

OAKLAND CITY COUNCIL

ORDINANCE No. 12579 C.M.S.

FILED
OFFICE OF THE CITY CLERK
OAKLAND
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[Signature]

INTRODUCED BY COUNCILMEMBER _____

ORDINANCE ESTABLISHING A PERMANENT VEHICULAR 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 sales activities; and,

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

WHEREAS, Ordinance No. 12311 C.M.S. established an eighteen-month pilot vehicular vending program (program) that permitted vehicular food vending in private property in designated areas in Oakland; and

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

WHEREAS, vehicular food vendors further provided commercial variety and encouraged additional pedestrian traffic; and,

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

WHEREAS, vehicular food vending provides an opportunity for individuals to be self-employed and contribute to the community; and,

WHEREAS, the vehicular food vendors have been licensed 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 requirements of the California Environmental Quality Act (CEQA) of 1970 are satisfied, and according to Section 15332, in-fill development projects such as vehicular food units are categorically exempt, therefore the proposed permanent Vehicular Food Vending Program is exempt from the provisions of the California Environmental Quality Act (CEQA); and,

WHEREAS, the City Council finds and determines that the public safety, health, convenience, comfort, property, and general welfare have been furthered by the Pilot Vehicular Food Vending 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. Oakland Municipal Code Chapter 8.09 “Vehicular Food Vending” is amended to read as follows (additions are indicated by underlining and deletions are indicated by ~~strike-out~~ type.):

Chapter 8.09 -- Vehicular Food Vending

8.09.010 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 vehicular food vendors provide the community and customers with a minimum level of cleanliness, quality and security.

8.09.020 Definitions.

For the purposes of this chapter, certain words and phrases are defined, and certain provisions shall be construed, as herein set out unless it shall be apparent from the context that they have a different meaning:

A. “Vehicular food vendor” (vendor herein) shall mean a person who is engaged in “vehicular food vending.”

B. "Vehicular food vending" shall mean the sale of ready-to-consume prepared foods from trucks located on private property on a semi-permanent basis during hours of operation. Vehicular food vending generally has the following characteristics:

- i) Food is ordered and served from a take-out counter that is integral to the catering truck;
- ii) Food is paid for prior to consumption;
- iii) Catering trucks from which the food is sold typically have a take-out counter and space for customer queuing;
- iv) Food and beverages are served in disposable wrappers, plates or containers; and
- v) Food and beverages are prepared and sold for off-site consumption.

C. "Loitering" shall mean remaining on any property under such circumstances that a reasonable person would conclude that the person who remains on the property does not have a purpose connected with the usual and ordinary use to which such property is put, does not have bona fide intent to exercise a constitutional right, and is causing public inconvenience or annoyance.

8.09.030 Permitted area.

~~During the pilot program and subject to the provisions of this Chapter, vehicular food vending shall only be permitted within City Council Districts 5, 6, and 7, as defined at the time of adoption of the ordinance, and only at the following locations:~~

Streets: Vehicular food vending shall be permitted on private property located on Fruitvale Avenue and High Street between Interstate 880 to the west and Foothill Boulevard to the east, Foothill Boulevard between 19th Avenue to the north and MacArthur Boulevard to the south, International Boulevard between 19th-First Avenue to the north and 105th Avenue to the south, and San Leandro Boulevard Street between Fruitvale Avenue to the north and 98th Avenue to the south. East 12th Street between 4th Avenue to the west and 23rd Avenue to the east, 14th Avenue between East 11th Street in the south and Est 19th Street in the north. Within the pilot-program permitted area, vehicular food vendors shall be required to locate on private property with an address on and visible from the above-listed public streets.

Zoning Districts: On the streets listed above, vehicular food vending shall be permitted only 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.¹ Vehicular food vending shall not be permitted in any other zoning district.

No vehicular food vending use shall be located or maintained on public property inconsistent with any other City of Oakland regulations.

8.09.040. Permit Application New and existing vehicular food vendors shall possess a valid Vehicular Food Vending Permit issued by the Building Services Division of the Community and Economic Development Agency (CEDA).

