

OAKLAND CITY COUNCIL

Mark P. Wald

2003 DEC 30 PM 3:47

ORDINANCE No. 12582 C.M.S.

INTRODUCED BY COUNCILMEMBER _____

ORDINANCE ESTABLISHING A PERMANENT PUSH CART FOOD VENDING PROGRAM TO BE LOCATED WITHIN THE MANUFACTURING AND COMMERCIAL CORRIDORS ON FRUITVALE AVENUE AND HIGH STREET BETWEEN I-880 TO THE SOUTH AND FOOTHILL BOULEVARD TO THE NORTH, FOOTHILL BOULEVARD BETWEEN 19TH AVENUE TO THE WEST AND MACARTHUR TO THE EAST, INTERNATIONAL BOULEVARD BETWEEN FIRST AVENUE TO THE WEST AND 105TH AVENUE TO THE EAST, SAN LEANDRO STREET BETWEEN FRUITVALE AVENUE TO THE WEST AND 98TH AVENUE TO THE EAST, EAST 12TH STREET BETWEEN 4TH AVENUE TO THE WEST AND 23RD AVENUE TO THE EAST, 14TH AVENUE BETWEEN EAST 11TH STREET TO THE SOUTH AND EAST 19TH AVENUE TO THE NORTH.

WHEREAS, on July 24, 1990, a special session of the City Council considered a proposal to permit vending on public property on (sidewalks) at approximately thirteen (13) locations throughout the City. The council accepted the report and instructed staff to expand the proposal to include guidelines for regulating vending activities citywide on private property, specifically in commercially zoned areas; and

WHEREAS, on October 29, 1991, the City Council Public Safety Committee held a special meeting to review a report presented by the City Manager's Office that proposed an amendment to the City's Municipal Code Regulations to implement controls for street vending activities; and

WHEREAS, the Anti-Grime Task Force seeks legalization of certain types of vending and improved enforcement actions against illegal vending; and

WHEREAS, the pushcart food vendors provide a service to the Oakland community with convenient hours of operation; and

WHEREAS, Ordinance No. 12310 established an eighteen-month pilot pushcart food vending program (program) that permitted pushcart food vending on public sidewalks in designated areas in Oakland; and

WHEREAS, the program has enlivened the streetscape and enriched the neighborhood character in the areas where it occurred; and

WHEREAS, the program did not compete with adjacent retail businesses; and

WHEREAS, pushcart food vending provided commercial variety and encouraged additional pedestrian traffic; and

WHEREAS, pushcart food vending provided additional visual interest to established commercial activities, thereby strengthening commercial districts and/or locations; and

WHEREAS, pushcart food vending has provided an opportunity for individuals to be self-employed and contribute to the community; and

WHEREAS, pushcart vendors paid for Vendor's Permits and paid taxes to the City, thereby expanding the City's tax base; and

WHEREAS, the City of Oakland supports entrepreneurial development; and

WHEREAS, the regulations contained herein will regulate specific activities to ensure that the public right-of-ways remain safe and useful for their primary purpose and are attractive to the public; and

WHEREAS, the requirements of the California Environmental Quality Act (CEQA) of 1970 are satisfied, and Section 15311(c) exempts mobile food vending uses; and

WHEREAS, the City Council finds and determines that the public safety, health, convenience, comfort, property, and general welfare was furthered by the presence of the Pushcart Food Vending Pilot Program;

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 makes them a part of this Ordinance.

Section 2:

A. Sections 5.48.050 and 5.48.070 of the Oakland Municipal Code are amended to read as follows: (additions are indicated by underlining and deletions are indicated by ~~strike-out~~ type.):

Chapter 5.48.050, Peddling foodstuffs from vehicles:

It is unlawful for farmers, hucksters or vendors of fruits, vegetables, fish or dairy products to display for sale such goods, wares and merchandise to the passing public in or from wagons, vehicles or portable stands on the streets or sidewalks of the city; provided, however, that nothing in this section contained shall be construed as forbidding the peddling of such goods, wares or merchandise from house to house in wagons or other vehicles as may be permitted by regulations elsewhere set forth in this

title. However, within those areas of Oakland subject to the Pushcart Food Vending Pilot Program Ordinance, and during such time that the pilot program is in effect, pushcart food vending is regulated by Chapter 5.49 of the Municipal Code. (Prior code 5-10.05).

