

SUPPLEMENT NO. 60  
VOLUMES I AND II  
July 2013

**OAKLAND MUNICIPAL CODE**

( **Ordinance No. 13162, passed May 21, 2013** )

**Looseleaf Supplement**

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SUPPLEMENT NO. 59  
VOLUMES I AND II  
April 2013

## OAKLAND MUNICIPAL CODE

( Ordinance No. 13153, passed February 19, 2013 )

### Looseleaf Supplement

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SUPPLEMENT NO. 58  
VOLUMES I AND II  
January 2013

**OAKLAND MUNICIPAL CODE**

**( Ordinance No. 13141, passed November 13, 2012 )**

**Looseleaf Supplement**

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SUPPLEMENT NO. 57  
VOLUMES I AND II  
August 2012

## OAKLAND MUNICIPAL CODE

( **Ordinance No. 13031, passed July 27, 2010 ( added in Supplement No. 57 )**  
and **Ordinance No. 13107, passed February 21, 2012**  
( included in Supplement No. 56. )

### Looseleaf Supplement

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SUPPLEMENT NO. 56  
VOLUMES I AND II  
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**OAKLAND MUNICIPAL CODE**

**( Ordinance No. 13107, passed February 21, 2012 )**

**Looseleaf Supplement**

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SUPPLEMENT NO. 55  
VOLUMES I AND II  
January 2012

**OAKLAND MUNICIPAL CODE**

( Ordinance No. 13095, passed November 15, 2011 )

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SUPPLEMENT NO. 54  
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November 2011

## OAKLAND MUNICIPAL CODE

( Ordinance No. 13089, passed July 26, 2011 )

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SUPPLEMENT NO. 53  
VOLUMES I AND II  
July 2011

**OAKLAND MUNICIPAL CODE**

( **Ordinance No. 13066, passed May 17, 2011** )

**Looseleaf Supplement**

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SUPPLEMENT NO. 52  
VOLUMES I AND II  
April 2011

**OAKLAND MUNICIPAL CODE**

( Ordinance No. 13054, passed February 11, 2011 )

**Looseleaf Supplement**

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SUPPLEMENT NO. 51  
VOLUMES I AND II  
December 2010

**OAKLAND MUNICIPAL CODE**

( **Ordinance No. 13046, passed November 9, 2010** )

**Looseleaf Supplement**

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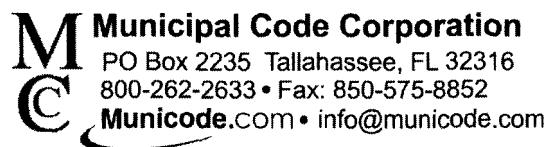
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SUPPLEMENT NO. 50  
VOLUMES I AND II  
October 2010

**OAKLAND MUNICIPAL CODE**

( Ordinance No. 13035, passed July 27, 2010 )

**Looseleaf Supplement**

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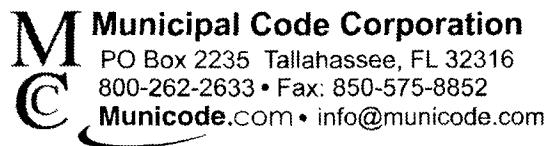
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SUPPLEMENT NO. 19  
VOLUMES I AND II  
June 2010

## OAKLAND MUNICIPAL CODE

( Ordinance No. 13016, passed May 18, 2010 )

### Looseleaf Supplement

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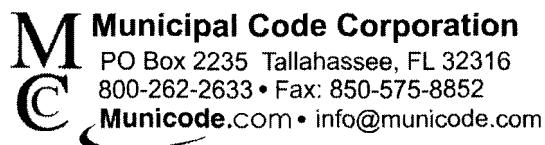
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SUPPLEMENT NO. 48  
VOLUMES I AND II  
April 2010

**OAKLAND MUNICIPAL CODE**

( **Ordinance No. 12997, passed February 16, 2010** )

**Looseleaf Supplement**

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SUPPLEMENT NO. 47  
VOLUMES I AND II  
January 2010

**OAKLAND MUNICIPAL CODE**

( **Ordinance No. 12985, passed December 8, 2009** )

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SUPPLEMENT NO. 46  
VOLUMES I AND II  
September 2009

**OAKLAND MUNICIPAL CODE**

( **Ordinance No. 12945, passed June 16, 2009** )

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INSTRUCTION SHEET—Cont'd.

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**SUPPLEMENT NO. 45****INSERTION GUIDE****OAKLAND MUNICIPAL CODE****January, 2009****(Covering Ordinances through 12899)**

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The contents of the Oakland Municipal Code should be distributed between the original Municipal Code binder and the new Oakland Municipal Code, Volume II binder. The Volume II binder should begin with Title 13 (Public Services).

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**SUPPLEMENT NO. 44**  
**INSERTION GUIDE**

**OAKLAND MUNICIPAL CODE**

**October, 2008**  
**(Covering Ordinances through 12889)**

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**SUPPLEMENT NO. 43**  
**INSERTION GUIDE**

**OAKLAND MUNICIPAL CODE**

**July, 2008**  
**(Covering Ordinances through 12871)**

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## SUPPLEMENT NO. 42

### INSERTION GUIDE

#### OAKLAND MUNICIPAL CODE

April, 2008

(Covering Ordinances through 12860)

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**SUPPLEMENT NO. 41**  
**INSERTION GUIDE**

**OAKLAND MUNICIPAL CODE**

**January, 2008**  
**(Covering Ordinances through 12837)**

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**SUPPLEMENT NO. 40**  
**INSERTION GUIDE**

**OAKLAND MUNICIPAL CODE**

**October, 2007**  
**(Covering Ordinances through 12823)**

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**SUPPLEMENT NO. 39**  
**INSERTION GUIDE**

**OAKLAND MUNICIPAL CODE**

**July, 2007**  
**(Covering Ordinances through 12791)**

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<b>Remove Pages</b>	<b>Insert Pages</b>
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**SUPPLEMENT NO. 38**  
**INSERTION GUIDE**

**OAKLAND MUNICIPAL CODE**

**April, 2007**  
**(Covering Ordinances through 12786)**

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**SUPPLEMENT NO. 37**  
**INSERTION GUIDE**

**OAKLAND MUNICIPAL CODE**

**February, 2007**  
**(Covering Ordinances through 12773)**

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**SUPPLEMENT NO. 36**  
**INSERTION GUIDE**

**OAKLAND MUNICIPAL CODE**

**January, 2007**  
**(Covering Ordinances through 12773)**

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**SUPPLEMENT NO. 35**  
**INSERTION GUIDE**

**OAKLAND MUNICIPAL CODE**

**October, 2006**  
**(Covering Ordinances through 12763)**

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**SUPPLEMENT NO. 34**  
**INSERTION GUIDE**

**OAKLAND MUNICIPAL CODE**

**July, 2006**  
**(Covering Ordinances through 12736)**

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<b>Remove Pages</b>		<b>Insert Pages</b>
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**SUPPLEMENT NO. 33**  
**INSERTION GUIDE**

**OAKLAND MUNICIPAL CODE**

**April, 2006**  
**(Covering Ordinances through 12730)**

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in the front of the code.

<b>Remove Pages</b>	<b>Insert Pages</b>	<b>Remove Pages</b>	<b>Insert Pages</b>
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**SUPPLEMENT NO. 32**  
**INSERTION GUIDE**

**OAKLAND MUNICIPAL CODE**

**January, 2006**  
**(Covering Ordinances through 12711)**

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<b>Remove Pages</b>	<b>Insert Pages</b>	<b>Remove Pages</b>	<b>Insert Pages</b>
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**SUPPLEMENT NO. 31**  
**INSERTION GUIDE**

**OAKLAND MUNICIPAL CODE**

**October, 2005**  
**(Covering Ordinances through 12695)**

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in the front of the code.

<b>Remove Pages</b>	<b>Insert Pages</b>	<b>Remove Pages</b>	<b>Insert Pages</b>
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**SUPPLEMENT NO. 30**  
**INSERTION GUIDE**

**OAKLAND MUNICIPAL CODE**

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**(Covering Ordinances through 12658)**

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<b>Remove Pages</b>	<b>Insert Pages</b>
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## **SUPPLEMENT NO. 29**

### **INSERTION GUIDE**

#### **OAKLAND MUNICIPAL CODE**

**April, 2005**

**(Covering Ordinances through 12647)**

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## **SUPPLEMENT NO. 28**

### **INSERTION GUIDE**

#### **OAKLAND MUNICIPAL CODE**

**January, 2005**

**(Covering Ordinances through 12630)**

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## **SUPPLEMENT NO. 27**

### **INSERTION GUIDE**

#### **OAKLAND MUNICIPAL CODE**

**December, 2004**

**(Covering Ordinances through 12621)**

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## **SUPPLEMENT NO. 26**

### **INSERTION GUIDE**

#### **OAKLAND MUNICIPAL CODE**

**October, 2004**

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## **SUPPLEMENT NO. 25**

### **INSERTION GUIDE**

#### **OAKLAND MUNICIPAL CODE**

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## **SUPPLEMENT NO. 24**

### **INSERTION GUIDE**

#### **OAKLAND MUNICIPAL CODE**

**April, 2004**

**(Covering Ordinances through 12586)**

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## **SUPPLEMENT NO. 23**

### **INSERTION GUIDE**

#### **OAKLAND MUNICIPAL CODE**

**January, 2004**

**(Covering Ordinances through 12560)**

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## **SUPPLEMENT NO. 22**

### **INSERTION GUIDE**

#### **OAKLAND MUNICIPAL CODE**

**October, 2003**

**(Covering Ordinances through 12528)**

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## **SUPPLEMENT NO. 21**

### **INSERTION GUIDE**

#### **OAKLAND MUNICIPAL CODE**

**July 2003**

**(Covering Ordinances through 12496)**

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## **SUPPLEMENT NO. 20**

### **INSERTION GUIDE**

#### **OAKLAND MUNICIPAL CODE**

**April, 2003**

**(Covering Ordinances through 12475)**

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#### **Remove Pages**

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## **SUPPLEMENT NO. 19**

### **INSERTION GUIDE**

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**January, 2003**

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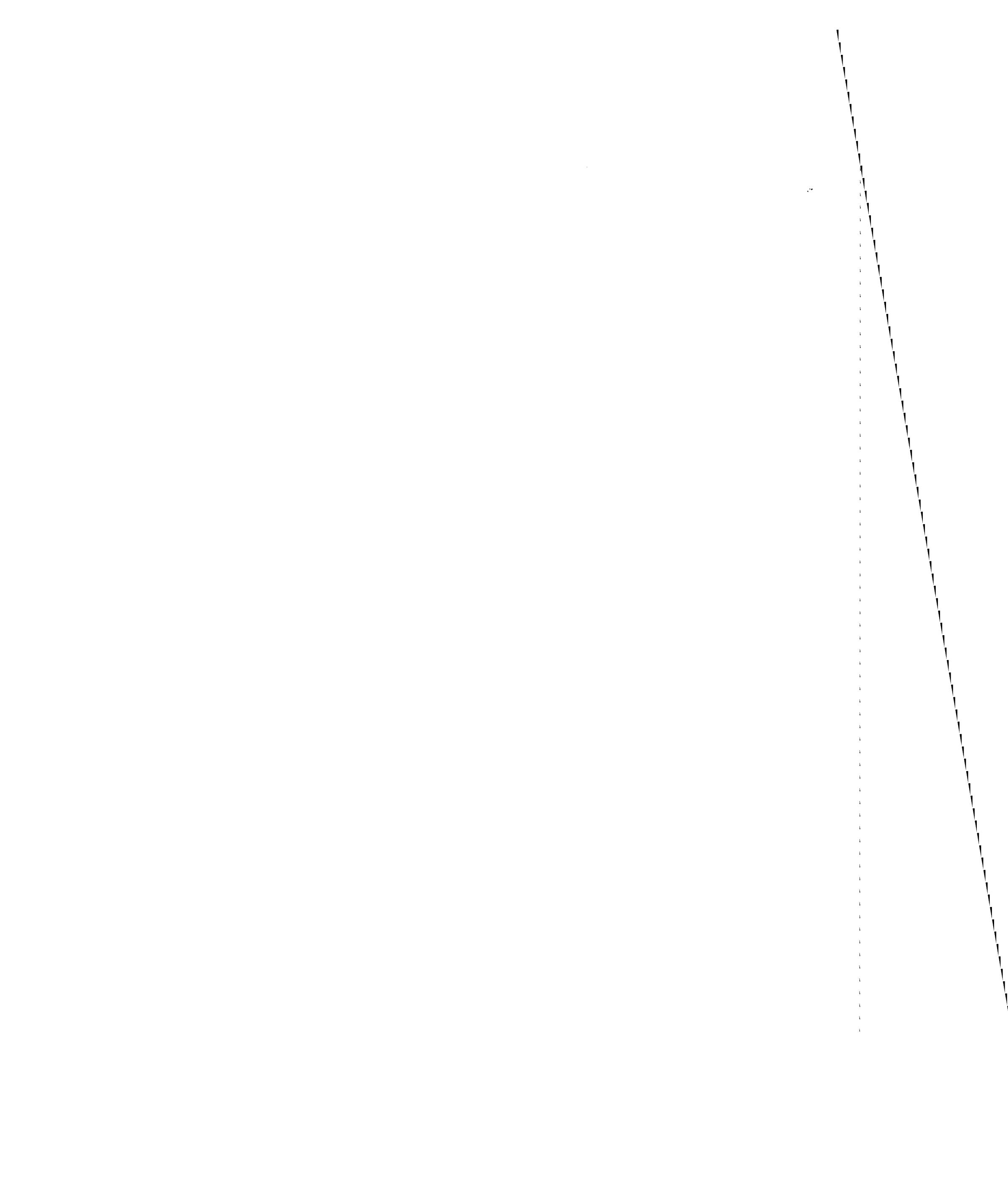
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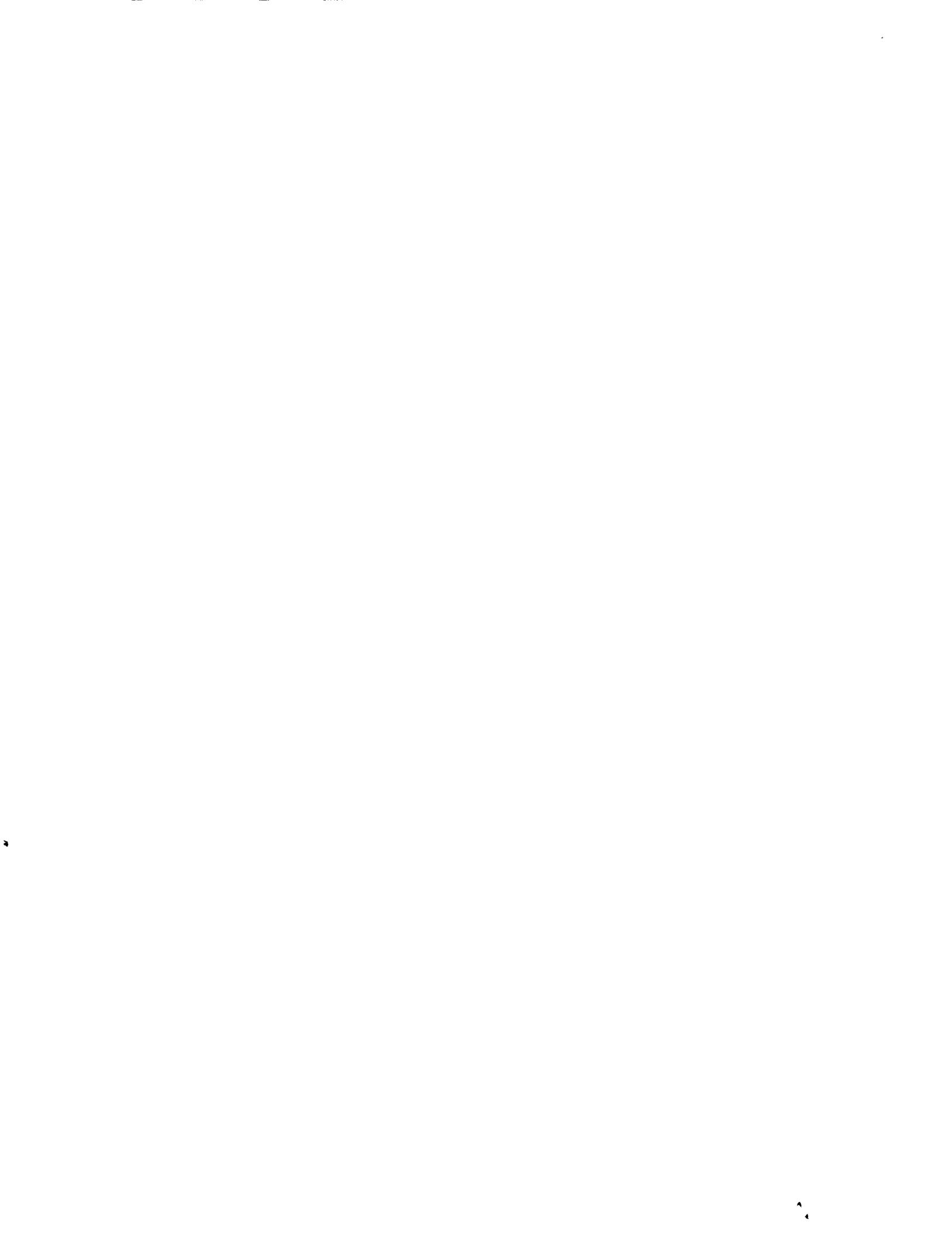
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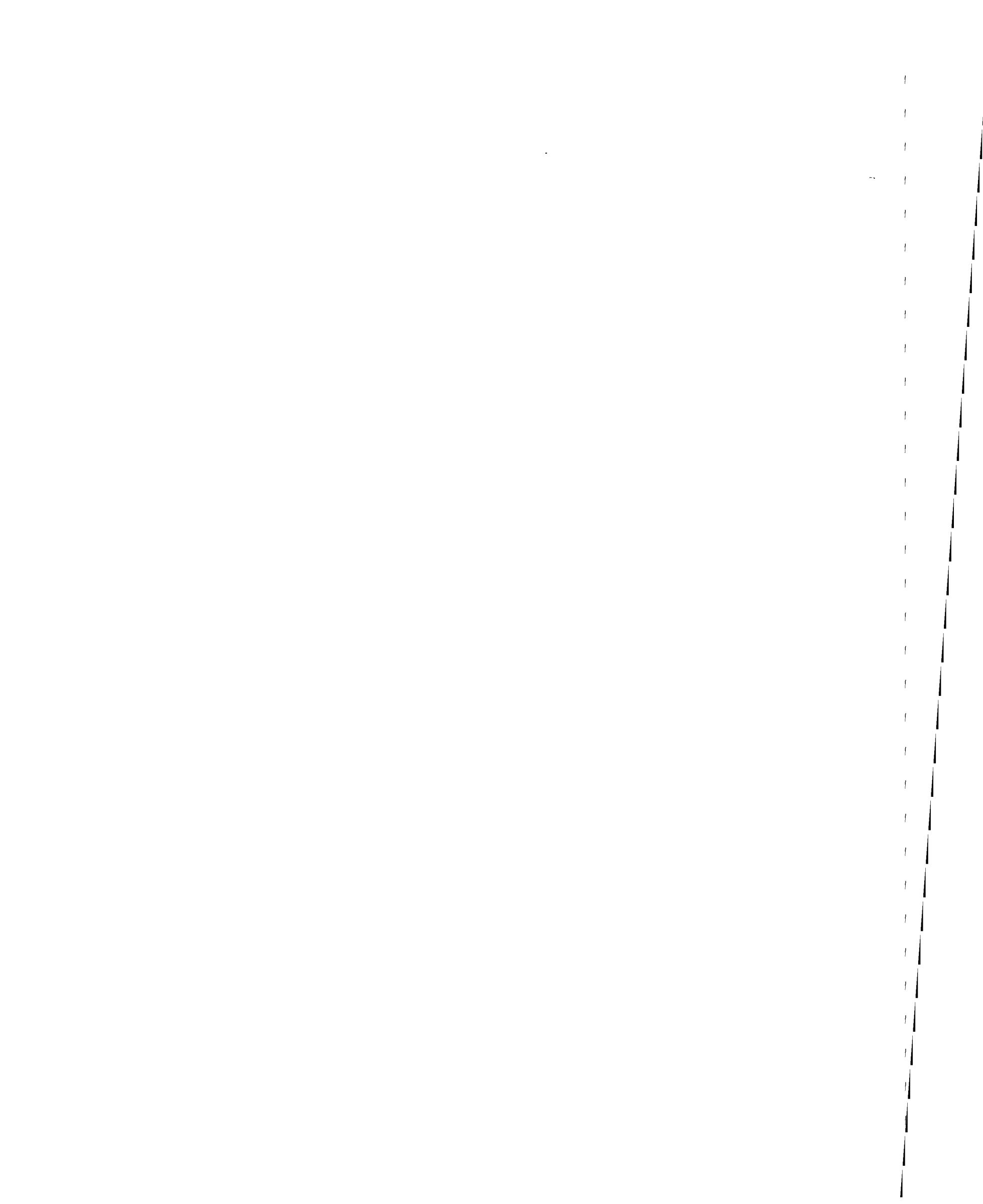
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**SUPPLEMENT**

