

CITY OF OAKLAND
CITY COUNCIL AGENDA REPORT 2003 DEC 30 PM 2: 28

TO: Office of the City Manager
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: January 13, 2004

RE: REPORT ON AN:

- **ORDINANCE TO ADOPT A PERMANENT VEHICULAR FOOD VENDING PROGRAM TO BE LOCATED ON PRIVATE PROPERTY GENERALLY WITHIN THE MANUFACTURING AND COMMERCIAL CORRIDORS EAST OF 1ST AVENUE AND SOUTH OF FOOTHILL BOULEVARD;**
- **ORDINANCE AMENDING THE MASTER FEE SCHEDULE (ORDINANCE NUMBER 9336 C.M.S.) TO ADD A VEHICULAR FOOD VENDING FEE;**
- **AN ORDINANCE AMENDING THE OAKLAND PLANNING CODE TO REFERENCE A PERMANENT VEHICULAR FOOD VENDING PROGRAM; AND A**
- **RESOLUTION AUTHORIZING THE CITY MANAGER TO APPROPRIATE \$53,360 IN REVENUE AND EXPENDITURE TO THE COMMUNITY AND ECONOMIC DEVELOPMENT AGENCY BUILDING SERVICES DIVISION.**

SUMMARY

The City Council is requested to consider adoption of a permanent Vehicular Food Vending Program Ordinance to regulate the use in a limited area. On February 6, 2001, the City Council approved an 18 month pilot Vehicular Food Vending Program allowing a minimum of 25 vehicles to vend on private property generally within the manufacturing and commercial corridors east of 1st Avenue and south of Foothill Boulevard (see Map in Attachment A). The pilot program was extended administratively for another year as the permanent program was being developed. Vehicular food vendors sell ready-to-consume prepared foods from trucks located on private property. Pushcart Food Vending is a separate but related activity that is also currently under consideration under a separate proposed ordinance. **This report deals with vehicular vending.** Another parallel report deals with pushcart vending.

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The pilot Vehicular Food Vending Program was established because the use was seen as an asset to the community. Customers appreciate the convenience and availability of prepared and specialty foods and believe that vehicular food vendors contribute to the streetscape of the commercial neighborhoods where vending occurs. Vendors support the entrepreneurial aspect of vehicular food vending and the diversified employment opportunities offered by this business type.

The pilot Vehicular Food Vending Program was generally successful in its limited geographic area. Because of this success, staff recommends increasing the permitted areas and the permitted numbers. A few changes are being proposed as well to streamline the program. There was little enforcement necessary with permitted vendors; however, unpermitted vendors necessitated much more enforcement action. Staff is therefore proposing more targeted enforcement coordination between Police, Business Tax Enforcement Unit, County Health, and CEDA.

Staff is proposing that Oakland establish a permanent Vehicular Food Vending Program. The permanent program will resemble the pilot program with the following modifications:

- Some commercial and manufacturing corridors in the Eastlake would be added to the vehicular vending locations (see Map in Attachment A)
- The setback requirement would be based on a performance standard rather than an arbitrary ten feet.
- Hours of operation would be expanded from 7:00 am-2:00 am to 7:00 am-3:00 am.
- Allowable signage area on the vehicles would increase from 15 square feet to 30 square feet.
- Allow up to four tall, stand-up dining, cocktail-type tables, but no chairs, per site.
- The permit fee for vehicular vendors would be \$1334 for 12 months rather than the original \$2000 for 18 months in the pilot program. Increase the non-refundable application fee (which is subtracted from the permit fee) from \$55 to \$100. Charge late renewal fee.
- That the revenue be used for the sole purpose of administering and enforcing the program.

FISCAL IMPACTS

The proposed permanent Vehicular Food Vending Program will add approximately \$16,062 in revenue to be deposited into the General Fund in the Pushcart/Vehicular Vending project account (P172610). The additional revenue will be appropriated to cover portions of both a Police Officer FTE and a CEDA Building Services Division Combination Inspector FTE.

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During the pilot program up to 40 vehicular food vendors each paid \$2,000 for the first 18 months and \$2,060 for the next 18 months during the administrative extension of the program. Most permits are due to be renewed in April 2004. The FY 2003-04 Budget estimated 17 permits at \$2,194 (this permit fee amount includes Master Fee Schedule increases since the program's inception) totaling \$37,298. Staff proposes to adjust the fee to \$1,334 per vehicle per year. The slight fee reduction will be offset by an anticipated increase in number of vehicular vendors from 40 to 50. The increased permit estimates are based on the proposed larger geographic area. The new permanent program estimates that at least 40 permits will be issued in FY 2003/2004. The permit fees for 40 permits would generate \$53,360 annually in revenue, \$37,298 of which has already been factored into the FY 2003-04 Adopted Policy Budget.

Staff also recommends increasing the "non-refundable application fee" from \$55 to \$100. After an application is approved, the application fee would be subtracted from the \$1,334 permit fee. An increased application fee would discourage applicants who are not serious about obtaining a permit from submitting an application, thereby decreasing unnecessary workload. This fee modification will not result in an increase or decrease in the General Fund.