Chapter 5.48.070 Peddlers' carts, stands.

It is unlawful for any person having charge or control of a cart, wagon or any vehicle used for the vending of goods, wares, merchandise, foods, confections, refreshments or other article, therefrom commonly known as peddlers' carts, wagons or vehicles to occupy, or permit to be occupied, as a stand for such cart, wagon or vehicle, any portion of any street, lane, alley or sidewalk in the city, or to cause or permit such cart, wagon or vehicle to stand within five hundred (500) feet of any entrance or exit to any public park, public building or public grounds for the purpose of peddling such goods or merchandise therefrom. However, within those areas of Oakland subject to the Pushcart Food Vending Pilot Program Ordinance, and during such time that the pilot program is in effect, pushcart food vending is regulated by Chapter 5.49 of the Municipal Code.

Nothing in this section shall be so construed as to conflict with, or repeal, any provision of this code or any ordinance establishing and regulating a street market in the city. (Prior code § 5-10.08)

- B. Chapter 5.49 is added to the Oakland Municipal Code to read as follows:

Chapter 5.49: Pushcart Food Vending Pilot Program

5.49.010 Purpose.

The general purpose of these regulations is to promote the health, safety, comfort, convenience, prosperity, and general welfare by requiring that new and existing pushcart food vendors provide residents and customers with a minimum level of cleanliness, quality and safety.

5.49.020: Definitions.

For the purpose of this Ordinance, the following words or phrases shall mean or include:

- A. "Permit" is an approval that enables the holder to vend food items at authorized locations and times, ~~throughout the duration of the Pushcart Food Vending Pilot Program~~ for a specified period of time.
- B. "Vending" is the business of selling or causing to be sold any of the following items: produce, prepared foods and beverages, prepackaged foods and non-alcoholic beverages.
- C. "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 the licensed pushcart food vendor.
- D. "Pushcart Food Vendor" or vendor is a person who owns and operates a business vending from a pushcart. No vendor shall be issued more than one City of Oakland Pushcart Food Vending Permit.
- E. "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 are easily moved by a person or vehicle.
- F. "Pedestrian" is a person who is walking or otherwise travelling in the public right-of-way.

~~G. "Pilot Program" is an eighteen-month period, beginning on the effective date of this Ordinance, during which pushcart food vending will be permitted in the City of Oakland within the parameters and criteria set forth in this Ordinance.~~

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

5.49.030: Effective Date.

~~Permits issued under this ordinance shall remain in effect for a period of eighteen-twelve months from the effective date, at the end of which time the City Council will consider terminating, expanding and/or revising these regulations. Should the City Council take no action, then this any permits would automatically terminate eighteen months after the effective date of the ordinance.~~Permit will expire unless renewed by the vendor.

5.49.040: Permit Required.

Any new or existing Pushcart Food Vendor who desires to vend in the City of Oakland shall apply for and obtain a Pushcart Food Vending Permit prior to conducting pushcart food vending. It shall be unlawful to sell, offer for sale, or solicit offers to purchase food from a pushcart in the ~~pilot-program~~ area without first obtaining a Pushcart Food Vending Permit from the Building Division. All applicants shall be required to submit the following information in order to qualify for a Pushcart Food Vending Permit.

A. The applicant shall obtain a Pushcart Food Vending Permit Application from the City of Oakland Building Services Division.

B. In order for the Pushcart Food Vending Permit Application to be deemed complete, the applicant shall provide the Building Division with the following:

1. Completed Pushcart Food Vending Permit Application;
2. Mailing address for notification;
3. Legal names of pushcart food vending business owner/operator;
4. Proof of valid City of Oakland Business Tax Certificate;
5. Proof of valid County of Alameda Health Agency, Environmental Health Services Health Permit;
6. Photocopy of valid California Drivers License for business owner/operator;
7. ~~Six~~ Four photographs (showing different views) of the pushcart;
8. Sample or rendering or photograph of advertising signs; and
9. ~~A \$50 non-refundable~~ An application fee ~~or as modified in~~ per the City of Oakland Master Fee Schedule. A permit fee of \$500 ~~or as modified by~~ per the City of Oakland Master Fee Schedule shall be paid prior to issuance of the permit. The application fee shall be credited toward payment of the permit fee. A late fee will be assessed per the City of Oakland Master Fee Schedule if the annual renewal is not paid in a timely manner.
10. If a vendor proposes to vend from a single location for more than four consecutive hours at a time, the vendor must identify the location and an available restroom to be used by the vendor, and written permission to use the bathroom from its owner.

