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2013 JAN 10 PM 6:13

REVISED 1/9/13

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City Attorney

INTRODUCED BY COUNCILMEMBER _____

OAKLAND CITY COUNCIL
ORDINANCE NO. 13152 C.M.S.

AN ORDINANCE EXTENDING INTERIM REGULATIONS WITH MINOR AMENDMENTS FOR PERMITTING MOBILE FOOD VENDING GROUP SITES WITHIN A LIMITED AREA OF THE CITY OF OAKLAND DEFINED, IN PART, BY CITY COUNCIL DISTRICTS 1, 2, 3, AND 4. THE INTERIM REGULATIONS CONTAINED HEREIN SHALL REMAIN IN PLACE AND BE EFFECTIVE UNTIL THE CITY COUNCIL ADOPTS NEW PERMANENT MOBILE FOOD VENDING REGULATIONS.

WHEREAS, changes in the economy and the growing popularity of mobile food vending have increased mobile food vending in both the public and private right of way in the City of Oakland; and

WHEREAS, on December 20th, 2011 the City Council adopted interim regulations to allow permitted food vending “Group Sites” or “Food Pods” to operate legally in a limited area in the City of Oakland defined, in part, by Council Districts 1, 2, 3, and 4, as set forth in OMC Chapter 5.51 Food Vending Group Site Pilot Program; and

WHEREAS, as originally adopted, the interim regulations expired on January 1, 2013; and

WHEREAS, the original intent was to have new permanent citywide mobile food vending regulations in place that would supersede the interim regulations prior to January 1, 2013; and

WHEREAS, due to the complex nature of regulating mobile food vending inside and outside the public right-of-way, involving coordination across several City departments, it will not be possible to adopt new citywide regulations prior to the expiration of the current interim regulations; and

WHEREAS, extending the current interim regulations to remain in place and be effective until the City Council adopts new permanent mobile food vending regulations will ensure that there is no interruption in the ability of those currently participating in the program to operate; and

WHEREAS, the total maximum number of 40 vending dates allowed under a particular Food Vending Group Site permit in O.M.C. Section 5.51.050.D. shall be deleted since the regulations are being extended beyond the original effective period; and

WHEREAS, the prohibition to locate within 100 feet of a city park unless written consent is obtained is being amended to also include any City-owned facility or property; and

WHEREAS, the proposal is exempt from the California Environmental Quality Act (CEQA) under several CEQA Guidelines, including without limitation Section 15061(b)(3) (known as the “General Rule,” that states a project is exempt from CEQA if there is no possibility that the activity in question will have a significant effect on the environment) and Section 15183 (projects consistent with a Community Plan, General Plan and/or Zoning); and

WHEREAS, for the reasons set forth above, the Council declares that this ordinance is necessary to preserve the public peace, health, welfare or safety, and to protect the health, safety, and welfare of the community, and the “Whereas” clauses above taken together constitute the City Council’s statement of the reasons constituting such necessity; now, therefore

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

Section 1. The following section of the Oakland Municipal Code is hereby amended as follows:

Chapter 5.51

FOOD VENDING GROUP SITE PILOT PROGRAM

Sections:

5.51.010 – Title and purpose.

5.51.020 - Applicability.

5.51.030 – Expiration of the Food Vending Group Site pilot program.

5.51.040 - Definitions.

5.51.050 – Food Vending Group Site Permit required.

5.51.060 - Contents of application form.

5.51.070 - Application procedure.

5.51.080 - Action on application.

5.51.090 - Conditional approval of Food Vending Group Site Permit.

5.51.100 - Grounds for denial of application.

5.51.110 – Transferability of Food Vending Group Site Permits and requests for changes in food vendor participants.

5.51.120 – Requests for Additional Vending Dates and Annual Renewal.

5.51.130 – Operating standards.

5.51.140 - Revocation of Food Vending Group Site Permit.

5.51.150 - Penalties for violation of Food Vending Group Site Permit requirements.

5.51.160 - Enforcement.

5.51.170 - Abatement generally.

5.51.180 - Order to abate.

5.51.190 - Abatement procedure.

5.51.200 - Violations constituting infractions.

5.51.210 - Penalty for violation.

5.51.010 – Title and purpose.

This chapter shall be known as the Food Vending Group Site Pilot Program ordinance, and establishes an interim pilot program for issuing Food Vending Group Site Permits until the City Council adopts permanent mobile food vending regulations.

