



Legislative Department
Seattle City Council
Memorandum

Date: June 20, 2011
To: Committee on the Built Environment
From: Christa Valles, Council Central Staff
Subject: C.B. 117165, Food Vending Legislation

The Committee on the Built Environment (COBE) has been discussing C.B. 117165, which is intended to encourage more street food vending in Seattle by allowing food vending trucks to park in street side curb spaces and proposing new regulations for food vending carts on sidewalks. Seattle currently allows food trucks and carts on private property (which are not specifically regulated by the City) and the Seattle Department of Transportation (SDOT) currently issues permits for food vending carts on sidewalks if they obtain adjacent property owner permission¹. C.B. 1127165 focuses exclusively on regulations related to food vending trucks and carts in the City right-of-way, which is managed by SDOT.

The June 8th COBE provided direction on the following issues:

- Food vehicle zones in curbside parking spaces (amend C.B. 117165 to limit each zone to no more than two trucks with the ability of the SDOT director to approve more under certain circumstances);
- Fees (amend C.B. 117165 to increase flat rate for food trucks, leave proposed food cart and sidewalk cafe fees in place);
- Late-night vending (amend C.B. 117165, or include as policy direction in yet-to-be drafted companion resolution, to improve data collection, clarify when permits will be revoked or denied, consult with the CCT prior to issuing permits in neighborhoods with high concentrations of late night vending, potentially add language to allow civilian impound option).

This memo covers the remaining issues identified with C.B. 118165:

- 1) School setbacks
- 2) Restaurant & business setbacks
- 3) Design guidelines
- 4) Incentivizing healthy food options
- 5) Coordination of the permitting process
- 6) Disability Commission Recommendations

¹ The Seattle Department of Parks and Recreation (DPR) has a separate process for permitting food vending in city parks.

Issue #1: School Setbacks

C.B. 117165 proposes a 200' setback from the *property line* of all public and private schools for food vending carts and trucks in the right away (and a 1,000' setback for roving mobile vehicles, such as ice cream trucks). In 2005, the City Council passed Ordinance 121813, increasing a 200' food vending setback to 1,000' *for public schools only*². Ordinance 121813 cites two general rationales for increasing the setback from public schools: unhealthy vending food³ and illegal vending activity near high schools. (Note: The type of illegal vending occurring in 2005—individuals selling pizzas out of cars—will remain illegal).

Currently, only public and several private high schools allow students off campus for lunch. In some cases, the Seattle Public School District lacks capacity to serve lunch to all high school students on campus and allowing students off campus for lunch is a necessity. Certain Seattle School District employees have requested that the City Council amend C.B. 117165 to increase the proposed 200' food vending setback from schools to 1,000'. Seattle school district employees are only concerned about a setback for *high schools*, where students are allowed off campus for lunch.

Options

Note: All options below assume the setback will apply to the property line of the entire school grounds of contiguous buildings, not just the primary school building itself. Another option would be to apply the setback to the property lines of the primary school building only.

- a. Maintain C.B. 117165's proposed setback of 200' from all public and private K-12 schools.
 - This language is unnecessarily restrictive since it applies to all schools, and the concerns that have been voiced only pertain to high schools that allow students off-campus for lunch.
- b. Eliminate C.B. 117165's proposed 200' setback for *all* public and private schools and establish a 200' setback for public and private high schools only since elementary and middle schools do not allow students off-campus for lunch, making a setback unnecessary.
- c. Establish a 200' setback for high schools that would apply after 1pm on school days, all day on weekends, and all day during the summer months. Establish a larger setback (500' or 1,000) prior to 1pm on school days.
 - This option could be further refined to provide a exemption for transit stations from the larger setback.
 - This option could complicate enforcement as two different setbacks would apply during the day.

² Ordinance 121813 changed the City code in only one place, whereas another section of the City Code (cite), maintained a 200' food vending setback from public and private schools, this conflict is likely an oversight.

³ To the extent that there are concerns about food vendors offering unhealthy food to high school students, it's unclear why the increased setback did not apply to private high schools, which also allow students off-campus for lunch.

Issue #2: Restaurant/Business Setbacks & Public Notification Process

Currently, the City allows food vending on sidewalks, but only if the vendor obtains permission from property owners fronting the proposed vending site. This property owner “veto” is an unlawful delegation of the City’s authority to regulate its right of way and therefore, C.B. 117165 proposes to eliminate it. In lieu of this requirement, C.B. 117165 is proposing three mitigating measures:

- A. A 50’ food vending setback from food service businesses as measured from the property line⁴.
- B. A 10’ food vending setback as measured from a business entrance or exit.
- C. A public notice and comment period.