**INSERTION GUIDE**

**OAKLAND MUNICIPAL CODE**

**August, 1998**

This supplement consists of reprinted pages replacing existing pages in the Oakland Municipal Code.

Remove pages listed in the column headed "Remove Pages" and in their places insert the pages listed in the column headed "Insert Pages."

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## **SUPPLEMENT**

### **INSERTION GUIDE**

#### **OAKLAND MUNICIPAL CODE**

**June, 1998**

**(Covering Ordinances through 12031)**

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**INSERTION GUIDE**  
**OAKLAND MUNICIPAL CODE**  
**January, 1998**  
**(Covering Ordinances through 12023)**

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## **SUPPLEMENT**

## **INSERTION GUIDE**

### **OAKLAND MUNICIPAL CODE**

**June, 1997**

**(Covering Ordinances through 11947,  
including the November 5, 1996 Election)**

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#### **Remove Pages**

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Preface .....	Preface
List of City Officials .....	List of City Officials

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**OAKLAND**

**MUNICIPAL CODE**

**1997**

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**A Codification of the General Ordinances  
of the City of Oakland, California**

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**Beginning with Supp. No. 46,  
Supplemented by Municipal Code Corporation**

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## PREFACE

The Oakland, California Municipal Code, originally published by Book Publishing Company, has been kept current by regular supplementation by Municipal Code Corporation, its successor in interest.

During original codification, the ordinances were compiled, edited and indexed by the editorial staff of Book Publishing Company under the direction of Mark Morodomi, Assistant City Attorney; Tamika Thomas, Assistant City Clerk; LaTonda Simmons, City Clerk and Secretary to the Redevelopment Successor Agency.

The Code is organized by subject matter under an expandable three-factor decimal numbering system which is designed to facilitate supplementation without disturbing the numbering of existing provisions. Each section number designates, in sequence, the numbers of the Title, Chapter, and Section. Thus, Section 2.12.040 is Section .040, located in Chapter 2.12 of Title 2. In most instances, sections are numbered by "tens" (.010, .020, .030, etc.), leaving nine vacant positions between original sections to accommodate future provisions. Similarly, chapters and titles are numbered to provide for internal expansion.

In parentheses following each section is a legislative history identifying the specific sources for the provisions of that section. This legislative history is complemented by an ordinance disposition table, following the text of the Code, listing by number all ordinances, their subjects, and where they appear in the codification. Beginning with Supplement No. 46, legislation can be tracked using the "Code Comparative Table and Disposition List."

A subject-matter index, with complete cross-referencing, locates specific Code provisions by individual section numbers.

**This supplement brings the Code up to date through Ordinance No. 13161, passed May 21, 2013.**

Municipal Code Corporation  
1700 Capital Circle SW  
Tallahassee, FL 32310  
800-262-2633



## **HOW TO USE YOUR CODE**

This Code is organized to make the laws of the city as accessible as possible to city officials, city employees and private citizens. Please take a moment to familiarize yourself with some of the important elements of this Code.

### **Numbering System.**

The numbering system is the backbone of a Code of Ordinances; Municipal Code Corporation uses a unique and versatile numbering structure that allows for easy expansion and amendment of this Code. It is based on three tiers, beginning with the title, then chapter, and ending with section. Each part is represented in the Code section number. For example, Section 2.04.010 is Section .010, in Chapter 2.04 of Title 2.

#### **Title.**

A title is a broad category under which ordinances on a related subject are compiled. This Code contains about 15 to 20 titles. For example, the first title is Title 1, General Provisions, which may contain ordinances about the general penalty, Code adoption and definitions. The titles in this Code are separated by tabbed divider pages for quick reference. Some titles are "Reserved" for later use.

#### **Chapter.**

Chapters deal with more specific subjects, and are often derived from one ordinance. All of the chapters on a related subject are grouped in one title. The chapters are numbered so that new chapters which should logically be placed near certain existing chapters can be added at a later time without renumbering existing material. For example, Chapter 2.06, City Manager, can be added between 2.04, City Council, and Chapter 2.08, City Attorney.

#### **Section.**

Each section of the Code contains substantive ordinance material. The sections are numbered by "tens" to allow for expansion of the Code without renumbering.

### **Tables of Contents.**

There are many tables of contents in this Code to assist in locating specific information. At the beginning of the Code is the main table of contents listing each title. In addition, each title and chapter has its own table of contents listing the chapters and sections, respectively.

### **Ordinance History Note.**

At the end of each Code section, you will find an "ordinance history note," which lists the underlying ordinances for that section. The ordinances are listed by number, section (if applicable) and year. (Example: (Ord. 272 § 1, 1992).) Ordinance history notes will be amended with the most recent ordinance added to the beginning. These history notes can be cross referenced to the Code Comparative Table and Disposition List appearing at the back of the volume preceding the index.

### **Statutory References.**

The statutory references direct the Code user to those portions of the state statutes that are applicable to the laws of the municipality. As the statutes are revised, these references will be updated.

### **Cross-Reference Table.**

When a Code is based on an earlier codification, the cross-reference table will help users find older or "prior" Code references in the new Code. The cross-reference table is located near the end of the Code, under the tabbed divider "Tables." This table lists the prior Code section in the column labeled "Prior Code Section" and the new Code section in the column labeled "Herein."

As of Supplement No. 46, this table will no longer be updated.

### **Ordinance List and Disposition Table.**

To find a specific ordinance in the Code, turn to the section called "Tables" for the Ordinance List and Disposition Table. This table tells you the status of every ordinance reviewed for inclusion in the Code. The table is organized by ordinance number and provides a brief description and the disposition of the ordinance. If the ordinance is codified, the chapter (or chapters) will be indicated. (Example: (2.04, 6.12, 9.04).) If the ordinance is of a temporary nature or deals with subjects not normally codified, such as budgets, taxes, annexations or rezones, the disposition will be "(Special)." If the ordinance is for some reason omitted from the Code, usually at the direction of the municipality, the disposition will be "(Not codified)." Other dispositions sometimes used are "(Tabled)," "(Pending)," "(Number Not Used)" or "(Missing)."

Beginning with Supplement No. 46, this table will be replaced with the "Code Comparative Table and Disposition List."

### **Code Comparative Table and Disposition List.**

Beginning with Supplement No. 46, a Code Comparative Table and Disposition List has been added for use in tracking legislative history. Located in the back of Volume II, this table is a chronological listing of each ordinance considered for codification. The Code Comparative Table and Disposition List specifies the ordinance number, adoption date, description of the ordinance and the disposition within the Code of each ordinance. By use of the Code Comparative Table and Disposition List, the reader can locate any section of the Code as supplemented, and any subsequent ordinance included herein.

### **Index.**

If you are not certain where to look for a particular subject in this Code, start with the index. This is an alphabetical multi-tier subject index which uses section numbers as the reference, and cross-references where necessary. Look for the main heading of the subject you need, then the appropriate subheadings:

#### **BUSINESS LICENSE**

See also BUSINESS TAX

Fee 5.04.030

Required when 5.04.010

The index will be updated as necessary when the Code text is amended.

### **Instruction Sheet.**

Each supplement to the new Code will be accompanied by an Instruction Sheet. This sheet will tell the Code user the date of the most recent supplement and the last ordinance contained in that supplement. It will then list the pages that must be pulled from the Code and the new pages that must be inserted. Following these instructions carefully will assure that the Code is kept accurate and current. Removed pages should be kept for future reference.

### **Page Numbers.**

When originally published, this Code was numbered with consecutive page numbers. As it is amended, new material may require the insertion of new pages that are numbered with decimals. (Example: 31, 32, 32.1.) Backs of pages that are blank (in codes that are printed double-sided) are left unnumbered but the number is "reserved" for later use.

### **Electronic Submission.**

In the interests of accuracy and speed, we encourage you to submit your ordinances electronically if at all possible. We can accept most any file format, including Word, WordPerfect or text files. We prefer Word, any version. You can send files to us as an e-mail attachment, by FTP, on a diskette or CD-ROM. Electronic files enable us not only to get you your Code more quickly but also reduce the number of errors. Our e-mail address is: [ords@unicode.com](mailto:ords@unicode.com).

For hard copy, send two copies of all ordinances passed to:

Municipal Code Corporation  
P.O. Box 2235  
Tallahassee, FL 32316

### **Customer Service.**

If you have any questions about this Code or our services, please contact Municipal Code Corporation at 1-800-262-2633 or:

Municipal Code Corporation  
1700 Capital Circle SW  
Tallahassee, FL 32310



## CITY OF OAKLAND

---

### MAYOR

Jean Quan

---

### COUNCIL MEMBERS

District 2	Patricia Kernighan <i>President of the City Council</i>
District 7	Larry E. Reid <i>Vice Mayor of the City Council</i>
At-Large	Rebecca Kaplan <i>President Pro Tempore of the Council</i>
District 1	Dan Kalb
District 3	Lynette Gibson-McElhaney
District 4	Libby Schaaf
District 5	Noel Gallo
District 6	Desley A. Brooks

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### CITY ADMINISTRATOR

Deanna J. Santana

### CITY ATTORNEY

Barbara Parker

### CITY AUDITOR

Courtney Ruby

### CITY CLERK AND CLERK OF THE COUNCIL

LaTonda Simmons



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--------------------------

**Prior Planning Code Table**

**Planning Index**

## SUPPLEMENT HISTORY TABLE

The table below allows users of this Code to quickly and accurately determine what ordinances have been considered for codification in each supplement. Ordinances that are of a general and permanent nature are codified in the Code and are considered "Included." Ordinances that are not of a general and permanent nature are not codified in the Code and are considered "Omitted."

By adding to this table with each supplement, users of this Code of Ordinances will be able to gain a more complete picture of the Code's historical evolution.

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13161	5-21-2013	Included	60
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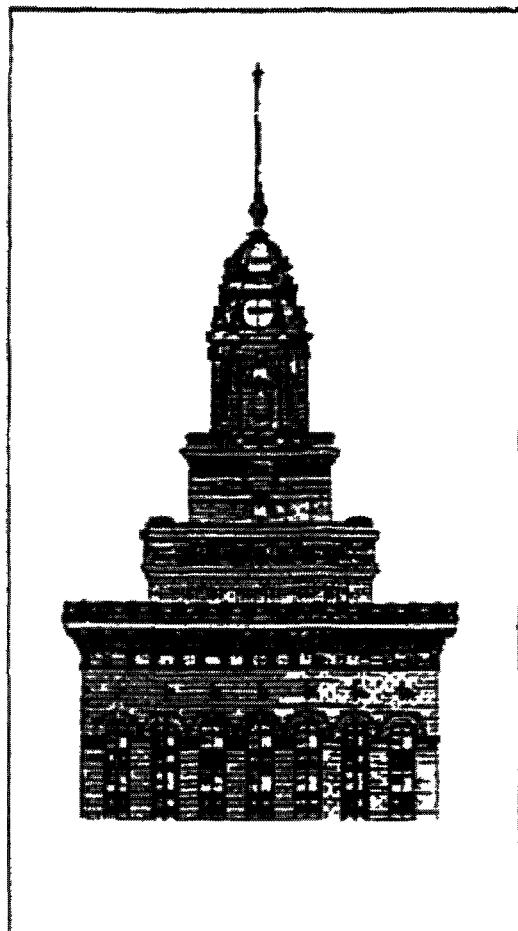


**THE CHARTER  
OF THE  
CITY OF OAKLAND**

*ADOPTED BY THE PEOPLE OF THE  
CITY OF OAKLAND ON NOVEMBER 5, 1968*

*RATIFIED BY THE SECRETARY OF STATE  
OF THE STATE OF CALIFORNIA AND  
IN EFFECT JANUARY 28, 1969*

*AS AMENDED THROUGH AND INCLUDING  
NOVEMBER, 2008*





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||

**THE CHARTER  
OF THE  
CITY OF OAKLAND**

**In Effect January 28, 1969**

We, the people of the City of Oakland, the State of California, do ordain and establish this Charter as the fundamental law of the City, under the Constitution of the State of California.

**ARTICLE I**

**POWERS AND FORM OF GOVERNMENT**

**Section 100. Name.** The municipal corporation now existing and known as the City of Oakland shall remain and continue a body politic and corporate in name and fact by the name of the City of Oakland, and by such name shall have perpetual succession.

**Section 101. Boundaries.** The boundaries of the City of Oakland, as they exist on the effective date of this Charter, shall continue until changed in the manner authorized by law.

**Section 102. Rights in Succession.** The City of Oakland, hereinafter termed the City, shall have, exercise, and enjoy all the rights, immunities, powers, benefits, privileges and franchises now possessed, enjoyed, owned or held by it.

**Section 103. Continuance of Laws.** All lawful ordinances, resolutions, rules and regulations or portions thereof now in force and not in conflict or inconsistent herewith are continued in force until they have been duly repealed or amended.

**Section 104. Continuance of Officers and Employees.** All officers and employees of the City now serving shall continue in their offices or employments until removed or replaced in the manner prescribed by the authority of this Charter.

**Section 105. Transfer of Records and Property.** The transfer of any function from one department to another by this Charter or by any lawful ordinance or administrative authority also authorizes the corresponding transfer of all records, property, and equipment necessary to such function.

**Section 106. General Powers.** The City shall have the right and power to make and enforce all laws and regulations in respect to municipal affairs, subject only to the restrictions and limitations provided in this Charter; provided, that nothing herein shall be construed to prevent or restrict the City from exercising or consenting to, and the City is hereby authorized to exercise, any and all the rights, powers and privileges heretofore or hereafter granted or prescribed by the general laws of the State including those specifically applicable to general law cities; provided, also, that where the general laws of the State provide a procedure for the carrying out and the enforcement of any rights or powers belonging to the City, said procedure shall control and be followed unless a different procedure shall have been provided in the Charter or by ordinance.

It is the intention of the people in adopting this section to take advantage of the provisions of Section 6 of Article XI of the Constitution of the State of California giving cities Home Rule as to municipal affairs.

**Section 107. Form of Government.** The government provided by this Charter shall be known as the Mayor-Council form of government.  
*(Amended by: Stats. November 2000.)*

**ARTICLE II**

**THE COUNCIL**

**Section 200. Composition of the Council.** The Council shall consist of eight Councilmembers, nominated and elected as hereinafter provided. The Mayor shall not be a member of the Council, but he shall have a vote on the Council if the councilmembers are evenly divided. *(Amended by: Stats. November 1998.)*

**Section 201. Qualifications.** No person shall be eligible for or continue to hold the office of Councilmember, either by election or appointment, unless he is a citizen of the United States, a qualified elector, a resident for at least thirty days of the City or of a territory lawfully annexed or consolidated, and a resident of the district from

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which he may be a candidate for at least thirty days immediately next preceding his nomination or appointment. **(Amended by: Stats. November 1988.)**

**Section 202. Public Ethics Commission; Council Salaries.** (a) There is hereby established a Public Ethics Commission which shall be responsible for responding to issues with regard to compliance by the City of Oakland, its elected officials, officers, employees, boards and commissions with regard to compliance with City regulations and policies intended to assure fairness, openness, honesty and integrity in City government including, Oakland's Campaign Finance Reform Ordinance, conflict of interest code, code of ethics and any ordinance intended to supplement the Brown Act, and to make recommendations to the City Council on matters relating thereto, and it shall set City Councilmember compensation, as set forth herein.