The general purpose of these interim regulations is to allow permitted food vending “group sites” or “food pods” to operate legally in the City, and to bring vitality, pedestrian activity, and spillover economic activity to surrounding districts while protecting the health, safety, comfort, convenience, prosperity, and general welfare of the Oakland community and customers with a minimum level of cleanliness, quality and security.

5.51.020 – Applicability.

A. The interim regulations contained in this chapter shall only apply to properties located:

1. Within Oakland City Council Districts 1, 2, 3, and 4; and
2. In a CN Neighborhood Center Commercial zone; CC Community Commercial zone; CR Regional Commercial zone; C-40 or C-45 Commercial zone; CBD Central Business District -C, -X, or -P zone; CIX, IG, IO, M-20, M-30, or M-40 Industrial zone (not including any such designation on Port of Oakland property); OS Open Space -RSP, -CP, -NP, -AMP, -PMP, -LP, -SU, or -AF zone (not including any such designation north of Highway 13); S-1 Medical Center zone; S-2 Civic Center zone; or RU Urban Residential -4 or -5 zone, as such terms are defined in the Oakland Planning Code.

These regulations shall not apply to areas of Oakland subject to the Pushcart Food Vending Program set forth in Chapter 5.49 of the Municipal Code, or the Vehicular Food Vending Program set forth in Chapter 8.09 of the Municipal Code.

B. To the extent that there is any express conflict between the interim regulations in this Chapter and other regulations in the Oakland Municipal and Zoning Codes, the regulations in this Chapter shall take precedent.

C. To ensure public safety and consistency with applicable City codes, appropriate additional permits will be required, which include but are not limited to connecting to on-site utilities, right-of-way encroachments, temporary street closures, or use of public property.

5.51.030 – Expiration of the interim Food Vending Group Site Pilot Program.

The interim regulations contained in this Chapter shall remain in place and be effective until the City Council adopts permanent mobile food vending regulations.

5.51.040 - Definitions.

As used in this chapter:

"Applicant" means the Responsible Party who seeks a Food Vending Group Site Permit from the City, to conduct or sponsor a Food Vending Group Site as governed by this chapter.

"City Administrator" means the City Administrator of Oakland or his/her designee.

"City" means the City of Oakland.

"Mobile Food Vending Group Site" or "Food Vending Group Site" or "Food Vending Pod" means the stationary operation of three (3) or more mobile food vendors clustered together on a single site.

"Mobile Food Vending Group Site Pilot Program" or "Food Vending Group Site Pilot Program" means the interim regulations established in this Chapter for the review, issuance, and enforcement of Food Vending Group Site Permits in the area defined under Section 5.51.020.

"Mobile Food Vending" or "Food Vending" means the sale of prepared foods from a truck, trailer, or other movable wheeled equipment or vehicle during hours of operation. Mobile food vending includes, but is not limited to, the following characteristics:

1. Food is prepared off-site in a commercial commissary and/or prepared on-site within the mobile food vending unit kitchen, per Alameda County Health Regulations; and
2. Food is ordered and served from the truck, trailer, or other movable wheeled equipment or vehicle utilized for mobile food vending;
3. Trucks, trailers, or other wheeled vehicles from which food is sold typically have a take-out counter and space for customer queuing;
4. Food is paid for prior to consumption;
5. Food and beverages are prepared and sold for on-site or off-site consumption; and
6. Food and beverages prepared and sold for off-site consumption are served in disposable wrappers, plates or containers.

“Mobile food vending unit” or **“Food vending unit”** means the truck, trailer, or other movable wheeled equipment or vehicle from which “mobile food vending” occurs.

“Mobile food vendor” or **“Food vendor”** means a person who is engaged in “mobile food vending.”

"Permit" or **“Food Vending Group Site Permit”** is an interim approval by the City Administrator, or his or her designee, that enables the holder to conduct a Mobile Food Vending Group Site and vend food items at authorized locations and times, for a specified period of time with specified public health and safety conditions including, but not limited to, the maximum number of vending unit spaces for use by individual food vendors, hours of operation, and/or site amenities, such as public seating areas and/or restroom facilities.

"Responsible Party" or **“Mobile Food Vending Group Site Event Organizer”** means, for the purpose of determining liability for damage to City or public facilities as a result of a Mobile Food Vending Group Site, the individual or legal entity who is directly responsible for organizing and/or conducting the Mobile Food Vending Group Site and/or the facility manager, and his or her respective designees.

“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 Permit.

5.51.050 - Food Vending Group Site Permit required.