Costs to administer, inspect and enforce the program, including overtime, would be covered by the annual permit fees. Allocating funds to dedicated staffing will relieve the general fund. Overtime hours will be charged directly against the project.

Based on experience with the pilot program, staff estimates that enforcement of the permanent Pushcart and Vehicular Food Vending Programs (monitoring vendors with permits as well as enforcing restrictions on vending outside the permitted area) will be conducted by utilizing existing staff in CEDA, Business Tax, and Police for which the specific inspection and enforcement activity will be covered from permit program revenues. The attached proposed Appropriation of Revenue and Expenditure Resolution includes an appropriation to cover the estimated total cost of \$16,062 over FY 2003-04 or approximately 40 permits from January through June 2004.

The Building Services Division of the Community and Economic Development Agency (CEDA) would remain responsible for implementation and enforcement of the program. Funds generated by the Vehicular Vending Program permits would be combined with funds generated by the Pushcart Food Vending Program and appropriated into salary accounts to be used solely for implementation and enforcement of this Vehicular Vending and the proposed permanent Pushcart Food Vending Program (see separate agenda item).

Staff recommends that this program be enforced by dedicated and existing staff because enforcement depends on building relationships between the staff and the vendors. To lose that capacity will undermine and jeopardize the project.

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BACKGROUND

City Council Actions

The City of Oakland's current permanent vending regulations, originally codified in 1932 and last amended in 1980, do not address the diverse types of street vending that presently occur or those that may be desirable. Over the past ten years, Council has at various times requested staff to study and propose modifications to the current regulations, as described below.

On July 24, 1990, a special session of the City Council considered a proposal to permit vending on public property (sidewalks) at approximately thirteen locations throughout the City of Oakland. City council accepted the report and instructed staff to expand the proposal to include guidelines for regulating vending activities citywide, focussing on those activities that occur on private property within commercially zoned areas.

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. The report proposed an amendment of the City's Municipal Code Regulations to implement controls for street vending sales activities. No action was taken.

At a June 16, 1998 Public Safety Committee meeting, staff presented a report on existing problems with peddlers and vendors in East Oakland. According to staff, without specific enforceable regulations, police officers encounter difficulties addressing nuisances related to peddling. Staff was directed to present a follow-up report in January 1999 regarding efforts to address the problems.

In response to the June 1998 Public Safety Committee meeting regarding peddlers and vendors, a working group comprised of representatives from the City Manager's Office, Police, Business Tax, Code Enforcement, Life Enrichment and the Alameda County Health Agency was formed. The working group evaluated Oakland's vending regulations as well as enforcement and vending ordinances from other cities. The working group then concluded that the current vending regulations are difficult to implement and enforce.

On January 19, 1999, staff presented a follow-up report to the Public Safety Committee summarizing existing City of Oakland regulations related to peddlers and vendors. The report indicated that the current regulations specifically prohibit vending in the downtown, on any public street or sidewalk, or within 500 feet from the entrance or exit of any public park, building or grounds. Vending activities on private property are subject to the Conditional Use Permit

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review process, which requires an application and fee of \$1,438, notice to surrounding property owners, and a decision by the Planning Commission. The entire review process takes approximately 60 days. At this meeting, the Public Safety Committee directed staff to evaluate potential modifications to the vending regulations in the Municipal Code and to obtain input from the community. The ordinance currently under consideration responds to the committee's request, and is designed to provide a regulatory framework for vehicular food vending, with a streamlined permit process.

On December 6, 2000, at its regular meeting, the Planning Commission considered the proposed pilot program, and voted unanimously to amend the Planning Code definition of "Fast Food Commercial Activity" to specifically exclude vehicular food vending throughout the Vehicular Food Vending Pilot Program and within the pilot program area, contingent upon adoption of the Vehicular Food Vending Pilot Program Ordinance.

On February 6, 2001, the City Council approved an ordinance to adopt an 18-month Vehicular Food Vending Pilot Program.

KEY ISSUES AND IMPACTS

During the pilot Vehicular Food Vending Program, staff monitored compliance with the program regulations. Issues and impacts became apparent in the following categories:

Location

The pilot program was located entirely along commercial and manufacturing corridors specifically Fruitvale Avenue and High Street between Interstate 880 to the south and Foothill Boulevard to the north, and along San Leandro Street, International Boulevard, and Foothill Boulevard.

Staff is proposing that the boundaries be expanded to include some commercial corridors in the Eastlake, specifically East 12th Street between 4th and 23rd Avenues, International Boulevard between 1st Avenue and 19th Avenue and 14th Avenue between East 11th Street and East 19th Street. These modifications are being proposed because the area is a logical expansion of the current boundaries and the demographics support the use. Additional commercial corridors will also discourage an over-concentration of vendors at any other locations.

Vehicular food vending may occur on private property outside of the permanent program area only with a conditional use permit (CUP). As part of the permanent program any vehicular food vendor with a CUP will be required to pay the annual permit fees.

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The Vehicular Food Vending Pilot program required a ten foot setback from property lines for the locations of vehicles. The setback is necessary to accommodate a queue line only when the service window faces the sidewalk. When the service window is perpendicular to, or faces away from the sidewalk, the queue line does not encroach upon the sidewalk. Staff recommends that the permanent program regulations prohibit encroachment upon the public sidewalk by anyone associated with the vehicular food vending activity rather than requiring a specific setback.

