

CITY OF OAKLAND
AGENDA REPORT

To: 2010 MAR 11 PM 4:03 Office of the City Administrator
Attn: Dan Lindheim
From: Police Department and Community and Economic Development
Date: March 23, 2010

Re: Update on A Report Detailing the Enforcement of Oakland Municipal Code Sections Prohibiting Illegal Street Vendors, Including Statistical Data on Enforcement Efforts, and the Feasibility of Centralized Locations Throughout the City Where food From Vendors Can Be Bought and Sold Legally

SUMMARY

As requested by the Rules and Legislation Committee, the Oakland Police Department (OPD) and Community and Economic Development Agency (CEDA) have prepared an informational report detailing their efforts in enforcing Oakland Municipal Code (O.M.C.) sections prohibiting illegal street vendors, including statistical data, and identified gaps in service.

FISCAL IMPACT

This is an information report; therefore, there is no fiscal impact.

BACKGROUND

The following O.M.C. sections are those most closely associated with illegal street vending violations:

- 5.04.020 Business Tax
- 5.48.020 Peddlers and solicitors – Police certificate
- 5.48.050 Peddling foodstuffs from vehicles
- 5.48.070 Peddlers' carts, stands
- 5.48.080 Peddling in certain district

KEY ISSUES AND IMPACTS

Oakland Police Department

There is a nexus between illegal vending and criminal activity; generally street vendors sell their wares in locations which have a considerable amount of foot traffic. In these dense areas vendors are robbed, beaten and assaulted which result in under reporting. Illegal vendors are often undocumented immigrants who fear reporting crimes due to their immigration status.

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Additionally there have been problems with late night commissaries which operate until 3:00 a.m., with incidents such as murder, robberies and assaults.

While the Oakland Police Department is tasked with enforcement of the above listed O.M.C. sections most enforcement actions stem from complaints received from the community. The community complaints received include unfair competition to those vendors that acquire the proper permits, public health threats posed by food prepared by illegal commissaries, and garbage left behind.

Officers assigned to the Problem Solving and Foot Patrol Unit are tasked with OPDs enforcement of O.M.C. violations and citizens complaints. Officers assigned as Problem Solving Officers and Foot Patrol approach the complaints and suspected violator(s) in the following form:

- Outreach/Education
- Warning
- Citation
- Arrest

From January 1, 2009 to December 2009, OPD issued 13 citations for violations dealing with illegal street vending.

Area	Number of Violations
One	3
Two	3
Three	7
Total	13

The 13 citations issued have resulted in all violators being convicted. Fines generally range up to \$100.00 and get progressively higher for subsequent offenses. There were no arrests for illegal vending violations during this time period.

Community and Economic Development Agency

In April 2009, CEDA Building Services received complaints identifying properties operating as un-permitted food preparation facilities (commissaries).

Complaints: Site:

Description:

0903219	521 105 th Ave	Food preparation for off-site sale/consumption.
0903190	1051 84 th Ave	Food preparation for off-site sale/consumption
0903225	1744 85 th Ave	Food preparation for off-site sale/consumption
0903377	1008 69 th Ave	Food preparation for off-site sale/consumption

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0903113	1217 97 th Ave	Food preparation for off-site sale/consumption
0905615	1538 94 th Ave	Food preparation for off-site sale/consumption

The following schools were also reported to CEDA as having vendor problems:

Stone Hurst Elementary	10315	E St	Melrose Elementary	1325	53 rd Ave
New Highland Academy	8521	A St.	Greenleaf Elementary	6328	E. 17 th St
Webster Academy	8000	Birch St	Reach Academy	9860	Sunnyside St
Community United	6701	Int'l Blvd	Acorn Woodland	1025	81 st Ave
Markham Elementary	7220	Krause Ave	Jefferson Elementary	2035	40 th Ave
Manzanita Community	2907	E. 27 th St	Ascend Elementary	3709	E. 12 th St
Lazear Elementary	824	29 th Ave	St Bernard	1630	62 nd Ave
Think College	2825	Int'l Blvd	Calvin Simmons	2101	35 th Ave
Garfield Elementary	1640	22 nd Ave	Urban Promise	3031	E. 18 th St