A. A Food Vending Group Site Permit shall be required for any Mobile Food Vending Group Site located as described in Section 5.51.020A, except as may otherwise be permitted by:

1. A Conditional Use Permit consistent with regulations in the Oakland Planning Code related to fast food restaurant activities;
2. An ordinance or resolution establishing and regulating a street market in the city;
3. A Special Event Permit consistent with regulations in Chapter 9.52 of the Oakland Municipal Code, but only for a defined limited duration (generally 4 or fewer dates over a 12-month period, unless specified otherwise at the discretion of the City Administrator).

B. It shall be unlawful for any person to conduct a Food Vending Group Site without first obtaining and maintaining a valid Food Vending Group Site Permit pursuant to this chapter for each location at which that activity is to occur. Conducting a Food Vending Group Site without a valid Food Vending Group Site Permit is a public nuisance, as defined in the Oakland Municipal Code. The City Administrator shall have power to adopt rules of procedure and regulations not inconsistent with the provisions of this chapter for the purpose of carrying out the

provisions of this chapter; and a copy of such rules of procedure and regulations shall be on file and available for public examination at the Department.

- C. Any Food Vending Group Site without a valid Food Vending Group Site Permit, including without limitation a person whose license has been suspended or revoked, shall be required to immediately permanently remove a food vending unit used for food vending and failure to cease operation as a Food Vending Group Site after the termination, revocation, expiration, or suspension of any Food Vending Group Site 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 the Oakland Municipal Code.
- D. **Permit Limitations.**
1. No Applicant may hold more than two (2) Food Vending Group Site Permits at the same time.
 2. During the effective period of the Mobile Food Vending Group Site Pilot Program, any Applicant may apply for a Mobile Food Vending Group Site Permit pursuant to the requirements in this Chapter. Permit applications will be accepted and issued in the manner described in Section 5.51.070. The Applicant shall be the Responsible Party, and must be eighteen (18) years of age or older.
 3. During the effective period of the Mobile Food Vending Group Site Pilot Program, the number of vending dates allowed under a Food Vending Group Site Permit shall not exceed two (2) dates per week..
 4. The specific hours of operation shall be determined by the City, and shall not exceed more four (4) hours of food vending operation on any day of permitted Group Site activity, unless specified otherwise at the discretion of the City Administrator.
 5. The Applicant shall specify in their Permit application the maximum number of proposed vending unit spaces to be provided for use by individual food vendors, the hours of operation, and the Group Site location.
 6. No more than two (2) Food Vending Group Site Permits shall be issued for any single site location at any given time, including any specific portion of public right-of-way; and only if operating dates for each Group Site occur on different days of the week.
 7. No City action related to issuing or renewing a Food Vending Group Site Permit shall confer any form of land use entitlement and/or vested rights to the persons, entities, or properties associated with such Permit.

5.51.060 - Contents of application form.

A. The application for a Food Vending Group Site shall provide the following information:

1. Name of Applicant and mailing address for notification;
2. Maximum number of mobile food vendors to operate at the proposed Food Vending Group Site, legal and business names for each, and mailing address for notification;
3. Location of the proposed Mobile Food Vending Group Site (indicated by Address, Assessor Parcel Number (APN), and/or specific section of public right-of-way);
4. Four (4) photographs (showing different views) of the proposed Mobile Food Vending Group Site location;
5. 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 Mobile Food Vending Group Site to locate on the site; or copy of encroachment permit or license application if location is on public property;
6. All proposed dates for the Mobile Food Vending Group Site, and starting and ending times for each;
7. Sample menu or itemized list for each mobile food vendor to operate at the proposed Mobile Food Vending Group Site;
8. The size and description of each food vending unit (truck, trailer, or other movable wheeled equipment or vehicle); plus four (4) photographs (showing different exterior views) of each food vending unit;
9. Sample, photograph, or rendering of business signs;
10. Scaled or dimensioned site plan depicting the proposed location and arrangement of all participating food vending units; any proposed public seating or other site amenities; and any existing structures on site, driveways, or required parking spaces for other businesses;
11. Designation of a Mobile Food Vending Group Site Manager (if different than Mobile Food Vending Group Site Event Organizer) to be responsible for the day-to-day site management;
12. Proof of valid City of Oakland business tax certificate for the applicant and for each mobile food vendor to operate at the proposed Mobile Food Vending Group Site;