Number of Permits

The number of vehicular vending permits was estimated to be no less than 25 during the pilot program. Since the pilot program began 90 vendors have applied for permits, 63 have received permits, 35 have renewed permits and 25 have not renewed permits. Currently there are 43 permitted vehicular vendors in Oakland. With the proposed extended vending corridors, Staff estimates that there will be approximately 50 permitted vehicular vendors in Oakland.

Hours of Operation

Hours of operation for the vehicular food pilot program were from 7:00 am-2:00 am. Vendors and customers have requested that the hours be extended until 3:00 am to serve the 2:00 am surge of business after other establishments close. Staff recommends that the new hours of operation be 7:00 am-3:00 am.

Permit Fee

The permit fee for vehicular food vendors was \$2,000 for the initial pilot program period of 18 months. To align with our accounting system, the fee should be an annual, rather than an 18 month fee. For the permanent program, staff recommends that the \$2,000 fee be prorated for 12 months creating an annual permit costing \$1,334. Because the number of permit fees is expected to increase, no increase in the permit fee is being proposed.

Staff recommends increasing the "non-refundable application fee" from \$55 to \$100. After an application is approved, the application fee is subtracted from the permit fee. An increased application fee would discourage applicants who are not serious about obtaining a permit from submitting an application, thereby decreasing unnecessary workload.

During the pilot program there was no provision for a penalty for late renewal. As a result, many permits were not renewed in a timely manner. Vendors were working without permits and the City was not receiving anticipated income. Staff recommends that sliding percentages of the annual fee be charged for a late renewal as an incentive for timely renewals.

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Signage

The pilot vehicular food vending program called for “maximum two signs on vehicle, up to 15 square feet total including ‘no loitering’ sign”. In the course of enforcement, staff found it useful to be able to spot and identify vehicular vendors from as many sides as possible and to have information such as the name of the commissary and the menu displayed in a legible size. Staff recommends that signage be increased to 30 square feet, not including City-required signs, and the number of promotional signs be increased from two to three.

Site Furniture

The pilot program prohibited the use of site furniture, however customers asked for and several vendors provided tables and chairs. One restaurant owner repeatedly reported violations of this provision. Vendors reluctantly removed the tables and chairs only to reintroduce them later. The lessons learned during the pilot program are that tables and chairs enhance the businesses that use them, competitors object to their use, vendors will risk penalties to provide them, and furniture does not cause loitering. Staff recommends that up to four tall, stand-up style, cocktail-type tables, but no chairs, per site be allowed.

Enforcement

Enforcement of pilot program regulations was both proactive and responsive to complaints. Proactive enforcement was limited to the permitted areas. Complaints were investigated and resolved citywide. Periodic surveys and spot inspections were made to track vending patterns, catch violations, and show a presence. Proactive enforcement measures established lines of communication and understanding and cooperation among regulatory agencies, vendors, and commissaries. This resulted in a high level of compliance.

The majority of violations discovered in proactive enforcement was a failure to properly display the vendor’s permit. Unacceptable electrical hook-up and the use of tables and chairs were a distant second and third.

The majority of complaints was about vendors without permits. A small number of vendors parked on streets close to permitted vendors, who must vend on private property. A larger number of un-permitted vendors wandered from location to location outside the permitted area, but were seldom reported. Staff estimates that between five and ten vendors operate outside the permitted areas.

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Enforcement in the proposed permanent Ordinance emphasizes the proactive protection of permitted vendors against unfair competition from illegal vendors. Effective enforcement will include inter-agency coordination, up to \$5,000 in penalties, and confiscation of the foods.

Staff recommends that enforcement efforts focus on pushcart and vehicular vendors operating without permits. By partnering with the Police Special Operations Division, Vehicle Enforcement Section, CEDA Building Services can create a citywide enforcement mechanism. Currently when Police support is needed to respond to a complaint or cite a violator, Building Services staff contacts Area Commanders who in turn contact their patrol or problem solving officers to arrange for a meeting at the vendor's location. By also working with Police's Vehicle Enforcement Section and covering their costs, Building Services can plan proactive rather than re-active enforcement at locations throughout the City. In addition, as traffic officers become more familiar with pushcart and vehicular vending regulations, they can enforce the regulations as part of their daily routine.

PROPOSED PERMANENT VEHICULAR FOOD VENDING PROGRAM

Vehicular food vendors (vendors) engage in the sale of ready-to-consume prepared foods from trucks. Vendors locate mobile catering trucks on private property on a semi-permanent basis during hours of operation, and may only relocate the trucks off-site during non-business hours, if at all. Vehicular food vending generally has the following characteristics:

- Food is ordered and served from a take-out counter that is integral to the catering truck;
- Food is paid for prior to consumption;
- Catering trucks from which the food is sold typically have a take-out counter and space for customer queuing and may have tall cocktail-type tables; and
- Foods and beverages are served in disposable wrappers, plates or containers.

The proposed permanent Vehicular Food Vending Program would include the following components: an Ordinance regulating the vehicular food vending use; implementation of a streamlined permit process; enforcement of regulations; a limited geographic area; and amendments to the Municipal Code.