In addition, two churches were reported as having vendor problems:

St. Elizabeth	1500	34 th Ave	St. Luis Bertrand	1410	100 th Ave
San Antonio	1500	E 15 th St	St. Bernard	1630	62 nd Ave

Inspectors from the CEDA Building Services Department confirmed the following related to the above complaints:

- Food preparation took place between 1100 and 1300 hours
- Food carts were unloaded from vehicles, brought into properties to be restocked, and loaded back onto the vehicle.
- Vehicles depart from properties at approximately 1400 hours
- Vehicles made several stops, leaving each vendor in their designated zone.
- Vendors then setup near schools
- An average of 12 vendors operated out of each facility, to solicit at least 25 schools
- Photographs were taken and actions were documented by CEDA Building Inspectors

The following actions were taken in response to these events:

- Notices sent on May 28, 2009 to property owners with re-inspection dates of June 30, 2009, by CEDA and Alameda County Environmental Health Services (ACEHS)
- Most property owners were present at time of inspections to assure compliance and access to properties.
- Complaints were abated June 30, 2009 and all targeted facilities were closed as a result of enforcement actions.
- During the inspections, no citations were issued and no property was confiscated.

The following are the relevant Oakland Municipal Code chapters which provide authority for citation under chapters 5.49 and 8.09:

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5.49.040 Permit required	8.09.030	Permitted area
5.49.050 Geographic area	8.09.050	Permit conditions of issuance
5.49.060 Regulations for pushcart vendors	8.09.080	Enforcement
5.49.080 Violation & penalty	8.09.160	Violations constituting infractions

CEDA staff offer the following summary information from the complaints received in April 2009, and the subsequent actions as described above:

It is not possible for CEDA Building Services to assert a nexus between schools and commissaries. Schools are highly targeted by vendors; the high concentration of people within a short time frame makes schools an attractive source of potential customers. Vendors solicited and sold goods 15 minutes before and 15 minutes after school, from 1445 to 1515 hours on most weekdays, and around 1330 hours on Wednesdays (school minimum days). Un-permitted food vending activity has also been reported near churches and on weekends.

CEDA enforcement was successful in abating the un-approved activities taking place from the facilities. However, the overall intended goal of abating food vending was not reached. Un-permitted food vending activities continue throughout the City by many of the same operators, as well as by some new operators from unknown new locations. To renew such efforts, CEDA would need to obtain new information or receive new complaints.

At the time of the 2009 efforts, CEDA had one full time Senior Construction Inspector who issued permits, monitored mobile food vendors operating within the approved geographic area, and investigated complaints. These duties were in addition to regularly assigned duties of this position, which include blighted news racks, payphones, right of way encroachments and obstructions, construction inspections for privately funded public improvements, and work without permits Citywide. Additionally, one acting Specialty Combinations Inspector/Planner I assigned to Zoning inspections responds to unapproved activity complaints Citywide. Since the time of the 2009 enforcement efforts, however, the staff person who formerly held that position accepted a different job, and funding for the now-vacated position has been eliminated. CEDA is not currently staffed or funded for continued food vendor complaint response activity.

CEDA Building Services only has jurisdiction on activities that occur on or close to private properties. Property owners are fee-charged for any violations that are not abated. However, in most cases the property owners are not associated or responsible for the activity. A more permanent solution would require un-permitted commissary operators to be identified, cited and prosecuted as the main responsible persons. A dialogue was initiated with the District Attorney's office for a plan of action; the D.A. has worked on past cases with ACEHS.

Un-permitted food vending and peddling (from carts, vehicles, parking lots, streets or residences) is an informal economy that is rapidly growing. It is also an unfair business practice with minimal overhead that is un-regulated and un-taxed. Additionally, it undercuts and hinders established businesses, impacting the quality of life in the affected neighborhoods. Attempting to abate this activity has cost the City of Oakland and County of Alameda substantially in hours of

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work with very little in return. Although it has been non-revenue producing, allowing unpermitted vendors to roam freely throughout our City will have a negative and financial impact. Pro-active plans of action, resources and outreach are requested in order for enforcement to be fully successful.

