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OFFICE OF THE CITY ATTORNEY

INTRODUCED BY COUNCILMEMBER _____

OAKLAND CITY COUNCIL
ORDINANCE No. ~~13421~~ 13421 C.M.S.

ORDINANCE AMENDING THE OAKLAND MUNICIPAL CODE (“OMC”) TO ADOPT A NEW CITYWIDE FOOD VENDING PROGRAM, DELETE CHAPTERS 5.49 PUSH CART FOOD VENDING PILOT PROGRAM, 5.51 FOOD VENDING GROUP SITE PILOT PROGRAM AND 8.09 VEHICULAR FOOD VENDING, ADOPT NEW CHAPTER 5.51 FOOD VENDING PROGRAM AND VARIOUS CONFORMING CHANGES TO THE OMC AND CITY PLANNING CODE, AND ADOPTING CEQA FINDINGS

WHEREAS, on February 6, 2001, the City Council adopted Ordinance No. 12312 C.M.S., which established the Vehicular Food Vending Pilot Program, allowing food trucks to sell from private property in certain industrial and commercial areas of Central and East Oakland; and

WHEREAS, on February 17, 2004, the City Council adopted two pieces of legislation related to food vending, Ordinance No. 12579 C.M.S., which created a permanent Vehicular Food Vending Program, codified in Oakland Municipal Code (“OMC”) Chapter 8.09, Vehicular Food Vending, and Ordinance No. 12582 C.M.S., which created a permanent Pushcart Food Vending Program, codified in OMC Chapter 5.49, Pushcart Food Vending Pilot Program; and

WHEREAS, on December 20, 2011, the City Council adopted Ordinance No. 13098 C.M.S., establishing interim regulations to allow three or mobile food vendors (“Group Sites”) to operate legally in a limited area in the City of Oakland defined, in part, by Council Districts 1, 2, 3 and 4, codified in OMC Chapter 5.51, Food Vending Group Site Pilot Program; and

WHEREAS on February 5, 2013, the City Council adopted Ordinance No. 13152 C.M.S., extending the effective date of the Group Site Food Vending Pilot Program regulations until City Council adopts permanent mobile food vending regulations; and

WHEREAS, on January 17, 2017, the City Council adopted Ordinance No. 13414 C.M.S., which permitted food vending on private property and, for the first time, in the public right of way on 85th Avenue, between Edes Avenue and San Leandro Boulevard; and

WHEREAS, the City seeks to expand food vending opportunities with a comprehensive citywide expansion of the food vending program, with the goals of adding vitality to neighborhoods, contributing to the richness of Oakland’s culinary and cultural offerings, and provide economic opportunities for small business owners, many of whom are Oakland residents; and

WHEREAS, City staff has worked with stakeholders to develop a proposed new comprehensive citywide food vending program that would expand the areas in Oakland where food vending will be permitted, and address problems with the existing food vending regulations and programs; and

WHEREAS, staff from the Bureau of Planning met with many of the stakeholders who are involved with food vending in Oakland, including mobile food vendors, restaurant owners, business improvement district leaders, City staff, chambers of commerce, residents and community groups, and considered stakeholders’ comments in developing new food vending legislation; and

WHEREAS, the new citywide food vending program would permit, with certain restrictions, individual food vending on private property and from the public right of way in selected commercial and industrial areas of Oakland. The new program would also permit group site vending citywide; and

WHEREAS, in connection with the new citywide food vending program, the City seeks to (1) revise the definition of “Fast Food Restaurant Commercial Activities” in Section 17.10.280 of the Oakland Planning Code, (2) replace Oakland Municipal Code Chapters 5.51 (Food Vending Group Site Pilot Program), 5.49 (Pushcart Food Vending Pilot Program) and 8.09 (Vehicular Food Vending) with a new Chapter 5.51 (Food Vending Program); (3) revise other Municipal Code sections as minor conforming changes; and (4) adopt CEQA findings; and

WHEREAS, this Ordinance serves the public interest and is necessary to protect and promote the health, safety, and/or welfare of the City of Oakland’s constituents, and is enacted pursuant to the City of Oakland’s general police powers, Article XI, Sections 5 and 7, of the California Constitution, Vehicle Code Section 22455, and Section 106 of the Charter of the City of Oakland; and

WHEREAS, it is in the City’s interest to regulate food vending to protect public health and safety, including pedestrian, bicyclist, motorist, and mobile food vendor safety at the new vending sites in the street right-of-way; and

WHEREAS, space on sidewalks adjacent to restaurants may be limited by crowded pedestrian areas at entrances, with customers required to stand outside, as well as by the use of outdoor seating, which warrants the inclusion of buffer distances in the regulations and administrative guidelines; and

WHEREAS, narrow sidewalk width, and existing obstructions in the sidewalk can limit accommodations for the disabled and other pedestrians to follow a safe path of travel, which are further limited with the presence of pushcarts and other mobile food vendors; and

WHEREAS, regulations that limit a single food vending facility’s days to use a particular location in the public right-of-way, during the course of a week will encourage and provide for greater

opportunities for diversity of mobile food vending facilities in the locations where different vendors will appear on a rotating basis; and

WHEREAS, location restrictions and buffer distances are included in the regulations and administrative guidelines to minimize conflict between pedestrians, bicyclists, customers of food vending facilities, automobile drivers on city streets, and mobile food vendors; to avoid double-parking and vehicular congestion which may occur when limited on-street parking is occupied by food vending facilities; to cause fewer motorist distractions and resulting accidents; to avoid causing pedestrians to be pushed into busy streets; and to prevent injuries; and

WHEREAS, funds from fees collected pursuant to this ordinance, and adopted in the Master Fee Schedule, shall be deposited and appropriated in the Development Services Fund (2415), Planning Organization (84211), Other Fees: Misc. Account(45419) and Construction and Obstruction Permit Accounts (42211 and 42315) and Contingency Account (54011), Food Vendor Projects (10000867 and 1000868) which is established for food vending administration; penalties collected pursuant to this ordinance, beyond what is needed to recover the costs of program operations, shall be deposited to the same fund; and;

WHEREAS, the proposed amendments to the Oakland Municipal Code and Oakland Planning Code were considered, after a duly noticed public hearing, at a regular meeting of the City Planning Commission on December 21, 2016, and the Planning Commission recommended adoption of the proposed new comprehensive food vending program to the City Council; and

WHEREAS, this Ordinance was considered, after a duly noticed public meeting of the Community and Economic Development Committee on February 28, 2017, and the Committee recommended adoption of this Ordinance with revisions, specifically that the buffer distance between vendors and restaurants be three hundred feet; and

WHEREAS, this Ordinance was considered, after a duly noticed public hearing, at a regular meeting of the City Council on March 21, 2017, and all interested parties were provided an ample opportunity to participate in said hearing and express their views. The Council proposed the following revisions: reducing the buffer distances between vendors and restaurants on certain segments of Telegraph Avenue, Leimert Boulevard, and on the lot at the southeast corner of the intersection of Mountain Boulevard and Werner Court; adding an exception allowing lesser buffer distances if all applicable restaurant owners in the buffer area provide a signed waiver; expanding the noticing distance for permit applications; and removing Foothill Boulevard, in Council District 6, between 55th and 73rd Avenues from the Permitted Program Area map. The Council also directed staff to return to Council with new ordinances which consider permitting mobile retail sales, and mobile vegetable markets in residential areas; and

WHEREAS, this Ordinance is supported by sufficient justifications and/or evidence, including for reasons stated herein and in the record, including the February 28, 2017 City Council Agenda Report, and March 21, 2017 Supplemental Report, incorporated herein by reference, and meets the appropriate legal standards, including without limitation the City's police power, constitutional standards, Vehicle Code Section 22455, and the Oakland City Charter; and

WHEREAS, the City Council finds and determines that the public safety, health, convenience, comfort, property, and general welfare will be improved with a new comprehensive food vending program; now therefore,

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

Section 1. Recitals. The recitals contained in this Ordinance are true and correct and are an integral part of the Council’s decision, and are hereby adopted as findings.

Section 2. Repeal of the Existing Food Vending Program, Located in Oakland Municipal Code Chapters 5.51 (Food Vending Group Site Pilot Program), 5.49 (Pushcart Food Vending Pilot Program) and 8.09 (Vehicular Food Vending). The existing food vending program, which is located in Oakland Municipal Code Chapters 5.51 (Food Vending Group Site Pilot Program), 5.49 (Pushcart Food Vending Pilot Program), and 8.09 (Vehicular Food Vending), is hereby expressly repealed in its entirety.