A. Restaurant Setbacks

C.B. 117165’s proposed 50’ setback from food service businesses (as measured from the restaurant property line) is intended to balance the concerns voiced by brick and mortar restaurants and the increasing popularity of street food vending with the public.

Not all cities impose setbacks, though they are not uncommon. A few cities have imposed larger setbacks for food vendors serving “like” foods near brick and mortar restaurants⁵. (For example, a food truck serving hamburgers would need to park 100’ from a McDonald’s, but only 50’ from a Pizza Hut.) Extreme setbacks, however, can seriously limit a city’s street food scene and would probably do more to discourage rather than encourage street food vending⁶.

Options

- a. Approve C.B. 117165 as proposed: 50’ setback from food businesses.
- b. Approve 75’ or 100’ setback from food businesses.
- c. Approve 75’ or 100’ setback for food trucks or carts selling “like” foods.

B. Business Setbacks

C.B. 117165’s proposed 10’ business entrance setback is intended to ensure pedestrian access and ingress and egress to and from the entrance. Some businesses have raised concerns about food trucks and carts potentially blocking storefront display windows and business signs. C.B. 11765 allows the SDOT director to condition permits to address impacts on “business displays” from vending activity, but it does not mention impacts to signs.

- a. Approve C.B. 117165 as proposed: 10’ setback from business entrances.
- b. Approve 15’ or 20’ setback from business entrances.

⁴ “Food Establishment” is defined broadly in the legislation to include restaurants, grocery stores, cafes, and bars that serve food.

⁵ San Francisco recently eliminated its “like” food requirement, Baltimore still has one.

⁶ Such as the case with Chicago, which has a 200’ setback from restaurants and is often cited as a reason for Chicago’s stunted street food scene (in addition to restrictive public health requirements limiting options to pre-packaged foods).

- c. Amend C.B. 117165 to allow SDOT director to condition permits to address potential vending impacts on business displays and signs.
- d. Provide Council direction to SDOT to include in Director's Rules language pertaining to visibility concerns, e.g., "When possible, SDOT should avoid siting locations for trucks and carts that may block retail window displays and signs."

C. Public notification and comment period

In addition to the proposed setbacks, C.B. 117165 creates a public notice and comment period consisting of the following steps:

- Vendor submits application for new vending site.
- SDOT conducts site review.
- Vendor notifies all entities within 100 foot radius of proposed vending site by mail (SDOT also plans to post notices online).
- 10 day public comment period.
- SDOT reviews comments and decides whether to approve or deny permit.

These requirements are modeled after the city's existing sidewalk café requirements. As a result of any concerns or comments it receives, SDOT may impose the following conditions on food vendors:

- Condition hours & dates of operation.
- Require larger setbacks.
- Require wider pedestrian zone or visual corridor.
- Dictate design and placement of vending equipment & umbrellas.
- Require repairs to the public place.
- Require mitigation for impacts associated with vending activity, e.g. lighting, noise, air emissions, signage, or equipment
- Require mitigation for impacts associated with vending activity to business displays
- Condition for pedestrian circulation & traffic management.

SDOT may also outright deny a permit, though the circumstances under which it might do so are not contemplated in C.B. 117165 (the June 8th COBE committee instructed SDOT to clarify these circumstances via director's rules).

Options

- a. Approve public notification and comment period as proposed.
- b. Increase public comment period from 10 to 20 days.
- c. Amend 100' notification radius from proposed vending site to include all property owners along the entire block face of the proposed vending site as well as the adjacent block face if the proposed vending site is within 10' feet of the corner curb radius.

Issue #3: Design Guidelines

While C.B. 117165 does not include design guidelines for vendors, SDOT has authority to impose street use permit conditions related to design. In addition, C.B. 117165 requires SDOT to, within one year of C.B. 117165's passage, "... develop and adopt by rule vending cart design guidelines that shall apply to all vending carts located on any public place..." SDOT will be responsible for ensuring compliance with the guidelines, but the legislation states it will work with the Department of Neighborhoods to develop them.

Options

- a. Approve language as proposed.
- b. Require Executive to develop design guidelines within 6 months instead of 12 months (it's unclear why 12 months would be needed to accomplish this).
- c. Require SDOT to consider including design guidelines for food trucks (in addition to carts) and include guidelines for addressing storefront visibility issues.