PROGRAM DESCRIPTION

On December 12, 2008 an informational report was presented to the Public Safety Committee concerning illegal vendors and OPDs strategy to address future concerns. The following information details the strategies implemented and results.

Community Outreach

Problem Solving Officers (PSO) and Neighborhood Services Coordinators (NSC) from Areas 2 and 3 have discussed the issue of illegal vending at Neighborhood Crime Prevention Council (NCPC) meetings and Merchant meetings. Included in those discussions are the rules that govern illegal vending and what a seller needs to do to obtain a permit. PSOs and NSCs have partnered with NCPC and merchant leaders distribute informational circulars in the business district targeting those vendors suspected of illegal vending to educate them of potential violations. The results have been positive from the community and illegal vendors; compliance is generally met with education and a warning.

Refresher Training to OPD Field Staff

Area 2 and 3 patrol staff received refresher training on illegal street vending, and were provided with a "cheat sheet," concerning the illegal vending O.M.C. sections. This training is on-going and is enforced during peak events such as Valentine's Day and Mother's Day holidays.

PSOs are required to assess respective beats to determine if there is an illegal vendor issue through day-to-day observation, and researching crime statistics to determine if there is a nexus between criminal activities, the presence of the illegal vendors, and the presence of community complaints. PSOs and Foot Patrol Officers are the lead officers in dealing with issues regarding illegal vending. Officers in these assignments respond to NCPC complaints, community complaints and on-view violations.

Progressive Enforcement

Progressive enforcement is highly encouraged and is occurring. When officers meet with suspected illegal vendors and educate them on the violations they are committing they generally cease their illegal activity. OPDs response from the community has been positive as we take a educational/warning approach to this issue.

SUSTAINABLE OPPORTUNITIES

Economic: By enforcing O.M.C. sections that govern illegal street vendors, legal vendors are able to remain in business which contributes to the economic health of the local economy.

Environmental: Crime and blight are often associated with illegal street vending; therefore regular enforcement of these O.M.C. sections promotes a healthier environment.

Social Equity: Eliminating illegal street vendors helps to reduce crime throughout the neighborhoods, making them safer.

Disability and Senior Access

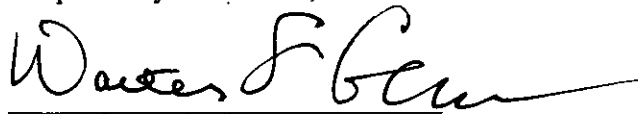
There are no ADA or senior citizen access issues identified in this report

RECOMMENDATION / RATIONALE

Staff recommends acceptance of this report.

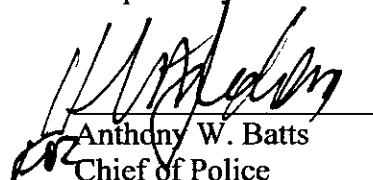
OPD will continue its enforcements efforts, using the PSOs and Foot Patrol Officers as the primary response. This is a combined community and OPD effort where educating the illegal vendors has had an impact on efforts to reduce this problem. OPD will continue to train field officers and maintain the “cheat sheet” to assist when necessary to issue citations. The Department has been very successful in providing information to the general public concerning illegal vending and has partnered with the community to take a more active role in addressing the problem.

Respectfully Submitted,



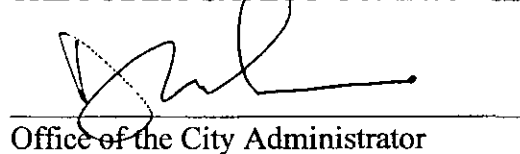
Walter S. Cohen, Director
Community and Economic Development Agency

Respectfully submitted,



Anthony W. Batts
Chief of Police

APPROVED AND FORWARDED TO
THE PUBLIC SAFETY COMMITTEE:


Office of the City Administrator

Prepared by:
Captain Ricardo E. Orozco
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