

Walter S. ...
CITY ATTORNEY

INTRODUCED BY COUNCIL MEMBER _____

ORDINANCE NO. 12291 C.M.S.

AN ORDINANCE ESTABLISHING A PILOT OAKLAND ARTISAN MARKETPLACE.

WHEREAS, this Ordinance will establish a five year arts and crafts vending project called “Oakland Artisan Marketplace” (hereafter “project”) that permits arts and crafts vending on public sidewalks and designated areas in Oakland; and

WHEREAS, this project will create destination areas that will attract visitors and residents to purchase unique arts and craft products produced in Oakland by regional artists; and

WHEREAS, this project will encourage the development of the arts community and existing business areas without competing with retail businesses; and

WHEREAS, this project will create a positive streetscape in designated community development areas in Oakland, and

WHEREAS, the City of Oakland recognizes the importance of the Oakland Artisan Marketplace Project in future planning, development and expansion of community development projects; and

WHEREAS, the regulations contained herein and subject to changes if deemed necessary by city officials will regulate specific activities to ensure that the public ways remain safe and useful for their primary purpose and are attractive to tourists and the public; and

WHEREAS, this project shall continue for five years from the final date of passage.

NOW THEREFORE, THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Section 1: The City Council finds and determines the foregoing recitals to be true and correct and hereby make them a part of this Ordinance.

Section 2: CEQA. The requirements of the California Environmental Quality Act (CEQA) of 1970 as prescribed by the Secretary of Resources, and the City of Oakland’s environmental review requirements have been satisfied, and that in accordance with section 15061(b)(3) of the California Code of Regulations, this project is exempt from the provision of CEQA.

Section 3: Statement of Purpose. The City Council hereby evidences its intent to establish the Oakland Artisan Marketplace Project for the purpose of regulating the vending of arts and crafts on public sidewalks and designated areas, days and times in Oakland.

Section 4: Definitions. For the purpose of this Ordinance the following words or phrases shall mean or include:

- A. “Certificate” is a revocable approval from the city of Oakland that enables the holder to vend arts and crafts items at authorized locations, days and times.

- B. "Identification Card or LD. Card is issued by the City under this Ordinance to identify persons authorized to vend.
- C. "Vending" is the business of selling or causing to be sold any of the following items: crafts, handiwork, artifacts and art or artwork of any kind permitted by this ordinance.
- D. "Vending Equipment" includes but is not limited to any materials, merchandise, tools, carts, tables, or other items owned by, in the possession of, or associated with both the City of Oakland and licensed vendor.
- E. "Artisan" is a person (fine artist or skilled craftsperson) who is in the business of vending their own art or craft product.
- F. "Pedestrian" shall mean a person who is walking or otherwise travelling in the public way.

Section 5: Oakland Artisan Marketplace Certificate Application. Every person desiring an Artisan certificate pursuant to this Ordinance shall file an application with the Craft and Cultural Arts Department upon a form to be provided by said department. Fees as hereinafter set forth in the Ordinance shall accompany said application. The application shall contain the following information:

- A. The name, resident address, phone number and social security number of the applicant.
- B. The federal and state employer's identification number; the state sales tax identification number if sales tax is chargeable to the items sold; City of Oakland Business Tax Certificate verification.
- C. A description of the art or craft item for which the applicant **seeks** to license.
- D. Four (4) photographs or slides of the artisan's arts or craft items, including one of vending equipment.
- E. A brief description on how the art and craft item was made.
- F. A declaration under penalty or perjury that the art or craft item for which the applicant **seeks** a license to sell is of the applicant's own creation and was created or produced in his or her presence and under his or her own direct and personal supervision.

Section 6: Issuance of Certification. Fee. I.D. Card, Period, Requirement. If the application is satisfactory and complete, the applicant will be required to pay the certificate fee and obtain a certificate card.

- A. The fee amount for a certificate shall be determined by the City Manager on an annual basis or until a set amount is determined.
- B. The I.D. Card shall contain a photograph of the Oakland artisan and the certificate number. The Craft and Cultural Arts Department shall determine the manner and form of any other information that may be placed upon this I.D. Card. **The** I.D. Card shall be displayed by the artisan at all times when the artisan is selling or soliciting offers to purchase any art or craft work. The photograph shall be furnished by **the** artisan.
- C. **Any** certificate issued will be valid for the period of six months or a year from the date of issuance depending on the amount of fee paid.
- D. No person under the age of sixteen is eligible for certification as **an** artisan.
- E. No person may hold or be issued more **than** one valid certificate.
- F. It is unlawful for any person to sell, offer for sale, expose for sale or solicit offers to purchase any art or craft item of his or her own creation on any public area where such activities are permitted pursuant to this Ordinance, unless such person has been duly certified and issued an ID card in accordance with the provisions of this Ordinance.
- G. The City of Oakland will notify the artisan in writing of the decision to issue or deny the certificate and, if denied, the reason for denial. **In** the event that an artisan is denied certification, either upon application or renewal, the artisan shall have the opportunity to appeal the denial to the Cultural Affairs Commission.

Section 7: Regulations for Artisans

- A. Artisans shall sell, offer for sale or solicit offers to purchase only for those specific handcrafted art or craft items created personally by the artisan.