(b) The members of the Public Ethics Commission shall consist of seven (7) members who shall be Oakland residents.

(1) Initial appointments. The first seven members of the Commission shall be appointed as follows: Three (3) members who represent local civic organizations with a demonstrated history of involvement in local governance issues shall be nominated for appointment by the Mayor and confirmed by the City Council; and four (4) members shall be appointed following a public recruitment and application following a public recruitment and application process, by the unanimous vote of the three (3) representatives appointed by the City Council. The four (4) members so appointed shall reflect the interest of the greater Oakland neighborhood and business communities.

(2) Subsequent Mayoral appointments. A vacancy in any of the three (3) positions nominated for appointment by the Mayor and confirmed by the City Council shall be filled in the same manner and upon consideration of the same criteria as for the initial Mayoral appointments.

(3) Subsequent Non-Mayoral appointments. A vacancy in any of the four (4) positions initially selected by the unanimous vote of the three (3)

Mayoral appointments shall be filled, following a public recruitment and application process, by a candidate who receives the affirmative vote of at least four (4) members of the Commission. Any member so appointed shall reflect the interests of the greater Oakland neighborhood and business communities.

(4) Staggered Terms. Both categories of member shall be appointed to staggered terms.

(5) Functions, duties, powers, jurisdiction and terms. The City shall by ordinance prescribe the function, duties, powers, jurisdiction and the terms of members of the Commission, in accordance with this Article.

(C) Beginning with Fiscal Year 2003-2004, the Public Ethics Commission shall annually adjust the salary for the office of Councilmember by the increase in the consumer price index over the preceding year. The Commission may adjust salaries beyond the increase in the consumer price index up to a total of five percent. Any portion of an increase in compensation for the office of Councilmember that would result in an overall increase for that year in excess of five percent must be approved by the voters. **(Amended by: Stats. November 1996, June 1998 and November 1998 and March 2004.)**

**Section 203. Nomination and Election of Councilmembers.** Seven Councilmembers shall be nominated from districts and one shall be nominated at large. The Councilmember-at-large shall be nominated and elected by the qualified electors of the City at large. The District Councilmembers shall be nominated and elected by the qualified electors of their respective districts. The districts shall be as they exist upon the taking effect of this section, until revised by ordinance. In the year 1993, and every ten years thereafter, and whenever any substantial territory is annexed to or consolidated with the City, the Council

shall form new districts not exceeding seven. Districts shall be composed of contiguous territory, as equal as possible in population, and as geographically compact as practicable. No change in the boundary of a district shall operate to exclude an incumbent from office before the expiration of the term for which he was elected or appointed. (**Amended by:** Stats. October 1980, June 1990 and March 2004.)

**Section 204. Term Office, Council.** The Councilmembers shall be elected to a term of four years beginning at 11:00 a.m. on the Monday following January 1 following their election. The Councilmembers elected or appointed to office to serve terms beginning in 1985 shall serve in office until 11:00 a.m. on the Monday following January 1 in 1991. The Councilmembers elected or appointed to office to serve terms beginning in 1987 shall serve in office until 11:00 a.m. on the Monday following January 1, 1993. In 1990 Municipal Elections will be held to select City officers for four year terms for the following offices: Councilmember, District #2; Councilmember, District #4, and, Councilmember, District #6. In 1992 Municipal Elections will be held to select City Councilmembers for four year terms for the following offices: Councilmember, District #1; Councilmember, District #3; Councilmember, District #5; Councilmember, District #7; and Councilmember-At-Large. (**Amended by:** Stats. November 1988.)

**Section 205. Vacancy, Filling of.** All vacancies occurring in the office of Councilmember shall be filled by special election within 120 days of a vacancy. An extension of up to 60 days may be allowed for the express purpose of consolidating the special election with the next Municipal Election or Statewide Election. If the special election is to take place before the first use of ranked choice voting in a Municipal Election, the Council shall have the authority to provide for a ranked choice voting election by ordinance. Otherwise, the candidate who receives the highest number of votes at the special election shall be declared the winner and thereafter sworn into office as soon as legally possible. Special elections for

the office of Councilmember that take place during or after the first use of ranked choice voting in a Municipal Election shall be conducted using the same ranked choice voting procedures used to elect Councilmembers in General Municipal Elections. Whenever the period of vacancy in a Councilmember's term of office equals or exceeds 120 days the vacancy may be temporarily filled by appointment through the majority vote of the remaining Councilmembers, provided the appointee is not a candidate for the office which created the vacancy and provided the appointment does not exceed 128 days or go beyond the date the new incumbent is sworn in, whichever is shortest. Alternative legal voting procedures shall be used to the greatest extent feasible to increase voter participation in special elections including but not limited to mail ballot voting, electronic voting and extended voting period. Notwithstanding any other provision of this section 205 or this Charter, an election shall not be required to fill a vacancy in the office of Councilmember that occurs when the Vice Mayor fills a mayoral vacancy pursuant to Sections 303 and 304 of this Charter, and the Vice Mayor shall be entitled to return to his/her seat. (**Amended by:** Stats. November 1998, November 2000, March 2002 and February 2007.)

**Section 206. Vacancy, What Constitutes.** An office of Councilmember shall be declared vacant by the Council when the person elected or appointed thereto fails to qualify within ten days after his term is to begin, dies, resigns, ceases to be a resident of the City or of the district from which he was nominated, absents himself continuously from the City for a period of more than thirty days without permission from the Council, absents himself from any ten consecutive regular meetings except on account of his illness or when absent from City by permission of the Council, is convicted of a felony, is judicially determined to be an incompetent, is permanently disabled as to be unable to perform the duties of his office, forfeits his office under any provision of this Charter, or is removed from office by judicial procedure. A finding of disability shall require the affirmative vote of at least six members of the Council after consider-

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ing competent medical evidence bearing on the physical or mental capability of the Councilmember. **(Amended by: Stats. November 1988 and November 2000.)**

**Section 207. Powers of the Council.** The Council shall be the governing body of the City. It shall exercise the corporate powers of the City and, subject to the expressed limitations of this Charter, it shall be vested with all powers of legislation in municipal affairs adequate to provide a complete system of local government consistent with the Constitution of the State of California. It shall have no administrative powers. The Council shall fix the compensation of all City employees, officers and officials except as otherwise provided by this Charter. **(Amended by: Stats. November 1988 and November 2000.)**

**Section 208. Meetings of the Council.** At 11:00 a.m. on the first Monday following January 1 following each General Municipal Election, the Council shall meet at the established Council meeting place, at which time and place the newly elected members of the Council shall assume the duties of their office; and at such meeting, and at its first meeting in January of each year, the Council shall elect a Vice-Mayor from among its members to serve for a one-year term. Thereafter, the Council shall meet regularly at the time and place fixed by resolution. Special meetings may be held at the regular place of meeting and shall be called, and notice thereof given, by the City Clerk upon the written request of the Mayor, the City Administrator or three members of the Council and such notice shall state the special subject to be considered at the special meeting; and no other subject shall be there considered. Regular or special meetings may be held at places other than the regular meeting place only in an emergency in which the regular meeting place is untenable, or for some purpose of public convenience, upon the posting of a public notice at the regular meeting place that the Council is meeting elsewhere to be designated on the notice. **(Amended by: Stats. June 1988 and March 2004.)**

**Section 209. Quorum.** Five members of the Council shall constitute a quorum for the transaction of business, but a lesser number may adjourn.

**Section 210. Council Action.** The Council shall provide by resolution for the order of business and the rules of procedure for the conduct of Council meetings. The Council shall act by ordinance or resolution or motion. The "ayes" and "noes" shall be taken on the passage of all ordinances and resolutions and entered upon the journal of the Council's proceedings. Each proposed ordinance or resolution shall be introduced in written or printed form. The affirmative vote of five members of the Council shall be required to adopt any ordinance or resolution, except as otherwise provided by this Charter or by general law.

**Section 211. Enactment of Ordinances.** In addition to such other action of the Council as is required by statute or by this Charter to be by ordinance, every act of the Council establishing a penalty or granting a franchise shall be by ordinance. The enacting clause of all ordinances shall be: "**The Council of the City of Oakland does ordain as follows:**"

**Section 212. Adoption and Amendment of Ordinances.** Except for emergency ordinances, no ordinance shall be adopted by the Council on the day of its introduction, nor within five days thereafter, nor except at a regular or adjourned regular or special meeting. If an ordinance is altered after its introduction (except for the correction of typographical or clerical errors), it shall not be adopted except at a regular or adjourned regular or special meeting held not less than five days after the date of such alteration. Any section or subsection of an ordinance may be amended solely by the reenactment of such section or subsection at length as amended.

**Section 213. Emergency Ordinances.** Any ordinance declared by the Council to be necessary for preserving the public peace, health, or safety in an emergency, and containing a statement of the reasons constituting such necessity, may be introduced and

adopted at the same meeting if passed by the affirmative vote of at least six members. Appropriations to meet an urgent need for public expenditure, to protect the public health, safety, or welfare may be made as an emergency ordinance.

**Section 214. Publication.** Before final adoption of an ordinance, its title, a digest thereof, a notice showing the vote on its introduction and the date, time, and place of hearing on its final adoption, and notice that three full copies thereof are available for use and examination by the public in the Office of the City Clerk, shall be published once in the official newspaper of the City at least three days before said hearing date. Notice of the adoption of an emergency ordinance, the vote thereon, its title, and a digest thereof shall be similarly published once within three days after its adoption. The notices and digests shall be prepared by the City Attorney.

**Section 215. Codification.** The duly adopted and effective ordinances of the City may be compiled and arranged as comprehensive codes, which may be adopted by reference by the passage of an ordinance for such purpose.

**Section 216. Effective Date of Ordinance.** An ordinance receiving upon final adoption the affirmative vote of at least six members of the Council shall be effective immediately, unless a later date is specified therein. All other ordinances, unless a different date is required by this Charter, shall be effective upon the seventh day after final adoption; provided, that within three days after said date of final adoption, the Mayor may file in the Office of the City Clerk written notice to the Council that he has suspended the taking effect of the ordinance, stating in said notice the reason or reasons for his action, which notice the City Clerk shall forthwith deliver to the members of the Council. Such notification shall automatically cause the reconsideration of the ordinance by the Council at its regular meeting next following the sixth day after the aforesaid final adoption of the ordinance. If, upon reconsideration, the ordinance is approved by the affirmative vote of at least

five members of the Council, it shall take effect immediately; and if not so approved, it shall be ineffective. (Amended by: Stats. November 1998 and March 2004.)

**Section 217. Penalty for Violation of Ordinances.** The Council may make the violation of its ordinances a misdemeanor, which may be prosecuted in the name of the People of the State of California or may be redressed by civil action, and may prescribe punishment for such violations by a fine not to exceed \$1,000 or by imprisonment not to exceed one year, or by both such fine and imprisonment.

**Section 218. Non-Interference in Administrative Affairs.** Except for the purpose of inquiry, the Council and its members shall deal with the administrative service for which the City Administrator, Mayor and other appointed or elected officers are responsible, solely through the City Administrator, Mayor or such other officers. Neither the Council nor any Council member shall give orders to any subordinate of the City under the jurisdiction of the City Administrator or such other officers, either publicly or privately; nor shall they attempt to coerce or influence the City Administrator or such other officers, in respect to any contract, purchase of any supplies or any other administrative action; nor in any manner direct or request the appointment of any person to or his removal from office by the City Administrator or any of his subordinates or such other officers, nor in any manner take part in the appointment or removal of officers or employees in the administrative service of the City. Violation of the provisions of this section by a member of the Council shall be a misdemeanor, conviction of which shall immediately forfeit the office of the convicted member. (Amended by: Stats. November 1988, November 2000 and March 2004.)

**Section 219. Ordinance: When Required.** In addition to other actions required by law or by specific provision of this Charter to be done by ordinance, those actions of the Council shall be by ordinance which:

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(1) Adopt or amend an administrative code or establish, alter or abolish any City department, office or agency as authorized in Article VI of this Charter.

(2) Provide for a fine or other penalty or establish a rule or regulation for violation of which a fine or other penalty is imposed.

(3) Levy taxes except as otherwise provided in this Charter with respect to the property tax levied by adoption of the budget.

(4) Regulate the rates charged for its services by a public utility.

(5) Authorize the borrowing of money except as otherwise provided in Section 812 of this Charter.

(6) Convey or lease, or authorize the conveyance or lease for longer than one year, of any real property of the City, or any interest therein, or the acquisition of real property, the purchase price of which is more than Five Thousand Dollars (\$5,000.00).

(7) Amend or repeal any ordinance previously adopted.

Provided, acts other than those referred to hereinabove under this section, or other than may be specifically otherwise provided for in other sections of this Charter, may be done either by ordinance or by resolution.

## ARTICLE III THE MAYOR

**Section 300. The Mayor.** The Mayor shall be nominated and elected from the City at large and shall receive an annual salary payable in equal monthly installments, and without any additional compensation or fees provided for in Section 202 of this Charter. The salary shall be set by the Council, which shall be not less than 70% nor more than 90% of the average salaries of City Managers'/Chief Executive Officers of California cities within the three immediate higher and the three immediate lower cities in population to Oakland. The Mayor's salary shall be reviewed by the City Council in odd-numbered years and may be adjusted by the Council as provided for herein. (Amended by: Stats. November 1988 and March 2004.)

**Section 301. Qualifications.** No person shall be eligible for or continue to hold the Office of Mayor, either by election or appointment, unless he is a citizen of the United States, a qualified elector and resident for at least thirty days of the City or a territory lawfully annexed or consolidated. (Amended by: Stats. November 1988.)

**Section 302. Term of Office, the Mayor.** The Mayor shall be elected to a term of four years beginning at 11:00 a.m. on the first Monday of January following his election. The Mayor elected to Office to serve a term beginning in 1985 shall serve in Office until 11:00 a.m. on the Monday following January 1 in 1991. In 1990 municipal elections will be held to select City Officers for four year terms, including the Office of Mayor. No person shall be elected to the office of Mayor for more than two consecutive terms, and no person who has held the office of Mayor, or acted as Mayor, for more than two years of a term for which some other person was elected Mayor may be elected to more than one more consecutive term as Mayor. (Amended by: Stats. November 1988, November 1998 and March 2004.)

**Section 303. Vacancy, Filling of.** Upon the declaration of vacancy in the office of the Mayor, the office of the Mayor shall be filled by the Vice-Mayor of the Council. Except as otherwise provided in this Section, when the Vice-Mayor of the Council assumes the office of Mayor upon declaration of a vacancy, she/he shall serve for the unexpired term if such term is less than one year; otherwise she/he shall serve until the vacancy is filled as provided herein. Whenever the period of vacancy in a Mayor's term of office is less than one year and the Vice Mayor notifies the Council in writing that she/he does not wish to serve as Mayor for the unexpired term, the vacancy shall be filled by appointment through a majority vote of the remaining Council-members; provided the appointee shall be ineligible to be a candidate for the next full term of the Office of Mayor. If at the time of a vacancy declaration the unexpired term is one year or more, the vacancy occurring in the office of Mayor shall be filled by spe-

cial election within 120 days of such vacancy. An extension of up to 60 days may be allowed for the express purpose of consolidating the special election with the next Municipal Election or Statewide Election. If the special election is to take place before the first use of ranked choice voting in a Municipal Election, the Council shall have the authority to provide for a ranked choice voting election by ordinance. Otherwise, the following procedures shall be used: if no candidate receives the majority of the votes cast in the special election, then a run-off election shall be held for the two candidates who received the highest number of votes no later than 60 days after the date of the special election; provided that all persons receiving a number of votes equal to the highest number of votes received by any candidate shall also be candidates at such run-off election. The candidate receiving the highest number of votes cast for all candidates for the office at the run-off election shall be declared elected. Special elections for the office of Mayor that take place during or after the first use of ranked choice voting in a Municipal Election shall be conducted using the same ranked choice voting procedures used to elect the Mayor in General Municipal Election. The candidate elected to fill the vacancy shall hold office for the balance of the unexpired term. Alternative legal voting procedures shall be used to the greatest extent feasible to increase voter participation in special elections including but not limited to mail ballot voting, electronic voting, and extended voting period. (**Amended by: Stats. November 1988, March 2002 and February 2007.**)

**Section 304. Vacancy: What Constitutes.** The office of Mayor shall be declared vacant by the Council when the person elected or appointed thereto fails to qualify within ten days after his term is to begin, dies, resigns, ceases to be a resident of the City or absents himself/herself continuously from the City for a period of more than thirty days without permission from the Council, is convicted of a felony, is judicially determined to be an incompetent, is permanently so disabled as to be unable to perform the duties of his office, forfeits his office under any provision of this Charter, or is removed from office

by judicial procedure. A finding of disability shall require the affirmative vote of at least six members of the Council after considering competent medical evidence bearing on the physical or mental capability of the Mayor. (**Amended by: Stats. November 1988 and March 2004.**)

**Section 305. Functions, Powers and Duties.** The Mayor shall be the chief elective officer of the City, responsible for providing leadership and taking issues to the people and marshalling public interest in and support for municipal activity. The Mayor shall have the following powers, duties, and responsibilities:

- (a) The Mayor shall be responsible for the submission of an annual budget to the Council which shall be prepared by the City Administrator under the direction of the Mayor and Council. The Mayor shall, at the time of the submission of the budget, submit a general statement of the conditions of the affairs of the City, the goals of the administration, and recommendations of such measures as he may deem expedient and proper to accomplish such goals.
  - (b) Recommend to the Council such measures and legislation as he deems necessary and to make such other recommendations to the Council concerning the affairs of the City as he finds desirable.
  - (c) Encourage programs for the physical, economic, social and cultural development of the City.
  - (d) Actively promote economic development to broaden and strengthen the commercial and employment base of the City.
  - (e) Appoint the City Administrator, subject to confirmation by the City Council, remove the City Administrator and give direction to the City Administrator. The Mayor shall advise the Council before removing the City Administrator.
  - (f) Serve as ceremonial head of the City.
  - (g) Represent the City in inter-governmental relations as directed by the Council.
  - (h) Provide community leadership.
- The Mayor shall, at the first meeting of the City Council in October, appear before the Council to deliver a general address on the State of the City, and recommend the adoption of such measures as he/she

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may deem expedient and proper. The Mayor and such staff as he/she may designate shall also conduct four additional public meetings during the year to solicit and respond to comments, concerns, or questions from the public. These meetings shall be noticed to the public not less than two weeks in advance, and shall be scheduled approximately three months apart.

