

INTRODUCED BY COUNCILMEMBER _____


CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

ORDINANCE TO AUTHORIZE A FIRST AMENDMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF OAKLAND AND CHAMPION STREET, LLC, FOR THE PROPERTY LOCATED AT 3455 AND 3461 CHAMPION STREET, TO (1) MODIFY THE PROJECT SCHEDULE TO EXTEND (A) THE OUTSIDE DATE FOR COMPLETION OF CONSTRUCTION TO JUNE 30, 2021, AND (B) THE OUTSIDE DATE THE RESTAURANT WILL OPEN TO JULY 30, 2021, (2) MODIFY THE RESTAURANT CLOSING TIME FROM 11:00 P.M. TO 10:00 P.M., (3) DELETE PROVISION REQUIRING SUBMITTAL TO THE CITY OF PROPOSED CHANGE OF HOURS OF OPERATION WITH SUPPORTING DOCUMENTATION, AND (4) TO MAKE THE DETERMINATION THAT PROJECT IS EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

WHEREAS, Ordinance No. 13400 C.M.S. adopted by the City Council on November 29, 2016 authorized the City Administrator to negotiate and execute a disposition and development agreement (the “DDA”) for the sale of the properties located at 3455 and 3461 Champion Street (the “Property”) to Carlos Solomon and Dominica Rice-Solomon or their related entities or affiliates, based on terms and conditions contained in a term sheet attached to such ordinance (the “Term Sheet”) for the development of the Property as a restaurant (the “Project”); and

WHEREAS, on June 20, 2017, the City Council adopted Ordinance No. 13438 C.M.S., to amend the Term Sheet; and

WHEREAS, on July 27, 2017, the City of Oakland (the “City”) and Champion Street, LLC (the “Developer”) entered into the DDA; and

WHEREAS, the Project was delayed due to additional improvements imposed by agencies with jurisdiction over the Project, which required increased financing and additional approvals by the City; and

WHEREAS, the Project was further delayed due to public health orders issued by the Alameda County Health Officer in March 2020 in response to the Coronavirus pandemic which prohibited non-essential business operation and construction; and

WHEREAS, staff and Developer are now seeking an amendment to the DDA to include: (A) extending the outside date for completion of construction to June 30, 2021; and (B) extending the deadline to open the restaurant to July 30, 2021; and

WHEREAS, staff and Developer are now seeking an amendment of Section 7.1.1 of the DDA to change the restaurant closing time from 11:00 p.m. to 10:00 p.m.; and

WHEREAS, staff and developer are now seeking an amendment to the DDA to delete the following sentence: "Should the Developer desire to modify such hours of operation, the Developer shall submit any proposed change to the City along with such supporting evidence as the City may reasonably require regarding the economic infeasibility or financial hardship of maintaining such hours, and the City may grant or deny such proposed change in its reasonable discretion." from Section 7.1.1 of the DDA; and

WHEREAS, staff's review of the Project indicates the foregoing modifications to the DDA (collectively, the "First Amendment") are justified and necessary to keep the development moving forward; and

WHEREAS, Section 11.22 of the DDA provides any amendments to the DDA must be in writing, approved as to form and legality by the City of Attorney of Oakland, and must be executed by both City and the Developer; and

WHEREAS, the City Council desires to authorize the First Amendment to the DDA by adoption of this Ordinance.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council hereby finds that it is in the best interests of the City to amend the DDA with the First Amendment.

SECTION 2. The City Council hereby authorizes the City Administrator or his/her designee, without returning to the City Council, to negotiate and execute: (1) the First Amendment, in a form and content substantially in conformance with the terms described herein; (2) such other additions, amendments or other modifications to the foregoing document that the City Administrator, in consultation with the City Attorney's Office, determines are in the best interests of the City, do not materially increase the obligations or liabilities of the City, and are necessary or advisable to complete the transaction contemplated by this Ordinance, to be conclusively evidenced by the execution and delivery by the City Administrator of any such amendments; and (3) such other documents as necessary or appropriate, in consultation with the City Attorney's Office, to facilitate the First Amendment and development of the Property in order to consummate the transaction in accordance with this Ordinance, or to otherwise effectuate the purpose of this Ordinance and its basic purposes.

SECTION 3. All agreements associated with the Property and the Project shall be reviewed and approved as to form and legality by the City Attorney's Office prior to execution

by the City and shall be placed on file with the City Clerk.

SECTION 4. The City Council finds and determines that the Project is exempt from CEQA pursuant to CEQA Guidelines Sections 15061(B), 15183, 15301, 15302, 15303, 15312, AND 15332.

SECTION 5. The City Administrator or his/her designee is hereby directed to file a notice of determination and a notice of exemption with the Office of the Alameda County Recorder and the State Office of Planning and Research, and to take any other action necessary in furtherance of the Alternate Project, consistent with this Ordinance and its basic purposes.

SECTION 6. The recitals contained in this Ordinance are true and correct and are an integral part of the City Council's decision.

SECTION 7. The Ordinance shall be in full force and effect immediately upon its passage as provided by Section 216 of the City Charter if adopted by at least six members of Council, or upon the seventh day after final adoption if adopted by fewer votes.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES -FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR,
THAO AND PRESIDENT KAPLAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

ASHA REED
Acting City Clerk and Clerk of the
Council of the City of Oakland, California

Date of Attestation: _____

Date of Attestation: _____

NOTICE AND DIGEST

ORDINANCE TO AUTHORIZE A FIRST AMENDMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF OAKLAND AND CHAMPION STREET, LLC, FOR THE PROPERTY LOCATED AT 3455 AND 3461 CHAMPION STREET, TO (1) MODIFY THE PROJECT SCHEDULE TO EXTEND (A) THE OUTSIDE DATE FOR COMPLETION OF CONSTRUCTION TO JUNE 30, 2021, AND (B) THE OUTSIDE DATE THE RESTAURANT WILL OPEN TO JULY 30, 2021, (2) MODIFY THE RESTAURANT CLOSING TIME FROM 11:00 P.M. TO 10:00 P.M., (3) DELETE PROVISION REQUIRING SUBMITTAL TO THE CITY PROPOSED CHANGE OF HOURS OF OPERATION WITH SUPPORTING DOCUMENTATION, AND (4) TO MAKE THE DETERMINATION THAT PROJECT IS EXEMPT FROM CEQA

This Ordinance authorizes a First Amendment to the Disposition and Development Agreement between the City of Oakland and Champion Street, LLC related to property located at 13455 and 3461 Champion Street (the "DDA") to amend the DDA to authorize the City Administrator to (1) modify the project schedule to extend (A) the outside date for completion of construction to June 30, 2021, and (B) the outside date the restaurant will open to July 30, 2021, (2) modify the restaurant closing time from 11:00 p.m. to 10:00 p.m. in Section 7.1.1 of the DDA, and (4) delete the provision in Section 7.1.1 of the DDA requiring submittal to the City a proposed change of hours of operation with supporting documentation.