- *Vehicular Food Vending Ordinance*: The permanent Vehicular Food Vending Ordinance (Ordinance), if adopted, would become a section of the Municipal Code, under Title 8: Health and Safety. The Ordinance would establish the framework for regulating the vehicular food vending use. The Ordinance would outline the required permit application process for the vehicular food vending use, the criteria for operation of the use, the administration and enforcement of the use, and the timeframe and geographic area in which the use could occur during the permanent program.

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- *Streamlined Permit Process:* The Building Services Division of the Community and Economic Development Agency (CEDA) would implement the streamlined Vehicular Food Vending Permit process. The Vehicular Food Vending Permit (permit) would be an administrative permit that could be processed without discretionary review. The permit application would include a mandatory filing fee of \$1,334 to cover the costs of program implementation.
- *Criteria for Vehicular Food Vending Operations:* The Vehicular Food Vending Permit would include a requirement that vehicular food vending uses meet an established set of criteria designed to protect neighbors from noise, light, litter and crime impacts, and to ensure minimum aesthetic standards. The criteria are designed to respond to community concerns about community appearance and neighborhood quality of life.
- *Permanent Program Enforcement:* CEDA Building Services would enforce the vehicular food vending regulations by conducting periodic inspections of the sites where the use is located. These inspections could be unannounced or in response to a neighborhood complaint. Inspectors would be equipped with the checklist of criteria for permit approval, which could be evaluated during the inspection. The vehicular food vendor would be required to provide the inspector with a copy of the permit, demonstrate compliance with permit regulations, and cooperate with inspections. Should a vehicular food vendor fail to cooperate with an inspection or be found to be in noncompliance with any criteria, the inspector would recommend revocation of the Vehicular Food Vending Permit to the Building Division. The Building Division would provide non-compliant vehicular food vendors with notification of permit revocation by mail. The applicant would be given ten days to demonstrate compliance.

In addition to enforcing permits, the CEDA Building Services would have authority to inspect any incidences of illegal or non-permitted vehicular food vending. Inspectors would be able to cite any vehicular food vendor operating without permits and issue an order to abate.

Enforcement inspections would occur throughout the City of Oakland, and not solely within the permanent program area. Vehicular food vendors located outside of the permanent program area who do not have a conditional use permit (CUP) would be cited accordingly. This would be accomplished by partnering with Police's special Operations Division, Vehicle Enforcement Unit. Police would allocate a number of hours for enforcement as agreed to by CEDA and Police.

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Finally, the CEDA Building Services would maintain records related to vehicular food vending, and would receive and respond to all complaints concerning the regulations.

- *Program Area:* The permanent program would be located entirely within City Council Districts 2, 4, 5, 6, and 7. Vehicular food vending would only be permitted on certain streets and within certain zones, as described below:
 - *Streets:* The vehicular food vending use would be allowed on private property located 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 Boulevard between Fruitvale to the west and 98th Avenue to the east, East 12th Street between 4th Avenue to the west and 23rd Avenue to the east, and 14th Avenue between East 11th Street to the south and East 19th Street to the north. Vehicular food vendors would be required to locate on private property with an address on and visible from the above-listed public streets.
 - *Zones:* The vehicular food vending use would 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.¹ Vehicular food vending would not be permitted in any other zoning district.

Vehicular food vending outside of the permanent program area would continue to be subject to existing regulations related to the Fast Food Restaurant Commercial Activity and would continue to require a Major Conditional Use Permit granted by the Planning Commission (as described above).

- *Amendments to the Municipal Code:* The Municipal Code would be amended to include a new definition for the vehicular food vending activity and a new chapter that would regulate the vehicular food vending activity. The “Fast Food Activity” definition in the Planning Code (Chapter 17 of the Municipal Code) would be amended to exclude the Vehicular Food Vending use and to reference the definition in the Municipal Code. A new Chapter 8.09: Vehicular Food Vending, would include the proposed regulations for the use.

¹ Consistent with existing regulations related to Fast Food Restaurant Activities and with section 5.48.080 of the Municipal Code, vehicular food vending would 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.

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SUSTAINABLE OPPORTUNITIES

Economic: The proposed permanent Vehicular Food Vending Program will generate approximately 50 sites within Oakland. It is likely that the jobs associated with these vehicles, both in the field and in the commissaries, will be filled by Oakland residents. Additional sales and Business License taxes will also be generated.

Environmental: There are no direct environmental opportunities associated with the permanent Vehicular Food Vending program.

Social Equity: The proposed permanent Vehicular Food Vending program will be an asset to the community and neighborhoods where it is permitted, generally in disadvantaged areas. Customers appreciate the availability of prepared and specialty foods and believe that vehicular food vendors contribute to the streetscape of the neighborhoods where vending occurs.

DISABILITY AND SENIOR CITIZEN ACCESS

Under the Vehicular Food Vending Ordinance, applicants for the Vehicular Food Vending Permit would be required to comply with the Americans with Disabilities Act and all other City regulations that ensure adequate access for senior citizens and people with disabilities.