¹ ~~During the pilot program and~~ Consistent with existing regulations related to Fast Food Restaurant Activities and with section 5.48.080 of the Municipal Code, vehicular food vending will continue to be conditionally permitted outside of the pilot program area in the following zoning districts: C-20 Shopping Center Commercial; C-25 Office Commercial; C-27 Village Commercial; C-28 Commercial Shopping District; C-30 District Thoroughfare Commercial; C-31 Special Retail Commercial; C-35 District Shopping Commercial; C-36 Gateway Boulevard Service Commercial; C-40 Community Thoroughfare Commercial; C-45 Community Shopping Commercial; C-51 Central Business Service Commercial; C-55 Central Core Commercial; C-60 City Service Commercial; M-10 Special Industrial; M-20 Light Industrial; M-30 General Industrial; M-40 Heavy Industrial; S-1 Medical Center; and S-2 Civic Center.

A. Vehicular food vendors shall submit the following information in order to qualify for a Vehicular Food Vending Permit.

i) The applicant shall obtain a Vehicular Food Vending Permit Application from the City of Oakland building services counter (building counter), located at 250 Frank H. Ogawa Plaza, Second Floor. The completed application shall be submitted to the Building Division.

ii) In order for the Vehicular Food Vending Permit Application to be deemed complete, the applicant shall provide the Building Division with the following:

- a. Completed Vehicular Food Vending Permit Application;
 - b. Mailing address for notification;
 - c. Address or Assessor Parcel Number (APN) for the proposed vehicular food vending site;
 - d. Signed and notarized affidavit in a form approved by the City of Oakland from the property owner (if other than self) permitting the vehicular food vendor to locate on the site;
 - e. Legal names of vehicular food vending business owner(s) ~~and all employees~~;
 - f. Proof of valid City of Oakland Business Tax Certificate;
 - g. Proof of valid County of Alameda Health Agency, Environmental Health Services Health Permit;
 - h. Photocopy of valid California Drivers License for business owner and all employees;
 - i. Scaled or dimensioned site plan depicting location of vehicular food vending vehicle and any existing structures on proposed site;
 - j. Six photographs (showing different views) of the proposed site;
 - k. Four photographs (showing different exterior views) of the vehicular food vending vehicle;
 - l. Sample photograph or rendering of advertising signs;
 - m. Facsimile of logo to be applied to all disposable paper products to be provided to customers;
 - n. If the vehicular food vendor is not able to provide employee access to restrooms, affidavit from property owner within 200 feet of the vehicular food vending vehicle permitting use of restroom facilities by the vehicular food vendor; and
 - o. Nonrefundable application fee of ~~\$50 or as modified in~~ per the City of Oakland Master Fee Schedule. The application fee shall be applied to the permit fee upon application approval.
- iii) The Building Division shall process the Vehicular Food Vending Permit Application (application) within ten (10) business days from the date on which the application is deemed complete.

8.09.050 Permit Conditions and Issuance

A permit issued pursuant to the provisions of this Chapter shall be subject to the following conditions:

A. Applications approved for issuance shall expire in 30 days if unclaimed.

B. A permit fee of ~~\$2,000 or as modified in~~ per the City of Oakland Master Fee Schedule, shall be paid prior to issuance of the permit. The ~~\$50~~ application fee shall be applied to the permit fee upon application approval. A late fee per the City of Oakland Master Fee Schedule will be assessed if the annual renewal is not paid in a timely manner.

C. Upon issuance of the permit, the applicant shall not commence business activities until the Building Services Division has inspected and approved all conditions of the permit.

D. Location:

i) The vehicular food vendor shall be located within the Vehicular Food Vending ~~Pilot~~-Program area as identified on the attached map (see Attachment A).

ii) The vehicular food vendor shall locate on private property, and must receive written consent from the property owner (if not self) to occupy the property and conform to the conditions of the permit.