Section 3. Adopt New Comprehensive Food Vending Program by Adding Language to Chapter 5.51 of Oakland Municipal Code. Chapter 5.51 of the Oakland Municipal Code is amended to read as follows (additions are shown as underlined text):

CHAPTER 5.51 FOOD VENDING PROGRAM

Sections:

Article I – General Provisions

Article II – Standards and Requirements

Article III – Enforcement, Revocation and Abatement

Article I – General Provisions

5.51.010 – Title and Purpose.

5.51.020 – Definitions.

5.51.025 – Administrative Regulations.

5.51.030 – Permit required.

5.51.040 – Conflicting Provisions.

5.51.050 – Permitted Area.

5.51.060 – Transference of a Food Vending Permit.

5.51.070 – Food Vending Permit Not a Land Use Entitlement.

5.51.080 – Maximum Number of Food Vending Permits.

5.51.090 – Application requirements for all Food Vending Permits.

5.51.100 – Additional application requirements for group sites.

5.51.110 – Decisions regarding the approval and renewal of a Food Vending Permit.

5.51.120 – Inspections required prior to legal operation.

5.51.130 – Food Vending Permit expiration and renewal.

5.51.140 – Finality of Decisions

5.51.010 – Title and purpose.

This Chapter shall be known as the Food Vending Program Regulations, and establishes a citywide food vending program in Oakland.

The purpose of this Chapter is to regulate the vending of food and food products from food vending facilities on public and private property throughout the city in such a manner as to bring convenience, economic vitality, and pedestrian activity to these areas. This includes protecting the health, safety, and general welfare of the Oakland community and customers through appropriate regulation by requiring that new and existing food vendors provide the community and customers with a minimum level of cleanliness, quality and security.

5.51.020 – Definitions.

“Administrative Guidelines” means the document prepared by the City Administrator or his/her designee, used by Bureau of Planning staff to administer the Food Vending program. The document includes the “Food Vending Program Permitted Area” map, and is revised by the City Administrator or his/her designee.

“Applicant” means the responsible party who seeks a Food Vending Permit from the City of Oakland.

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

“Employee” means any person hired or paid compensation by, or any person under contract to, a food vendor.

“Food vending” means the business of selling, or causing to be sold from a food vending facility, raw or cut fruit, produce, prepared foods and non-alcoholic beverages, and/or prepackaged foods and beverages, where:

1. Food is prepared off-site in a commercial commissary and/or prepared on-site within the food vending facility, per Alameda County Health Regulations;
2. Food is ordered and served from the truck, trailer, pushcart, or other equipment or vehicle as permitted by Alameda County Environmental Health;
3. Fruit and produce is sold to customers without preparation or cooking by a vendor;

4. Food is served outdoors or under a non-permanent structure;
5. Food is paid for prior to consumption; and
6. Food and beverages are prepared and sold for on-site or off-site consumption.

“Food vending facility” means a truck, trailer, pushcart, stationary cart or other equipment or vehicle from which food vending services are provided, as permitted by the Alameda County Environmental Health Department. Food vending trucks and trailers must be less than eighteen feet, six inches (18’ 6”) in length, eight feet (8’ 0”) in width, and ten feet, six inches (10’ 6”) in height, measured from bottom of tire. Not included in this definition is the preparation of food and serving of food outside of a vehicle, typically under a tent, canopy, or from a booth.

“Food Vending Permit” is the City of Oakland’s annual or temporary permit required to place, operate, maintain, or allow an individual food vending facility or group site within the Oakland city limits.

“Food Vending Program Permitted Area” is the map in the Administrative Guidelines which shows which areas and public right-of-ways are permitted for a Food Vending Permit. The Permitted Area map also shows specific parking spaces in the street right-of-way, designated by the City for Food vending facilities. Designated parking spaces are the only permitted areas allowed for Food vending on the street right-of-way.

“Food vendor” means a person who is engaged in “food vending” as governed by this Chapter.

“Group site” or “Group site food vending” means the stationary operation of two (2) or more food vending facilities clustered together on a single site and operating at the same time.

“Group site organizer” or “responsible party” means, for the purpose of determining liability for damage to City or public facilities as a result of a group site operation, the individual or legal entity who is directly responsible for organizing and/or conducting the group site and/or the facility manager, and his or her respective designees.

“Group site food vending facility” means a food vending facility that is operating at a “group site”.

“Group Site Food Vending Permit” means a Food Vending Permit for a group site.

“Healthy foods” are defined in the Administrative Guidelines.

“Individual food vending” means a food vending facility that is not operating at a group site.

“Individual Food Vending Permit” means a Food Vending Permit for an individual food vending facility.

“Mobile café” is a motorized food vending facility that serves coffee and tea drinks and pre-made pastries, and does not have cooking equipment.

“Non-food merchandise” means goods, wares, or non-food merchandise.

“Pushcart” is a type of non-motorized food vending facility that, because of its small size and operable wheels, can be easily moved by a person during hours of operation. This definition

may also include a food vending facility integrated or pulled by non-motorized, pedal-powered vehicle such as a bicycle or tricycle.

“**Pushcart food vendor**” is a person who owns and operates a business vending from a pushcart.

“**Roaming**” means the movement of a food vending facility to multiple locations during vending hours.

“**School**” means any public, charter, or private school serving children between kindergarten and high school. For the purposes of this Chapter, pre-schools, community colleges and universities are not included in this definition.

“**Site**” means the specific public or private property location, including any public right-of-way, for which an applicant or responsible party has been issued a Food Vending Permit.

“**Stationary**” means a food vending facility which does not move during vending hours.

“**Stationary cart**” means a type of non-motorized food vending facility that generally has a maximum length of eight (8) feet, maximum depth of six (6) feet, and a maximum height of eight (8) feet. Stationary food carts are typically larger than pushcarts; pulled or delivered by a vehicle into position; and stationary at a specific site during hours of operation, and then removed by a vehicle after operating hours. Umbrellas nine (9) feet in diameter or less are permitted with these carts.

“**Stationary food cart vendor**” is a person who owns and operates a business vending from a stationary food cart.

5.51.025 – Administrative Regulations.

The City Administrator or his/her designee is hereby authorized to adopt rules and regulations consistent with this Chapter as needed to implement this Chapter, subject to the review and approval of the Office of the City Attorney, and to develop all related forms and/or other materials and take other steps as needed to implement this Chapter, and make such interpretations of this Chapter as he or she may consider necessary to achieve the purposes of this Chapter.

5.51.030 – Permit required.

- A. Except as may be allowed by a previously granted Conditional Use Permit for the use under Title 17, or by any ordinance or resolution establishing and regulating a street market or farmer’s market in the City; or for a limited period by a Special Event Permit issued in accordance with Chapter 9.52, it shall be unlawful for any individual, group, or legal entity to sell, offer for sale, or solicit offers to purchase food from food vending facilities in the City of Oakland without first obtaining a Food Vending Permit as specified in this Chapter. Conducting a food vending operation in the City of Oakland without such a valid form of city permission is a public nuisance, as defined in this Code.
- B. Any individual, group, or legal entity desiring to engage in food vending in the City shall first

file an application with the Bureau of Planning pursuant to procedures established in this Chapter and/or in the Administrative Guidelines to this Chapter.

- C. Issuance of an Encroachment or Obstruction Permit from the City of Oakland is not required to operate an individual food vending facility or group site in the public right-of-way.
- D. The individual, group, or legal entity desiring to engage in food vending shall obtain and maintain all required permits from the Alameda County Environmental Health Department the City of Oakland, and other regulatory agencies, including, but not limited to Electrical Permits or Fire Department permits.

5.51.040 – Conflicting provisions.

Where a conflict exists between the regulations or requirements in this Chapter and applicable regulations or requirements contained in other Chapters and Titles of the Oakland Municipal Code, including but not limited to the Oakland Planning Code (Title 17), the applicable regulations or requirements in this Chapter shall prevail.

5.51.050 – Permitted area.