RECOMMENDATION AND RATIONALE

Staff recommends adoption of the Ordinance to Establish a Permanent Vehicular Food Vending Program and approval of the enabling Municipal Code amendments. The advantages of regulating vehicular food vending are as follows:

- Vehicular food vendors were more likely to seek permits when the process was streamlined;
- Vehicular food vending is easier to monitor with an established permit process;
- Collaborative monitoring and enforcement reduces nuisance activities that occur within the vicinity of vehicular food vending businesses;
- The location of vehicular food vending businesses is controlled in order to avoid unfair competition and oversaturation of an area. In addition, the limited geographic area enables adequate monitoring by City staff.
- Minimum standards for aesthetic quality and operation can be enforced;
- The permit criteria establish a means for ensuring health standards and general food quality; and
- Permit fees are collected and, in large part, pay for program implementation and enforcement.

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The following points provide rationale for this recommendation:

- The Vehicular Food Vending Pilot Program provided benefits for vehicular food vendors, customers, and for the community and continues to be a well-received program.
- Under the permanent Vehicular Food Vending Program, vehicular food vending would be permitted in designated locations (both former and new), and would be subject to a conditional use permit in other locations. This component of the permanent program substitutes administrative for discretionary review, resulting in more certainty for the applicant, and reducing the amount of time and effort necessary for permit approval. In addition, permits protect vehicular food vendors from unfair competition and undesirable interrogations from the police and other authorities.
- The Vehicular Food Vending Permit requires that vendors meet certain operational criteria. The criteria are designed to protect the health and safety of the customers and to reduce impacts on the surrounding community. Establishing and enforcing the criteria will ensure that vehicular food vending is an attractive use that contributes to both an entrepreneurial and culturally rich business climate and to neighborhood character in the City of Oakland.
- The proposed Vehicular Food Vending Program provides a means for City staff to implement and enforce the vehicular food vending use. Field inspectors and Police use the Vehicular Food Vending Permit criteria to determine compliance with regulations.

ACTION REQUESTED OF THE CITY COUNCIL

1. Adopt the permanent Vehicular Food Vending Program Ordinance and approve proposed amendments to the Municipal Code to regulate vehicular food vending (see Attachment C).
2. Adopt proposed amendments to the Planning Code (see Attachment D).
3. Amend the Master Fee Schedule to establish a \$1,334 annual fee for vehicular food vendors, a \$100 non-refundable application fee and sliding percentages for late renewals (see Attachment E).

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4. Approve the resolution to increase revenue and appropriate \$53,360 in permit revenue and expenditure to the Building Services Division for the sole purpose of implementing the Vehicular Food Vending Program (see Attachment F).

Respectfully submitted,



CLAUDIA CAPPIO
Development Director
Community and Economic Development
Agency

Prepared by:
Calvin Wong, Director
Building Services Division

APPROVED AND FORWARDED TO THE
COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE

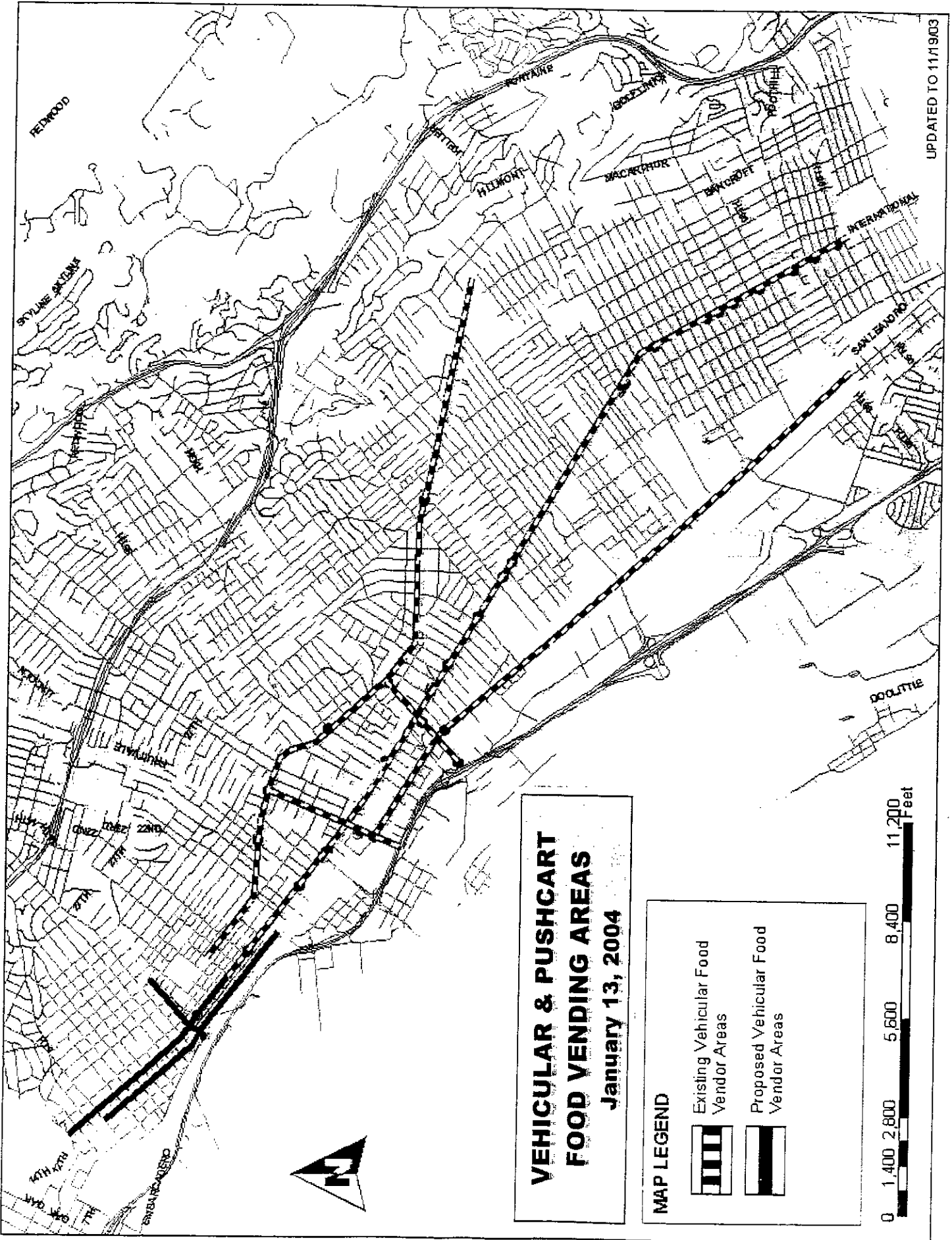


OFFICE OF THE CITY MANAGER

- Attachments:
- A. Map: Proposed Vehicular Food Vending Pilot Program Area
 - B. Map: Existing Vehicular Food Vendor Locations
 - C. Proposed permanent Vehicular Food Vending Program Ordinance
 - D. Proposed Planning Code Amendment
 - E. Proposed Master Fee Schedule Amendment
 - F. Proposed Appropriation of Revenue and Expenditure Resolution



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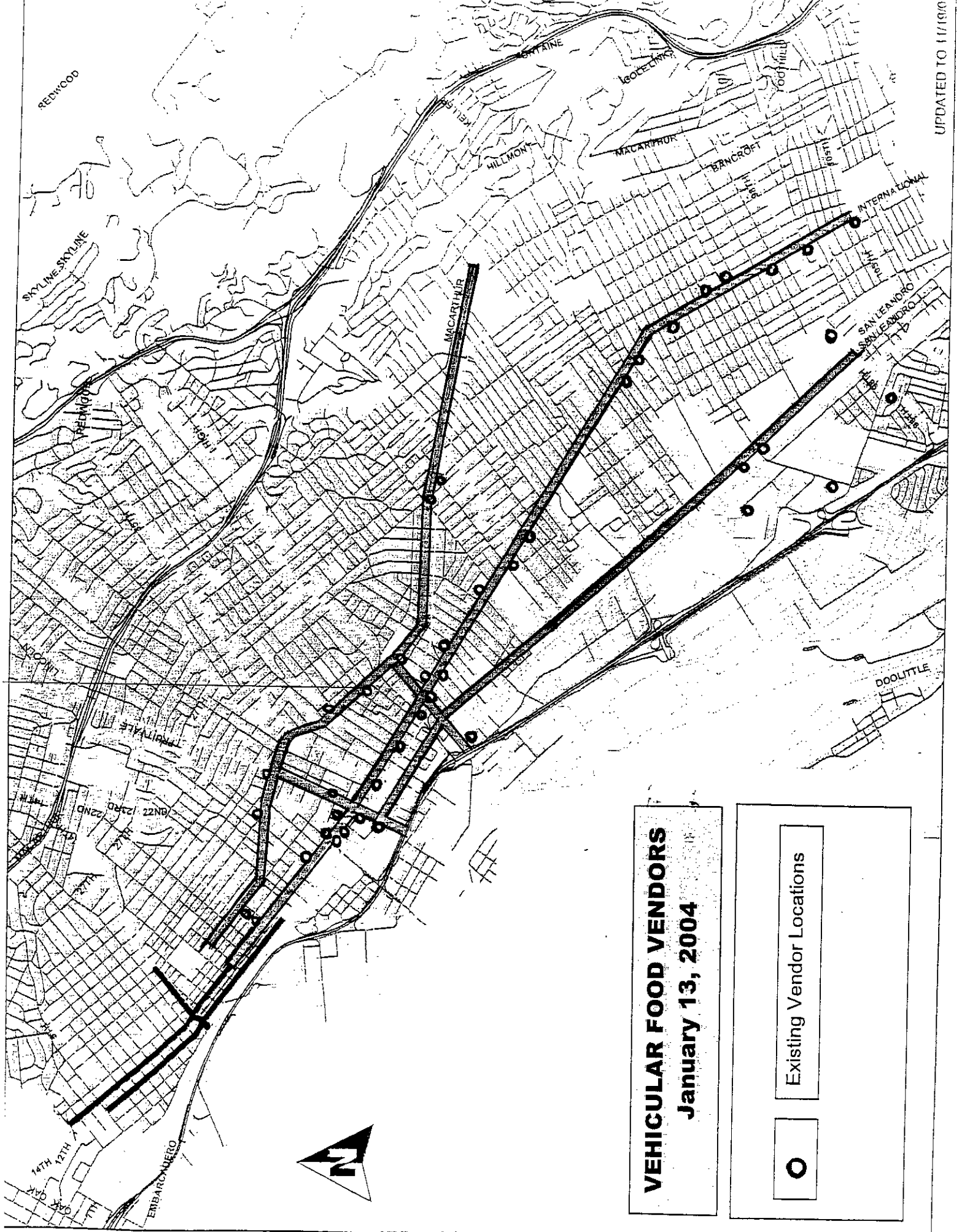
**VEHICULAR & PUSHCART
FOOD VENDING AREAS**
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MAP LEGEND