C. The Building Division shall issue up to ~~thirty-sixty (3060)~~ permits. Permit issuance will be prioritized as follows.

1. Holders of Alameda Health Agency, Environmental Health Services Health Permits will be given priority for available permits. ~~During the first thirty (30) days of application of these regulations, the Building Division shall only accept and deem complete those permit applications for which an Alameda Health Agency, Environmental Health Services Health Permit was previously issued.~~

2. ~~After the first thirty (30) days of application of these regulations, permit~~ Permit applications shall be accepted and deemed complete on a first-come, first-served basis.
 3. Upon issuance of ~~thirty-sixty (3060)~~ permits, the Building Division will accept applications on a first-come, first-served basis for entry onto a permit waiting list. Should a permit be revoked or otherwise become available, the first applicant on the permit waiting list shall be contacted immediately and offered the available permit.
 4. At no time shall more than ~~thirty-sixty (3060)~~ permits be active.
 5. The permit applicant shall obtain the permit within fourteen (14) days of permit availability or said permit application shall expire.
- D. The Building Division shall process permit applications at the time ~~of~~ receipt at the permit counter.

5.49.050: Geographic Area.

Pushcart food vending shall only occur in the following geographic areas of Oakland:

- A. Sidewalks: Pushcart food vending shall be permitted on public sidewalks located on Fruitvale Avenue and High Street between Interstate 880 to the ~~west-south~~ and Foothill Boulevard to the east, Foothill Boulevard between 19th Avenue to the ~~north~~ west and 105th Avenue Macarthur Boulevard to the southeast, International Boulevard between First Avenue to the west and 105th Avenue to the east, and San Leandro Boulevard Street between Fruitvale Avenue to the north and 98th Avenue to the south, East 12th Street between 4th Avenue in the west and 23rd Avenue in the east, 14th Avenue between East 11th Street in the south and East 19th Street in the north. Vendors may transport pushcart vending equipment throughout the City of Oakland. However, vending, including selling, offering for sale, or soliciting offers to purchase food, is restricted outside of the streets and zones identified in this section.
- B. Zones: Along the street sections described above, pushcart food vending shall be permitted in the C-20 Shopping Center Commercial, C-28 Commercial Shopping District, C-30 District Thoroughfare Commercial, C-40 Community Thoroughfare Commercial, M-20 Light Industrial, M-30 General Industrial, and M-40 Heavy Industrial zoning districts.
- C. Locations:
1. Vendors may vend at any location within permitted zones and along permitted sidewalks. However, vendors shall maintain a 100-foot distance between one another while selling, offering for sale, or soliciting offers to purchase food.
 2. The pushcart food vendor shall not locate within 200 feet of any primary or ~~secondary-middle~~ school or public park.
 3. Pushcart food vendors shall not vend or locate equipment adjacent to on-street parking spaces reserved for disabled access, driveways, entries and exits from buildings or facilities, or adjacent to street intersections where equipment may obstruct vehicle and pedestrian sight distance.
 4. Pushcart Food Vendors may vend at assemblies within two blocks of the permitted locations.
- D. Travel: Pushcart food vendors may travel along any public right-of-way within the City of Oakland. However, vending ~~shall only be permitted within the pilot program area~~ shall be limited to the permitted locations. Pushcart food vendors shall not be allowed to vend, expose or otherwise advertise merchandise, solicit sales, or loiter outside of the ~~pilot program area~~ permitted locations.

5.49.060: Regulations for Pushcart Food Vendors.