Issue #4: Incentivizing "Healthy Food"

A few cities-- New York, Chicago, San Diego-- offer free or reduced cost permits to produce vendors that sell fruits and vegetables. Seattle could also do the same by reducing the "Use Fee" for food trucks, i.e., parking rate fees, and food carts, i.e., sidewalk square foot fee. If Seattle wanted to develop nutritional guidelines beyond whole foods, that would be a more complicated undertaking.

According to Seattle & King County Public Health (Public Health), establishing nutritional guidelines may be doable (for example, establishing limits for fat content or calories), but it will be difficult for food vendors to demonstrate compliance and for Public Health to enforce. Additional, and perhaps simpler approaches, could entail Use Fee discounts to vendors who sell whole foods alongside regular menu offerings and/or who sell low calorie beverages (Public Health says non-diet sodas are one of the largest sources of empty calories).

Options

- a. Require Executive to eliminate or reduce use fees for produce-only vendors. This option would require amending the fee schedule.
- b. Instruct Executive to report back after one year on the types of food being served by cart and truck vendors that are permitted in the City ROW to obtain more information on the type of food being offered by vendors. (SDOT could have vendors submit menus approved by Public Health).
- c. Place item on Council 2012 work program for further exploration of options, including whether it would make sense to allow reduced use fees for vendors offering produce and low-calorie beverages alongside regular menu offerings.

Issue #5: Coordination of the Permitting Process

Councilmembers have indicated an interest in the City developing a “one-stop” shopping approach for food vending permits. Food cart and truck vendors must obtain various permits from City departments to operate (SDOT, Fire, Finance) as well as permits from external city agencies (Public Health, Labor and Industries for trucks).

SDOT and Public Health are the two agencies with the largest permit role and they will need to work in close coordination with each other (for example, Public Health requires a food vendor to confirm they have restroom access within 200’ of the vending site at the outset of its application process, but it may not make sense for a food vendor to obtain restroom access before having some degree of certainty that SDOT can issue a permit for the proposed location). Close coordination, however, does not necessarily mean SDOT and Public Health should formally combine their permit processes. Recently, Public Health and DPD decoupled their combined permit process for brick and mortar restaurants because Public Health learned it could issue permits more quickly and efficiently working independently from DPD.

While SDOT anticipates it will issue a Client Assistance Memo and website to aid vendors in navigating the permit process, the focus will be on SDOT’s permit process. The Executive has suggested that the Office of Economic Development (OED) may be in the best position to provide prospective food vendors with an overview of the process and instructions on when and how to obtain the necessary permits from the various agencies. OED’s role would likely be informational only and vendors would still need to apply for separate permits from each agency. Providing clear, concise, and comprehensive online information could, however, go a long way towards assisting prospective vendors in navigating the permit process. That said, good website information will only be helpful for English language speakers and while food vending has been touted as a good entry point for recent immigrants, online information may not be the most effective way to assist these communities in understanding the permit process.

Options

- a. Approve legislation as proposed (currently silent on the outreach/information issue).
- b. Require Executive to report back on how permitting process is working, especially its coordination with Public Health.
- c. Require OED to develop comprehensive website information on food vending permit process (~\$5,000) and develop outreach options/partnerships for reaching out to non-English speaking and immigrant/refugee communities.

Issue #6: Ensuring Access & Mobility

The Seattle Commission for People with disAbilities (SCPWD) has provided feedback on C.B. 117165. It recommends the following:

- *Ability to fine for mobility violations*

Comments: C.B. 117165 does allow SDOT to issue fines for mobility and access violations .

- *Make pedestrian zone requirements consistent with City's ROW Improvement Manual*

Comments: C.B. 117165 requires a minimum 6' pedestrian zone in downtown Seattle, but only a 5' pedestrian zone outside of downtown. The City's ROW improvement manual recommends a minimum 6' pedestrian zone be maintained throughout the City. Requiring a 6' pedestrian zone throughout the City could impact SDOT's ability to permit carts in certain neighborhoods that have more narrow sidewalks, which is why the Executive recommends a 5' minimum requirement outside of downtown.

- *Post City contact information on all trucks and carts where citizens can report problems/violations.*

Comments: This is an excellent idea and SDOT intends to implement it.

- *Quarterly inspections for access and mobility*

Comments: The Executive intends to adopt a pro-active enforcement approach to late-night vending, inspecting carts and trucks, on average, every other week. Daytime enforcement will be primarily complaint driven.

- *Require food trucks to have lowered counter or service windows (max height of 36").*

Comments: The American with Disability Act requirements do not apply to food trucks. Imposing such a requirement could be difficult as most, if not all, trucks would need to be retrofitted. (SCPWD may want to make its suggestion to the state agency that approves the design and construction of food trucks).