-  Existing Vehicular Food Vendor Areas
-  Proposed Vehicular Food Vendor Areas



UPDATED TO 11/19/03



VEHICULAR FOOD VENDORS
January 13, 2004

○	Existing Vendor Locations
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OAKLAND CITY COUNCIL

ORDINANCE No. _____ C.M.S.

FILED
OFFICE OF THE CITY CLERK
2003 DEC 30
Mark FH 239cll

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,

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**COMMUNITY & ECONOMIC
DEVELOPMENT CMTE
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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 ~~45~~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~~ 11:00 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.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2004

PASSED BY THE FOLLOWING VOTE:

AYES- BRUNNER, CHANG, BROOKS, NADEL, REID, QUAN, WAN, AND
PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

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

8-1
**COMMUNITY & ECONOMIC
DEVELOPMENT CMTE
JAN 13 2004**

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.

8-1
**COMMUNITY & ECONOMIC
DEVELOPMENT CMTE
JAN 13 2004**

OAKLAND CITY COUNCIL

ORDINANCE No. _____ C.M.S.

INTRODUCED BY COUNCILMEMBER _____

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2003 DEC 30 PM 2:38

Marta P. Ward

AN ORDINANCE AMENDING THE MASTER FEE SCHEDULE (ORDINANCE NUMBER 9336 C.M.S. AS AMENDED) TO AMEND A VEHICULAR FOOD VENDING FEE

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

WHEREAS, Ordinance No. 12312 C.M.S. established an eighteen-month pilot vehicular food vending program (program) that permitted vehicular food vending on private property in designated areas in Oakland; and

WHEREAS, implementation of the permanent Vehicular Food Vending Program would result in increased costs to the City for administration, enforcement and monitoring for the program, estimated at a cost of \$1,334 per vendor; and

WHEREAS, it is anticipated that 40 vehicular food vendors would apply annually for permits under the Vehicular Food Vending Program; and

WHEREAS, fees would generate approximately \$53,360 annually in revenues; and

WHEREAS, the City Council finds and determines that the public safety, health, convenience, comfort, property, and general welfare will be furthered by funding the enforcement of the permanent Vehicular Food Vending Program; now therefore,

8-2
COMMUNITY & ECONOMIC
DEVELOPMENT CMTE
JAN 13 2004

THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Section 1. Section G.29 (Community and Economic development – Building Services – Code Compliance) of the Master Fee Schedule as set forth in Ordinance Number 9336 C.M.S., as amended, is hereby amended to read:

- I Vehicular Food Vending
 - 1. Application/Processing \$100.00/site (non-refundable application fee to be applied to the permit fee)
 - 2. Initial Permit fee \$1,334.00/site for 12 months (includes application/processing fee)
 - 3. Permit Renewal fee \$1,334/site per year
 - 4. Late fee Assessed as a percentage of permit fee based on length of time after date of the renewal letter as follows:
 - 10%, 30-60 days
 - 20%, 60-90 days
 - 50%, after 90 days

Section 2. The City Council finds and determines that the foregoing recitals are true and correct, are an integral part of this Ordinance, and provide findings to support the Ordinance.

Section 3. This ordinance shall be effective upon approval by the Council of the City of Oakland.

IN COUNCIL, OAKLAND, CALIFORNIA, . 2004

PASSED BY THE FOLLOWING VOTE:

AYES- BRUNNER, CHANG, BROOKS, NADEL, REID, QUAN, WAN, AND
PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

CEDA FLOYD
City Clerk and Clerk of the Council
Of the City of Oakland, California

8 -2
**COMMUNITY & ECONOMIC
DEVELOPMENT CMTE
JAN 13 2004**

MPW

FILED
OFFICE OF THE CITY CLERK
CHICAGO
2003 DEC 30 PM 2:38

Notice and Digest

**AN ORDINANCE AMENDING THE MASTER FEE SCHEDULE
(ORDINANCE NUMBER 9336 C.M.S. AS AMENDED) TO AMEND A
VEHICULAR FOOD VENDING FEE**

This ordinance proposes to amend the fees for the Vehicular Food Vending Program. The non-refundable application fee (applied to the permit fee if approved) would increase from \$55 to \$100. The Permit fee would change from \$2,000 for 18 months to \$1,334 for 12 months. A late fee would be assessed if the annual renewal fee of \$1,334 is not paid in a timely manner.

8-2

**COMMUNITY & ECONOMIC
DEVELOPMENT CMTE**

JAN 13 2004

OAKLAND CITY COUNCIL

ORDINANCE No. _____ C.M.S.