Individual food vending facilities and group sites shall be subject to the following location requirements:

- A. Food vending shall only be located in the Food Vending Program Permitted Area, and may be located on private property, on publicly-owned property, or in the public right-of-way. Food vending in the street right-of-way is restricted to designed parking spots as shown on the Food Vending Program Permitted Area map. The City Administrator or his or her designee is authorized to adopt a Food Vending Program Permitted Area Map and make amendments or correct administrative errors to such map.
- B. A location for an individual food vending facility or group site shall not be permitted if it is proposed to be closer than the distances specified below.
 - 1. Three hundred (300) feet from another individual food vending facility or group site, unless individual food vending facilities or group sites are permitted to operate at designated parking spaces on the street right-of-way, or separate individual vending facilities or group sites are permitted to operate on different days of the week from the same location;
 - 2. Vending within three hundred (300) feet from the parcel boundary of a school serving children between kindergarten and high school between the hours of 7 a.m. and 6 p.m. Monday through Friday is restricted as per the Administrative Guidelines to this Chapter;
 - 3. Three hundred (300) feet from the primary entrance of a Full Service or Limited Service Restaurant. This separation requirement shall only apply during the normal hours of operation of the Full Service or Limited Service Restaurant. As a further exception, food vending facilities may locate: (a) within three hundred (300) feet of a Full Service or Limited Service Restaurant if the restaurant owner has provided the food vendor with permission to locate on the same lot as his/her restaurant, or if all applicable restaurant owners in the buffer area provide a signed waiver to the food vendor; (b) one hundred (100) feet from a Full Service or Limited Service Restaurant located on Telegraph

Avenue between West MacArthur Boulevard and Alcatraz Avenue; (c) two (200) feet from a Full Service or Limited Service Restaurant located on Leimert Boulevard between Clemens Road and Oakmore Road; and (d) on the lot at the southeast corner of the intersection of Mountain Boulevard and Werner Court; and

4. Any additional location requirements, as determined by the City Administrator or his/her designee, per Section 5.51.025 of this Chapter.

C. Individual food vending facilities or group sites cannot block or impede access to:

1. Required parking or driveways;

2. Bicycle racks;

3. Signal crossings;

4. Required off street parking;

5. Parking meters;

6. Pedestrian or bicycle routes;

7. Emergency vehicle routes;

8. Building entrances and exits;

9. Required accessibility routes and curb cuts;

10. Easements;

11. Trash enclosure areas or access to trash bins/trash enclosures; or

12. Other City facilities, as determined by the City Administrator or his/her designee.

D. Individual food vending facilities and group sites shall maintain site circulation and access consistent with the Americans with Disabilities Act (ADA).

E. Each stationary individual food vending facility and group site shall be located within two hundred (200) feet of a restroom facility that employees can legally access.

F. All stationary food vending facilities on public sidewalks shall be located and operated such that a minimum of five and one-half (5½) feet of unobstructed improved sidewalk or fifty percent (50%) of the overall improved sidewalk width, whichever is greater, is provided and maintained at all times from all building entrances, as well as from parking meters, traffic signs, trees, tree wells, sidewalk planter strips, and all similar sidewalk obstacles.

5.51.060 – Transferability of a Food Vending Permit.

A Food Vending Permit cannot be transferred or conveyed from the permit applicant, or otherwise assigned to another person or entity without written permission from the Director of City Planning or his or her designee.

5.51.070 – Food vending permit not a land use entitlement.

No City action related to issuance and/or renewal of a Food Vending Permit for an individual food vendor or a group site shall be interpreted to confer any form of permanent land use entitlement to the person, group, entity, or property associated with such permit.

5.51.080 – Maximum number of Food Vending Permits.

The maximum number of the different types of Food Vending Permits which may be issued shall be set by the City Administrator in the Administrative Guidelines to this Chapter, and reviewed annually. At no time shall more than the maximum number of the specified types of Food Vending Permits be active.

5.51.090 – Application requirements for all Food Vending Permits

Application for an Individual Food Vending Permit shall be made by the owner of the affected food vending facility, or his or her authorized agent, or in the case of a Group Site Food Vending Permit, by the group site organizer, or his or her authorized agent, on a form prescribed by the Bureau of Planning. Each application for an Individual or Group Site Food Vending Permit shall include:

- A. Name, contact information, and copy of a photo ID of the applicant;
- B. A non-refundable application fee in an amount set in the Master Fee Schedule;
- C. If proposed location is on private property, written consent in a form approved by the City from the property owner (if other than self) permitting the individual food vending facility or group site to locate on the property; or, if owned by applicant, proof of ownership;
- D. A map or illustration, showing:
 - 1. The proposed location(s);
 - 2. The address and Assessor's Parcel Number of the subject or nearest parcel, and/or specific section of the public right-of-way in a designated parking space; and
 - 3. The two (2) nearest street intersections.
- E. A site plan for each proposed location, containing:
 - 1. If on a parcel, the location and dimensions of all proposed food vending facility(s), any public seating or other site amenities (including chairs and tables), buildings or other structures on site, paved areas, driveways, trash receptacles, garages, parking spaces, maneuvering aisles, and pavement striping;
 - 2. If in the public right-of-way in a designated parking space, location and dimensions of the proposed food vending facility(s), sidewalks, curb cuts, trash receptacles, and obstructions such as parking meters, telecommunication boxes, street trees, and light poles.
- F. Photographs of the site(s) and food vending facility(s);
- G. Sample, photo, or rendering of proposed signs;
- H. The proposed menu of items to be offered at the food vending facility(s);
- I. Proof of all required approvals from the Alameda County Department of Environmental Health for the proposed food vending facility(s) and/or group site;
- J. Proof that the food vendor(s) and, if applicable, group site organizer, has a valid City of Oakland Business Tax Certificate;
- K. The proposed schedule for the individual food vending facility or group site, including dates, and starting and ending times of the vending period;
- L. Maintenance plan, including litter pickup and cleaning in the vicinity of the individual food vending facility or group site;
- M. The address where the food vending facility(s) will be stored and serviced during non-

operating hours;

N. The following information shall be provided regarding the commercial kitchen or commissary to be used by the applicant, if any:

1. Proof of all required approvals from the Alameda County Department of Environmental Health;
2. A valid lease between the facility operator(s) and a commercial kitchen or commissary; and
3. For a commissary in Oakland, evidence of a valid City of Oakland Business Tax Certificate and Zoning Clearance.

O. A signed statement from the applicant that they will abide by all local, state and federal requirements, including, but not limited to, those relating to the minimum wage and sick leave.

P. Proof of liability insurance in the amount required by the City's Administrative Guidelines.

Q. Any other reasonable information regarding time, place, and manner of the individual food vending facility or group site operation that the City Administrator or his/her designee requires to evaluate the proposal.

5.51.100– Additional application requirements for group sites.

A. The application for a Group Site Food Vending Permit shall include the items in Section 5.51.090, and the following additional information:

1. Legal and business name and mailing address for each food vendor; and
2. Designation of a manager to be responsible for the day-to-day site management of the group site.

5.51.110 – Decisions regarding the approval, approval with conditions, or denial of a Food Vending Permit.

A. The Director of City Planning, or his or her designee, shall determine whether the proposal meets the requirements for a Food Vending Permit as set forth in this Chapter and/or in the Administrative Guidelines to this Chapter.

1. The Director of City Planning, or his or her designee, shall review and issue Food Vending Permits in the following order of priority:
 - i. Priority Group One: Vendors with valid, unexpired Oakland Food Vending permits (i.e. 2016-2017 Food Cart "FC" or Food Vehicle "FV" permits);
 - ii. Priority Group Two: Vendors with expired Oakland Food Vending permits (i.e. 2001-2015 Food Cart "FC" or Food Vehicle "FV" permits);
 - iii. Priority Group Three: Vendors applying for City-designated parking spaces in the street right-of-way; and
 - iv. Priority Group Four: All other vending applicants.
2. Applications in Priority Group One and Two shall be reviewed based on the buffer standards that applied at the time of their initial issuance of an Oakland Food Vending permit, as described in the Administrative Guidelines to this Chapter. As a result, permits may be granted for a previously permitted location that does not meet the current buffer distances in Section 5.51.050.

3. Applications in Priority Group Three and Four shall be reviewed according to the current requirements for a Food Vending Permit as set forth in this Chapter and/or in the Administrative Guidelines to this Chapter. However, all permits that are renewed on an annual basis shall continue to be evaluated according to the standards that applied at the time of the initial permit issuance.
- B. Notice of the Food Vending Permit application shall be given by mail or delivery to all persons shown on the last available equalized assessment roll as owning real property in the City within three hundred (300) feet of the vending site, except that the notice area shall be limited to one hundred (100) feet for vending sites located on Telegraph Avenue between West MacArthur Boulevard and Alcatraz Avenue, and two hundred (200) feet for vending sites located on Leimert Boulevard between Clemens Road and Oakmore Road and on the lot at the southeast corner of the intersection of Mountain Boulevard and Werner Court; provided, however, that failure to send notice to any such owner where his or her address is not shown in said records shall not invalidate the affected proceedings. All such notices shall be given not less than ten (10) days prior to the date set for final decision on the application.
- C. Decision by the Director of City Planning. The Director of City Planning or his/her designee shall approve, approve with conditions, or deny a Food Vending Permit application based on the standards and criteria set forth in this Chapter and/or in the Administrative Guidelines to this Chapter. The Director of City Planning or his/her designee may impose conditions of approval on a Food Vending Permit in the exercise of his or her reasonable discretion. The applicant shall be notified of any conditions of approval in writing.
- D. The Administrative Guidelines shall include such reasonable rules and regulations as are necessary to hold any lottery the city may utilize in the issuance of permits.
- E. A Food Vending Permit application may be denied upon evidence that:
1. Information contained in the application, or supplementary information requested from the applicant, is false in any material detail; or
 2. The applicant has failed to ensure conformity with the operating standards and/ or permitted area location requirements in this Chapter and/or in the Administrative Guidelines to this Chapter; or
 3. The applicant has failed to provide a complete application form after having been notified of the requirement of producing additional information or documents; or
 4. The applicant has previously been cited by the City of Oakland for causing a public nuisance, or causing an unlawful or criminal activity during the operation of a food vending activity; or
 5. The applicant has previously had a food vending permit revoked in Oakland or in another jurisdiction, for violating food vending permit conditions or for unlawful conduct relating thereto; or
 6. The granting of the Food Vending Permit will have an adverse impact upon the public health, safety, or order.

