

CITY OF OAKLAND
BILL ANALYSIS



Date: March 22, 2012
Bill Number: AB 1678 (as amended)
Bill Author: Monning

DEPARTMENT INFORMATION

Contact: Claudia Burgos, District 5, 510-238-7051
cburgos@oaklandnet.com

RECOMMENDED POSITION: OPPOSE

Summary of the Bill:

Assembly Bill 1678 (Monning) "Mobile Food Facilities: School Campus Location" would prohibit a mobile food facility from selling or otherwise providing food or beverages within ~~1,500~~ 500 feet of ~~any~~ the property line of ~~an~~ a public elementary or secondary school campus, except as specified.

This bill would also require the enforcing agency to notify each individual or entity that seeks approval of a mobile food facility of this requirement. By imposing additional duties upon local officials and creating a new crime, this bill would create a state-mandated local program.

On March 8th, AB 1678 was amended from the original 1,500 foot prohibition from the property line of an elementary or secondary school campus to a 500 foot prohibition from a public elementary or secondary school campus.

The bill has also been amended to include the following exemptions:
114294.1.

(b) The prohibition of this section shall not apply to any of the following:

(1) A mobile food facility operating on nonresidential, private, real property with the express consent of the owner or lessee of the real property.

(2) A mobile food facility operating adjacent to a permitted construction site and vending to a person who is at least 18 years of age.

(3) A mobile food facility operating to exclusively serve a film production, as defined in Section 14999.31 of the Government Code.

(4) A mobile food facility operating under a formal agreement with a school district pursuant to Chapter 9 (commencing with Section 49400) of Part 27 of Division 4 of Title 2 of the Education Code.

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OAKLAND

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(c) This section shall not be construed to limit or otherwise prohibit the enforcement of a local ordinance adopted prior to January 1, 2013, by a city, county, city and county, or district, including a school district, that regulates the location of operations by a mobile food facility, regardless of whether the local restriction is more or less restrictive than subdivision (a). This section also shall not be construed to limit or otherwise prohibit the adoption and enforcement of a local ordinance adopted on or after January 1, 2013, that is more restrictive of the location of operations by a mobile food facility than subdivision (a).

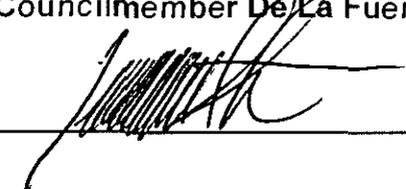
Although section 114294.1 (c) above, offers back local control to Cities and Counties, it only applies to local ordinances adopted prior to January 1, 2013. Because the City of Oakland is currently in the middle of modifying its mobile food vending ordinance and has been engaged in this process for almost two years, we do not know for sure if an amended mobile food vending ordinance will be adopted by the Council by January 1, 2013. If it is not, we will be bound to the 500 foot from schools restriction.

An oppose position is still recommended.

PLEASE RATE THE EFFECT OF THIS MEASURE ON THE CITY OF OAKLAND:

- Critical (top priority for City lobbyist, city position required ASAP)
- Very Important (priority for City lobbyist, city position necessary)
- Somewhat Important (City position desirable if time and resources are available)
- Minimal or None (do not review with City Council, position not required)

Respectfully Submitted,
Councilmember De La Fuente,



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BILL NUMBER: AB 1678 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY MARCH 8, 2012

INTRODUCED BY Assembly Member Monning

FEBRUARY 14, 2012

An act to add Section 114294.1 to the Health and Safety Code, relating to food.

LEGISLATIVE COUNSEL'S DIGEST

AB 1678, as amended, Monning. Mobile food facilities: school campus location.

The California Retail Food Code provides for the regulation of health and sanitation standards for retail food facilities, including mobile food facilities, as defined, by the State Department of Public Health. Under existing law, local health agencies are primarily responsible for enforcing this code. A violation of these provisions is punishable as a misdemeanor.

