artisanal craft vendors along Telegraph Avenue itself. Those vendors have a completely different set of impacts on and contributions to the district, and thus must be considered separately.

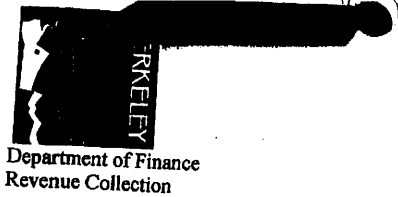
Please let me know if you need more detail on our position. Thank you for your commitment to Berkeley, and for the care and consideration you use to ensure the Telegraph business district is a thriving, successful place serving the local and regional community.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Stuart Baker', written in a cursive style.

**Stuart Baker**  
Executive Director

Cc: Henry Oyekanmi, Interim Director of Finance  
Michael Caplan, Economic Development Manager  
Jordan Klein, Economic Development Project Coordinator



The three Food Vendor Permits will be reinstated based on the following stipulations:

- Permit holders must place a sign that is plainly visible to customers at eye level on the outside front of their vending carts that reads as follows: **“Please respect neighboring food service businesses – do not use their seating to consume food purchased here”.**
- Permit holder’s customers must not negatively impact neighboring food service establishments through patterns of nuisance behavior.
- The new permits are specifically issued for the location on Bancroft near College in the area that is specifically assigned for your use.
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  - managing appropriate containment and disposal of trash,
  - Not encroaching on the sidewalk with garbage cans, tables, chairs or other obstructions
- In the event any operational issues come up, the vendors shall contact staff from the **Office of Economic Development** at 510.981.CITY (2489) as their principal liaison relationship with the City.

I JACK HUYNH understand and agree to all of the conditions above.  
Print Name

[Signature]  
Signature

3/26/2014  
Date





Department of Finance  
Revenue Collection

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I Jason Chou understand and agree to all of the conditions above.

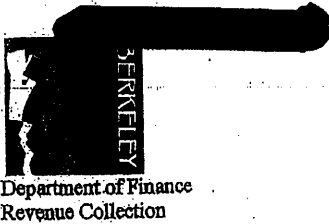
Print Name

Jason Chou

Signature

8/8/13

Date



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I Ann MyLinh Vu understand and agree to all of the conditions above.  
Print Name

[Signature]  
Signature

7/02/13  
Date