5.51.120 –Inspections required prior to legal operation.

Upon issuance of the permit, the applicant shall not commence business activities until:

- A. An Oakland Fire Department designee has inspected all food vending facilities for safety that involve the use of gas for cooking onsite, and a liquid petroleum gas permit has been received

by the applicant.

- B. Once the food vending facility or group site has passed all required inspections and can legally operate, the applicant shall affix an issued City of Oakland Food Vending Permit seal/placard/sticker at a clearly visible location on the individual food vending facility, or display such Permit seal/placard/sticker at a prominent place at a group site. The City of Oakland Food Vending Permit seal/placard/sticker shall contain the permit number, the expiration date, and an indication that the individual food vending facility or group site is legal to operate.

5.51.130 – Food Vending Permit expiration and renewal.

- A. Unless renewed as described in Subsection B. below, each Annual Food Vending Permit shall be valid for twelve (12) months from the month of issuance, and expire and become null and void annually on the anniversary of its month of issuance. Each Temporary Food Vending Permit shall expire and become null and void after ninety (90) days, and may be renewed for one additional consecutive ninety (90)-day time period.
- B. An individual food vending facility or group site organizer may apply to the Director of City Planning, or his or her designee, for a Food Vending Permit renewal on a form provided by the City prior to the expiration of their active Food Vending Permit. All renewal applications shall be filed with the Bureau of Planning pursuant to procedures established in this Chapter and/or in the Administrative Guidelines to this Chapter. As stated in Section 5.51.110.A, all Food Vending Permits that are renewed on an annual basis shall continue to be evaluated according to the standards that applied at the time of the initial permit issuance.

5.51.140 – Finality of decisions

Decisions regarding a Food Vending Permit application shall be effective immediately and are not appealable.

Article II – Standards and Requirements

5.51.150 – Hours of operation

5.51.160 – Appearance and Operating Standards

5.51.170 – Liability and Indemnification

5.51.150 – Hours of operation

- A. The regular permitted hours of operation for all individual food vending facilities and group sites are 7 a.m. to 10 p.m., daily.
- B. If an applicant is granted permission for late night vending, as described in the Administrative Guidelines to this Chapter, the City may allow an individual food vending facility or group site to operate later than the regular permitted hours, but no later than 3 a.m.
- C. For Group Sites in the public right-of-way, the specific hours of operation shall be determined by the City, and shall not exceed more than five (5) hours of food vending operation on any

day of permitted group site activity, unless specified otherwise at the discretion of the Director of City Planning or his or her designee.

5.51.160 – Appearance and operating standards.

A. Appearance and condition of the food vending facility.

1. All food vending facilities and group sites shall clearly display a current City of Oakland business tax certificate, Alameda County Environmental Health permit (and decal), and City of Oakland Food Vending Permit (and decal) in plain view and at all times on the exterior of the food vending facility or at the group site.
2. No more than three (3) signs shall be attached to any food vending facility, with a maximum aggregate display surface of thirty (30) square feet of signage per food vending facility.

B. Utilities.

1. Individual food vending facilities and group sites shall either be entirely self-sufficient in regards to gas, electricity, water, and telecommunications, or the food vending facility shall be required to apply for appropriate permits for any utility hook-ups or connections to on-site utilities to ensure building and public safety and consistency with applicable building codes.

C. Refuse, trash and litter maintenance.

1. The food vending facility or group site organizer shall not throw, deposit, discharge, leave, or permit to be thrown, deposited, discharged, or left, any fat, oil, grease, refuse, garbage, or other discarded or abandoned objects, articles, and accumulations, in or upon any street, alley, sidewalk, gutter, storm drain, inlet, catch basin, conduit or other drainage structure, or upon any public or private lot of land in the City, so that the same might be or become a pollutant.
2. Other than roaming food vending facilities, a minimum of one thirty-two (32)-gallon litter receptacle shall be within fifteen (15) feet of each individual food vending facility for customers and employees.
3. Individual food vending facilities and group site organizers shall maintain the subject site and adjacent public right-of-way free of litter on and within one hundred (100) feet of their site.
4. At a minimum, all refuse shall be removed from the individual food vending facility location or group site, and properly disposed of after each vending period.
5. Failure to adequately clean up after a food vending operation date shall be grounds for denying an applicant's request for permit renewal as set forth in Section 5.51.130.

D. Seating, chairs and tables.

1. Depending on site size, configuration and location, a plan for site amenities, including but not limited to tables and chairs, portable restroom facilities, and/or temporary shade structures, may be permitted in conjunction with the operation of a food vending site. A site plan depicting the proposed location of any site amenities shall be submitted for review and approval in conjunction with a food vending permit application.

E. Performance standards.

1. Noise levels from food vending facilities shall not exceed the City's noise ordinance standards. Vendors should use low-noise emission generators.

2. Noise and odors from food vending facilities shall be contained within immediate area of the permitted food vending location.
3. The food vendor shall maintain site circulation for pedestrians and access consistent with the Americans with Disabilities Act.

F. Security.

1. The site shall be maintained in a safe and clean manner at all times.
2. Food vending facilities and group sites shall have adequate lighting to ensure customer safety. Lighting shall be directed downwards and away from public streets and adjacent properties.

G. Other requirements.

1. Food vending facilities shall be maintained in operating condition at all times, and shall be movable at all times.
2. No food vending vehicle shall become a permanent fixture on the site and shall not be considered an improvement to real property.
3. The food vendor shall maintain a valid Alameda County Environmental 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.
4. The organizer of a group site or their representative shall be personally present at all times during group site operations.
5. Proof of liability insurance in the amount required by the City shall be maintained by the individual food vendor or group site organizer.
6. The posting of the food vending permit at the site is required at all times.
7. The individual food vendor or group site organizer shall have a working telephone where he/she can be reached directly at all times during food vending.
8. The vending site shall be paved.

5.51.170 – Liability and Indemnification

- A. To the fullest extent permitted by law, any actions taken by a public officer or employee under the provisions of this Chapter shall not become a personal liability of any public officer or employee of the City.
- B. To the maximum extent permitted by law, the permittees under this Chapter shall defend (with counsel acceptable to the City), indemnify and hold harmless the City of Oakland, the Oakland City Council, the Oakland City Planning Commission, and their respective officials, officers, employees, representatives, agents and volunteers (hereafter collectively called “City”) from any liability, damages, actions, claims, demands, litigation, loss (direct or indirect), causes of action, proceedings or judgment (including legal costs, attorneys’ fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called “Action”) against the City to attack, set aside, void or annul, any food vending- related approvals and actions or implementation of such approvals and actions, including conditions of approval, if any. The City may elect, in its sole discretion, to participate in the defense of said Action and the permittee shall reimburse the City for its reasonable legal costs and attorneys’ fees.
- C. Within ten (10) calendar days of the service of the pleadings upon the City of any Action as

specified in Subsection B above, the permittee shall execute a Letter of Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations and the Letter of Agreement shall survive termination, extinguishment or invalidation of the food vending-related approval. Failure to timely execute the Letter of Agreement does not relieve the permittee of any of the obligations contained in this Section or any other requirements or performance or operating standards that may be imposed by the City.

Article III. Enforcement, Revocation and Abatement

5.51.180 – Enforcement.

5.51.190 – Violation.

5.51.200 – Responsibility.

5.51.210 – Revocation of Food Vending Permits.

5.51.220 – Penalties for violation of Food Vending Permit requirements.

5.51.230 – Abatement generally.

5.51.240 – Notice to abate.

5.51.250 – Abatement procedure.

5.51.260 – Violations constituting infractions.

5.51.270 – Penalty for violation.

5.51.180 – Enforcement.

The City Administrator or his/her designee shall be responsible for enforcing this Chapter. If periodic inspections are necessary to monitor compliance, reinspection fees per the Master Fee Schedule shall be assessed against the responsible party.

5.51.190 – Violation.