The Mayor shall devote his full time and attention to the duties of the Office of the Mayor and shall not engage in outside employment while in office. However, nothing shall prevent the Mayor from the receipt of income earned from business(s) or investment(s) in which he is not actively engaged and which are not in conflict with the performance of his duties and responsibilities. **(Amended by: Stats. November 1988, November 1998 and March 2004.)**

**Section 306. Duties of Vice-Mayor.** In the absence or temporary disability of the Mayor, the Vice-Mayor shall perform the duties of the office. **(Amended by: Stats. November 1988.)**

## ARTICLE IV CITY OFFICERS

**Section 400. Designation as Officer.** In addition to the Councilmembers and the Mayor, the officers of the City shall be the City Administrator, the City Attorney, the City Clerk, the City Auditor, and such department heads, members of boards or commissions and executive officers of such boards and commissions as may be so designated by ordinance. The City Administrator may be hired by contract, for a term not to exceed four years, but no such contract shall prevent the Mayor from removing the City Administrator from office at any time. **(Amended by: Stats. November 1988, November 1998 and March 2004.)**

**Section 401(1). City Attorney.** The City Attorney shall be nominated and elected in the same manner and at the same election as the Councilmember-at-large. The salary of the elected City Attorney shall be

set by the Council, which shall be not less than 70% nor more than 90% of the average salaries of City Attorneys of California cities within the three immediate higher and the three immediate lower cities in population to Oakland, and may not be reduced during the City Attorney's term of office, except as part of a general reduction of salaries of all officers and employees in the same amount or proportion. **(Amended by: Stats. November 1988, November 1998, March 2002 and March 2004.)**

**Section 401(2). Qualifications, the City Attorney.** No person shall be eligible for or continue to hold the Office of City Attorney, either by election or appointment, unless he or she is a citizen of the United States, a qualified elector and resident for at least 30 days of the City or a territory lawfully annexed or consolidated, licensed to practice law in all courts of the State of California and so licensed for at least ten years preceding his or her election. **(Amend by: Stats. November 1988, November 1998 and March 2002.)**

**Section 401(3). Term of Office, the City Attorney.** The City Attorney shall be elected to a term of four years beginning at 11:00 a.m. on the Monday following January 1 following his or her election. **(Amended by: Stats. November 1988, November 1998 and March 2002.)**

**Section 401(4). Vacancy, Filling of.** Upon the declaration of vacancy in the Office of the City Attorney, the Office of the City Attorney shall be filled by appointment by the majority vote of the members of the Council; provided, that if the Council shall fail to fill a vacancy by appointment within sixty days after such office shall become vacant, the City Council shall cause an election to be held to fill such vacancy pursuant to the manner and method as provided for in Article II, Section 205 of the Charter. An appointee or the person elected to the Office of City Attorney for the balance of an unexpired term shall hold office until the next general election for the Office of the City Attorney. **(Amended by: Stats. November 1988, November 1998 and March 2002.)**

**Section 401(5). Vacancy, What Constitutes.**

The Office of City Attorney shall be declared vacant by the Council when the person elected or appointed thereto fails to qualify within ten days after his or her term is to begin, dies, resigns, ceases to be a resident of the City or absents himself or herself continuously from the City for a period of more than thirty days without permission from the Council, absents himself or herself from any ten consecutive regular meetings except on account of own illness or when absent from the City by permission of the Council, is convicted of a felony, is judicially determined to be an incompetent, is permanently so disabled as to be un-



able to perform the duties of his or her office, forfeits his or her office under any provision of this Charter, or is removed from office by judicial procedure. A finding of disability shall require the affirmative vote of at least six members of the Council after considering competent medical evidence bearing on the physical or mental capability of the City Attorney. **(Amended by: Stats. November 1988, November 1998 and March 2002.)**

**Section 401(6). Powers of the City Attorney.** The City Attorney shall serve as counsel to the Mayor, City Council, and each and every department of the City, except departments specifically enumerated by this Charter as an independent department of the City, in their official capacities pursuant to state law and the Charter, and as counsel, shall assert and maintain the attorney-client privilege pursuant to state law. He or she shall advise all officers, boards, commissions, and other agencies of the City on legal matters referred to him or her and shall render written legal opinions when the same are requested in writing by the Mayor or a member of the Council or the City Administrator or any other officer, board or commission of the City. He or she shall draft such ordinances, resolutions, contracts and other legal documents as directed by the Council or requested by the Mayor or City Administrator or any official board or commission of the City. He or she shall act as Counsel in behalf of the City or any of its officers, boards, commissions, or other agencies in litigation involving any of them in their official capacity. He or she may, whenever a cause of action exists in favor of the City, commence legal proceedings, subject to ratification by the City Council, when such action is within the knowledge of the City Attorney, or, he or she shall commence legal proceedings when directed by the City Council. He or she shall pass on the form and legality of all contracts of the City before the same are executed. He or she shall not settle or dismiss any litigation brought for the City nor settle any litigation brought against the City which may be under his control unless upon his written recommendation he or she is authorized to do so by the Council. He or she shall administer the office of City Atto-

ney, and shall have the power to appoint, discipline and remove all officers and employees of his or her office subject to the provisions of Article IX of the Charter. The Council may empower the City Attorney, at his or her request and without regard to the provisions of Article IX, to employ special legal counsel, and he or she shall have the power to appoint appraisers, engineers and other technical and expert services necessary for the handling of any pending or proposed litigation, proceeding or other legal matter. Upon the City Attorneys recommendation and the approval of the Council, when he or she has a conflict of interest in litigation involving another office of the City in his official capacity, such other officer may retain special legal counsel at City expense. **(Amended by: Stats. November 1988, November 1998, March 2002 and March 2004.)**

**Section 402. City Clerk.** The City Clerk shall be appointed or discharged by the City Administrator subject to confirmation by the Council. He shall be the Clerk of the Council and keep an accurate public record of all ordinances, resolutions and motions, shall have custody of the official seal and all official records committed to his care, make affidavits and administer oaths without charge in matters affecting the business of the City, conduct elections, and perform the other duties of a City Clerk under general law where not inconsistent with this Charter or the ordinances of the City. **(Amended by: Stats. November 1988 and March 2004)**

**Section 403. City Auditor.** The City Auditor shall be nominated and elected in the same manner, for the same term, and at the same election, as the Mayor. To be eligible to the office a person must be a qualified elector of the State of California, and shall be a resident of the City at the time of filing nomination papers and for thirty (30) days immediately preceding the date of filing, and shall be certified by the California State Board of Accountancy as a Certified Public Accountant or by the Institute of Internal Auditors as a Certified Internal Auditor. The salary of the office shall be set by the Council, which shall be not less than 70% nor more than 90% of the aver-

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age salaries of City Auditors of California cities within the three immediate higher and the three immediate lower cities in population to Oakland, and may not be reduced during the City Auditor's term of office, except as a part of a general reduction of salaries for all officers and employees in the same amount or proportion. The City Auditor shall have the power and it shall be his or her duty to audit the books, accounts, money and securities of all departments and agencies of the City and such other matters as the Council may request; to report to the Council periodically the results of such audits and to advise and make recommendations to the City Administrator regarding accounting forms design, fiscal and statistical reports and the methods or procedures for maintaining the accounts and accounting system throughout all departments, offices and agencies of the City. The City Auditor shall report to the Council instances of noncompliance with accepted accounting principles where recommendations for compliance have not been implemented by the City Administrator after reasonable time and opportunity. The City Auditor shall conduct surveys, reviews, and audits as the Auditor deems to be in the best public interest or as required by the Council or Mayor. For these purposes the public interest shall include, but not be limited to:

(1) Reviewing and appraising the soundness, adequacy and application of accounting, functional, and operating controls and reliability and timeliness of accounting and other data generated within the organization.

(2) Evaluating the city's internal controls to ensure that the City's assets and resources are reasonably safeguarded from fraud, waste, and mismanagement.

(3) Ascertaining compliance with Council's resolutions and policies and the Mayor's Administrative Instructions and Directives, as well as applicable State and Federal laws and regulations.

(4) Providing assistance to City Departments to enhance the effectiveness, efficiency and economy of their operations.

(5) Preparing an impartial financial analysis of all ballot measures, pursuant to the provisions of the

Municipal Code.

(6) Preparing impartial financial analyses of proposed major expenditures prior to the approval of such expenditures. These analyses will be for informational purposes only and will include, but not be limited to, proposals, contracts, ventures, programs and construction projects. The proposed major expenditures selected for these financial analyses will be based on requests from Mayor/Council and/or deemed to be prudently advisable in the objective and professional judgment of the City Auditor.

(7) Responding to requests for audit and reviews.

(8) Submitting, at a public meeting of the full City Council, a quarterly report to the Council and public on the extent of implementation of recommendations for corrective actions made in the City Auditor's report.

(9) The City Auditor shall conduct performance audits of each department as specified in the City budget.

The City Auditor shall be represented in all legal matters by the City Attorney except as provided otherwise in Section 401. **(Amended by: Stats. November 1979, November 1996 and March 2004)**

**Section 404. Board of Education.** (a) The Board of Education shall consist of ten District School Directors. Seven District School Directors shall be nominated and elected by the qualified electors of their respective districts for a term of four years. The elected District School Directors shall be elected at the times and in the manner in this Charter provided for members of the Council and shall be required to have the same qualifications. The elected School Directors' Districts shall have the same boundaries as the seven Council Districts. Three School District Directors shall be appointed by the Mayor for two-year terms commencing on May 1, 2000. The appointed Directors shall be residents of the City of Oakland and shall have the same powers and duties as elected Directors.

Effective May 1, 2004 (1) the office of appointed Director shall be abolished, (2) the Board of Education shall consist of seven District School Directors, elected in accordance with the provisions of this sec

tion 404, and (3) the provisions of this section pertaining to Mayoral appointment of Directors shall be null and void.

The provisions of the Education Code of the State of California shall apply as to matters not provided for in this Charter.

(b) Notwithstanding any other provisions of this section, the respective terms of office of the elected Directors of the Board of Education shall be as follows:

(1) Directors elected or appointed to serve terms beginning in 1985 shall serve in office until 11:00 a.m. on the Monday following January 1, in 1991.

(2) Directors elected or appointed to serve terms beginning in 1987 shall serve in office until 11:00 a.m. on the Monday following January 1, in 1993.

(3) At the 1990 General Municipal Election, District School Director seats in Districts 2, 4, and 6 shall be filled for 4-year terms.

(4) At the 1992 General Municipal Election, District School Director seats in Districts 1, 3, 5, and 7 shall be filled for 4-year terms thereafter.

Notwithstanding any other provisions of the Education or Elections Code or any other law:

(1) The three appointed Directors' qualifications shall be determined by the Mayor and may include, but shall not be limited to the following: (i) a Director who is an educator; (ii) a Director who is skilled in financial matters; and (iii) a Director who is a student or a recent graduate of the Oakland Unified School District; and

(2) Appointed Directors shall serve at the pleasure of the Mayor.

**(Amended by: Stats. June 1988, November 1988 and March 2000)**

(c) No District School Director of the Board of Education may interfere with the performance by the Superintendent of the District of those duties vested in or delegated to the Superintendent of the District by statute or by act of the Board of Education. Such interference specifically includes any attempt by a District School Director to order, coerce or influence, publicly or privately, any subordinate, official or employee of the District as to any matter within the authority of the Superintendent under statute or as con-

ferred by the Board of Education through its policies, procedures, resolutions, or minutes of meetings. Such interference will constitute official misconduct.

**(Added by: Stats. June 1990.)**

(d) Violations of California Education Code section 7053 and 35230 and California Government Code section 1090 and 1126(a) will constitute official misconduct. **(Added by: Stats. June 1990.)**

(e) Any District School Director who engages in official misconduct as defined in subsections (c) and (d) above may be removed from office, pursuant to Government Code section 3060, by an accusation presented by the Alameda County Grand Jury or as otherwise provided by law. **(Added by: Stats. June 1990.)**

#### **Section 405. (Repealed by: Stats. November 2000.)**

### **ARTICLE V THE CITY MANAGER**

**Section 500. Appointment.** The Mayor shall appoint a City Administrator, subject to the confirmation by the City Council, who shall be the chief administrative officer of the City. He shall be a person of demonstrated administrative ability with experience in a responsible, important executive capacity and shall be chosen by the Mayor solely on the basis of his executive and administrative qualifications. No member of the Council shall, during the term for which he is elected or appointed, or for one year thereafter, be chosen as City Administrator. **(Amended by: Stats. November 1988, November 1998 and March 2004.)**

#### **Section 501. Compensation and Tenure.**

The City Administrator shall receive the salary fixed by the Council. He shall be appointed for an indefinite term and shall serve at the pleasure of the Mayor. **(Amended by: Stats. November 1988 and March 2004.)**

**Section 502. Acting City Administrator.** The City Administrator shall designate two or more of his

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assistants or department heads, in the sequence in which they are to serve, as Acting City Administrator to serve as City Administrator in the temporary absence or disability of the City Administrator.  
**(Amended by: Stats. November 1988 and March 2004.)**

**Section 503. Powers of Appointment and Removal.** The City Administrator shall be responsible to the Council for the proper and efficient administration of all affairs of the City under his jurisdiction, and shall, subject to the provisions of Article IX of this Charter and except as otherwise provided in this Charter, have the power to appoint, assign, reassign, discipline and remove all directors or heads of departments and all employees under his jurisdiction. He may delegate to directors or other department heads responsible to him/her the authority to appoint, discipline and remove subordinate employees, subject to the provisions of Article IX of this Charter.  
**(Amended by: Stats. November 1988 and March 2004.)**

**Section 504. Duties.** The City Administrator shall have the power and it shall be his duty:

- (a) To execute and enforce all laws and ordinances and policies of the Council and to administer the affairs of the City.
- (b) To attend all meetings of the Council, and its committees, unless excused, and such meetings of boards and commissions as he chooses or which he is directed to attend by the Council, and to participate in discussions at such meetings.
- (c) To recommend to the Council such measures and ordinances as he may deem necessary or expedient and to make such other recommendations to the Council concerning the affairs of the City as he finds desirable.
- (d) To investigate affairs of the City under his supervision, or any franchise or contract for the proper performance of any obligation running to the City within his jurisdiction.
- (e) To control and administer the financial affairs of the City. He may appoint a Director of Finance to act under his direction.

(f) To prepare an annual budget under the direction of the Mayor and Council for the Mayor's submission to the Council.

(g) To prepare or cause to be prepared the plans, specifications, and contracts for work which the Council may order.

(h) To supervise the purchasing of materials and supplies and to make recommendations to the Council in connection with the awarding of public contracts and to see that all City contracts under his direction or that of the Council are faithfully performed.

(i) To prepare and submit to the Council such reports as it may require.

(j) To keep the Council at all times fully advised as to the financial condition and needs of the City.

(k) To prescribe such general rules and regulations as he may deem necessary or expedient to the general conduct of the administrative departments under his jurisdiction.

(l) When directed by the Council, to represent the City in its intergovernmental relations and to negotiate contracts for joint governmental actions, subject to Council approval.

(m) To devote his entire time to the duties and interest of the City.

(n) To perform such other duties as may be prescribed by this Charter or by ordinance or resolution.

**(Amended by: Stats. November 1988 and March 2004.)**

## **ARTICLE VI ADMINISTRATIVE ORGANIZATION**

**Section 600. Administrative Organization Authorized.** The Council shall by ordinance provide the form of organization through which the functions of the City under the jurisdiction of the City Administrator are to be administered. Any combination of authorized duties, powers and functions which in the judgment of the Council will provide the most efficient and economical service possible, consistent with the public interest and in keeping with accepted principles of municipal administration, may be authorized by such ordinance. All departments or other

administrative agencies so created shall be administered by the City Administrator or by a department head or other officer appointed by and responsible to him/her. (Amended by: Stats. November 1988 and March 2004.)

**Section 601. Boards and Commissions.** The Council may create by ordinance such operational, advisory, appellate or rule-making boards and commissions as may be required for the proper operation of any function or agency of the City and prescribe their function, duties, powers, jurisdiction and the number of board and commission members, their terms, compensation and reimbursement for expenses, if any, subject to the provisions of this Article. Members of boards and commissions shall be appointed by the Mayor subject to confirmation by the affirmative vote of five members of the Council and may be removed for cause, after hearing, by the affirmative vote of at least six members of the Council. Vacancies shall be filled for any unexpired term in the same manner as the original appointments were made; provided, however, that if the Mayor does not submit for confirmation a candidate to fill the vacancy within 90 days of the date the vacancy first occurred, the Council may fill the vacancy. If the Mayor does submit for confirmation a candidate to fill a vacancy within the 90-day time frame and the Council does not confirm the candidate, the 90-day period shall commence anew. For purposes of this Section, a seat filled by a holdover appointment will be considered vacant as of the expiration of the holdover's prior term of office. (Amended by: Stats. November 1988 and March 2004.)

**Section 602. Continuation.** The departments, agencies, boards and commissions heretofore created by prior Charter, ordinance or administrative order, other than those provided for in Articles IV, V, VII, and IX of this Charter, may be modified or discontinued by ordinance adopted pursuant to this Article and are hereby continued until so modified or discontinued. (Amended by: Stats. November 1988.)

## ARTICLE VII PORT OF OAKLAND

**Section 700. Establishment of a Port Department.** To promote and more definitely insure the comprehensive and adequate development of the Port of Oakland through continuity of control, management and operation, there is hereby established a department of the City of Oakland known as the "Port Department." (Amended by: Stats. November 1988.)

**Section 701. Board of Port Commissioners.** The exclusive control and management of the Port Department is hereby vested in the Board of Port Commissioners, which shall be composed of seven (7) members who shall be appointed by the Council, upon nomination by the Mayor.

No person shall be appointed as, or continue to hold office as, a member of the Board who is not at the time of his appointment, and has not been continuously for thirty (30) days immediately preceding his appointment, and who shall not continue to be during his term, a bona fide resident of the City of Oakland.