13. Proof of valid Alameda County Health Permit for each mobile food vendor to operate at the proposed Mobile Food Vending Group Site;
14. Mobile Food Vending Group Sites shall be located within two hundred (200) feet of an approved, readily available and fully functioning restroom facility per the California Retail Food Code, as may be amended. The Applicant shall provide documentation to the City demonstrating access to such restrooms for its Food Vendors and their employees. Documentation may include a letter from the property owner within two hundred (200) feet of the Food Vending Group Site location authorizing use of his or her restroom facilities by food vendors and their employees;
15. Signed statement that the Applicant accepts total responsibility for cleaning up after each Food Vending Group Site operation date. Failure to adequately clean up after a Food Vending Group Site operation date shall be grounds for denying an Applicant's request for Permit renewal and/or additional vending dates under a Permit that might otherwise be approved as set forth in Section 5.51.120. The City shall require Applicant to pay for cleaning, and/or post clean-up expenses; provided that if the Applicant does not pay, the City has the right to clean up the Food Vending Group Site and seek reimbursement from the Applicant; and
16. Any supplementary information which the City Administrator shall find reasonably necessary to determine whether to approve, deny or conditionally approve the Permit.

5.51.070 - Application procedure.

- A. Upon submittal of a complete application, the City Administrator, in consultation with applicable City Staff, shall review the application based on a weighted point system that takes into consideration the required operating standards in Section 5.51.130, as well as the following additional criteria:
 1. The extent to which the Applicant would be personally and actively engaged in organizing and/or conducting the Food Vending Group Site;
 2. The Applicant's ability to successfully operate a Food Vending Group Site. Previous experience in food vending or comparable activity is desirable;
 3. The Applicant's history of complying with City ordinances or State laws relating to business regulation, street vending, food service, and health;
 4. The organization and layout of the proposed food vending unit spaces on the subject property;
 5. The level of site amenities proposed at the Food Vending Group Site, such as seating areas and/or restroom facilities;

6. The variety and quality of the food items to be offered by the participating food vendors; and
7. Whether the location of the proposed Food Vending Group Site is likely to add vitality, pedestrian activity, and spillover economic activity to the surrounding district, including any Business Improvement District (BID) or Community Benefit District (CBD) in the area.

B. The City Administrator may reject applications that are deemed incomplete.

C. No later than thirty (30) days after submittal of a complete application, the City Administrator shall approve, conditionally approve, or deny Food Vending Group Site Permit applications based on the standards and criteria set forth in this chapter.

Applicants shall only be issued a Food Vending Group Site Permit upon determination by the City Administrator that the application is complete and meets the standards and criteria set forth in this chapter; the Applicant has completed the required public notice, as described in subsection D below, and submitted proof of consent from any Business Improvement District (BID) or Community Benefit District (CBD) in the area, as applicable; and the City shall have issued, or be in the process of issuing, any other required City permits, including, but not limited to, those required for any connection to on-site utilities, right-of-way encroachments, temporary street closures, or use of public property.

D. Applicants with complete and conforming applications, as described in subsection C above, shall be required to send notice of the proposed Group Site operation, in a form approved by the City, to all property owners, business owners, and building occupants located within three hundred (300) feet of the Group Site location. Notice shall also be given to any Business Improvement District (BID) or Community Benefit District (CBD) in the area and to the applicable Council District office. Notification shall be provided by certified mail or delivery, and be completed by the applicant not less than ten (10) days prior to the first proposed Group Site operation date.

E. Food Vending Group Site Permit applications will be accepted and issued in the manner described in this Section until such time as the interim regulations in this chapter expire, as stated in Section 5.51.030.

F. Upon application for and/or issuance of a Food Vending Group Site Permit, the Applicant shall pay a fee or fees as established by the City Master Fee Schedule. Such fees are not inclusive of other fees the Applicant may have to pay for other necessary permits, such as, but not limited to, right-of-way encroachment permits.

5.51.080 - Action on application.

A. The City Administrator shall determine whether an application is complete and meets the requirements for a Food Vending Group Site Permit as set forth in this chapter.

B. The City Administrator shall approve, conditionally approve, or deny Food Vending Group Site Permit applications based on the standards and criteria set forth in this chapter. Such action shall be taken no later than thirty (30) calendar days after submittal of a complete application, as described in Section 5.51.070. The City Administrator may impose conditions of approval on a Food Vending Group Site Permit in the exercise of his or her reasonable discretion, as stated in Section 5.51.090. The Applicant shall be notified of any conditions of approval in writing.