- iii) The vehicular food vendor shall submit the written consent with the application.
- iv) The vehicular food vendor shall not locate within 200 feet (as measured from the parcel boundary) of any Fast Food Restaurant² or other vehicular food vendor³, full-service restaurant⁴ or delicatessen⁵, or within 500 feet of any public park or primary or secondary school.
- v) The vehicular food vendor shall not locate in the public right of way.
- vi) The vehicular food vendor shall not locate in parking spaces required to meet minimum parking requirements for any other business.
- vii) The vehicular food vendor shall be located within 200 feet of a restroom facility and shall demonstrate legal access for employees.
- viii) The vehicle shall not block any parking required to adequately serve other businesses, driveways or drive aisles, and shall be visible from the street.
- ix) The vehicular food vending vehicle shall be set back a minimum of 10 feet from any public sidewalk or right-of-way when the service window faces the street. Less obstructive orientations shall insure that the queue does not encroach upon the public right-of-way.

E. Condition/Appearance of Vehicle:

- i) The vehicular food vendor shall display current business tax certificate, Health Department permit (and decal) and Vehicular Food Vending Permit in plain view and at all times on the exterior of the food vending vehicle.
- ii) The Vehicular Food Vending Permit and business tax certificate shall be displayed on or immediately adjacent to the front, passenger-side window.
- iii) The health decal shall be located on the left rear of the vehicle.
- iv) The vehicular food vendor shall maintain a valid health permit at all times. If the permit expires, or is suspended or revoked, then all food sales shall cease until the permit is reinstated.
- v) The applicant shall display no more than ~~two~~ three signs attached to the vehicle (including the signage pertaining to loitering), with a maximum aggregate display surface of ~~15~~ 30 square feet per sign.
- vi) The vehicular food vending vehicle and use shall be entirely self-sufficient in regards to gas, water, and telecommunications. Should any utility hook-ups or connections to on-site utilities be required, the vehicular food vendor shall be required to apply for appropriate permits to ensure building and public safety and consistency with applicable building codes.
- vii) Electrical service to vehicular food vending vehicles shall be reviewed and approved on a case-by-case basis by the Building Division.
- viii) The vehicular food vending vehicle shall be a self-propelled vehicle maintained in operating condition at all times.
- ix) The vehicle shall not become a fixture of the site and shall not be considered an improvement to real property.
- x) The vendor shall not discharge items onto the sidewalk, gutter or storm inlets.

F. Condition/Appearance of Site:

- i) The site shall be maintained in a safe and clean manner at all times.
- ii) Exterior storage of refuse, equipment or materials associated with the vehicular food vending enterprise is prohibited.
- iii) The lot shall be paved.

² As an exception, Vehicular Food Vendors may locate within 200 feet of a restaurant of which the owner has provided the Vehicular Food Vendor with permission to locate on the same lot.

³ See Footnote 2, above.

⁴ See Footnote 2, above.

⁵ See Footnote 2, above.

iv) The vehicular food vendor shall maintain site circulation and access consistent with the Americans with Disabilities Act.

v) ~~No~~ Up to four tall stand-up cocktail-type tables, however, no chairs, no fences or other site furniture (permanent or otherwise) shall be permitted in conjunction with vehicular food vending establishments.

G. Lighting. The vehicular food vendor shall provide adequate lighting to ensure customer safety. Lighting shall be directed downwards and away from public streets and adjacent properties.

H. Noise Control. Noise levels measured at the property line shall not exceed the City's Noise Ordinance Standards.

I. Litter Control.

i) The vehicular food vendor shall provide a minimum of two 32-gallon litter receptacles within 15 feet of the vehicular food vending vehicle. The receptacles will serve both employees and customers.

ii) The vehicular food vendor shall ~~collect~~ maintain the subject property and adjacent right-of-way free of litter on and within 200 feet of the subject property twice daily vending site.

iii) All refuse shall be removed from the site and properly disposed of on a daily basis.

J. Security.

i) The vehicular food vendor shall install signage indicating that loitering is not permitted and customers may only remain on the lot for up to 15 minutes after receiving their food.

ii) The vehicular food vendor shall enforce the no-loitering rule.

iii) The serving or consumption of alcohol shall be prohibited at vehicular food vending sites.

K. Hours of Operation.

Hours of operation shall be determined by the City but shall not exceed: 7:00 a.m. to ~~23~~:00 a.m., everyday.