The members of the Board shall serve without salary or compensation. (Amended by: Stats. November 1988 and Stats. November 2000.)

**Section 702. Organization, Terms of Office.** The Board of Port Commissioners shall consist of seven (7) members nominated by the Mayor and appointed by the Council for a term of four (4) years. Members in office at the time this section takes effect shall continue in office until their successors are appointed and qualified. For terms commencing July 10, 1969, two (2) members shall be appointed to fill the positions expiring upon that date, and two (2) additional members shall be ap-



pointed to bring the membership of said Board to seven (7); provided, that the terms of such two additional members shall be for such original duration, in no event to exceed four years, as will insofar as practicable permit appointment at the end of subsequent terms of office of members, of either one or two members. (Amended by: Stats. November 1988.)

**Section 703. Removal.** Any member of the Board may be removed from office by the affirmative vote of six (6) members of the Council in the same manner and subject to the same conditions as the Council may remove the members of any of the Boards provided for in this Charter in Article VI. (Amended by: Stats. November 1988.)

**Section 704. Ordinances and Resolutions.** All action taken by the Board of Port Commissioners shall be by resolution, except as hereinafter set forth in this Article. Any member of the Board may require a record of the vote on any resolution to be made in its minutes. The Board shall keep a minute book wherein shall be recorded the proceedings taken at its meetings and it shall keep a record and index of all of its resolutions and ordinances.

No ordinance or resolution shall be passed or become effective without receiving the affirmative votes of at least four (4) members of the Board.

To constitute an ordinance a bill must, before final action thereon, be passed to print and published with the ayes and noes at least once in the official newspaper of the City. Between the first and final readings at least five (5) days shall elapse. The enacting clause of all ordinances passed by the Board shall be substantially in these words:

Be it ordained by the Board of Port Commissioners of the City of Oakland as follows:

All ordinances shall be signed by the President or Vice-President of the Board and attested by the Secretary.

A certified copy of each ordinance adopted by the Board shall be forthwith filed with the City Clerk, and the City Clerk shall keep a record and index

thereof which shall at all times be open to public inspection. (Amended by: Stats. November 1988.)

**Section 705. Ordinances Required in Certain Cases.** All proceedings for the acquisition of real property by purchase, condemnation, or otherwise, or the granting of any lease longer than one (1) year, the fixing, regulating, and altering schedules of rates, dockage, wharfage, tolls, and charges for all public-owned docks, piers, wharves, slips and other facilities, and for services rendered by the Port Department, and the adoption of all general rules and regulations of the Board, excepting administrative regulations of a temporary nature, shall be taken by ordinance. (Amended by: Stats. November 1988.)

**Section 706. Powers and Duties of the Board.** The Board of Port Commissioners shall have the complete and exclusive power, and it shall be its duty for and on behalf of the City:

(1) To sue and defend in the name of the City in all actions and proceedings wherein there is involved any matters within the jurisdiction of the Board.

(2) To make provisions for the needs of commerce, shipping, and navigation of the port, to promote, develop, construct, reconstruct, alter, repair, maintain, equip and operate all water front properties including piers, wharves, sea walls, docks, basins, channels, slips, landings, warehouses, floating and other plants or works, dredge, and reclaim land, construct, equip and operate terminal trackage with sidings and turnouts and railroad connections between docks, piers and other port structures, and connect the same with mainline tracks, and to establish, equip and operate all other facilities or aids incident to the development, protection and operation of the port, as may be deemed proper and desirable in its judgment, and it may modify its plans from time to time as the requirements of commerce, shipping and navigation may demand, and as part of such development and operation to provide for tugs, dredges, fireboats, barges, cold storage plants, and all other publicly owned facilities or appliances

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incident to the operation of the port, of such number and character, and in such places as the Board may deem feasible and proper.

(3) To take charge of, control, and supervise the Port of Oakland, including all the water front properties, and lands adjacent thereto, or under water, structures thereon, and approaches thereto, storage facilities, and other utilities, and all rights and interests belonging thereto, which are now or may hereafter be owned or possessed by the City, including all salt or marsh or tidelands and structures thereon granted to the City in trust by the State of California for the promotion and accommodation of commerce and navigation.

(4) To have control and jurisdiction of that part of the City hereinafter defined as the "Port Area" and enforce therein general rules and regulations, to the extent that may be necessary or requisite for port purposes and harbor development, and in carrying out the powers elsewhere vested in the Board.

Provided, however, that with the approval of the Council the Board may relinquish to the Council control of portions of the said area, and likewise, upon request of the Board, the Council may, by ordinance, enlarge the Port Area.

(5) To require owners of water terminal properties and facilities within the port to keep the same in proper condition and repair and to maintain them with especial reference to the reduction of fire hazard or nuisances, and it shall have the right to inspect such terminal facilities at reasonable times.

(6) To exercise all the powers pertaining to the waterfront, wharves, dredging machines, or the port and its operation and maintenance, which have been heretofore conferred upon the City and the Council by Section 106 of this Charter.

(7) To regulate the berthing, anchoring, towing, loading, unloading and mooring of vessels within the port.

(8) To handle, store and recondition all commodities; to sell or otherwise dispose of personal property within its possession or ownership, and, generally, to perform all services customary, necessary or expedient in connection with the development and operation of the port.

(9) To issue receipts, negotiable or otherwise, for property or merchandise in its charge or possession.

(10) To fix all rates, dockage, rentals, tolls, wharfage, and charges, for the use and occupation of the public facilities or appliances of the port, and for services rendered by the Port Department, and to provide for the collection thereof.

(11) To use, for loading and unloading cargo; with the right to collect tolls, dockage and other terminal charges thereon, such portions of the streets of the City ending or fronting upon the water areas of the harbor of said City, as may be used for said purposes.

(12) To build piers, wharves, docks, bulkheads, slips or other structures, across and upon such streets, provided only that access be provided to the public at the shoreward end thereof.

(13) To lend its aid to secure the improvement of navigable tidal waters within or adjacent to the port, where, in its opinion, such improvements are economically justifiable, and in the general carrying out of its powers to cooperate with neighboring cities, other ports, the State of California, or the United States Government, and appear before state, federal and other public legislative and administrative authorities.

(14) To manage the business of the Port and promote the maritime and commercial interests by proper advertisement of its advantages, and by the solicitation of business, within or without the port, within other states or in foreign countries, through such employees and agencies as it may deem expedient.

(15) To acquire in the name of the City by purchase, condemnation, gift, lease, or otherwise take over and hold all lands, property, property rights, leases, or easements, and personal property of every kind, necessary or convenient for the development and operation of the port, or for the carrying out of the powers herein granted to the Board. Whenever the Board determines that any lands owned by the City within its jurisdiction have become unnecessary for port purposes or harbor development, it may in its discretion transfer such lands to the control of the Council, free from all restrictions, or it may sell or

exchange such lands, by ordinance subject to the referendum provisions of this Charter.

(16) To purchase materials and supplies.

(17) To enter into contracts, agreements, or stipulations (other than leases) germane to the scope of its powers and duties.

(18) To let all work by contract, or order it done by any labor, as the Board may determine.

(19) To have and exercise the right of eminent domain within the "Port Area" on behalf of and in the name of the City for port purposes, harbor development or the carrying out of any of the powers granted to said Board, and to exclusively find and determine by ordinance adopted by a two-thirds vote of all of its members the public interest and necessity thereof.

(20) To appoint a Port Attorney, whose duty it shall be to pass upon the form and legality of all contracts within the jurisdiction of the Board, give legal advice to the Board on official matters, defend and (subject to direction from the Board) prosecute or compromise all actions at law or in equity and special proceedings for or against the City or any officers thereof in his official capacity, pertaining to matters within the jurisdiction of the Board. The Board shall fix and provide for his compensation.

(21) To employ and appoint an Executive Director, and such other officers, employees and agents as may be necessary in the efficient and economical carrying out of its functions and to prescribe and fix their duties, authority and compensation, and to require such officers, employees and agents to give a bond in such an amount as the Board may require for the faithful discharge of their duties. All offices and places of employment in the permanent service of the Board shall be created by ordinance duly passed.

(22) To provide and equip offices.

(23) To provide in the Port Area, subject to the provisions of Section 727, for other commercial development and for residential housing development; provided that any residential housing development shall be approved by the Board with the consent of the City Council.

(24) To provide for financing of Port facilities through the issuance of bonds or other forms of debt instruments which are secured by a pledge of, or are payable from, all or any part of the revenues of the Port and/or which may be secured in whole or in part by interests, liens or other forms of encumbrance (other than in or on fee title in land) or lease in property. Such debt instruments shall be issued and sold in such manner and upon such terms and conditions, and shall contain such provisions and covenants, as the Board may fix and establish by the provisions of one or more procedural ordinances. Such debt instruments shall not constitute a debt, liability or obligation of the City of Oakland and shall be payable exclusively from revenues and other assets of the Port.

(25) To provide for the issuance and sale, or to cause the issuance and sale, of any form of equity instruments or securities which represent interests in property (other than fee title and land) used or owned by the Port and which participate in incidents of ownership of such property; provided, that such property shall not include property of the Port which was owned or used by the Port prior to the date of the adoption of this Section. For the purpose of facilitating the issuance and sale of such equity instruments, the Port is authorized to create and to participate in legal entities, including but not limited to, trusts, corporations and partnerships, and to pledge and grant security interests, liens or other forms of encumbrance or lease in such property (other than fee title in land) to secure the repayment of such equity instruments. Such equity instruments, or combinations of debt and equity instruments, shall be issued and sold, and such entities created, in such manner and upon such terms and conditions, as the Board may fix and establish by the provisions of one or more procedural ordinances. Such equity instruments shall not constitute a debt, liability or obligation of the City of Oakland and shall be payable exclusively from revenues, other funds and property of the Port pledged thereto.

(26) To expend all funds necessary to the carrying out of the powers and duties herein expressed.

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(27) To adopt and enforce such ordinances, orders, regulations and practices as are necessary for the proper administration and discharge of its duties and powers, or for the management and government of the port, and its facilities.

(28) To prescribe fines, forfeitures and penalties for the violation of any provision of this Article, or of any ordinance, but no penalty shall exceed Five Hundred Dollars (\$500.00) or six (6) months imprisonment, or both.

(29) To have and exercise on behalf of the City all the rights, powers and duties in respect to the subject matters herein provided for, that are now or which may hereafter be vested in the City, or any of its departments or officers, or which may be provided for by general law.

(30) To do and perform any and all other acts and things which may be necessary and proper to carry out the general powers of the City, or any of the provisions of this Article, and to exercise all powers not in conflict with the Constitution of the State, or with this Charter, germane to the scope of its powers, purposes and duties. (Amended by: Stats. November 1988.)

**Section 707. Operation of Facilities.** Notwithstanding any other provision of this Charter to the contrary, the Board shall not be required to directly operate all of the properties, facilities and utilities under its control or jurisdiction, and shall have the power to authorize the operation of any of such properties, facilities and utilities by a private person, firm, association or corporation, whether by lease, franchise, license, assignment, permit or otherwise, upon such terms and conditions as the Board shall prescribe, which terms and conditions shall include control over the rates, charges and practices of said private party to the extent permitted by law. (Amended by: Stats. November 1988.)

**Section 708. Building Permits.** No person or persons shall construct, extend, alter, improve, erect, remodel or repair any pier, slip, basin, wharf, dock or other harbor structure, or any building or structure within the "Port Area" without first applying

for and securing from the Board a permit so to do, in accordance with the rules and regulations adopted by it. In approving or denying the right to said permit, the Board shall consider the application therefor, the character, nature and size and location of the proposed improvement, and exercise a reasonable and sound discretion in the premises.

Provided, however, that applications for building permits pertaining to privately owned property within the "Port Area" shall be made to the Executive Director who shall consider and act upon them in the same manner as applications for such permits made to the Board. Any person excepting to any denial, suspension or revocation of a permit applied for or held by him pursuant to the provisions of this section, or any person excepting to the granting of, or to the refusal to suspend or revoke a permit applied for or held under the provisions of this section, may appeal to the Board by filing with the Secretary 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 denial, suspension, revocation or granting, or refusal to suspend, revoke or grant, such permit, constituting the basis of such appeal, but in no event later than thirty (30) days after the date of the denial, suspension, revocation or granting of the permit. The Secretary shall forthwith set said matter for hearing before the Board and cause notice thereof to be given (1) to the appellant, and (2) to the adverse party or parties, or to the attorney, spokesman or representative thereof, 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. The Board may continue such hearing from time to time, and its findings and conclusions on the appeal shall be final and conclusive in the matter.

Such permit issued by the Board or the Executive Director shall be in addition to any permit which may be required by law from the Building Inspector of the City. (Amended by: Stats. November 1988.)

**Section 709. Leases.** The Board shall have the power to make and enter into any lease of any properties belonging to or possessed by the City under its jurisdiction for a term of not to exceed sixty-six (66) years, provided that all leases made shall be subject to referendum. **(Amended by: Stats. November 1988.)**

**Section 710. Contracts.** All contracts shall be made and entered into in accordance with the conditions and procedures established by the Board, but subject to bid limit and race and gender participation programs established by the Council pursuant to the provisions of Sections 807 and 808 of this Charter. **(Amended by: Stats. November 1988, March 1996.)**

**Section 711. Supervision of Leases, etc.** The Board shall take over and control, and shall have the power to grant, all leases, concessions, easements, privileges, spur tracks and other permits, wharfing-out rights, and waterfront or other franchises relating to the harbor or port and located within the "Port Area" and receive the income therefrom, but this shall not include franchises for the construction and maintenance of railroads, power lines, gas mains and other utilities of a general nature which may extend through other portions of the City into the Port Area and which are within the jurisdiction of the Council pursuant to the provisions of Article X of this Charter, and subject to the supervision of the City Administrator.

It shall be the duty of the Board to see that all provisions of such leases, concessions, easements, privileges, permits, rights or franchises within its jurisdiction are faithfully observed, and it may cause to be instituted such actions or proceedings in the name of the City as may be necessary to enforce the provisions thereof, or to revoke, cancel, or annul them when they have become forfeitable in whole or in part, or are illegal, or void or voidable. **(Amended Stats. November 1988 and March 2004.)**

**Section 712. Restrictions of Powers of Council.** No franchise shall be granted, no property shall be

acquired or sold, no street shall be opened, altered, closed or abandoned, and no sewer, street, or other public improvement shall be located or constructed in the "Port Area," by the City of Oakland, or the Council thereof, without the approval of the Board. **(Amended by: Stats. November 1988.)**

**Section 713. Public Streets.** Whenever the Board shall determine that it is necessary to open, close, improve, alter or vacate a public street or part of a public street within the "Port Area," a certified copy of the resolution so determining such necessity shall be filed by the Board in the Office of the City Clerk, with the request that the City Administrator and the Council initiate and carry to completion the proceedings necessary to effect said proposal. **(Amended by: Stats. November 1988 and March 2004.)**

**Section 714. Personnel System.** All permanent places of employment in and under the Board shall be included within the personnel system of the City established pursuant to and subject to the provisions of Article IX of this Charter, except the Executive Director and his two principal assistants, the Secretary of the Board, the Port Attorney and Legal Assistants, chief wharfinger, field and traffic representatives, and all persons employed in the physical or mechanical handling, moving or checking of cargo and freight. The exemption of such personnel from the operation of civil service rules shall not in any way affect such pre-existing civil service rights as such employee may hold. **(Amended by: Stats. November 1988.)**

**Section 715. Annual Budget.** The Board shall annually, on or before the fourth Monday of May, or not less than one week prior to the submission of the annual appropriation ordinance by the City Administrator, should the Council advance the date therefor, but not later than the third Monday of July, carefully prepare a budget setting forth the estimated receipts of the Port, and revenue from other sources, for the ensuing year, and the sums of money necessarily required for the administration of the department, and for maintenance, operation, construction and devel-

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opment of the port and its facilities for the ensuing year, and stating the amount necessary to be raised by tax levy for said purposes. Said budget when so prepared, shall be certified by the President and Secretary of the Board, and a certified copy thereof shall, on or before said date, be filed with the Council, one with the City Administrator, and one with the Auditor. (**Amended by: Stats. November 1988 and March 2004.**)

**Section 716. Tax Levy Funds.** In the event that said Port budget, as provided for in the foregoing section, shall request or provide for the allocation or appropriation to the Port by the Council of any funds raised or to be raised by tax levy or in any manner to be obtained from general revenues of the City, or shall request the incurring or payment of any financial obligation by the City for the Port's use and benefit, or shall not provide for Board servicing of existing or future general obligation bonds of the City issued for Port purposes, the Council shall have the authority to reject said budget and to require it to be revised to meet with Council approval, subject, however, to the Board's covenants with the holders of all of the then outstanding revenue bonds issued by the Board.

The Treasurer shall keep all Port funds separate from other funds in his possession, and the Board shall have the exclusive management and disbursement of the same. (**Amended by: Stats. November 1988.**)

### Allocation of Funds.

**Section 717 (1).** All Port facilities, airport facilities and terminal facilities of any kind or character are hereby consolidated and shall be operated as a single project by the Board in the interest of transportation by land, by sea and by air, it being hereby found and determined that transportation facilities of all classes implement and augment each other to such an extent that the same must in the public interest be operated singly and under one central supervision and control. Wherever in this Charter the terms "port", "project", or "facilities" are used, the same

shall include all facilities under the jurisdiction of the Board, irrespective of whether the same shall be port or airport facilities or other real or personal property or equipment of the Port and related improvements, structures or facilities. (**Amended by: Stats. November 1988.**)

**Section 717 (2).** All moneys once apportioned or appropriated to the Board, including, without limiting the generality of the foregoing, all moneys heretofore apportioned or appropriated to and now under the control of the Board, shall be and remain under the control and order of and shall be expended by the Board for the purpose for which apportioned or appropriated and shall be kept separate and apart from all other moneys of the City or the Board. All surplus moneys which, in the judgement of the Board, are not needed for the purpose for which apportioned or appropriated, shall be allocated to and deposited in the Revenue Fund provided for in Section 717 (3). (**Amended by: Stats. November 1988.**)

**Section 717 (3).** All income and revenue from the operation of the port or from the facilities of the port, of whatever kind or nature, and all net income from leases or any other source of income or revenue, including, without limiting the generality of the foregoing, all such income and revenue now under the control of the Board, shall be and remain under the control and order of and shall be expended by the Board; provided that all such income and revenue shall be allocated to and deposited in a special fund in the City Treasury (which is hereby created) designated "Port Revenue Fund" and shall be kept separate and apart from all other moneys of the City or the Board and shall be used and applied for the following purposes and in the following order of priority, to wit:

**First:** For the payment, as the same become due and payable, of the principal of and interest on any or all general obligation bonds of the City of Oakland heretofore and hereafter issued for port purposes, but only to the extent required by the Constitu-

tion of the State of California or otherwise as determined by resolution of the Board.