C. Food Vending Group Site Permit applications that are denied shall be notified in writing of the specific grounds for the denial, as stated in Section 5.51.100. Any applicant whose Permit application is denied shall have the right to request reconsideration of the denial. Reconsideration requests must be submitted to the City Administrator within ten (10) days of issuance of the denial. Said request for reconsideration shall be in writing and shall state any and all reasons of any nature why the City Administrator's stated reasons for denial are in error. Within fifteen (15) days of receipt of said request for reconsideration, the City Administrator shall schedule a hearing before an independent hearing officer on the reconsideration request, and send written notice of such to the Applicant. The initial decision of the administrative hearing officer shall become final ten (10) days after the date of decision unless appealed to the City Administrator in writing within ten (10) days of the hearing officer's decision. The decision of the City Administrator on an appeal shall be final and conclusive, with no further appeal to the City Council or any other appellate body.

D. After an Applicant is issued a Group Site Permit that specifies the first approved vending date at the Group Site location, the Applicant will need to apply to the City Administrator, or his or her designee, for each additional vending date, not to exceed the maximum number and frequency of vending dates per Permit allowed by this chapter, and pay the required per event fee specified in the master fee schedule.

5.51.090 - Conditional approval of Food Vending Group Site permit.

The City Administrator may impose conditions of approval on a Food Vending Group Site Permit in the exercise of his or her reasonable discretion when conditionally granting a permit, including, but not limited to:

A. Requiring the Applicant to be personally present at all times during Food Vending Group Site operations;

B. Requiring the Applicant to provide a working telephone where he or she can be reached directly at all times during Food Vending Group Site operations;

C. Requiring the posting of the Food Vending Group Site Permit at the site;

D. Requiring the submission of copies of all promotional materials simultaneously with the posting or distribution of said materials. All promotional materials must identify the promoter, and must not be posted or affixed to or on City or public property;

- E. Requiring a proof of liability insurance in the amount required by the City;
- F. Requiring such other additional conditions as are reasonably believed to be necessary to protect the public health, safety, welfare and order, and to minimize adverse impacts upon the surrounding neighborhood and the general community.

5.51.100 - Grounds for denial of application.

A Food Vending Group Site Permit application may be denied upon evidence that:

- A. Information contained in the application, or supplementary information requested from the applicant, is false in any material detail; or
- B. The Applicant has failed to ensure conformity with the operating standards in Section 5.51.130; or
- C. The Applicant has failed to provide a complete application form after having been notified of the requirement of producing additional information or documents; or
- D. The Applicant has not submitted a completed Food Vending Group Site Permit application form in the time provided pursuant to Sections 5.51.070 and 5.51.080; or
- E. 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
- F. The granting of the Food Vending Group Site Permit will have a substantial adverse impact upon the public health, safety, or order; or
- G. The granting of the Food Vending Group Site Permit will result in substantial adverse impacts including, but not limited to, noise, litter, traffic and congestion upon the surrounding neighborhood or the community in general; or
- H. Another complete Food Vending Group Site Permit application has been previously filed for the same place requested by the Applicant, or so close to the previously requested place as to cause traffic congestion or a demand for police services which the Police Department is unable to meet; or
- I. The time or size of the Food Vending Group Site will substantially interrupt the safe and orderly movement of pedestrian or vehicular traffic in the immediate vicinity of the Group Site, or disrupt the use of a street at a time when it is usually subject to great traffic congestion; or

- J. The concentration of persons and vehicles at the Food Vending Group Site will prevent proper police, fire, ambulance, or other essential public services to areas contiguous to the Group Site; or
- K. The size or duration of the Food Vending Group Site will require diversion of so great an amount of city police services that providing for the minimum level of police services to other areas of the city is jeopardized; or
- L. The Food Vending Group Site operation dates will substantially interfere with construction or maintenance work scheduled to take place upon or along the city streets or a previously granted encroachment permit; or
- M. The Food Vending Group Site will operate at a time and place where the noise created by the activities of the Group Site will substantially disturb or disrupt the activities of such institutions as schools and hospitals; or
- N. Sponsors have failed to pay the city for previous Food Vending Permit fees and costs; or
- O. The granting of the Food Vending Group Site Permit is likely to result in substantial negative impacts upon the delivery of city-wide police services and therefore pose a threat to the public health, safety and order due to the likelihood of the Food Vending Group Site resulting in a call for a police emergency response.

5.51.110 – Transferability of Food Vending Group Site Permits and requests for changes in food vendor participants.