Failure to comply with any of the provisions of this Chapter is declared to be prima facie evidence of an existing violation, a continuing blight and a declared public nuisance and shall be abated by the City Administrator or his/her designee, in accordance with the provisions of this Chapter. Any person in violation will be subject to administrative penalties, citations, civil action and/or other legal remedies, including seizure of a food vending facility, and/or food and drink merchandise.

5.51.200 – Responsibility.

If a food vending facility is on a privately owned parcel, the parcel owner and the individual food vending facility or group site organizer have joint and several liability for compliance with this Chapter, including fees, administrative citations, civil actions, and/or legal remedies relating

to an individual food vending facility or group site. The parcel owner remains liable for any violation of duties imposed by this Chapter even if the parcel owner has, by agreement, imposed on the individual food vending facility or group site organizer the duty of complying with the provisions of this Chapter.

5.51.210 – Revocation of Food Vending Permits.

The City of Oakland reserves the right to revoke any food vending permit at any time if it is found that the approved activity is violating any of the provisions of the City of Oakland Municipal Code or causing a public nuisance, in accordance with Section 5.02.080 OMC for:

- A. Violating any of the required operating standards set forth in Section 5.51.180; or
- B. Violating any of the imposed permit conditions; or
- C. Causing a public nuisance, or causing an unlawful or criminal activity occurring during the operation a food vending activity or group site; or any other violation of this Chapter.

Revocation shall be immediately effective upon written notice of the revocation by the City Administrator or his/her designee. Revocation hearings and appeals shall be done in accordance with OMC Sections 5.02.090 (Hearings) and 5.02.100 (Appeals).

Should a food vending permit be revoked, the vendor shall be required to cease operation immediately or be subject to action which may include impounding of vehicle and/or citation.

5.51.220– Penalties for violation of Food Vending Permit requirements.

Any violation of this Chapter may be charged as a civil penalty or administrative citation as provided for in Chapters 1.08 and 1.12 of this Code. Enforcement action specifically authorized by this Section may be utilized in conjunction with, or in addition to, any other statutory, code, administrative or regulatory procedure applicable to this Chapter, including confiscation of merchandise and food for sale, and/or impoundment of the food vending facility. In addition, nothing in this Section shall be interpreted to preclude or limit the City from seeking injunctive or other judicial relief.

5.51.230 – Abatement generally.

- A. Failure to permanently remove a food vending facility or group site and failure to cease operation as a food vending facility or group site after the termination, revocation, expiration, or suspension of any permit issued pursuant to this Chapter shall constitute a public nuisance, and shall be subject to enforcement and abatement procedures set forth in Chapter 1.16 of this Code.
- B. When the City Administrator or his/her designee determines that an individual food vending facility or a group site has been used as an instrument for, or has contributed substantially to a violation of this Chapter, the City Administrator or his/her designee may deem the violation a public nuisance and issue a notice to abate the food vending facility or group site operation,

and direct the responsible party to:

1. Comply with the notice to abate;
2. Comply with a time schedule for compliance; and
3. Take appropriate remedial or preventive action to prevent the violation from recurring.

5.51.240 – Notice to abate.

Upon declaring and deeming a violation of this Chapter a nuisance, the City Administrator or his/her designee shall send a notice of abatement to the property owner, individual food vendor, and/or responsible party. The notice of abatement shall contain the following:

- A. The street address and legal description of the site 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 applicant, as well as the property owner if the activity is located on private 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, individual food vendor, and/or responsible party 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, individual food vendor, and/or responsible party and to the applicant 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 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, individual food vendor, and/or responsible party to fail or neglect to comply with such order or notice of abatement. In the event that the property owner, individual food vendor, and/or responsible party shall not promptly proceed to abate said nuisance condition(s) within seven (7) days of notice to abate, as ordered by the enforcing official, the abatement procedure set forth in Section 5.51.250 may be undertaken.

5.51.250 – Abatement procedure.

Any person violating or failing to comply with any of the provisions of this Chapter shall be subject to the abatement procedure set forth in Title 1 of this Code.

5.51.260 – Violations constituting infractions.

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

5.51.270 – Penalty for violation.

Any person violating any provision of this Chapter shall be punished upon a first violation by a fine of not more than \$1,000.00 and, for a second violation within a period of one year, by a fine of not more than \$2,000.00 and, for a third or any subsequent violation within a one-year period, by a fine of not more than \$5,000.00. Any violation beyond the third, 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 \$10,000.00 or by imprisonment in the county jail for a period of not more than six (6) 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 Chapters 1.08 and 1.12 of this Code, and could be subject to confiscation of their merchandise and food for sale, and/or impoundment of the food vending facility.

Section 4. Conforming Changes in the Oakland Municipal Code and Oakland Planning Code. Chapters 1.08 (Civil Penalties), 1.12 (Administrative Citations), 1.16 (Alternative Administrative Procedure for Abatement of Certain Violations), 5.02 (Business Permits Generally), 5.48 (Peddlers and Solicitors), and 12.08 (Encroachments) of the Oakland Municipal Code, and Chapter 17.10 (Use Classifications) of the Oakland Planning Code, are hereby amended to bring these chapters into conformity with the new comprehensive food vending program (additions are shown as underlined text and deletions are shown as ~~strikethrough~~):

Chapter 1.08 - CIVIL PENALTIES

1.08.020 - Scope

A. This chapter authorizes the administrative assessment of civil penalties to effect abatement of:

1. Any violations of provisions of the following Oakland Municipal Codes: Oakland Building Code (OMC Chapter 15.04), the Oakland Housing Code (OMC Chapter 15.08), Uniform Fire Code (OMC Chapter 15.12), Fire Damaged Area Protection & Improvement Code (OMC Chapter 15.16) Bedroom Window Security Bar & Smoke Detector Permit Code (OMC Chapter 15.64), Oakland Planning Code (OMC Title 17), Transient Occupancy Tax Code (OMC Chapter 4.24), Hotel Rates & Register Code (OMC Chapter 5.34), Food Vending Program (OMC Chapter 5.51); Animal Code (OMC Title 6), Health & Safety Code (OMC Title 8), Public Peace, Morals and Welfare Code (OMC Title 9), Vehicles and Traffic Code (OMC Title 10), Streets, Sidewalks & Public Places Code (OMC Title 12), Creek Protection, Storm Water Management and Discharge Control Code (OMC Chapter 13.16), Affordable Housing Impact Fees (OMC Chapter 15.72), Transportation and Capital Improvements Impact Fees (OMC Chapter 15.74), and the Oakland Sign Code (OMC Chapter 14); or,
2. The occurrence of anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, which affects-at-the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal; or
3. The occurrence of any public nuisance as known at common law or in equity jurisprudence, or
4. The violation of any state or federal law or regulations under which such violation is deemed a public nuisance.

B. Civil penalties established in this chapter are in addition to any other administrative or legal remedy which may be pursued by the city to address violations of the codes and ordinances identified in this chapter.

Chapter 1.12 - ADMINISTRATIVE CITATIONS

1.12.020 - Scope.

A. This chapter authorizes the administrative assessment of citations to effect abatement of:

1. Any violations of the following provisions of the Oakland Municipal Code: the Oakland Building Code (CIVIC Chapter 15.04), the Oakland Housing Code (OMC Chapter 15.08), Uniform Fire Code (CIVIC Chapter 15.12), Fire Damaged Area Protection & Improvement Code (CIVIC Chapter 15.16) Bedroom Window Security Bar & Smoke Detector Permit Code (CIVIC Chapter 15.64), Oakland Planning Code (CIVIC Title 17), Oakland Sign Code (OMC Chapter 146), Transient Occupancy Tax Code (OMC Chapter 4.24), Unattended Donation/Collection Boxes (OMC Chapter 5.19), Hotel Rates & Register Code (CIVIC Chapter 5.34), Food Vending Program (OMC Chapter 5.51); Animal Code (OMC Title 6), Health & Safety Code (OMC Title 8), Public Peace, Morals and Welfare Code (OMC Title 9), Vehicles and Traffic Code (OMC Title 10), Streets, Sidewalks & Public Places Code (OMC Title 12) and Creek Protection, Storm Water Management and Discharge Control Code (OMC Chapter 13.16); or

2. The occurrence of anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal; or

3. The occurrence of any public nuisance as known at common law or in equity jurisprudence.

4. The violation of any state or federal law or regulations under which such violation is deemed a public nuisance.

B. Administrative citations established in this chapter are in addition to any other administrative or legal remedy which may be pursued by the city to address violations of the codes and ordinances identified in this chapter.

Chapter 1.16 - ALTERNATIVE ADMINISTRATIVE PROCEDURE FOR ABATEMENT OF CERTAIN VIOLATIONS

1.16.020 - Scope.