8.09.060 Permit Expiration and Revocation.

Vehicular food vending shall be permitted only ~~during the period of time during which the Pilot Program is in effect~~ while the permit is valid pursuant to the provisions of this ordinance.

A. Permit Revocation. The City of Oakland reserves the right to revoke this permit at any time if it is found that the approved activity is violating any of the provisions of the City of Oakland Planning Code, any provision of this Chapter, or causing a public nuisance. Should a Vehicular Food Vending Permit be revoked, the vendor shall be required to cease operation immediately or be subject to police action which may include impounding of vehicle, ticketing and/or arrest.

B. Site Improvements. All applicable site improvements shall be installed no later than 30 days from the date of issuance of the permit for this approval to be valid. If improvements have not been made within the 30 days, the permit shall be revoked.

C. Permit Limitations. The Vehicular Food Vending Permit shall be valid ~~throughout the Vehicular Food Vending Pilot Program for 12 months from the date of issuance. Upon termination of the pilot program, food vending permits shall no longer be valid. The permit must be renewed on or before its expiration date.~~

8.09.070 Public Nuisance.

A. Prohibited Locations. Any vehicular food vending use located, maintained, or operated in violation of this section shall be declared a public nuisance. Any existing vehicular food vending use that is located or maintained in violation of this subsection shall be removed within thirty (30) days after the effective date of the ordinance codified in this chapter.

B. Public Nuisance. Any vehicular food vending use that is used as an instrumentality for or contributes substantially by its presence to any of the following conditions is declared to be a public nuisance:

- i) The selling or giving away of controlled substances (as defined in Division 10 of the California Health and Safety Code); or, the soliciting, agreeing to engage in, or engaging in any act of prostitution; or, the conduct of any other criminal activity;
- ii) The consumption of alcoholic beverages on nearby outdoor public or private property, except where outdoor consumption of alcoholic beverages is specifically authorized pursuant to a license issued by the Department of Alcoholic Beverage Control;
- iii) Loitering on nearby public or private property;
- iv) Disturbing the peace; or
- v) Any acts that threaten the public health and safety including, but not limited to, public urination.

8.09.080 Enforcement.

The City Manager, or his or her designee, shall be responsible for enforcement of this chapter. If periodic inspections are necessary to monitor compliance, code enforcement reinspection fees per the Master Fee Schedule shall be assessed.

8.09.090 Abatement generally.

Failure to permanently remove a vehicle used for vehicular food vending, and failure to cease operation as a vehicular food vendor after the termination, revocation, expiration, or suspension of any permit issued pursuant to the provisions of this Chapter shall constitute a public nuisance, and shall be subject to enforcement and abatement procedures set forth in Chapter 1.16 of the Oakland Municipal Code and Chapter 17.152 of the Oakland Planning Code.

When the City Manager, or his or her designee, finds that a vehicular food vending use has been used as an instrument for or has contributed substantially to any of the conditions stated in Section 8.09.040, in violation of this chapter, he or she, or his or her designee, may declare and deem the violation of a public nuisance and issue an order to abate operation of the vehicular food vending use and direct that these persons not complying shall: (A) comply with the requirement; (B) comply with a time schedule for compliance; and (C) take appropriate remedial or preventive action to prevent the violation from recurring.

8.09.100 Order to Abate.

Upon declaring and deeming a violation of this chapter a nuisance, the City Manager, or his or her designee, shall send a notice of abatement to the property owner and to the vehicular food vendor. The notice of abatement shall contain the following:

- A. The street address and a legal description of the property sufficient for identification of the premises or property upon which the nuisance condition(s) is located;
- B. A statement that the enforcement official has determined pursuant to this chapter that the property owner and vehicular food vendor of the subject property are in violation of this chapter;

C. A statement specifying the condition that has been deemed a public nuisance;

D. A statement ordering the property owner and the vehicular food vendor to abate the condition(s), and specifying the manner in which the same shall be abated, and the period within which such abatement shall be accomplished.

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

It is unlawful for the property owner and/or business owner/operator to fail or neglect to comply with such order or notice of abatement. In the event that the property owner and/or the vehicular food vendor shall not promptly proceed to abate said nuisance condition(s), that is to say within seven (7) days of notice to abate, as ordered by the enforcing official, the abatement procedure set forth in Section 8.09.060 may be undertaken.