- A. Food Vending Group Site Permits are not transferable in any form to any other person, firm, association, corporation, organization, club, or ad hoc committee.
- B. Once a Food Vending Group Site Permit has been issued, the maximum number of food vendors allowed to operate at the Group Site location as a condition of the Permit shall not be increased at any time. However, an Applicant may request a change in the specific mix of food vendors approved under the original Permit, but only if such request is submitted for review and approval by the City Administrator at least three (3) days before the proposed date of new vendor participation.
- C. Any request for a change in participating food vendors shall include the following information:
 1. Proof of valid City of Oakland business tax certificate and Alameda County Health Permit for each proposed new mobile food vendor;
 2. Sample menu or itemized list for each proposed new mobile food vendor;

3. The size and description of each proposed new food vending unit (truck, trailer, or other movable wheeled equipment or vehicle); plus four (4) photographs (showing different exterior views) of each proposed new food vending unit;
4. Sample, photograph, or rendering of business signs; and
5. Facsimile of logo to be applied to all disposable paper products to be provided to customers.

5.51.120 –Requests for Additional Vending Dates and Annual Renewal.

A. After an Applicant is issued a Food Vending Group Site Permit that specifies the one or more approved vending dates at the Group Site location, the Applicant may apply to the City Administrator for additional vending dates, not to exceed the maximum number and frequency of vending dates per Permit allowed by this chapter, and shall pay the required per event fee specified in the master fee schedule for each approved vending date.

B. Depending on the length of time this interim Food Vending Group Site Pilot Program remains active, requests for annual renewal of a Food Vending Group Site Permit may be considered, but only if submitted on or before the one (1) year anniversary of the original Permit issuance. Applicants who do not submit an annual renewal request on or before the one (1) year anniversary of the original Permit issuance must re-apply for a new Food Vending Group Site Permit according to the procedure set forth in Section 5.51.070.

5.51.130 – Operating standards.

A. **Location.** Food Vending Group Sites shall be subject to the following location requirements unless such activities are otherwise permitted under Section 5.51.050 (A):

1. Food Vending Group Sites shall only be located in the areas and zoning districts set forth in Section 5.51.020. A Food Vending Group Site Pilot Program Area map is available at the City of Oakland Planning and Zoning counter (Zoning counter), located at 250 Frank H. Ogawa Plaza, Second Floor.
2. Use of Open Space zoned property for Food Vending Group Sites may be exempted from normally required municipal and zoning regulations at the discretion of the City Administrator, based upon evidence that the applicant has received written consent in a form approved by the City from the park owner to locate in the subject park, the maximum frequency and overall length of the Group Site activity conforms to the regulations in this chapter, and the activity will not have a detrimental affect on public health, safety or welfare.
3. Food Vending Group Sites, as described in this chapter, shall not locate within one hundred (100) feet of:

- a. Any public school, unless the Applicant obtains written consent in a form approved by the City from the applicable public school, indicating that the school has no objections to the proposed Food Vending Group Site locating on school grounds or within one hundred (100) feet of the subject school grounds (as measured along the path of travel from the location of the closest proposed food vending unit on its address lot or site to the parcel boundary of the subject school);
 - b. Any public park or City-owned facility or property, unless the Applicant obtains written consent in a form approved by the City from the applicable public park or City-owned facility or property owner, indicating no objections to the proposed Food Vending Group Site locating within the park or within one hundred (100) feet of the park or City-owned facility or property (as measured along the path of travel from the location of the closest proposed food vending unit on the application site to the parcel boundary of the park or City-owned facility or property); or
 - c. Any active Full Service Restaurant, Limited Service Restaurant and Cafe, or Fast Food Restaurant (as defined in OMC Title 17, the Oakland Planning Code), unless the Applicant obtains written consent in a form approved by the City from each applicable restaurant owner, indicating that he or she has no objections to the proposed Food Vending Group Site locating within one hundred (100) feet of their restaurant (as measured from the location of the closest proposed food vending unit on its address lot or site along the path of travel to the front door of the subject restaurant).
4. Food Vending Group Sites shall be located within two hundred (200) feet of an available fully functioning restroom facility and shall provide documentation to the City demonstrating Applicant has access to such restrooms for its food vendors and their employees. Documentation may include a letter from a property owner within two hundred (200) feet of the Food Vending Group Site location authorizing use of his or her restroom facilities by food vendors and their employees;
 5. Unless permitted to operate from the same site but on different days of the week, Food Vending Group Sites shall not locate within three hundred (300) feet of any other Food Vending Group Site (as measured along the path of travel between the location of the closest proposed food vending units on each Group Site address lot or site).
 6. No more than two (2) Food Vending Group Site Permits shall be issued for any single site location at any given time, including any specific portion of public right-of-way; and only if operating dates for the Group Sites occur on different days of the week.

7. Food Vending Group Sites shall not locate in parking spaces required to meet minimum parking requirements for any other business.
8. Food Vending Group Sites shall not block driveways or the required parking for other businesses.
9. Each food vending unit at a Food Vending Group Site shall be sited in a manner to insure that the customer queue maintains a minimum five (5) feet of unobstructed clear path along any public sidewalk or right-of-way when the service window faces the street or sidewalk.