- A. Pushcart Food Vendors shall sell, offer for sale or solicit offers to purchase only in the area(s) designated by the City Manager or his or her designee. 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.
- B. Vending shall only occur within the hours of 7 a.m. to 10 p.m. Monday through Friday, and 8 a.m. to 10 p.m. Saturday and Sunday. The City of Oakland may require additional restrictions to abate nuisances.
- C. All Pushcart Food Vendors shall adhere to designated time and day requirements and shall be allotted one-half hour set-up and one-half hour breakdown and travel time before and after stated selling hours.
- D. No Pushcart Food Vendor shall sell, offer for sale, or solicit offers to purchase from any automobile or truck.
- E. Pushcart Food Vendors shall engage in their activities in designated areas of the City of Oakland in such a manner that at all times there shall remain an open pedestrian passage of at least six feet in width, as measured from the line perpendicular to the pushcart food vending activity and end of walkway, and consistent with the Americans with Disabilities Act.
- F. Vending equipment and merchandise shall occupy the pushcart only and shall not be stored, displayed or otherwise placed in the public right-of-way or on public property.
- G. Vending equipment shall be regulated in the following manner:
 - 1. The Pushcart Food Vending Permit shall be affixed to the pushcart in a readily visible location at all times.
 - 2. Vending equipment, merchandise offered for sale or otherwise associated with the Pushcart Food Vendor shall not block, impede or in any way hamper ingress or egress for parked vehicles, pedestrian movement or cause or allow to cause any hazard to pedestrians.
 - 3. 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.
 - 4. 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.
 - 5. Up to two signs may be attached to the pushcart, with a maximum aggregate display surface of five (5) square feet per sign.
 - 6. The pushcart vending equipment shall be entirely self-sufficient in regards to gas, electricity, water, and telecommunications.
 - 7. No tables, chairs, fences or other site furniture (temporary or otherwise) are permitted in conjunction with the pushcart vending equipment.
 - 8. Vendors shall remove all equipment upon order of City of Oakland.
 - 9. Vendors shall not locate or create a vending activity that will negatively impact adjacent businesses or residences.

5.49.070: Cleanup Responsibility and Liability for Damages.

- A. Vendors shall maintain their sales location in a clean, hazard-free condition; failure to do so and failure to clean the vending location of waste shall be cause for revocation or suspension of permit;
- B. Vendors shall agree to defend, indemnify and hold harmless City, its offices and employees from any and all damages or injury to persons or property proximately caused by any act or omission of the vendor or any hazardous or negligent conditions maintained at their sales location.
- C. Vendors shall not discharge materials onto the sidewalk, gutters, or storm drain.

5.49.080: Violation and Penalty.

- A. The City Manager or his designated representative shall issue or cause to have issued citations for violations of this Ordinance. Vendors in violation of this ordinance shall be subject to administrative citations per Chapter 1.12 of the Oakland Municipal Code.
- B. Any person vending without a duly issued permit and personal identification 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 person has been given notice, shall not be punished by imprisonment but may be fined.
- D. If periodic inspections are necessary to monitor compliance, code enforcement reinspection fees per the Master Fee Schedule shall be assessed.

5.49.090: Suspensions, Revocation or Denial of Permit.

- A. Any permit issued pursuant to this Ordinance may be revoked or suspended for good cause or upon violation of any provision of this Ordinance. Any person whose permit has been revoked or suspended shall receive in writing an explanation of such action by the permit 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 criteria for the permit 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
 - 5. Public use/repair of Right-of-Way.
- B. The following factors shall be considered in determining whether a permit should be suspended or revoked upon non-compliance with these regulations:
 - 1. The number of citations for violation of this Ordinance previously received by the vendor; and
 - 2. The number of previous suspensions and/or revocations imposed upon the vendor; and
 - 3. The number of occasions for which the vendor's permit 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 vendor's misrepresentation, noncompliance and/or misconduct; and
 - 5. Whether or not the condition subjecting the vendor to suspension or revocation is of a nature that can be and/or has been corrected.
- C. Any permit holder or applicant whose permit is suspended or revoked or whose application for a permit is denied may, within fifteen (15) days of the date of action, notify the Building Division that the permit holder desires reconsideration of that decision. A hearing before the City Manager of the request shall be scheduled. The suspension or revocation will remain in effect pending the hearing. At the hearing, the permit holder or applicant will be afforded the opportunity to be heard and present facts and witnesses on his or her behalf. At that time, the City Manager or his or her designee will make a final decision.