8.09.110 Notice, administrative hearing and abatement.

A. Notice of Administrative Hearing. The City Manager, or his or her designee, upon failure of the property owner and/or the business owner/operator to promptly proceed to abate said nuisance condition(s) as ordered, and or/upon receipt of a written notice from the subject property owner and/or the business owner/operator stating that they wish to appeal the determination of violation by the City Manager, or his or her designee, may forthwith fix a time and place for an administrative hearing of the matter. In all such cases, the City Manager, or his or her designee, shall serve, or cause to be served, notice of said hearing upon the person in possession of such premises, the property owner and the business owner/operator thereof, not less than seven days prior to the time fixed for such hearing stating the nuisance condition(s) that is the subject of the hearing. Service of said notice may be made by delivery to the property owner and to the vehicular food vendor or person in possession personally or by enclosing the same in a sealed envelope, addressed to the occupant at such premises, or to the last equalized assessment rolls of the city, postage prepaid, registered or certified mail, return receipt requested, and depositing same in the United States mail. Service shall be deemed complete at the time of the deposit in the United States mail.

B. Administrative Hearing. At the time and place set for the hearing, a Hearing Officer, designated by the City Manager, shall hear such evidence as may be presented by said property owner and/or said business owner/operator, person in possession or their representative. Such hearing may be continued from time to time by the Hearing Officer, provided that notice is given to said property owner and to said vehicular food vendor or person in possession. Service of said notice shall be deemed complete at the time of deposit in the United States mail. The findings of the Hearing Officer shall be rendered at the time of such hearing and thereupon shall be announced to such property owner and vehicular food vendor.

Upon a determination that a nuisance condition(s) exists, the Hearing Officer shall give written notice, in the manner provided in subsection A of this section, to the property owner and to the business owner/operator to abate such condition forthwith. Service of said notice shall be deemed complete at the time of deposit in the United States mail. If such abatement is not commenced within seven days thereafter and is not completed within fourteen days of noticing, the City Manager, or his or her designee, shall cause the same to be abated at the property owner's expense.

8.09.120 Abatement procedure.

A. Failure to Appear and Untimely Appeals. In those cases where the property owner and/or the vehicular food vendor or person in possession does not appear for the administrative hearing or appears for the administrative hearing but does not give timely notice of an intent to appeal, and there is no good cause shown, the City Manager, or his or her designee, may direct that the condition causing the public nuisance be abated.

Thereafter, the City Manager, or his or her designee, shall give or cause to be given written notice, in the manner provided in Section 8.09.080A, to the property owner and to the vehicular food vendor or person in possession of said premises to abate such condition forthwith. Service of said notice shall be deemed complete at the time of deposit in the United States mail. If such abatement is not commenced within seven days thereafter and diligently prosecuted to completion, the City Manager, or his or her designee, shall at the property owner's and/or business owner's/operator's expense, cause the same to be abated.

B. Abatement. The City Manager, or his or her designee, may order to be paid by property owner and the business owner/operator of said premises all sums that may be necessarily expended by the city in abating such condition, including but not limited to the abatement work cost, abatement contract administering costs, storage and abatement work supervising costs. In lieu of employing a contractor or other person to abate such condition, the City Manager, or his or her designee, may call upon the Building Division or other departments of the city to abate such condition. Upon completion of the abatement work said abatement costs shall be secured by a special assessment lien recorded against the subject property in the Office of County Recorder, Alameda County. Said special assessment lien shall substantially comply with the form outlined in Section 8.09.110.

At the time that the city elects to perform the abatement work, the City Manager, or his or her designee, may record a notice of prospective special assessment lien against the subject property. Such notice shall include a description of the proposed abatement work and an estimate of its costs. The notice shall indicate that the actual costs may exceed the city's estimate.