This bill would prohibit a mobile food facility from selling or otherwise providing food or beverages within ~~1,500~~

500 feet of ~~any~~ the property line of ~~an~~ a public elementary or secondary school campus, except as specified. It would also require the enforcing agency to notify each individual or entity that seeks approval of a mobile food facility of this requirement. By imposing additional duties upon local officials and creating a new crime, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, with regard to certain mandates, no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) All students deserve a school environment that promotes and protects good health.

(b) A school environment that fosters good health through sound nutrition is critical to overall student wellness and academic achievement.

(c) Past and ongoing efforts to create a healthier school environment for California's students are undermined by off-campus mobile food vending, which competes with the provision of healthful meals and snacks through the federally funded school nutrition programs.

(d) Mobile food vending diminishes participation in the school nutrition programs, reinforces the stigma associated with eating school meals, and jeopardizes the fiscal viability of school nutrition programs at the local level.

(e) Well-nourished students, such as those who participate in school meal programs, demonstrate better cognitive performance, classroom behavior, and social interaction, as well as improved academic achievement.

(f) Research shows meals served at school are often more nutritious than meals brought from home or served elsewhere. Students who participate in the School Breakfast Program consume more milk, more fruit, and less added sugar than their peers who do not eat a school breakfast. Students who participate in the National School Lunch Program consume more milk and more nutrient-dense lunches than their nonparticipating peers. Low-income students who participate in school lunch also eat more fruit than their nonparticipating peers.

(g) Mobile food vending increases students' access to foods and beverages that are calorie rich, nutrient poor, and contribute to negative health outcomes like being overweight and obesity.

(h) Mobile food vending near school campuses provides an incentive for students to leave school grounds, which decreases adult supervision of students during school hours and increases students' exposure to off-campus safety hazards.

(i) Mobile food vending near school campuses often results in crowded, impassable sidewalks and traffic congestion near school grounds, that infringes upon student safety.

(j) Mobile food vending near school campuses specifically and intentionally targets California's students.

(k) To help ensure student safety, promote good nutrition, and create healthier school environments, areas surrounding school campuses should be free of mobile food vending.

SEC. 2. Section 114294.1 is added to the Health and Safety Code, to read:

114294.1. (a) ~~Except as provided in subdivision (b), a mobile food facility may~~ shall not sell or otherwise provide food or beverages within ~~1,500~~ 500 feet of the property line of ~~an~~ a public elementary or secondary school campus, from the hours of 6:00 a.m. and 6:00 p.m., inclusive, on a ~~day~~ weekday that school is in session.

(b) The prohibition of this section shall not apply to any of the following:

(1) A mobile food facility operating on nonresidential, private, real property with the express consent of the owner or lessee of the real property.

(2) A mobile food facility operating adjacent to a permitted construction site and vending to a person who is at least 18 years of age.

(3) A mobile food facility operating to exclusively serve a film production, as defined in Section 14999.31 of the Government Code.

(4) A mobile food facility operating under a formal agreement with a school district pursuant to Chapter 9 (commencing with Section 49400) of Part 27 of Division 4 of Title 2 of the Education Code.

(c) This section shall not be construed to limit or otherwise prohibit the enforcement of a local ordinance adopted prior to January 1, 2013, by a city, county, city and county, or district, including a school district, that regulates the location of operations by a mobile food facility, regardless of whether the local restriction is more or less restrictive than subdivision (a). This

section also shall not be construed to limit or otherwise prohibit the adoption and enforcement of a local ordinance adopted on or after January 1, 2013, that is more restrictive of the location of operations by a mobile food facility than subdivision (a).

~~(b)~~

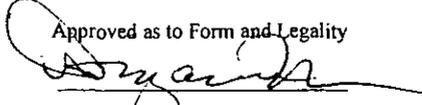
(d) The enforcement agency shall, in the course of approving mobile food facilities pursuant to Section 114294, provide notification of the restriction described in this section to each individual or entity that seeks approval of a mobile food facility.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

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Approved as to Form and Legality


City Attorney's Office

OAKLAND CITY COUNCIL
RESOLUTION No. _____ C.M.S.