- B. Artisans shall sell, offer for sale or solicit offers to purchase only in the area(s) designated by the City Manager. The designation of any area in a public place under jurisdiction is subject to approval of and to any rules and regulations imposed by such office.
- C. Days and hours when vending shall be allowed are determined and are specific to the designated site.
- D. All artisans must adhere to designated time and day requirements and shall be allotted one hour set-up and one hour breakdown time before and after stated selling hours.
- E. No artisan shall sell, offer for sale, or solicit offers to purchase, from any vehicle.
- F. Artisans shall engage in their activities in designated areas of the City of Oakland in such a specific manner to cause no impairment to any ~~handicapped person or other pedestrian or~~ other life safety activity and that at all times there shall remain open passage of pedestrians a space of at least ten (10) feet in width, as measured on a line perpendicular to the artisan activities and end to walkway.
- G. Vending equipment shall be regulated in the following manner:
 1. Vending equipment, merchandise offered for sale or otherwise associated with the artisan shall not block, impede or in any way hamper pedestrian movement or cause or allow to cause any hazard to pedestrians.
 2. Vending equipment shall be easily moved and shall be self-supporting; at no time shall vending equipment be attached, tied or locked to trees, hydrants or any other permanent vertical structure or bench.
 3. Any vending equipment shall have the maximum length of eight (8) feet, maximum depth of six (6) feet and a maximum height of eight (8) feet.

Section 8: Cleanup Responsibility and Liability for Damages

- A. Artisans shall maintain their sales location in a clean hazard-free condition; failure to so maintain and failure to clean the vending location of waste shall be cause for revocation or suspension of certificate.
- B. Artisans shall agree to defend, indemnify and hold harmless City, its officers and employees from any and all damages or injury to persons or property proximately caused by any act or omission of the artisan or any hazardous or negligent conditions maintained at their sales location.

Section 9: Lottery

- A. The Craft and Cultural Arts Department shall establish and supervise a lottery system whereby those persons certified as Oakland Artisans who possess a valid State Board of Equalization Resale Permit and Oakland Business Tax Certificate shall be chosen by lottery for the available designated selling area.
- B. The Craft and Cultural Arts Department shall make such reasonable rules and regulations as are necessary to effectuate the lottery.
- C. The Craft and Cultural Arts Department shall design and distribute to those chosen in the lottery on each day the lottery is held, a document identifying the person chosen, the craft of the person chosen and the location where the person chosen will be allowed to sell, offer for sale or solicit offers to purchase.
- D. The lottery document shall be in possession of the artisan at all times and shall be displayed to a monitor or police officer upon request.
- E. It shall be unlawful to sell, offer for sale, or solicit offers to purchase arts and crafts in designated area without first obtaining a document from the Craft and Cultural Arts Department indicating the seller has been chosen for the specified space and time period.

Section 10: Violations and Penalty

- A. The City Manager or his designated representative may issue or cause to have issued citations for violations of this Ordinance.
- B. Any person vending without a duly issued certificate and I.D. Card or found in violation of any of the regulatory provisions of this Ordinance shall be guilty of an infraction.

- C. Any person found guilty of an infraction, of which the person has been given notice, shall not be punished by imprisonment but may be fined.

Section 11: Suspensions, Revocation or Denial of Certificate

- A. Any certificate issued pursuant to this Ordinance may be revoked or suspended for good cause or upon violation of any provisions of this Ordinance. Any person whose certificate has been revoked or suspended shall receive in writing an explanation of such action by the certificate inspector. The reasons for denial, suspension and revocation include:
1. Fraud or misrepresentation in the application for the certificate; or
 2. Fraud or misrepresentation in the course of conducting the business of vending; or
 3. Conducting the business of vending contrary to the conditions of the certificate and/or regulations; or
 4. Conducting the business of vending in such a manner as to create a public nuisance or to constitute a danger to the public; or
- B. The following factors will be considered in determining whether a permit should be suspended or revoked
1. The number of citations for violation of this Ordinance previously received by the artisan; and
 2. The number of previous suspensions and/or revocations imposed upon the artisan; and
 3. The number of occasions for which the artisan's certificate was subject to suspension or revocation and was not suspended or revoked; and
 4. The seriousness of the violation or misrepresentation and the danger to the health and/or safety of the public presented by the artisan's misrepresentation, noncompliance and/or misconduct; and
 5. Whether or not the condition subjecting the artisan to suspension or revocation is a nature that has been or can be corrected.
- C. Any certificate holder or applicant whose permit is suspended or revoked or whose application for a permit is denied may within (15) days of the date of action notify the Craft and Cultural Arts Department that the certificate holder or applicant desires reconsideration of that decision. A hearing before the Cultural Affairs Commission of the request shall be scheduled for the next regular meeting. The suspension or revocation will remain in effect pending the hearing. At the hearing, the certificate holder or applicant will be afforded an opportunity to be heard and present facts and witnesses on his or her behalf. At that time a decision will be made which shall be final.

Section 12: The public safety, health and general welfare will be furthered by this Ordinance.

Section 13: This Ordinance shall be effective immediately upon its adoption by the City Council pursuant to Section 213 of the City Charter.

Section 14: This Ordinance is enacted pursuant to the City of Oakland's general police powers, Section 106 of the Charter of the City of Oakland, and Article XI of the California Constitution.

Section 15: If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, the remainder of this Ordinance and the application of such provisions to other persons or circumstances shall not be affected.

Section 16: To the extent this Ordinance is inconsistent with any other provisions of the Oakland Municipal Code or the Oakland Planning Code, this Ordinance shall apply.

Introduced - 10/31/00

IN COUNCIL, OAKLAND, CALIFORNIA, NOV 14 2000, 2000

PASSED BY THE FOLLOWING VOTE:

AYES- **BRUNNER, CHANG, MILEY, NADEL, REID, SPEES, WAN AND**

~~PRESIDENT DE LA FUENTE~~ — 7

NOTES- *None*

ABSENT- *None*

ABSTENTION- *None*

Excused - De la Fuente - 1

ATTEST: *Ceda Floyd*
CEDA FLOYD
City Clerk and Clerk of the Council
of the City of Oakland, California