8.09.130 Notice of special assessment lien.

The special assessment lien mentioned in Sections 8.20.080C and 8.20.090 shall substantially comply with the following form:

NOTICE OF SPECIAL
ASSESSMENT LIEN

Pursuant to authority vested in me, and the provisions of Chapter 8.09, of the Oakland Municipal Code, I did, on the ___ day of _____, 20___, cause a condition or chargeable action upon the hereinafter described real property to be abated at the expense of the property owners thereof, in the amount of \$ _____, and that said amount has not been paid nor any part thereof, and the City of Oakland does hereby claim a special assessment lien upon the hereinafter described real property in said amount; the same shall be a special assessment lien upon the said real property until said sum with interest thereon at the legally allowable rate from the date of the recordation of this special assessment lien in the office of the County Recorder of the County of Alameda, State of California, has been paid in full. The real property herein above mentioned and upon which a special assessment lien is claimed is that certain parcel of land lying and being in the City of Oakland, County of Alameda, State of California, and particularly described as follows, to wit:

[INSERT DESCRIPTION OF PROPERTY]

Dated this ___ day of _____, 20___.

(City Manager, or his designee)

City of Oakland

8.09.140 Replacement prohibited.

If the public nuisance to be abated is one defined in Section 8.09.040:

A. The hearing notice required by Section 8.09.070A shall specify that abatement shall consist of removal of the vehicular food vending vehicle, and that no vehicular food vending vehicle shall be located on the same parcel, or on any contiguous parcel owned by the same property owner, to replace the removed vehicular food vending vehicle for a period of one year from the date of removal; and

B. Any decision of the Hearing Officer ordering abatement shall specify that no vehicular food vending use shall be installed on the same parcel, or on any contiguous parcel owned by the same property owner, to replace the removed vehicular food vending use for a period of one year from the date of removal.

8.09.150 List of abated locations.

The City Manager, or his or her designee, shall maintain, and make available upon request, a list of locations where vehicular food vending is prohibited pursuant to Section 8.20.030.

8.09.160 Violations constituting infractions.

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

8.09.170 Penalty for violation.

Any person convicted of an infraction under the provision of this chapter shall be punished upon a first conviction by a fine of not more than one thousand dollars (\$1000.00) and, for a second conviction within a period of one year, by a fine of not more than two thousand dollars (\$2000.00) and, for a third or any subsequent conviction within a one-year period, by a fine of not more than five thousand dollars (\$5000.00). Any violation beyond the third conviction within a one-year period may be charged by the City Attorney or the District Attorney as a misdemeanor and the penalty for conviction of the same shall be punishable by a fine of not more than ten thousand dollars (\$10000.00) or by imprisonment in the county jail for a period of not more than six months or by both. Any person violating or failing to comply with any of the provisions of this chapter shall be subject to civil penalties and administrative citations per sections 1.08 and 1.12 of the Oakland Municipal Code.

8.09.180 Continuing violation.

Unless otherwise provided, a person shall be deemed guilty of a separate offense for each and every day during any portion of which a violation of this chapter is committed, continued or permitted by the person and shall be punishable accordingly as herein provided.

8.09.190 Civil actions.

In addition to any other remedies provided in this chapter, any violation of this chapter may be enforced by civil action brought by the city. In any such action, the city may seek, and the court shall grant, as appropriate, any or all of the following remedies:

A. A temporary and/or permanent injunction;

B. Assessment of the violator for the costs of any investigation which led to the establishment of the violation, and for the reasonable costs of preparing and bringing legal action under this subsection, including but not limited to attorney compensation.

8.09.200 Remedies not exclusive.

Remedies under this chapter are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive.

8.09.210 Joint and several liability.

The property owner and the vehicular food vendor shall be jointly and severally liable for violations of this chapter.

Section 3. This Ordinance is necessary to preserve the public health, safety and general welfare because of the potential harm to the area resulting from the unregulated distribution of food products, general appearance and attraction of additional nuisances by vehicular food vending.

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 circumstance is held invalid, the remainder of this Ordinance and the application shall not be affected thereby.

FEB 17 2004

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

PASSED BY THE FOLLOWING VOTE:

AYES- BRUNNER, CHANG, ~~BROOKS~~, NADEL, ~~REID~~, QUAN, 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

MPW

Notice and Digest

ORDINANCE ESTABLISHING A PERMANENT VEHICULAR 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 Vehicular 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.