Introduced by Councilmember Ignacio De La Fuente

RESOLUTION IN OPPOSITION OF ASSEMBLY BILL 1678 (MONNING) "MOBILE FOOD FACILITIES: SCHOOL CAMPUS LOCATION" WHICH WOULD PROHIBIT A MOBILE FOOD FACILITY FROM SELLING OR OTHERWISE PROVIDING FOOD OR BEVERAGES WITHIN 1,500 FEET OF ANY PROPERTY LINE OF AN ELEMENTARY OR SECONDARY SCHOOL CAMPUS.

WHEREAS, AB 1678 would prohibit a mobile food facility from selling or otherwise providing food or beverages within 1,500 feet of any property line of an elementary or secondary school campus from the hours of 6:00 a.m. and 6:00 p.m., inclusive, on a day that school is in session; and

WHEREAS, AB 1678 would require the enforcing agency to notify each individual or entity that seeks approval of a mobile food facility of this requirement; and

WHEREAS, by imposing additional duties upon local officials and creating a new crime, this bill would create a state-mandated local program; and

WHEREAS, a restriction of 1,500 feet from an elementary or secondary school campus would severely restrict the areas in which mobile vendors could operate in the City, and

WHEREAS, AB 1678 claims that past and ongoing efforts to create a healthier school environment for California's students are undermined by off-campus mobile food vending, which competes with the provision of healthful meals and snacks through the federally funded school nutrition programs; and

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WHEREAS, AB 1678 claims that Mobile food vending increases students' access to foods and beverages that are calorie rich, nutrient poor, and contribute to negative health outcomes like being overweight and obesity; and

WHEREAS, since 2001, the City of Oakland has had a successful and nationally replicated mobile food vending program; and

WHEREAS, Oakland has a thriving mobile food vending scene in which mobile food vendors offer a variety of foods from all over the world; and

WHEREAS, Oakland's mobile food vending ordinance includes a 500 foot distance requirement from schools; and

WHEREAS, several of Oakland's original mobile food vendors have gone on to become successful brick and mortar restaurants; and

WHEREAS, in December 2011, the Oakland City Council voted to expand Oakland's mobile vending ordinance to allow mobile vending in areas beyond the original "pilot program" permitted areas, and

WHEREAS, in December 2011, the Oakland City Council approved an additional component of its mobile vending program to allow for the creation of "food pods" in four of its seven council districts, and

WHEREAS, the City of Oakland is currently in the process of modifying our mobile vending ordinance so as to make it less restrictive for vendors, and

WHEREAS, existing mobile vendors and interested mobile vendors have both expressed a desire to be allowed to sell adjacent to school sites, and

WHEREAS, offering students the option of purchasing food from a mobile vendor is often a much healthier alternative to what is offered to students at the local corner market, and

WHEREAS, mobile food vendors offer a variety of fresh, often organic food products, and

WHEREAS, the proposed bill does not purport to ban the sale of any particular type of food thus allowing fast food restaurants, convenience stores, and gas station stores will continue to operate within the restricted area offering all manner of "unhealthy" food, and

WHEREAS, AB 1678 would override Oakland's mobile food vending ordinance which already regulates the proximity of food trucks to schools; now

WHEREAS, AB 1678 is in direct contrast to the direction in which Oakland is heading with its efforts to expand mobile food vending in the City; now therefore be it

RESOLVED: That the Oakland City Council opposes California Assembly Bill 1678 and encourages the California Legislature to reject it; and be it

FURTHER RESOLVED: That the City Council hereby directs the City Administrator and the City's legislative lobbyist to advocate for the above position in the California State Legislature.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES- BRUNNER, BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL,
SCHAFF and PRESIDENT REID

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the
Council of the City of Oakland

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RULES & LEGISLATION COMMITTEE

MAR 8 2012