**Second:** For the payment of the principal of and interest on revenue bonds, or other evidences of indebtedness payable solely from revenues as in Section 718 provided, which are due or become due during the fiscal year in which the revenues in said funds, or either thereof, are received or are to be received, together with reserve fund payments, sinking fund payments or similar charges in connection with such revenue bonds due or to become due in such fiscal year, including all payments required to be made pursuant to the terms of any resolution authorizing the issuance of revenue bonds, or required by the terms of the contract created by or upon the issuance of revenue bonds.

**Third:** For the payment of all costs of maintenance and operation of the facilities from or on account of which such money was received. General costs of administration and overhead of the Board not directly chargeable to each facility under its control shall be apportioned fairly by the Board, upon such reasonable basis as it may determine, to each such facility.

**Fourth:** For defraying the expenses of any pension or retirement system applicable to the employees of the Board.

**Fifth:** For necessary additions, betterments, improvements, repairs or enlargements of any facilities, and, to the extent determined by a resolution or resolutions of the Board, for replacements, renewals or reconstruction of any facilities.

**Sixth:** For establishing and maintaining reserve or other funds to insure the payment on or before maturity of any or all general obligation bonds of the City now outstanding or hereafter issued for any facility under the control of the Board, but only to the extent required by the Constitution of the State of California or otherwise as determined by resolution of the Board.

**Seventh:** For establishing and maintaining reserve or other funds to insure the payment on or before maturity of any or all revenue bonds of the Board hereafter issued.

**Eighth:** For establishing and maintaining such other reserve funds pertaining to the facilities of the Board as shall be determined by a resolution or resolutions of the Board.

**Ninth:** For transfer to the General Fund of the City, to the extent that the Board shall determine that surplus moneys exist in such fund which are not then needed for any of the purposes above stated. (Amended by: Stats. November 1988.)

#### **Financing of Harbor and Airport Operations.**

**Section 718 (1). General Obligation Bonds of the City.** The City of Oakland may from time to time incur general obligation bonded indebtedness in the manner provided by law for the acquisition, construction or completion of any port facilities or improvements of the Port of Oakland, including land, rights of way and air easements. The proceeds from the sale of any general obligation bonds now authorized, or which may hereafter be authorized, for any such purposes, shall be under the control of, and shall be expended by, the Board for the objects and purposes for which such general obligation bonded indebtedness was incurred. Whenever, in the opinion of the Board, it is desirable for the City of Oakland to incur additional general obligation bonded indebtedness for any project within the jurisdiction or control of the Board, the Board shall prepare tentative plans, estimates and bond retirement schedules and submit its recommendations in writing to the City Council, which shall thereupon take such action as it deems advisable to reject or carry out such recommendations. (Amended by: Stats. November 1988.)

**Section 718 (2). Methods of Financing Not Exclusive.** Nothing in this Section 718 contained shall in any way abridge, control, limit, restrict or revoke the power of the electors of the City of Oakland to vote for and cause to be authorized and issued general obligation bonds of the City of Oakland for the acquisition, construction or completion of any project herein defined, or any additions thereto or betterments or improvements thereof, irrespective of

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whether or not revenue bonds for such purpose have been, or may thereafter be issued hereunder, and nothing herein contained shall prevent the financing of any project or any additions, betterments or improvements thereof from any other funds which may be legally available for that purpose. Revenue bonds authorized to be issued hereunder shall not be subject to charter limitations as to the amount of general obligation bonded indebtedness of the City of Oakland nor be taken into consideration in determining the amount of general obligation bonded indebtedness which the City of Oakland is authorized to incur, and the issuance of revenue bonds as in this Article VII provided shall be deemed to constitute a supplemental and additional method of providing funds for the financing of harbor, airport or other real or personal property or equipment of the Port and related improvements, structures or facilities. Such revenue bonds shall be issued in the name of the Board of Port Commissioners of the City of Oakland and shall constitute obligations only of the Board, payable in accordance with their terms from revenues of any project, as in this Article VII authorized. (Amended by: Stats. November 1988.)

**Section 718 (3). Rates, Tolls and Charges.** Without limiting any power in this Charter conferred upon the Board, the Board has power for any of the purposes of this Section 718 to fix rates, tolls, fees, rentals or charges for the use of the facilities provided by any project, or for any services rendered in connection therewith, and to alter, change or modify the same at its pleasure, subject to any contractual obligation which may be entered into by the Board with respect to the fixing of such rates, tolls, fees, rentals or other charges; and, by a resolution of issue or otherwise, to enter into covenants to increase rates, tolls, fees, rentals or other charges from time to time; provided, however, that any person shall be permitted to use or operate any facilities provided by any project only upon payment of the regularly established charge therefor, except as may be otherwise specifically provided in a resolution of issue. All rates, fees, rentals and other charges shall be paid only in such coin or

currency as on the date of payment is legal tender for public and private debts. (Amended by: Stats. November 1988.)

**Section 718 (4). Authorization of Revenue Bonds.** Each issue of revenue bonds shall be authorized by the Board by a resolution of issue adopted by the affirmative votes of at least five (5) members of the Board at a duly assembled meeting. Each resolution of issue shall prescribe the purpose or purposes for which, and the terms and conditions on which, said revenue bonds are to be issued. (Amended by Stats. November 1988.)

**Section 718 (5). Validity of Revenue Bonds Not Affected by Actions of City or Boards Relative to Project.**

(a) The validity of the authorization and issuance of any revenue bonds by the Board shall not be dependent on or affected in any way by:

(i) Proceedings taken by the City or the Board for the acquisition, construction or completion of any project or any part thereof;

(ii) Any contracts made in connection with the acquisition, construction, or completion of any project; or

(iii) The failure to complete any project for which bonds are authorized to be issued. (Amended by: Stats. November 1988.)

**Section 718 (6). Rights of Bondholders.** Except as provided otherwise in any resolution of issue, the holder of any bond issued pursuant to this Section 718 may, by mandamus or other appropriate proceedings, require and compel the performance of any of the duties imposed upon the Board or the City or the Council or any official or employee of the Board or the City or assumed by any thereof in connection with the acquisition, construction, completion, operation, maintenance, repair, reconstruction or insurance of any project, or the collection, deposit, investment, application and disbursement of rates, fees and charges derived from the operation and use of any project and all other revenues, or in connection with the deposit, investment or disburse-

ment of the proceeds received from the sale of the bonds under this Section. The enumeration of such rights and remedies does not, however, exclude the exercise or prosecution of any other rights or remedies available to the holders of bonds issued pursuant to this Section 718. (Amended by: Stats. November 1988.)

**Section 718 (7). Section Confers Complete Authority.** The provisions of this Section constitute full and complete authority for the issuance of revenue bonds as herein provided by the Board and no other procedure, or proceedings, consents, approvals, orders or permission from the Council or any municipal officer or board of the City of Oakland, shall be required for the acquisition, construction or completion of any project, or the issuance of any revenue bonds under this Section 718 except as specifically provided in this Section 718. The powers and authorities conferred by this Section are in addition to and supplemental to all other powers and authorities conferred upon the Board. (Amended by: Stats. November 1988.)

**Section 719. Moneys on Hand.** All moneys in the Harbor Maintenance and Improvement Fund at the time of the adoption of this Charter and all other revenues and funds in the possession of the City set aside for port purposes, shall immediately be under the jurisdiction and control of the Board. (Amended by: Stats. November 1988.)

**Section 720. Duties of Treasurer.** All moneys under the control of the Board shall be immediately paid over to the Treasurer of the City of Oakland, who shall have the care and custody of said funds, and shall keep separate accounts thereof, and pay out the same, as provided in this Charter. (Amended by: Stats. November 1988.)

**Section 721. Revolving Fund.** The Board shall have authority to set up by ordinance a sufficient contingent or revolving fund from which the Executive Director shall be entitled to draw warrants directly upon the Treasurer for the prompt payment of

transient laborers, and the Treasurer shall upon presentation of same, pay such warrants. Statements of such payments shall be filed with the Board at its regular meetings and shall be approved by the Board and endorsed by the President and Secretary thereof, and audited as in the case of ordinary claims. (Amended by: Stats. November 1988.)

**Section 722. Additional Powers.** The City Council, subject to the approval of the Board, may by ordinance confer upon and delegate to the Board, from time to time, such additional powers and duties which may be vested in it, and which it may deem necessary or convenient to carry out the general purposes of such Board. (Amended by: Stats. November 1988.)

**Section 723. Liberal Construction.** If any section, clause, word, or provision of this Article shall be held unconstitutional, the other sections, clauses, words, or provisions of this Article shall not be affected thereby. All the provisions of this Article shall be liberally construed. (Amended by: Stats. November 1988.)

**Section 724.** The provisions of this Article shall supersede and control all other provisions of the Charter in conflict therewith. To all other extent, the powers, duties, and functions heretofore vested in the Council, or any of the officials, boards, or departments of the City, shall be unimpaired. (Amended by: Stats. November 1988.)

**Section 725. Port Area.** The "Port Area" under the exclusive jurisdiction of the Board of Port Commissioners shall be the same area that existed immediately prior to the adoption of this Section, as it has been defined by Charter and by ordinance, and as it may hereafter be altered by Council ordinance in accordance with and upon the recommendation of the Board, or by amendment of this Charter. (Amended by: Stats. November 1988.)

**Section 726.** Without denial or disparagement of other powers now held by or that may hereafter be

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given to the City of Oakland or its legislative bodies under or by the Constitution or the laws of the State of California, the City Council and Board of Port Commissioners are hereby authorized and empowered to grant and convey all or any portion of or interest in the tidelands and submerged lands located in the Middle Harbor area of the City, lying between the Estuary of San Antonio and Seventh Street, and westward of Bay Street extended southerly, to the United States of America for public and governmental (including military or naval) purposes, subject to such terms, conditions, and reservations, if any, as the Council and Board shall deem proper. No ordinance or other measure passed in respect to any such grant shall be subject to the referendum provisions of this Charter. All proceedings heretofore taken to accomplish such a grant are hereby ratified, confirmed and approved, and the completion thereof and making of such grant is hereby authorized. **(Amended by: Stats. November 1988.)**

**Section 727. Land Use and Development.** The Board shall develop and use property within the Port Area for any purpose in conformity with the General Plan of the City. Any variation therefrom shall have the concurrence of the appropriate City board or commission; provided, that the Board may appeal to the Council for final determination of adverse decisions of such board or commission, in accordance with uniform procedures established by the Council. **(Amended by: Stats. November 1988.)**

**Section 728. Living Wage and Labor Standards at Port-Assisted Businesses.**

(1) **Scope and Definitions.** The following definitions shall apply throughout this Section:

(A) "Port" means the Port of Oakland.

(B) "Port-Assisted Business" or "PAB" means (1) any person involved in a Port Aviation or Port Maritime Business receiving in excess of \$50,000 worth of financial assistance from the Port, or (2) any Port Contractor involved in a Port Aviation or Port Maritime Business if the person employs more than 20 persons per pay period, unless in the prior 12 pay periods the person has not had more than 20 such

employees and will not have more than 20 persons in the next 12 pay periods. A PAB shall be deemed to employ more than 20 persons if it is part of an 'enterprise' as defined under the Fair Labor Standards Act employing more than 20 persons. "Port Contractor" means any person party to a Port Contract as herein defined.

(C) "Port Contract" means:

(1) Any service contract with the Port for work to be performed at the Port under which the Port is expected to pay more than \$50,000 over the term of the contract;

(2) Any contract, lease or license from the Port involving payments to the Port expected to exceed \$50,000 either (a) over the term of the contract, lease or license, or (b) during the next 5 years if the current term is less than 1 year but may be renewed or extended, either with or without amendment;

(3) Any subcontract, sublease, sublicense, management agreement or other transfer or assignment of any right, title or interest received from the Port pursuant to any of the foregoing contracts, leases or licenses.

A contract, lease or license with the Port or any agreement derived therefrom shall not be deemed a Port Contract unless entered into after enactment of this Section, or amended after enactment of this Section to benefit in any way the party dealing with the Port.

(D) "Employee" means any individual employed by a PAB in Port related employment.

(E) "Person" includes any natural person, corporation, partnership, limited liability company, joint venture, sole proprietorship, association, trust or any other entity.

(F) "Valid collective bargaining agreement" as used herein means a collective bargaining agreement entered into between the person and a labor organization lawfully serving as the exclusive collective bargaining representative for such person's employees.

(G) "Port Aviation or Port Maritime business" means any business that principally provides services related to maritime or aviation business related services or whose business is located in the maritime or aviation division areas as defined by the Port.

(2) Exemptions from Coverage. In addition to the above exemption for workforces of fewer than 20 workers, the following persons shall also be exempt from coverage under this Section:

(A) An Employee who is (1) under twenty-one (21) years of age and (2) employed by a nonprofit entity for after-school or summer employment or for training for a period not longer than ninety (90) days, shall be exempt.

(B) An Employee who spends less than 25 percent of his work time on Port-related employment.

(C) A person who employs not more than 20 employees per pay period.

(3) Payment of Minimum Compensation to Employees. Port-Assisted Businesses shall provide compensation to each Employee of at least the following:

(A) Minimum Compensation. The minimum compensation shall be wages and health benefits totaling at least the rate of the living wage ordinance of the City of Oakland.

(B) Credit for Health Benefits. The PAB shall receive a credit against the minimum wage required by this Section for health benefits in the amount provided by and in accordance with the living wage ordinance of the City of Oakland.

(4) Notifying Employees of their Potential Right to the Federal Earned Income Credit. Each PAB shall inform each Employee who makes less than twelve dollars (\$12.00) per hour of his or her possible right to the federal Earned Income Credit ("EIC") under Section 2 of the Internal Revenue Code of 1954, 26 U.S.C. §32, and shall make available the forms required to secure advance EIC payments from the business. These forms shall be provided to the eligible Employees in English (and other languages spoken by a significant number of such Employees) within thirty (30) days of employment under this Section and as required by the Internal Revenue Code.

(5) Preventing Displacement of Workers. Each PAB, which is to replace a prior PAB shall offer employment to the Service Employees of the prior PAB, if, these Employees worked for the prior PAB for at least 90 calendar days. Such Employees may be not be terminated by the new PAB during the first 90

workdays except for just cause. The new PAB may operate at lower staffing levels than its predecessor but in such event, shall place the prior Employees on a preferential reinstatement list based on seniority. For purposes of this Section, a PAB "replaces" another if it (1) assumes all or part of the lease, contract or subcontract of a prior employer or obtains a new lease, contract, or sublease, and (2) offers employment which Employees of the prior PAB can perform. In the case of a replacement connected to the new PAB relocating from another location, in staffing decisions the new PAB may recognize seniority from its prior locations in addition to the seniority of the prior PAB's workforce. "Service Employees" means all employees except manager, supervisors, professionals, paraprofessionals, confidential and office employees.

#### (6) Waiver.

(A) A PAB who contends it is unable to pay all or part of the living wage must provide a detailed explanation in writing to the Port Executive Director who may recommend a waiver to the Port board. The explanation must set forth the reasons for its inability to comply, including a complete cost accounting for the proposed work to be performed with the financial assistance sought, including wages and benefits to be paid all employees, as well as an itemization of the wage and benefits paid to the five highest paid individuals employed by the PAB. The PAB must also demonstrate that the waiver will further the public interests in creating training positions which will enable employees to advance into permanent living wage jobs or better and will not be used to replace or displace existing positions or employees or to lower the wages of current employees.

(B) The Port Board will grant a waiver only upon a finding and determination that the PAB has demonstrated the necessary economic hardship and that waiver will further the public interests in providing training positions which will enable employees to advance into permanent living wage jobs or better. However, no waiver will be granted if the effect of the waiver is to replace or displace existing positions or employees or to lower the wages of current employees.

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(C) Such waivers are disfavored, and will be granted only where the balance of competing interests weighs clearly in favor of granting the waiver. If waivers are to be granted, partial waivers are favored over blanket waivers. Moreover, any waiver shall be granted for no more than one year. At the end of the year the PAB may reapply for a new waiver which may be granted subject to the same criteria for granting the initial waiver.

(D) Any party who objects to the grant of a waiver by the Port Board may appeal such decision to the City/Port Liaison Committee, who may reject such waiver.

(7) Retaliation and Discrimination Barred; No Waiver of Rights.

(A) A PAB shall not discharge, reduce the compensation of or otherwise discriminate against any person for making a complaint to the Port, participating in any of its proceedings, using any civil remedies to enforce his or her rights, or otherwise asserting his or her rights under this Section.

(B) Any waiver by an individual of any of the provisions of this Section shall be deemed contrary to public policy and shall be void and unenforceable, except that Employees shall not be barred from entering into a written valid collective bargaining agreement waiving a provision of this Section if such waiver is set forth in clear and unambiguous terms. Any request to an individual by a PAB to waive his or her rights under this Section shall constitute a violation of this Section.

(8) Enforcement.

(A) Each PAB shall maintain for each person in Port-related employment a record of his or her name, pay rate and, if the PAB claims credit for health benefits, the sums paid by the PAB for the Employee's health benefits. The PAB shall submit a copy of such records to the Port at least by March 31st, June 30th, September 30th and December 31st of each year, unless the PAB has employed less than 20 persons during the preceding quarter in which case the PAB need only submit a copy of such records every December 31st. Failure to provide a copy of such records within five days of the due date will result in a penalty of five hundred dollars (\$500.00)

per day. Each PAB shall maintain a record of the name, address, job classification, hours worked, and pay and health benefits received of each person employed, and shall preserve them for at least three years.