A. This chapter permits the administrative limitation of the use of property by authorizing the recordation of notices of violation and by authorizing the revocation, suspension, and/or withholding of permits as appropriate to effect abatement of:

1. Any violations of the Oakland Building Code (OMC Chapter 15.04), Oakland Housing Code (OMC Chapter 15.08), Uniform Fire Code (OMC Chapter 15.12), Fire Damaged Area Protection & Improvement Code (OMC Chapter 15.16) Bedroom Window Security Bar & Smoke Detector Permit Code (OMC Chapter 15.64), the Oakland Planning Code (OMC Title 17), Transient Occupancy Tax Code (OMC Chapter 4.24), Hotel Rates & Register Code (OMC Chapter 5.34), Food Vending Program (OMC Chapter 5.51); Animal Code (OMC Title 6), Health & Safety Code (OMC Title 8), Public Peace, Morals and Welfare Code (OMC Title 9), Vehicles and Traffic Code (OMC Title 10), Streets, Sidewalks & Public Places Code (OMC Title 12), Creek Protection, Storm Water Management and Discharge Control Code (OMC Chapter 13.16) and Oakland Sign Code (OMC Chapter 14; or
2. The occurrence of anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal; or
3. The occurrence of any public nuisance as known at common law or in equity jurisprudence.
4. The violation of any state or federal law or regulations under which such violation is deemed a public nuisance.

Chapter 5.02 - BUSINESS PERMITS GENERALLY

Sections:

5.02.010 - Permits generally.

5.02.020 - Application.

5.02.030 - Procedure on application.

5.02.040 - Chief of Police as the investigating official.

5.02.050 - Notice of hearing on application.

5.02.060 - Action on application.

5.02.070 - Transfer of permits.

5.02.080 - Revocation and suspension of permit.

5.02.090 - Hearings.

5.02.100 - Appeals.

5.02.110 - Inspection of premises.

5.02.120 - Permits to be exhibited.

5.02.130 - ~~City Clerk~~ Planning Director, or his or her designee, to examine applications as to zone.

5.02.140 - City Administrator, or his or her designee, ~~Clerk~~ to be notified of actions on permits.

5.02.150 - Expiration of permit.

5.02.010 - Permits generally.

Whenever, by the provisions of this Cchapter, a permit from the city is a prerequisite to the operation or maintenance of any business, establishment or place, or to the furtherance of any undertaking or the doing of any thing, unless otherwise specifically provided, such permit shall be procured in the manner, and be subject to the provisions, hereinafter in this Cchapter set forth.

5.02.020 - Application.

Application for any permit referred to in Section 5.02.010 shall be filed with the City AAdministrator, or his or her designee, ~~City Clerk~~ in triplicate, the original of which shall be duly acknowledged before some person lawfully authorized to administer oaths, and upon forms to be furnished by said City official, ~~Clerk~~, and shall set forth the following information:

- A. A full identification of the applicant and all persons to be directly or indirectly interested in the permit if granted;

- B. The residence and business address and the citizenship of the applicant, including all members of any firm or partnership, or all officers and directors of any corporation applying;
- C. The location of the proposed business, establishment, place, thing, etc., for which the permit is requested, and the name of the owner and the present use of such premises;
- D. The exact nature of the proposed business, establishment, place, thing, etc., for which the permit is requested, and the name under which it is to be operated;
- E. The past experience of the applicant in the matter to which the requested permit appertains; and the name, address, and past experience in such business or matter of the person to be in charge of the premises or business;
- F. Whether or not any permit has been revoked, and if so, the circumstances of such revocation;
- G. Such further information as the City Administrator, Manager, or such official of the city to whom the application may be referred, may require.

5.02.030 - Procedure on application.

Immediately on the filing of any application for a permit as provided in Sections 5.02.010 and 5.02.020, the City Administrator, Clerk or his or her designee, shall place the acknowledged copy in the permanent records of his or her office, refer one copy to ~~the City Administrator and one copy to~~ such official of the city the administrative functions of whom are those primarily concerned with the granting or denying of such permit, which latter official, hereinafter in this Chapter referred to as the "investigating official," shall make such investigation of the applicant and of the facts set forth in such application as he or she shall deem advisable, and shall make a written report of such investigations, together with his or her recommendations relative to disposal of the application, to the City Administrator, who shall proceed to act upon said application after a hearing set by the City Administrator, or his or her designee, Clerk for a day certain, not more than forty-five (45) days from the date of filing completed said application. At such hearing, all persons interested shall be entitled to file objections, protests or recommendations in the premises. Such hearing may, by the City Administrator, be continued over from time to time as circumstances may require; provided, however, that if hereinafter in this Chapter specifically provided, the investigating official may grant the permit applied for without referring the same to the City Administrator, and with or without a hearing thereon, as may be provided.

5.02.040 - Chief of Police as the investigating official.

Whenever the Chief of Police is the investigating official pursuant to this Chapter, the applicant shall pay to ~~the City Clerk~~ upon filing the application or an application for renewal, a fee to pay for the cost of such investigation.

5.02.050 - Notice of hearing on application.

The City Administrator, or his or her designee, Clerk shall in every case of application for a

permit notify the applicant of the time and place of such hearing to be held therein as in Section 5.02.030 provided, and such notice shall be given at least thirty (30) days before the date of such hearing.

In the event that a public notice of the hearing on any application for a permit may be hereinafter in this Chapter required, the City Administrator, or his or her designee, Clerk shall cause a notice to be published once in the official newspaper of the city at least thirty (30) days before said hearing date, and cause a copy thereof to be posted upon the premises to be primarily affected by the granting of such permit, and a copy on the bulletin board near the Council Chambers. Such notice shall set forth the fact that such application has been filed, the name of the applicant, the nature of the thing to be permitted, and the time and place of hearing upon such application.

For applications involving the ongoing use of property, notice of the hearing shall be given by posting a notices thereof on within three hundred (300) feet of the property involved in the application. Notice of the hearing shall also be given by mail or delivery to all persons shown on the last available equalized assessment roll as owning real property in the city within three hundred (300) feet of the property involved and to all addresses within three hundred (300) feet of the property and to registered community groups. All such notices shall be given not less than seventeen (17) days prior to the date set for the hearing. The fee for the notification process, as established by the master fee schedule, shall be a separate charge in addition to the application fee.

5.02.060 - Action on application.

The City Administrator, or the investigating official acting thereon, shall deny the granting of any permit applied for if it shall appear to his or her satisfaction that the applicant is not a fit and proper person, either for financial, moral, or other reasons, to conduct or maintain the business, establishment, place, or other thing, to which the application appertains; that the applicant has not complied with the provisions of this Code which directly appertain to the maintenance or conduct of the business, establishment, place, or other thing in question or for the violation of any law appertaining thereto; or for any other reason hereinafter in this Chapter more specifically set forth.

In granting or denying such permit, and in specifying the conditions, if any, upon which it is granted, the City Administrator or other official acting thereon, shall consider the character of the applicant as respects morality, honesty and integrity, and all pertinent facts which may concern the health, safety, and general welfare of the public, and shall exercise a reasonable and sound discretion in the premises. The City Administrator, or other official acting thereon, in acting upon an application for a permit, shall notify the investigating official to whom such application was referred, of such action.

5.02.070 - Transfer of permits.

No permit in this Chapter required shall be transferable, nor apply to any premises other than those originally specified as the location of the thing permitted, except upon written

permission of the City ~~Administrator, Manager~~, or other official originally granting such permit, granted upon written application by the transferor, made in the same manner as may be required in the instance of the original application for such permit.

5.02.080 - Revocation and suspension of permit.

Any permit granted pursuant to the provisions of this ~~C~~chapter may be revoked or suspended by the City ~~Administrator Manager~~ as in his or her discretion may seem meet and just, for any reason for which a granting of such permit might be lawfully denied, or for any other reason hereinafter in this ~~C~~chapter specifically provided. Such revocation or suspension shall be made only upon a hearing granted to the holder of the permit so revoked or suspended, held before the City ~~Administrator Manager~~ after five (5) days' notice to such permit holder, stating generally the grounds of complaint against him or her and stating the time and place where such hearing will be held. In the event of such revocation or suspension, any certificate issued in connection with the granting of such permit shall, by the holder thereof, be forthwith surrendered to the City ~~Administrator. Manager.~~

Such revocation or suspension of any permit shall be in addition to any other penalties more specifically provided in this ~~C~~chapter.

5.02.090 - Hearings.