B. Condition/Appearance of Mobile Food Vending Unit.

1. Each food vending unit at a Food Vending Group Site shall display current business tax certificate and health department permit in plain view on or immediately adjacent to the front, left-side window.
2. The health department decal shall be located on the left rear of each mobile food vending unit.
3. Each food vending unit at a Food Vending Group Site shall maintain a valid health permit at all times. If the health permit expires, or is suspended or revoked, then all food sales shall cease until the health permit is reinstated.
4. Food vending units at a Food Vending Group Site shall display no more than three (3) signs attached to the food vending unit, with a maximum aggregate display surface of thirty (30) square feet of signage per food vending unit.
5. Food Vending Units shall be entirely self-sufficient in regards to gas, electricity, water, and telecommunications, unless appropriate permits are reviewed and approved by City Departments, including but not limited to, the Building Services Division and the Fire Department.
6. Food vending units shall be maintained in movable condition at all times.
7. No Applicant or food vendor shall 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.

C. Condition/Appearance of Site.

1. The Group Site location shall be maintained in a safe and clean manner at all times.

2. Exterior storage of refuse, equipment or materials associated with the Group Site operation and each food vending enterprise is prohibited.
 3. The lot shall be paved.
 4. The Food Vending Group Site shall maintain site circulation and access consistent with the Americans with Disabilities Act (ADA).
 5. 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 date of a Food Vending Group Site. A scaled or dimensioned site plan depicting the proposed location of any site amenities shall be submitted for review and approval in conjunction with a Food Vending Group Site Permit application.
- D. **Lighting.** The Food Vending Group Site shall provide adequate lighting to ensure customer safety. Lighting shall be directed downwards and away from adjacent properties.
- E. **Noise Control.** Noise levels measured at the Group Site location boundary or property line shall not exceed the city's noise ordinance standards.
- F. **Litter Control.**
1. Each food vendor shall provide at least one thirty-two (32)-gallon litter receptacle within fifteen (15) feet of their food vending unit.
 2. The applicant shall be responsible for maintaining the subject property and adjacent right-of-way free of litter on and within one hundred (100) feet of the subject location after each Food Vending Group Site operation date.
 3. The applicant shall arrange and pay for collection and disposal of the waste after each Food Vending Group Site operation date.
 4. Failure to adequately clean up after a Food Vending Group Site operation date shall be grounds for denying an applicant's request for Permit renewal and/or additional vending dates under an issued Permit that might otherwise be approved as set forth in Section 5.51.120.
- G. **Security.**
1. The serving or consumption of alcohol is prohibited at Food Vending Group Sites.
- H. **Hours of Operation.** No Mobile Food Vending Group Site activities shall be conducted before 7:00 a.m. or after 3:00 a.m. on any day of the week. The specific hours of operation shall be determined by the City, and shall not exceed more than

four (4) hours of food vending operation on any day of permitted Group Site activity, unless specified otherwise at the discretion of the City Administrator.

5.51.140 - Revocation of Food Vending Group Site Permit.

Food Vending Group Site Permits may be revoked at any time by the City Administrator in accordance with Chapter 5.02.080 for:

- A. Violating any of the required operating standards set forth in Section 5.51.130; or
- B. Violating any of the imposed Food Vending Group Site Permit conditions; or
- C. Unlawful or criminal activity occurring during the operation dates of a Food Vending Group Site; or any other violation of this Chapter

Revocation shall be immediately effective upon written notice of the revocation by the City Administrator. Revocation hearings and appeals shall be done in accordance with Chapter 5.02.090 and 5.02.100.

5.51.150 - Penalties for violation of Food Vending Group Site Permit requirements.

Any violation of this Chapter may be charged as a civil penalty or administrative citation as provided for in Chapter 1.08 of the Oakland Municipal 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. In addition, nothing in this section shall be interpreted to preclude or limit the City from seeking injunctive or other judicial relief.

5.51.160 - Enforcement.

The City Administrator 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.

5.51.170 - Abatement generally.

A. Failure to permanently remove a food vending unit used for food vending and failure to cease operation as a Food Vending 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 the Oakland Municipal Code.

B. When the City Administrator determines that a Food Vending Group Site has been used as an instrument for, or has contributed substantially to, any of the conditions stated in Sections 5.51.100 or 5.51.130 in violation of this Chapter, the City Administrator may deem the violation a public nuisance and issue a notice to abate the Food Vending 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.