(B) If a PAB provides health benefits to persons in Port-related employment but does not pay for them on a per-hour basis, then upon the PAB's request, the amount of the hourly credit against its wage obligation shall be the Port's reasonable estimate of the PAB's average hourly cost to provide health benefits to its Employees in Port-related employment. The PAB shall support its request with such documentation as is reasonably requested by the Port or any interested party, including labor organizations in such industry.

(C) Each PAB shall give written notification to each current Employee, and to each new Employee at time of hire, of his or her rights under this Section. The notification shall be in the form provided by the Port in English, Spanish and other languages spoken by a significant number of the Employees, and shall also be posted prominently in areas at the work site where it will be seen by all Employees.

(D) Each PAB shall permit access to work sites and relevant payroll records for authorized Port representatives for the purpose of monitoring compliance with this Section, investigating employee complaints of noncompliance and evaluating the operation and effects of this Section, including the production for inspection and copying of its payroll records for any or all persons employed by the PAB. Each PAB shall permit a representative of the labor organizations in its industry to have access to its workforce at the Port during non-working time and in non-work areas for the purpose of ensuring compliance with this Section.

(E) Notwithstanding any provision in Article VI of this Charter to the contrary, the City Administrator may develop rules and regulations for the Port's activities in (1) Port review of contract documents to ensure that relevant language and information are included in the Port's RFP's, agreements and other relevant documents, (2) Port monitoring of the operations of the contractors, subcontractors and financial

assistance recipients to insure compliance including the review, investigation and resolution of specific concerns or complaints about the employment practices of a PAB relative to this section, and (3) provision by the Port of notice and hearing as to alleged violations of this section.

(9) Private Rights of Action.

(A) Any person claiming a violation of this Section may bring an action against the PAB in the Municipal Court or Superior Court of the State of California, as appropriate, to enforce the provisions of this Section and shall be entitled to all remedies available to remedy any violation of this Section, including but not limited to back pay, reinstatement or injunctive relief. Violations of this Section are declared to irreparably harm the public and covered employees generally.

(B) Any employee proving a violation of this Section shall recover from the PAB treble his or her lost normal daily compensation and fringe benefits, together with interest thereon, and any consequential damages suffered by the employee.

(C) The Court shall award reasonable attorney's fees, witness fees and costs to any plaintiff who prevails in an action to enforce this Section.

(D) No criminal penalties shall attach for any violation of this Section, nor shall this Section give rise to any cause of action for damages against the Port or the City.

(E) No remedy set forth in this Section is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights hereunder in a court of law. This Section shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination.

(10) Severability. If any provision or application of this Section is declared illegal, invalid or inoperative, in whole or in part, by any court of competent jurisdiction, the remaining provisions and portions thereof and applications not declared illegal, invalid or inoperative shall remain in full force or effect. The courts are hereby authorized to reform the provisions of this Section in order to preserve the maximum permissible effect of each subsection herein. Nothing herein may be construed to impair any contractual

obligations of the Port. This Section shall not be applied to the extent it will cause the loss of any federal or state funding of Port activities. (**Amended by: Stats. March 2002 and March 2004**)

## ARTICLE VIII FISCAL ADMINISTRATION

**Section 800. Fiscal Year.** The fiscal year for the City shall commence on the first day of July of each year. (**Amended by: Stats. November 1988.**)

**Section 801. Budget.** Each department, office and agency of the City shall provide in the form and at the time directed by the Mayor and City Administrator all information required by them to develop a budget conforming to modern budget practices and procedures as well as specific information which may be prescribed by the Council. Under the direction of the Mayor and Council, the City Administrator shall prepare budget recommendations for the next succeeding fiscal year which the Mayor shall present to the Council, in a form and manner and at a time as the Council may prescribe by resolution. Following public budget hearings, the Council shall adopt by resolution a budget of proposed expenditures and appropriations necessary therefor for the ensuing year, failing which the appropriations for current operations of the last fiscal year shall be deemed effective until the new budget and appropriation measures are adopted. (**Amended by: Stats. November 1988 and March 2004.**)

**Section 802. Levy of Property Tax.** Not later than the date set by state law for this purpose, the Council shall by resolution fix the rate of property tax to be levied and levy the tax upon all taxable property in the City. Such rate shall be adequate to meet all obligations of the City for the fiscal year, taking into account estimated revenue from all other sources. Should the Council fail to fix the rate and levy taxes within the time prescribed, the rate for the next preceding fiscal year shall thereupon be automatically effective, and a tax at such rate shall be levied upon all taxable property in the City for the

current fiscal year. (Amended by: Stats. November 1988.)

**Section 803. Cash Pool Operations.** Municipal obligations may be financed by cash pool operations and utilization of a check system (as contrasted with a warrant system). Except for those funds restricted by bond indentures, state or federal law, other sections of this Charter or specific conditions of the legislation creating them, temporary transfers between funds are permitted. (Amended by: Stats. November 1988.)

**Section 804. Funds.** The Council shall create, reduce or eliminate such Funds as are required for proper accounting and fiscal management, or required as a condition of receiving funds from any other government, or to fulfill any bonded or other contractual obligation of the City. (Amended by: Stats. November 1988.)

**Section 805. Accounting System.** The City Administrator shall establish and maintain a system of financial procedures, accounts and controls for the City government and each of its departments, offices and agencies which shall conform to generally accepted principles of accounting which shall be adequate to account for all monies on hand and for all income and expenditures in such detail as will provide complete and informative data concerning the financial affairs of the City and in such manner as the Council may prescribe and as will be readily susceptible to audit and review. (Amended by: Stats. November 1988 and March 2004.)

**Section 806. Receipts and Expenditures.** All monies received by the City shall be deposited in the City Treasury, and no monies shall be disbursed from the treasury without the approval of the City Administrator or of another officer duly authorized by him/her. No expenditure of City funds shall be made except for the purposes and in the manner specified by an appropriation of the Council; nor shall any disbursement be made unless obligations are properly supported by accounting evidence, sufficient money

is available in the City Treasury and there is an adequate unencumbered appropriation balance in the proper account classification. The City Administrator or other officer authorized by him/her to make disbursements shall be represented by the City Attorney in all legal matters in connection therewith, except as provided otherwise in Section 401. (Amended by: Stats. November 1988 and March 2004.)

**Section 807. Goods and Services.** The City Administrator or an officer authorized by him/her shall purchase or contract for equipment, materials, supplies and public works required by the City in the manner prescribed by ordinance, except as otherwise provided herein. (Amended by: Stats. November 1988 and March 2004.)

**Section 808. Bids and Awards.**

(a) The Council shall establish by ordinance the conditions and procedures for any purchase or contract, including advertising and bidding requirements, and may provide that all bids may be rejected. The ordinance may provide that under specified conditions, which the Council must find and determine exist in each applicable instance, advertising and bidding may be dispensed with.

(b) Every two years, the City shall conduct a race and gender disparity evaluation to determine if the City has been an active or passive participant in actual, identifiable discrimination within its relevant market place. If such disparity evaluation evidences such discrimination, the City Council, in order to remedy the discrimination, shall establish a narrowly tailored race and/or gender business participation program, as substantiated by the disparity evaluation, for the bidding and awarding of purchases and contracts. Any such program shall continue only until the discrimination has been remedied. The City Administrator or an officer authorized by him or her shall require all awardees and bidders to comply with the established program. (Amended by: Stats. November 1988, March 1996 and March 2004.)

**Section 809. Annual Audit.** The Council shall engage during the first month of each fiscal year an

independent certified public accountant who shall examine and report to the Council on the annual financial statement of the City. He shall have free access to the books, records, inventories and reports of all officers and employees who receive, handle, or disburse public funds, and of such other officers, employees, or departments as the Council may direct. He shall submit his audit as soon as practicable after the closing of the books for the fiscal year for which he is engaged. Copies of such audit reports shall be filed with the Council, and shall be available for public inspection and review. (Amended by: Stats. November 1988 and Stats. November 2000.)

**Section 810. Deposit and Investment.** The City Administrator shall arrange for the deposit in the City Treasury or in designated banks of all funds collected by any department or agency of the City, according to a schedule prescribed by him/her. After taking into account the amounts required to meet the current and pending requirements of the City, the City Administrator may arrange for the term deposit or investment in securities authorized by law of any balances available for such purpose and the yield therefrom shall be credited as revenue to the general fund unless otherwise provided by law or directed by the Council. (Amended by: Stats. November 1988 and March 2004.)

**Section 811. Official Bonds.** The Council shall determine by ordinance which officers and employees shall be subject to group or individual bonds to insure the faithful performance of official duties, shall fix the amount of such bonds and shall provide payment of the premium of such bonds by the City. (Amended by: Stats. November 1988.)

**Section 812. Revenue Bonds.** The Council may issue revenue bonds for any lawful purpose in such manner and upon such terms and conditions as it may fix and establish by the provisions of a procedural ordinance; provided, however, that in the procedure for the issuance of any such bonds for the acquisition, construction or establishment of any gas, electric or telephone system, the general laws of the State

of California in force at the time such proceedings are taken shall be observed and followed. (Amended by: Stats. November 1988.)

## ARTICLE IX PERSONNEL ADMINISTRATION

### **Section 900. Personnel Policy.**

(a) It is the policy of the City that there shall be a comprehensive personnel system based on merit which considers diversity based upon the relevant labor pool as set forth in section 900(b). Such system shall be continued and maintained for the purpose of providing an equitable and uniform procedure for dealing with personnel matters; to serve the mutual interests of the people, the City as an employer and its employees through accepted modern concepts and practices of public personnel administration; to attract to municipal service the best and most competent person available; to assure that appointments will be based on merit and fitness as ascertained by practical competitive examination and by records of achievement; and to provide the employees security of tenure, with advancement or promotion within the service, where practicable, from among employees having appropriate qualifications, free of discrimination, subject to their adherence to established standards of performance and conduct, all as more particularly hereinafter set forth in this article.

(b) The City shall study its workforce in comparison to the relevant labor pool to determine if there are manifest racial or gender imbalances in traditionally segregated job classifications. If the study demonstrates such manifest imbalances, the City shall adopt a remedial voluntary affirmative action plan which shall be periodically updated and in effect only until the imbalances are eliminated. (Amended by: Stats. November 1988 and March 1996.)

**Section 901. Enforcement and Administration.** The provisions of this article, and of the ordinances and rules adopted to give effect thereto, shall be enforced by a Civil Service Board. The Board shall be constituted and appointed as provided in Article VI. The Board shall be responsible for the general super-

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vision of the personnel system, without impairment of the responsibility and duty of the City Administrator, department heads and other supervisory personnel to exercise the administrative discretion vested in them by this Charter, or by ordinance. **(Amended by: Stats. November 1988 and March 2004.)**

**Section 902. The Competitive Service.** The Council may establish departments, divisions, offices and positions of employment by ordinance, and may change or abolish the same and prescribe their powers, functions and duties. The Council may by resolution provide for temporary employment of services when required. The competitive Civil Service shall include all offices and employments in the City government except:

(a) Offices required by this Charter to be filled by election or to be appointed by the Mayor and City Council.

(b) One secretary and all professional and administrative assistants in the office of the City Administrator the Mayor's secretary and an assistant and such other staff as authorized by Council; one secretary and one assistant to the City Attorney and the Auditor respectively; and the heads of such other departments and an assistant to each as may be provided for by ordinance. The City Administrator, the Mayor, the City Attorney, and the Auditor shall respectively appoint such exempt personnel.

(c) Department heads, one secretary to the executive director, the secretary of the board, commercial representatives and freight and cargo handlers and checkers employed by the Port Department; also such others engaged in the handling of ships and shipping as are found by both the Board of Port Commissioners and the action of the Civil Service Board as provided for pursuant to Article VI to hold positions peculiar to the operations of the Port as a commercial enterprise.

(d) Part-time employees who are regularly employed for less than one-half the established working hours throughout the year; or those who are employed in any seasonal employment for not more than 120 days in any consecutive 12 months.

(e) Individuals or organizations engaged by con-

tract after a finding by the Council or the Board of Port Commissioners, as the jurisdiction may be, that the service is of a professional, scientific or technical nature and is temporary in nature, or after finding by vote of two-thirds of the members of the Council or said Board that the performance of the service by contract, regardless of nature or term, is in the public interest because of economy or better performance; provided, that no such contract for service shall result in the loss of employment or salary by any person having permanent status in the competitive service.

(f) Such additional positions as may be excepted upon the recommendation of the Council, approved by the Civil Service Board as provided for pursuant to Article VI. **(Amended by: Stats. November 1988 and March 2004.)**

**Section 903. Provisional Appointments.** When there is no appropriate eligible list, provisional appointments to positions in the competitive civil service may be made pending the creation of such lists, but such provisional employment may not extend beyond the creation of the list nor in any event may such employment be renewed or extended beyond 120 days. **(Amended by: Stats. November 1988.)**

**Section 904. Personnel Ordinance.** The Council shall by ordinance provide a modern system of personnel administration for the competitive civil service. **(Amended by: Stats. November 1988.)**

**Section 905. Continuation.** Pending adoption of the ordinance required in Section 904, the provisions of Article IX, as the same appeared in the Charter immediately prior to the adoption of this section, shall continue in full force and effect except as the same may hereafter be changed by amendment thereof in the manner provided by law for the amendment of charter provisions. Said provisions of Article IX shall cease to have any force or effect immediately upon the adoption of the ordinance required in Section 904. The rules of the Civil Service Board shall remain effective until modified as authorized by ordinance pursuant to Article VI. **(Amended by: Stats. November 1988.)**

**Section 906. (Repealed by: Stats. November 2000.)**

**Section 907. Nepotism.** The Mayor or City Council shall not appoint as an employee or officer, to receive any compensation from the City, any person who is a relative by blood or marriage within the third degree of the Mayor or anyone or more of the members of the Council, nor shall the City Administrator or any other appointing authority appoint to any such position any relative of his or of the Mayor or any member of the Council within such degree of kinship. **(Amended by: Stats. November 1988 and March 2004.)**

**Section 908. Social Security.** Provisions for an employee retirement system shall not be construed to prevent the City and its employees from participating in any state or national social security system to the extent permitted by law for public employees. **(Amended by: Stats. November 1988.)**

**Section 909. Authority to Join Pension System.** Notwithstanding the provisions of Section 1209 the City, by and through its Council, may join or arrange for reciprocity of membership in, or continue as a contracting agency in, any retirement or pension system or systems existing or hereafter created under state or federal law to or in which municipalities and municipal officers or employees are eligible, either for all such officers and employees, or for less than all on the basis of a reasonable classification, provided that no employee or officer or classification thereof shall be unreasonably omitted from all systems referred to in this section or in Section 908 of this Charter. **(Amended by: Stats. November 1988.)**

**Section 910. Arbitration for Uniformed Members of the Police and Fire Departments.**

(a) It is hereby declared to be the policy of the voters of the City to endeavor to establish and maintain, without labor strife and dissension, wages, hours, and other terms and conditions of employment for the uniformed members of the Police and Fire Departments which are fair and comparable to simi-

lar private and public employment. To such purpose, the voters of the City hereby recognize the efficiency of and adopt the principle of binding arbitration as an equitable alternative means to arrive at a fair resolution of terms of wages, hours, and other terms and conditions of employment for such employees when the parties have been unable to resolve these questions through negotiations.

(b) Pursuant to the public policy hereinabove declared, the City or the recognized employee organization for the uniformed members of the Police and Fire Departments may, as the result of an impasse after meeting and conferring in good faith on matters within the scope of representation as required by applicable State law, refer any such matters which are unresolved to binding arbitration under the provisions of this Section; except that the Charter provisions concerning the Police and Fire Retirement System and such other provisions of this Charter which specifically govern wages, hours and other terms and conditions of employment of uniformed members of the Police and Fire Departments shall not be subject to change by arbitration. In any such arbitration, the arbitrator is directed to take into consideration the City's purpose and policy to create and maintain wages, hours and other terms and conditions of employment which are fair and comparable to similar private and public employment and which are responsive to changing conditions and changing costs and standards of living. The arbitrator shall also consider: the interest and welfare of the public; the availability and sources of funds to defray the cost of any changes in wages; hours and conditions of employment; and all existing benefits and provisions relating to wages, hours and terms and conditions of employment of the uniformed members of the Police and Fire Departments, whether contained in this Charter or elsewhere.

(c) Any unresolved dispute or controversy arising under the provisions of this Section, or any unresolved dispute or controversy pertaining to the interpretation or application of any negotiated agreement covering uniformed members of the Police and Fire Departments shall be submitted to an impartial arbitrator. Representatives designated by the City and

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representatives of the recognized employee organization affected by the dispute or controversy shall select the arbitrator. In the event that said parties cannot agree upon the selection of the arbitrator within five days from the date of any impasse, then the California State Conciliation Service shall be requested to nominate five (5) persons, all of whom shall be qualified and experienced as labor arbitrators. If the representatives of the recognized employee organization and the City cannot agree on one of the five to act as arbitrator, they shall strike names from the list of said nominees alternately until the name of one nominee remains who shall thereupon become the arbitrator. The first party to strike a name from the list shall be chosen by lot. Every effort shall be made to secure an award from the impartial arbitrator within thirty (30) calendar days after submission of all issues to him.

(d) The arbitration proceedings herein provided shall be governed by Sections 1280, et seq., of the California Code of Civil Procedure. The arbitrator's award shall be submitted in writing and shall be final and binding on all parties. The City and the affected employee organization shall take whatever action is necessary to carry out and effectuate the award. The expenses of arbitration, including the fee for the arbitrator's services, shall be borne equally by parties. All other expenses which the parties may incur individually are to be borne by the party incurring such expenses.