- C. Section 12.08.030 of the Oakland Municipal Code is amended to read as follows:

Chapter 12.08.030, Public sidewalk encroachments—Types and definitions:

For the purpose of this title, encroachments upon the public street, alley, or "sidewalk area" shall be of three types: major, minor, and short term. The sidewalk area shall be defined as that area between the property line and the edge of the pavement or face of the curb. "Improved streets" shall be defined as streets with concrete curbs, gutters and sidewalks. The displaying of wares, other than flowers or other aesthetically pleasing objects, and the selling of any wares on the sidewalk area shall be specifically prohibited. However, within those areas of Oakland subject to the Pushcart Food Vending Pilot Program Ordinance, ~~and during such time that the pilot program is in effect,~~ pushcart food vending is regulated by Chapter 5.49 of the Municipal Code. As defined in this title, the term "aesthetically pleasing objects" excludes furniture and other utilitarian objects. Permission to encroach shall be revocable at the pleasure of the City Council without recourse unless otherwise provided herein. Nothing in this section shall apply to the operation or maintenance of sidewalk cafes.

A major encroachment, for the purposes of this title, shall be anything attached to a structure or constructed in place so that it projects into the public right-of-way such as basement vaults, kiosks, covered conveyors, crane extensions, earth retaining structures, and structure connected planter boxes, fences, or curbs. Projections over any public street, alley or sidewalk in excess of the limitations specified in the Oakland Building Code shall also be classified as major encroachments, including theater marquees, signs suspended above the sidewalk, oriel windows, balconies, cornices and other architectural projections.

A minor encroachment, for the purposes of this title, shall be an encroachment into the public right-of-way resting on or projecting into the sidewalk area, but which is not structurally attached to a building, such as flowerpots, planter boxes, clocks, flagpole sockets, bus shelters, phone booths, bike racks, fences, nonadvertising benches, curbs around planter areas, displays of flowers, fresh fruits and vegetables. Such displays of fruits and vegetables shall not be allowed except when similar fruits and vegetable items are sold indoors on the premises at that location. In commercial zones, minor encroachments shall basically be for decorative or public service purposes with advertising signs specifically prohibited.

Short term encroachments into the public right-of-way, for the purposes of this title, shall be events open to the public which take place upon streets and sidewalks such as semiannual art and handicraft shows and semiannual sidewalk sales sponsored by merchant associations representing the majority of merchants in the area of the show or sale, and semiannual block parties and other events. (Prior code § 6-1.54)

Section 3: The public safety, health and general welfare will be furthered by this Ordinance.

Section 4: This Ordinance shall be effective as provided for in the Charter of the City of Oakland

Section 5: 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 6: 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 7: 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.

FEB 17 2004

IN COUNCIL, OAKLAND, CALIFORNIA, ~~2004~~

PASSED BY THE FOLLOWING VOTE:

AYES- BRUNNER, CHANG, ~~BROOKS~~, NADEL, ~~REID~~, CHAN, WAN, AND
PRESIDENT DE LA FUENTE - 6

NOES- ~~BROOKS~~, REID - 2

ABSENT- 0

ABSTENTION- 0

Introduction Date: FEB 3 2004

ATTEST:



CEDA FLOYD

City Clerk and Clerk of the Council
of the City of Oakland, California

FILED
OFFICE OF THE CITY CLERK
OAKLAND

NOTICE AND DIGEST

2003 DEC 30 PM 3:47

MPW

ORDINANCE ESTABLISHING A PERMANENT PUSH CART FOOD VENDING PROGRAM TO BE LOCATED WITHIN THE MANUFACTURING AND COMMERCIAL CORRIDORS ON FRUITVALE AVENUE AND HIGH STREET BETWEEN I-880 TO THE SOUTH AND FOOTHILL BOULEVARD TO THE NORTH, FOOTHILL BOULEVARD BETWEEN 19TH AVENUE TO THE WEST AND MACARTHUR TO THE EAST, INTERNATIONAL BOULEVARD BETWEEN 1ST AVENUE TO THE WEST AND 105TH AVENUE TO THE EAST, SAN LEANDRO STREET BETWEEN FRUITVALE AVENUE TO THE WEST AND 98TH AVENUE TO THE EAST, EAST 12TH STREET BETWEEN 4TH AVENUE TO THE WEST AND 23RD AVENUE TO THE EAST, 14TH AVENUE BETWEEN EAST 11TH STREET TO THE SOUTH AND EAST 19TH AVENUE TO THE NORTH.

This Ordinance proposes to make the current pilot Pushcart Food Vending Program a permanent program, expand the Program boundaries and make a number of operational adjustments. The boundaries of the pilot program were the manufacturing and commercial corridors south of Foothill Boulevard and east of 18th Avenue. The proposed new boundaries would be the manufacturing and commercial corridors south of Foothill Boulevard and east of 1st Avenue.