5.51.180 - Notice to abate.

Upon declaring and deeming a violation of this Chapter a nuisance, the City Administrator shall send a notice of abatement to the property owner and Responsible Party. The notice of abatement shall contain the following:

- A. The street address and a legal description of the property sufficient for identification of the premises or property upon which the nuisance condition(s) is located;
- B. A statement that the enforcement official has determined pursuant to this chapter that the property owner and applicant are in violation of this chapter;
- C. A statement specifying the condition that has been deemed a public nuisance;
- D. A statement ordering the property owner and applicant to abate the condition(s), and specifying the manner in which the same shall be abated, and the period within which such abatement shall be accomplished.

Service of said notice may be made by delivery to the property owner and to the 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 Group Site Permit application, postage prepaid, registered or certified mail, return receipt requested, and depositing same in the United States mail. Service shall be deemed complete at the time of the deposit in the United States mail.

It is unlawful for the property owner and/or Responsible Party to fail or neglect to comply with such order or notice of abatement. In the event that the property owner and/or applicant shall not promptly proceed to abate said nuisance condition(s), that is to say within seven (7) days of notice to abate, as ordered by the enforcing official, the abatement procedure set forth in Section 5.51.190 may be undertaken.

5.51.190 - 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 the Oakland Municipal Code.

5.51.200 - Violations constituting infractions.

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

5.51.210 - Penalty for violation.

Any person convicted of an infraction under the provision of this Chapter shall be punished upon a first conviction by a fine of not more than one thousand dollars (\$1000.00) and, for a second conviction within a period of one year, by a fine of not more than two thousand dollars (\$2000.00) and, for a third or any subsequent conviction within a one-year period, by a fine of not more than five thousand dollars (\$5000.00). Any violation beyond the third conviction within a one-year period may be charged by the City Attorney or the District Attorney as a misdemeanor and the penalty for conviction of the same shall be punishable by a fine of not more than ten thousand dollars (\$10000.00) or by imprisonment in the county jail for a period of not more than six months or by both. Any person violating or failing to comply with any of the provisions of this chapter shall be subject to civil penalties and administrative citations per Chapters 1.08 and 1.12 of the Oakland Municipal Code.

Section 2. The City Council finds and determines the foregoing recitals to be true and correct and hereby makes them a part of this Ordinance.

Section 3. The City Council finds and determines that the adoption of this Ordinance is exempt from the California Environmental Quality Act (“CEQA”), including, but not limited to, Section 15183 “Projects Consistent with a Community Plan, General Plan or Zoning” and/or Section 15061(b)(3) of the State CEQA Guidelines, and authorizes the filing of a Notice of Exemption with the Alameda County Clerk.

Section 4. If any article, section, subsection, sentence, clause or phrase of this Ordinance is held to be invalid, the offending portion shall be severed and shall not affect the validity of the remaining portions which shall remain in full force and effect.

Section 5. The controls imposed by this interim ordinance shall remain in place and be effective until the City Council adopts permanent mobile food vending regulations.

Section 6. For the term of this ordinance, as set forth in Section 5 above, the provisions of this ordinance shall govern, and to the extent there is any conflict between the provisions of this ordinance and the provisions of any other City code, ordinance, resolution or policy, all such conflicting provisions shall be suspended.

Section 7. This ordinance shall be effective retroactive to December 31, 2012, after final passage by the City Council.

Section 8. This Ordinance is enacted pursuant to the City of Oakland’s general police powers, Sections 106 of the Charter of the City of Oakland, and Article XI of the California Constitution.

FEB 5 2013

IN COUNCIL, OAKLAND, CALIFORNIA, _____

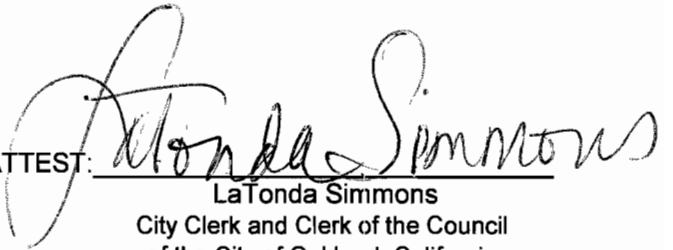
PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, KALB, GALLO, KAPLAN, KERNIGHAN, GIBSON-MCELHANEY, SCHAAF, and ~~GREENBERG~~
REID - 8

NOES- 0

ABSENT- 0

ABSTENTION- 0

ATTEST: 
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION: 01/13/13

Introduction Date **JAN 22 2013**