Mark P. Wald

INTRODUCED BY COUNCILMEMBER _____

AN ORDINANCE AMENDING THE OAKLAND PLANNING CODE TO REFERENCE A PERMANENT VEHICULAR FOOD VENDING PROGRAM

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,

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COMMUNITY & ECONOMIC
DEVELOPMENT CMTE
JAN 13 2004

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:

The Oakland Planning Code Section 17.10.290 Fast Food Restaurant Commercial Activities is amended to read as follows (additions are indicated by underlining and deletions are indicated by ~~strike-out~~ type.):

17.10.290 Fast-Food Restaurant Commercial Activities.

Fast-Food Restaurant Commercial Activities include the retail sale of ready-to-eat prepared foods and beverages, for on- or off-premises consumption, whenever the foods and beverages are available upon a short waiting time and are primarily served in or on disposable wrappers, containers, or plates. Fast-Food Restaurants may also exhibit other design and operating characteristics, including: (A) a limited menu; (B) food is typically ordered and served at a service counter; (C) food is paid for prior to consumption; (D) the facility in which the activity/use is occurring provides a take-out counter space and space for customer queuing. They also include certain activities accessory to the above, as specified in Section 17.10.040.

In those areas of the city subject to the permanent vehicular food vending ~~pilot program~~ ordinance, "vehicular food vending" is not considered a "Fast-Food Restaurant Commercial Activity" and is defined as follows:

"Vehicular food vending" is the sale of ready-to-consume prepared foods from trucks. The use involves locating mobile catering trucks on private property on a semi-permanent basis during hours of operation. Vehicular food vending generally has the following characteristics:

1. Food is ordered and served from a take-out counter that is integral to the catering truck;
2. Food is paid for prior to consumption;
3. Catering trucks from which the food is sold typically have a take-out counter and space for customer queuing; and
4. Foods and beverages are served in disposable wrappers, plates or containers.

Within those areas of Oakland subject to the permanent vehicular food vending ~~pilot program~~ ordinance, ~~and during such time that the pilot program is in effect,~~ vehicular food vending is regulated by Chapter 8.09 of this code. (Ord. 12314 § 2, 2001; prior planning code § 2362)

This ordinance shall be effective upon approval by the Council of the City of Oakland.

IN COUNCIL, OAKLAND, CALIFORNIA, . 2004

PASSED BY THE FOLLOWING VOTE:

AYES- BRUNNER, CHANG, BROOKS, NADEL, REID, QUAN, WAN, AND
PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

CEDA FLOYD

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

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**COMMUNITY & ECONOMIC
DEVELOPMENT CMTE**

JAN 13 2004

MPW

FILED
OFFICE OF THE CITY CLERK
OAKLAND

NOTICE AND DIGEST
2003 DEC 30 PM 2:37

**AN ORDINANCE AMENDING THE OAKLAND PLANNING CODE
TO REFERENCE A PERMANENT VEHICULAR FOOD VENDING
PROGRAM**

This ordinance proposes to amend the Oakland Planning Code to change references to the pilot Vehicular Food Vending Program to a permanent Vehicular Food Vending program.

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**COMMUNITY & ECONOMIC
DEVELOPMENT CMTE**

JAN 13 2004

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

OFFICE OF THE CITY CLERK
OAKLAND

Mark P. Wall

2003 DEC 30 PM 2:38

RESOLUTION AUTHORIZING THE CITY MANAGER TO APPROPRIATE \$53,360 IN REVENUE AND EXPENDITURE TO THE COMMUNITY AND ECONOMIC DEVELOPMENT AGENCY BUILDING SERVICES DIVISION

WHEREAS, on February 6, 2001, the City Council approved an Ordinance to adopt an eighteen month Vehicular Food Vending Pilot Program;

WHEREAS, implementation of the permanent Vehicular Food Vending Program would result in increased costs to the City for administration, enforcement and monitoring of the program, estimated at a cost of \$1,334 per vendor; and

WHEREAS, it is anticipated that 40 vendors would apply for permits under the permanent Vehicular Vending Program, in FY 2003-2004; and

WHEREAS, the permit fees for 40 permits would generate \$53,360 annually in revenue, \$36,750 of which has already been factored into the FY 2003-2004 Adopted Policy Budget, leaving an estimated \$16,610 total revenue; and

WHEREAS, the City Council finds and determines that the public safety, health, convenience, comfort, and general welfare will be furthered by funding enforcement of the permanent Vehicular Food Vending Program; now therefore, be it

RESOLVED, that the City Manager is hereby authorized to appropriate \$53,360 in revenue and expenditure to the Community and Economic development Agency, Building Services Division, Pushcart/Vehicular Vending project account (P172610) for the sole purpose of administering and enforcing the program.

IN COUNCIL, OAKLAND, CALIFORNIA, . 2004

PASSED BY THE FOLLOWING VOTE:

AYES- BRUNNER, CHANG, BROOKS, NADEL, REID, QUAN, WAN, AND
PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

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**COMMUNITY & ECONOMIC
DEVELOPMENT CMTE**

JAN 13 2004

ATTEST: _____

CEDA FLOYD
City Clerk and Clerk of the Council
Of the City of Oakland, California