Any investigation, inquiry or hearing which the City ~~Administrator Manager~~ has power to undertake or to hold may be undertaken or held by such member of the City ~~Administrator's Manager's~~ staff as he or she may designate and to whom the matter is assigned. The person to whom a matter is assigned shall be deemed a "Hearing Officer." In any matter so assigned the Hearing Officer conducting the investigation, inquiry or hearing shall report within thirty (30) days after the conclusion of the investigation, inquiry or hearing his or her findings and recommendations to the City ~~Administrator. Manager.~~

Within sixty (60) days after the filing of the findings and recommendations of the Hearing Officer, the City ~~Administrator Manager~~ shall confirm, adopt, modify or set aside the findings of the Hearing Officer and with or without notice enter his or her order, findings, decision or award based upon the record in the case.

In such hearings, investigations, and inquiries by the City ~~Administrator Manager~~ or a Hearing Officer, he or she shall not be bound in the conduct thereof by the common law or statutory rules of evidence and procedure but inquiry shall be made in the manner, through oral testimony and records, which is best calculated to ascertain the substantial rights of the public parties and carry out justly the spirit and provisions of this ~~C~~chapter.

No informality in any proceeding or the manner of taking testimony shall invalidate any other decision, award or rule made as specified in this ~~C~~chapter. No order, decision, award or rule shall be invalidated because of the admission into the record and the use as any proof of any fact in dispute or any evidence not admissible under the common law or statutory rules of evidence and procedure.

5.02.100 - Appeals.

Any person excepting to any denial, suspension or revocation of a permit applied for or held by him or her pursuant to the provisions of this Cehapter, or pursuant to the provisions of this code where the application for said permit is made to, or the issuance thereof is by the City Administrator, Manager, or any person excepting to the granting of, or to the refusal to suspend or revoke, a permit issued to another pursuant to the provisions of this Cehapter, or issued to another by the City Administrator Manager pursuant to the provisions of this Code, may appeal in writing to the City Council by filing with the City Administrator, or his or her designee, Clerk a written notice of such appeal setting forth the specific grounds thereof. Such notice must be filed within fourteen (14) days after notice of such action appealed from is posted in the United States mail. Upon receipt of such notice of appeal, the Council shall set the time for consideration thereof. The City Administrator, or his or her designee, Clerk shall cause notice thereof to be given (A) to the appellant and (B) to the adverse party or parties, or to the attorney, spokesman, or representative of such party or parties, not less than five (5) days prior to such hearing. At such hearing the appellant shall show cause on the grounds specified in the notice of appeal why the action excepted to should not be approved. Such hearing ~~may,~~ by the Council, ~~be continued over from time to time~~ and its findings on the appeal shall be final and conclusive in the matter.

5.02.110 - Inspection of premises.

Any officer of the city charged with the enforcement or administration of any of the provisions of this Cehapter shall be permitted to enter and inspect at any reasonable time, without charge or other restraint, any premises to which any permit granted under the provisions of this Cehapter may pertain, or which are directly affected by such permit, for the purpose of ascertaining whether or not any of the provisions of this Cehapter applicable thereto are being violated.

5.02.120 - Permits to be exhibited.

Any permit required under the provisions of this Cehapter shall be exhibited in a conspicuous place in that part, to which the public has access, of the premises to which such permit appertains.

5.02.130 - City Clerk-Planning Director, or his or her designee, to examine applications as to zone.

~~Upon~~ Prior to the filing of any application for a permit as in this Cehapter provided for, the City Clerk-Planning Director, or his or her designee, shall examine the same for the purpose of ascertaining whether the business, establishment or place for which such permit is desired is proposed to be located within a zone in which the same is permitted pursuant to the provisions of this code and the ordinances and laws of the city. If such location is not within such approved zone, the City Administrator, or his or her designee, City Clerk shall refuse to accept such application.

5.02.140 - City Administrator, or his or her designee, Clerk to be notified of actions on permits.

Any official of the city taking any action upon any application for a permit or upon any permit to operate or maintain any business, establishment or place within the city as in this Chapter provided for, shall notify the City Administrator, or his or her designee, Clerk of such action, and shall, so far as possible, supply the City Administrator, or his or her designee, Clerk with copies of all communications, findings and records pertaining to such applications and permits, and the City Administrator, or his or her designee, Clerk shall place the same on file with the applications and permits to which they pertain.

5.02.150 - Expiration of permit.

Any permit granted pursuant to the provisions of this Chapter but under which the thing herein permitted has not been done, carried on or maintained within six (6) months from the time of the issuance of such permit, shall expire by limitation and cease to be valid for any purpose. Provided, however, that the City Administrator, or his or her designee, Manager may renew such permit upon written application being made prior to its expiration.

Chapter 5.48 - PEDDLERS AND SOLICITORS

Sections:

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 districts.

5.48.090 - Peddling in certain districts—Construction.

5.48.020 - Peddlers and solicitors—Police certificate.

It is unlawful for any person to solicit or take orders from house to house, or upon any public street, grounds or squares, or within any public buildings, within the city, for the sale of any article, merchandise or other thing of value; or to peddle the same or solicit in such manner any moneys, funds, articles, merchandise, or other thing of value for any charitable, religious, business or other purpose, without a police certificate, provided, however, that no such certificate shall be required of ~~drummers~~, traveling salespersons, or other persons engaged in soliciting or taking orders exclusively from the trade, or established retail dealers, for the delivery of goods, wares or merchandise by wholesale.

An application for a police certificate required by the provisions of this section shall be made

in writing to the Chief of Police, shall be presented in person, and shall set forth the nature of the business of the applicant, the firm or corporation which the applicant represents, the kind of goods or property to be sold, solicited or dealt in, and such further information as the Chief of Police may require. ~~Such application shall be accompanied by the written recommendation of not less than five citizens of the city, concerning the moral character, honesty and integrity of the applicant.~~ The applicant, upon filing his or her application, may shall be fingerprinted by the Bureau of Identification at the request of the Oakland Police Department.

The Chief of Police, if satisfied as to the ~~moral character, honesty and integrity~~ business practices of the applicant, shall issue to him or her a police certificate to engage in the said business within the city, which certificate shall be effective for a period of one (1) year from date of issuance, and any renewal thereof shall be made upon application made as herein required in the instance of the original application. Such police certificate, together with any license otherwise required of such person by the provisions of this Code, shall be at all times carried by the person therein certified when he or she is engaged in said business. The Chief of Police shall at all times maintain in his or her office a complete list of all persons to whom such police certificates have been issued.

5.48.050 - Peddling foodstuffs from vehicles.

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

- A. Bby regulations set forth elsewhere set forth in the Municipal or Planning Codes;
- B. By any ordinance or resolution establishing and regulating a farmer's market or street market in the city;
- C. Within those areas of Oakland subject to the Food Vending Program set forth in Chapter 5.51 of the Municipal Code; and this title. However, within those areas of Oakland subject to the pusheart food vending program ordinance, pusheart food vending is regulated by Chapter 5.49 of the municipal code.
- D. For a limited time in accordance with the Special Event permit program set forth in Chapter 9.52 of the Municipal Code.

5.48.070 - Peddlers' carts, stands.

It is unlawful for any person having charge or control of ~~a cart, wagon or~~ any vehicle used for the vending of goods, wares, merchandise, foods, confections, refreshments or other article, therefrom commonly known as peddlers' carts, ~~wagons or~~ vehicles to occupy, or permit to be occupied, as a stand for such cart, ~~wagon or~~ vehicle, any portion of any street, lane, alley or sidewalk in the city, or to cause or permit such cart, wagon or vehicle to stand within five hundred (500) feet of any entrance or exit to any public park, public building or public grounds for the purpose of peddling such goods or merchandise therefrom except as may be permitted:-

- A. By regulations set forth elsewhere in the Municipal or Planning Codes;

- B. By any ordinance or resolution establishing and regulating a farmer's market or street market in the city;
- C. Within those areas of Oakland subject to the Food Vending Program set forth in Chapter 5.51 of the Municipal Code; and
- D. For a limited time in accordance with the Special Event permit program set forth in Chapter 9.52 of the Municipal Code.

However, within those areas of Oakland subject to the pusheart food vending program ordinance, pusheart food vending is regulated by Chapter 5.49 of the municipal code.

~~Nothing in this section shall be so construed as to conflict with, or repeal, any provision of this code or any ordinance establishing and regulating a street market in the city.~~

5.48.080 - Peddling in certain districts.

It is unlawful for any person to traffic in, vend or sell, or attempt to, or offer to, traffic in, vend or sell, any goods, wares, merchandise, meats, vegetables, fruits, berries, produce or any article of household, family or domestic supplies, ~~within the territory hereinafter in this section defined,~~ unless the same is done by such person at a fixed place of business conducted in a building or store lawfully occupied by him or her, or is permitted by:

- A. Regulations set forth elsewhere in the Municipal or Planning Codes;
- B. Any ordinance or resolution establishing and regulating a farmer's market or street market in the city;
- C. The Food Vending Program set forth in Chapter 5.51 of the Municipal Code; and
- D. The Special Event permit program set forth in Chapter 9.52 of the Municipal Code.

~~The territory above referred to in this section is bounded and particularly described as follows: All that portion of the city bounded on the south by a line drawn parallel to and one hundred (100) feet southerly of the southern line of First Street, on the east by a line drawn parallel to and one hundred (100) feet easterly of the eastern line of Harrison Street, on the north by a line drawn parallel to and one hundred (100) feet northerly of the northern line of 17th Street, and on the west by a line drawn parallel to and one hundred (100) feet westerly of the western line of Jefferson Street, and also beginning at the intersection of a line drawn parallel to and one hundred (100) feet southerly of the southern line of First Street with a line drawn parallel to and one hundred (100) feet easterly of the eastern line of Alice Street; thence northerly along said last named line to a line drawn parallel to and one hundred (100) feet southerly of the southern line of 11th Street; thence easterly along said last named line to the centerline of Fallon Street; thence northerly along the centerline of Fallon Street and its production to the western shore of Lake Merritt; thence northerly and westerly along the western shore of Lake Merritt to a line drawn parallel to and one hundred (100) feet easterly of the eastern line of Harrison Boulevard; thence northerly along said last named line to a line drawn parallel to and one hundred (100) feet northerly of the northern line of 22nd Street and Grand Avenue; thence westerly along said last named line and its productions to a line drawn parallel to and one hundred (100) feet westerly of the western line of San Pablo Avenue; thence southerly along said last named line to a line drawn parallel to and one hundred (100) feet westerly of the western line of Grove Street; thence southerly along said last named line to a line drawn parallel to and one hundred (100) feet southerly of the southern line of First Street; thence easterly along said last~~

~~named line to the point of beginning.~~

5.48.090 - Peddling in certain districts—Construction.

Nothing in Section 5.48.080 contained shall be construed as preventing or making unlawful the prompt delivery in good faith of any of said personal property to or at any such fixed place of business (so situated and conducted in such building or store within said territory) in any case where such personal property, so being delivered is actually and in good faith consigned goods, or has actually and in good faith been theretofore purchased at a place outside of said territory by such lawful occupant of such fixed place of business, actually doing business therein, and said property is in either such case then being delivered to him or her thereat; ~~provided, however, that the Chief of Police of the city, in his or her discretion, may at any time grant a permit to any person to sell such personal property within such district and within the fire limits of the city for a limited period only, not to exceed five days.~~

Chapter 12.08 - ENCROACHMENTS

Sections:

12.08.030 - Public sidewalk encroachments—Types and definitions.

12.08.150 - Exceptions.

12.08.030 - Public sidewalk encroachments—Types and definitions.

For the purpose of this title, encroachments upon the public street, alley, or "sidewalk area" shall be of three types: major, minor, and short term. The sidewalk area shall be defined as that area between the property line and the edge of the pavement or face of the curb. "Improved streets" shall be defined as streets with concrete curbs, gutters and sidewalks. It is unlawful for any person to use the sidewalk area in the city for the display and sale of goods, wares and merchandise, except as may be permitted:

1. By regulations set forth elsewhere in the Municipal or Planning Codes;
2. By any ordinance or resolution establishing and regulating a street market in the city;
3. Within those areas of Oakland subject to the Food Vending Program set forth in Chapter 5.51 of the Municipal Code; and
4. For a limited time in accordance with the Special Event permit program set forth in Chapter 9.52 of the Municipal Code.

~~The displaying of wares, other than flowers or other aesthetically pleasing objects, and the selling of any wares on the sidewalk area shall be specifically prohibited. However, within those areas of Oakland subject to the Pusheart Food Vending Program Ordinance, pusheart food vending is regulated by Chapter 5.49 of the Municipal Code. As defined in this title, the term "aesthetically pleasing objects" excludes furniture and other utilitarian objects. Permission to~~

- ~~• Catering trucks, pushcarts or other movable equipment from which the food is sold typically have a take-out counter and space for customer queuing;~~
- ~~• Food and beverages are served in disposable wrappers, plates or containers; and~~
- ~~• Food and beverages are prepared and sold for off-site consumption.~~

~~This classification also includes certain activities accessory to the above, as specified in Section 17.10.040.~~

Section 5. Working Group. The Council directs staff from the Bureau of Planning to return to Council with a framework for the creation of “Food Vending Working Group,” with the purpose, in the first year of the new vending program, to monitor the program’s implementation, to make recommendations to staff, and to inform the larger vending community of the new program.

Section 6. California Environmental Quality Act. The City Council finds and determines the adoption of this Ordinance complies with the California Environmental Quality Act (“CEQA”), and relies on the previous set of applicable CEQA documents including: the Coliseum Area Specific Plan EIR (2015); Broadway Valdez Specific Plan EIR (2014); West Oakland Specific Plan EIR (2014); Central Estuary Area Plan EIR (2013); Land Use and Transportation Element of the General Plan EIR (1998); the Oakland Estuary Policy Plan EIRs (1999, 2006) and Supplemental EIR (2013); the Redevelopment Area EIRs- West Oakland (2003), Central City East (2003), Coliseum (1995), and Oakland Army Base (2002); the Historic Preservation Element of the General Plan EIR (1998); the 2007-2014 Housing Element Final EIR (2010) and Addendum (2014); and various Redevelopment Plan Final EIRs (collectively, “Previous CEQA Documents”). Further, the Council finds the adoption of this Ordinance is exempt, pursuant to CEQA Guidelines section 15183 (projects consistent with General Plan and Zoning) and 15061(b)(3) (general rule, no significant effect on the environment). Each of these provides a separate and independent basis for CEQA clearance and when viewed collectively provide an overall basis for CEQA clearance.

Section 7. Severability. The provisions of this Ordinance are severable. If a court of competent jurisdiction determines that any word, phrase, clause, sentence, paragraph, subsection, section, chapter or other provision (collectively called “Part”) is invalid, or that the application of any Part of this Ordinance to any person or circumstance is invalid, such decision shall not affect the validity of the remaining Parts of this Ordinance. The City Council declares that it would have adopted this Ordinance irrespective of the invalidity of any Part of this Ordinance or its application to such persons or circumstances have expressly excluded from its coverage.

Section 8. Effective Date. This Ordinance shall take effect sixty (60) days after its adoption.

Section 9. Authority. This Ordinance serves the public interest and is necessary to protect the health, safety, and/or general welfare of the citizens of Oakland, and is enacted pursuant to the City of Oakland’s general police powers, Section 106 of the Charter of the City of Oakland, Vehicle Code section 22455, and Article XI, Sections 5 and 7 of the California Constitution.

Section 10. Revenue. Fees collected pursuant this ordinance, per the Master Fee Schedule, shall be deposited and appropriated in the Development Services Fund (2415), Planning Organization (84211), Other Fees: Misc. Account (45419) and Construction and Obstruction Permit Accounts

(42211 and 42315) and Contingency Account (54011), Food Vendor Projects (10000867 and 1000868); any fines or penalties collected pursuant to Oakland Municipal Code Chapters 1.08 and 1.12 and Section 5.51.270 will be deposited in the same fund.

Section 11. Conflict. Nothing in this Ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

Section 12. Notice of Exemption/Notice of Determination. The Environmental Review Officer, or designee, is directed to cause to be filed a Notice of Exemption/Notice of Determination with the appropriate agencies.

Section 13. Record. That the record before the City Council relating to this Ordinance includes, without limitation, the following:

1. All final staff reports, decision letters and other documentation and information produced by or on behalf of the City;
2. All oral and written evidence received by the City staff, Planning Commission, and City Council before and during the public hearings on the amendments to the Oakland Municipal Code and Oakland Planning Code;
3. All matters of common knowledge and all official enactments and acts of the City, such as (a) the General Plan and the General Plan Conformity Guidelines; (b) Oakland Municipal Code; (c) Oakland Fire Code; (d) Oakland Planning Code; other applicable City policies and regulations; and (e) all applicable state and federal laws, rules and regulations.

Section 14. Conforming Changes. The City Council hereby authorizes the City Administrator or designee to make non-substantive, technical conforming changes (essentially correction of typographical and clerical errors), prior to formal publication of the amendments in the Oakland Municipal Code and Oakland Planning Code.

IN COUNCIL, OAKLAND, CALIFORNIA, MAR 28 2017

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, CAMPBELL WASHINGTON, GALLO, ~~REIDSON, NICOLAS, HANSEN, DELMATA~~, KALB, KAPLAN, AND PRESIDENT REID — 0

NOES- *Guillen*

ABSENT- 0

ABSTENTION- 0

Excused - *McElhenny*

ATTEST: *Alina Jal per LaTonda Simmons*
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

Introduction Date

MAR 21 2017

DATE OF ATTESTATION: March 29, 2017