(e) Nothing herein shall be construed to prevent the parties from submitting controversies or disputes to mediation, fact-finding or other reasonable method to finally resolve the dispute should the City and the recognized employee organization in the controversy or dispute so agree. An impasse may be declared by either the City or the recognized employee organization in the event the parties fail to reach an agreement on matters within the scope of representation after meeting and conferring in good faith as required by applicable State law, or after other mutually agreed-upon settlement methods fail to result in agreement between the parties. **(Added by: Stats. 1973. Amended by: Stats. November 1988.)**

## **ARTICLE X FRANCHISES, LICENSES, PERMITS, LEASES AND SALES**

**Section 1000. Franchises, Licenses, Permits.** The Council shall have authority to grant or issue franchises, licenses and permits for the transaction of business or the providing of services, or for the use of public streets or other public places, and to provide by ordinance the procedure for the granting or issuing thereof, the taxes, charges, fees or other compensation to be paid therefor and the penalties for the violation thereof. **(Amended by: Stats. November 1988.)**

**Section 1001. Leases, Sales.** The Council shall have authority to lease or sell real and personal property owned or controlled by the City in accordance with such uniform procedure as it shall adopt by ordinance, provided, however, that no lease of real property shall be for a term in excess of sixty-six years. **(Amended by: Stats. November 1988.)**

**Section 1002. Right to Acquire.** No franchise grant shall be construed to impair or affect the right of the City, acting pursuant to law, to acquire the property of the grantee either by purchase or through the exercise of the right of eminent domain. **(Amended by: Stats. November 1988.)**

## **ARTICLE XI ELECTIONS**

**Section 1101. General Municipal Elections.** General Municipal Elections for the election of officers and for such other purposes as the Council may prescribe shall be held in the City on the first Tuesday after the first Monday in November in each even-numbered year. In order to consolidate General Municipal Elections with Statewide General Elections, the Council may by ordinance provide for a date for a General Municipal Election which conforms to the date of a Statewide General Election. **(Amended by: Stats. November 1994.)**

**Section 1102. Special Municipal Elections.** All other municipal elections that may be held by the authority of this Charter or of any law shall be known as Special Municipal Elections. **(Amended by: Stats. November 1988.)**

**Section 1103. Election Procedure.** Except as may be otherwise provided by this charter, the mode, manner, form and procedure for nominations, qualifications, petitions, filing — including fees therefor and amounts thereof — and elections, for elective office, may be provided by ordinance. Except as may be otherwise provided by ordinance or by this charter, declarations of candidacy, nominations for election, all elections and all procedures relating thereto shall be in accordance with the applicable provisions of state law. **(Amended by: Stats. November 1988 and February 2007.)**

**Section 1104. Initiative, Referendum and Recall.** The People of the City reserve to themselves the powers of initiative and referendum and the recall of elected officials, to be exercised in the manner prescribed by general law of the State. **(Amended by: Stats. November 1988.)**

**Section 1105. Ranked Choice Voting.** Elections for all city offices, including but not limited to Mayor, Councilmember, City Attorney, City Auditor, and School Director, shall be conducted using ranked choice voting, known sometimes as “instant runoff voting.”

(a) **Definitions.** “Ranked choice voting” shall mean an election system in which voters rank the candidates for office in order of preference, and the ballots are counted in rounds that, in the case of a single-winner election, simulate a series of runoffs until one candidate receives a majority of votes. In each round of counting: (1) “continuing ballot” shall mean a ballot that counts towards some candidate; (2) “continuing candidate” shall mean a candidate that has not been eliminated; and (3) “majority of votes” shall mean more than fifty percent of the votes coming from continuing ballots.

(b) **General Provisions.** Ranked choice voting elections for single-winner city offices shall be conducted according to the procedures in this section. The City shall conduct a voter education campaign to familiarize voters with ranked choice voting. The use of ranked choice voting shall commence with the 2008 General Municipal Election.

(c) **Ballot.** The ranked choice voting ballot shall allow voters to rank as many choices as there are candidates. The ballot shall not interfere with a voter’s ability to rank a write-in candidate.

(d) **Tabulation.** The ballots shall be counted in rounds: (1) in the first round, every ballot shall count as a vote towards the first choice candidate. (2) After every round, if any candidate receives a majority of votes from the continuing ballots, that candidate shall be declared the winner. If no candidate receives a majority, the candidate receiving the smallest number of votes shall be eliminated, and every ballot counting towards that candidate shall be advanced to the next-ranked continuing candidate. All the ballots shall be counted again in a new round.

(e) **Ties.** In the event that two or more candidates tie for the smallest number of votes, the candidate to eliminate shall be chosen by lot.

(f) **Elimination of more than one candidate.** During the elimination stage of any round, in the event that any candidate has more votes than the combined vote total of all candidates with fewer votes, all the candidates with fewer votes shall be eliminated simultaneously, and those ballots advanced to the next ranked continuing candidate.

(g) **Skipped rankings.** In the first or any round, in the event that any ballot reaches a ranking with no candidate indicated, that ballot shall immediately be advanced to the next ranking.

(h) **Undervotes, Overvotes, and Exhausted Ballots.** After each round, any ballot that is not continuing is an undervote, overvote, or exhausted ballot, as follows: Any ballot that has no candidates indicated at any ranking shall be declared an “undervote.” In the event that any ballot reaches a ranking with more than one candidate indicated, that ballot shall immediately be declared an “overvote.” In the event that any ballot cannot be advanced because no further

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candidates are ranked on that ballot, that ballot shall immediately be declared “exhausted” Any ballot that has been declared an undervote, overvote, or exhausted shall remain so and shall not count towards any candidate in that round or in subsequent rounds.

(i) Reports. Summary, ballot image, and comprehensive reports shall be made available after each ranked choice voting election, as follows: (1) The “summary report” for a race shall mean a report that lists the candidate vote totals in each round, along with the cumulative numbers of undervotes, overvotes, and exhausted ballots in each round. (2) The “ballot image report” for a race shall mean a report that lists, for each ballot, the candidate or candidates indicated at each ranking, the precinct of the ballot, and whether the ballot was cast absentee. In the report, the ballots shall be listed in an order that does not permit the order in which they were cast in each precinct to be reconstructed. (3) The “comprehensive report” for a race shall mean a report that breaks the numbers in the summary report down by precinct. The report shall list for each round the number of ballots cast in each precinct (a) that count as votes for each candidate in that round, (b) that have been declared undervotes, (c) that have been declared overvotes up to that point, and (d) that have been declared exhausted up to that point. (4) Mode and manner of release. Preliminary versions of the summary report and ballot image report shall be made available as soon as possible after the ballots have begun to be processed and counted. The summary report, ballot image report, comprehensive report, and preliminary versions of the summary report and ballot image report shall be made available to the public during the canvass via the internet and by other means. The ballot image report and preliminary versions of the ballot image report shall be made available in a plain text electronic format.

(j) Manual Tally. Prior to the selection of precincts for the public one percent manual tally, as provided by State law, a report shall be made available to the public that lists, for the ballots subject to the manual tally, the number of those ballots in each precinct that counted in each round as undervotes, overvotes, exhausted ballots, and as votes for each candi-

date. The public manual tally shall check those vote totals in each of the randomly selected precincts.

(k) Changes to Procedures. For the purposes of this subsection: “voting equipment” shall mean all ballots and/or voting devices, vote tabulating systems and/or similar or related systems to be used in the conduct of the City’s election, including but not limited to paper ballot systems, optical scan systems, and touchscreen systems.

(1) Number of rankings. In the event that the voting equipment cannot feasibly accommodate a number of rankings on the ballot equal to the number of candidates, the City Clerk may limit the number of choices a voter may rank to the maximum number allowed by the equipment. This limit shall never be less than three.

(2) Voting Equipment. If the voting equipment cannot feasibly accommodate all of the procedures in subsections (e)-(j) above, the City Clerk may make changes to those procedures provided that ranked choice voting shall still be used and the smallest feasible number of changes made until such time as the voting equipment can accommodate those procedures in their entirety.

(3) State Guidelines. If the State of California adopts guidelines for the conduct of ranked choice voting elections and the voting equipment used to conduct the City’s election can accommodate the State’s guidelines, the City Clerk shall have the option of adopting those guidelines, in whole or in part, in lieu of the ranked choice voting procedures in this section.

(4) First Choice Tally. The City Clerk may authorize the following change to make ranked choice voting on voting equipment feasible: before counting the ballots in rounds, the first ranking on every ballot shall be tallied, with the exception of overvotes. If some candidate receives a majority of first rankings from all ballots cast, including undervotes and excluding overvotes, that candidate shall be declared the winner; and the ballots shall not be counted in rounds. Otherwise, the ballots shall be counted in rounds in accordance with this section.

(5) Election integrity. The City Clerk shall further have the authority to make any changes to these pro-

cedures necessary to preserve the secrecy of the ballot and ensure the integrity and smooth functioning of the election, provided that ranked choice voting shall still be used and the smallest number of changes made to achieve such purpose.

(l) **Exception from Using Ranked Choice Voting.** Notwithstanding any other provision of this Charter, the City shall use ranked choice voting once the Alameda County Registrar of Voters is able to conduct the election on behalf of the City in accordance with the requirements and procedures of this section, including any changes to such procedures made pursuant to subsection (k).

(m) **Election Procedures if Ranked Choice Voting is Not Used:**

(1) In the event that the City is unable to use ranked choice voting, the City shall hold Municipal Nominating Elections for the nomination of officers and for such other purposes as the Council may prescribe, which shall be held in the City on the first Tuesday after the first Monday in June in each even numbered year. In order to consolidate Municipal Nominating Elections with Statewide Primary Elections, the Council may by ordinance provide for a date for a Municipal Nominating Election which conforms to the date of a Statewide Primary Election. Any candidate receiving a majority of the vote cast for all candidates for that office at the Municipal Nominating Election shall be declared elected.

(2) If at any Municipal Nominating Election there is any office to which no person was elected, then the two candidates for such office receiving the highest number of votes for such office shall be the candidates, and the only candidates, for such office whose names shall be printed upon ballots to be issued at the second or General Municipal Election; provided that, in any event, all persons receiving a number of votes equal to the highest number of votes received by any candidate shall also be candidates at such second election. The candidate receiving the highest number of votes cast for all candidates for that office at the second or General Municipal Election shall be declared elected. **(Added by: Stats. February 2007.)**

## ARTICLE XII GENERAL PROVISIONS

**Section 1200. Conflict of Interest.** No officer of the City may participate on behalf of the City in any transaction or activity in which he has a conflict of interest, as such conflict is defined by State Law. The penalty for violation of this section shall be as provided by State Law. **(Amended by: Stats. November 1988.)**

**Section 1201. Incompatible Employment.** Each officer and employee shall, during his hours of active duty, devote his whole time, attention and efforts to his office or employment, and he may not be required to perform any service except for the benefit of the City. No officer or employee of the City may engage in any employment, activity or enterprise which has been determined to be inconsistent, incompatible or in conflict with his duties or with the duties, functions and responsibilities of the department or other agency in which he is employed.

The City Administrator or the City Attorney, or the Auditor, as to personnel under their respective jurisdictions, shall declare the activities which will be considered inconsistent, incompatible or in conflict with, or inimical to, the duties of such personnel as City employees. In making this determination, consideration shall be given to employment, activity or enterprise which: (a) involves the use for private gain or advantage of City time, facilities, equipment and supplies, or the badge, uniform, prestige or influence of one's City office or employment; or (b) involves receipt by the officer or employee of any money or other consideration for the performance of any act required of him/her as a City officer or employee; or (c) involves the performance of an act in other than his capacity as City officer or employee which act may later be subject directly or indirectly, to control, inspection, review, audit or enforcement by him/her or by the agency in which he is employed. **(Amended by: Stats. November 1988 and March 2004.)**

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**Section 1202. Conflict in Office.** The Mayor and members of the Council shall not hold any other municipal office or any other office or employment to receive compensation from the City; or be appointed or elected to any office created by the Council while he is a member thereof, until at least one year shall have expired after the expiration of the term for which he was elected. **(Amended by: Stats. November 1988.)**

**Section 1203. Gifts and Trusts.** The Council shall have the power to accept gifts and trusts in behalf of the City and to control, manage, dispose of and otherwise administer the same in accordance with their terms. **(Amended by: Stats. November 1988.)**

**Section 1204. Title to Property.** All real property acquired by the City shall be held in the name of "The City of Oakland." **(Amended by: Stats. November 1988.)**

**Section 1205. Public Notice.** Except as otherwise provided in this Charter or by general law, the Council shall, by ordinance applying to all agencies of the City, designate the time and conditions under which adequate public notice should be given, through publication or otherwise, of the pending consideration of ordinances, invitations to bid, and awards of contracts or leases, notices of intention to grant franchise, election proceedings and other matters requiring public notice in accordance with this Charter, any ordinance enacted pursuant thereto or general state law. Publication, if required, shall be in an official newspaper designated annually by the Council, which shall be a newspaper printed and published in the City of Oakland and which shall have a daily circulation within the City of at least 25,000. **(Amended by: Stats. November 1988.)**

**Section 1206. Oath of Office.** Every officer of the City, before entering upon his duties, shall take the following oath and file the same with the City Clerk: "I solemnly swear or affirm that I will support the constitution of the United States, the constitution of

the State of California, and the Charter of the City of Oakland, and will truly and to the best of my abilities perform the duties of the office of \_\_\_\_\_" **(Amended by: Stats. November 1988.)**

**Section 1207. Oaths and Subpoenas.** Every officer and every member of any Board provided for in this Charter shall, in all matters relevant to his office, have the power to administer oaths and affirmations and to issue subpoenas to compel the production of books, papers and documents and to take testimony on any matter pending before him. If any person subpoenaed fails or refuses to appear or to produce required documents or to testify, said officer or the majority of the members of the board or commission may find him in contempt, and shall have power to take the proceedings in that behalf provided by the general law of the State. **(Amended by: Stats. November 1988.)**

**Section 1208. Violation.** The violation of any provision of the Charter shall be deemed a misdemeanor and be punishable upon conviction in the manner provided by State Law, unless otherwise expressly provided for in this Charter. **(Amended by: Stats. November 1988 and Stats. November 2000.)**

**Section 1209. Previous Charter Provisions Continued.** Section 91(e) added by Stats. Feb. 1959, Sections 97(f), 33(1) through 33(10), 92-1/2 through 96-3/4%, 100-1/2 through 104(c), 199(d), all the sections of Article XXVI and all the sections of Article XXVII, as the same appeared in the Charter immediately prior to the adoption of this section, are by this reference hereby continued in full force and effect, and ratified, by the adoption of this section as if the same were herein printed and set forth in full. Said sections shall be printed in the appendix to this revised Charter and shall be renumbered therein as sections of said appendix. All sections and articles of the said Charter, as the same existed immediately prior to the adoption of this section, other than the hereinabove specified sections and articles thereof which are ratified and continued in full force and effect by the adoption of this section, are hereby repealed by

the adoption of this section. (**Amended by:** Stats. November 1988.)

**Section 1210. Construction and Separability.** If any provision of this Charter or the application thereof to any person or circumstance is held invalid, the remainder of this Charter and the application of such provisions to other persons or circumstances shall not be affected thereby. (**Amended by:** Stats. November 1988.)

**Section 1211. Effective Date.** This charter shall take effect upon the filing with the Secretary of State of the concurrent resolution of its approval by the State Legislature. (**Amended by:** Stats. November 1988.)

**Section 1212. Gender References.** All gender references in this Charter shall be considered neutral in form and context. (**Amended by:** Stats. November 1988.)

**Section 1213. (Repealed by: Stats. March 2004)**



**APPENDIX  
TO THE CHARTER  
OF THE CITY OF OAKLAND**



**APPENDIX  
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OF THE CITY OF OAKLAND**

**ARTICLE XIII**

**Added By: Stats. November 1996  
KIDS FIRST! OAKLAND CHILDREN'S  
FUND**

**Fund Revenue**

**Section 1300.** Notwithstanding any other provision of law, effective July 1, 2009 and continuing through June 30, 2021, the KIDS First! The Oakland Fund for Children and Youth ("Fund") shall receive revenues in an amount equal to three percent (3.0%) of the City of Oakland's annual actual unrestricted General Purpose Fund (Fund 1010) revenues and appropriated as specified in this Act each year, together with any interest earned on the Fund and any amounts unspent or uncommitted by the Fund at the end of any fiscal year. The actual funds deposited in the Fund pursuant to this Act shall only come from actual unrestricted General Purpose Fund (Fund 1010) revenues of the City of Oakland. For purposes of this Act, Fund shall mean the fund established pursuant to Measure K which was approved by the voters of Oakland in 1996 and which shall continue in existence.

The annual amount of actual unrestricted General Purpose Fund (Fund 1010) revenues shall be estimated by the City Administrator and verified by the City Auditor. Errors in calculation for a fiscal year shall be corrected by an adjustment in the set aside depending upon whether the actual, unrestricted General Purpose Fund (Fund 1010) revenues are greater or less than the estimate. Actual unrestricted General Purpose Fund (Fund 1010) revenues shall not include funds granted to the City by private agencies or by other public agencies and accepted and appropriated by the City.

No less than 90% of the monies in the Fund shall be used to pay for eligible services for chil-

dren and youth. No more than 10% of the monies in the Fund may be used for independent third-party evaluation, strategic planning, grant-making, grants management, training and technical assistance, and communications and outreach to ensure effective public participation.

**Eligible Services**

**Section 1301.** Monies in the Fund shall be used exclusively to:

1. support the healthy development of young children through pre-school education, school-readiness programs, physical and behavioral health services, parent education, and case management;
2. help children and youth succeed in school and graduate high school through after-school academic support and college readiness programs, arts, music, sports, outdoor education, internships, work experience, parent education, and leadership development, including civic engagement, service-learning, and arts expression;
3. prevent and reduce violence, crime, and gang involvement among children and youth through case management, physical and behavioral health services, internships, work experience, outdoor education, and leadership development, including civic engagement, service-learning, and arts expression;
4. help youth transition to productive adulthood through case management, physical and behavioral health services, hard-skills training and job placement in high-demand industries, internships, work experience, and leadership development, including civic engagement, service-learning, and arts expression.

**Excluded Services**

**Section 1302.** Monies in the Fund shall not be appropriated or expended for:

1. any service which merely benefits children and youth incidentally;
2. acquisition of any capital item or real property not for primary and direct use by children and youth;
3. maintenance, utilities or any similar operating cost of any facility not used primarily and directly by children and youth;

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4. any service for which a fixed or minimum level of expenditure is mandated by state or federal law, to the extent of the fixed or minimum level of expenditure.

### Strategic Investment Plan

**Section 1303.** Appropriations from the Fund shall be made pursuant to a Three-Year Strategic Investment Plan, with the first Plan beginning July 1, 2010.

Grants made by the Fund for fiscal year 2008-2009 shall be carried forward to fiscal year 2009-2010 subject to modifications recommended by the Planning & Oversight Committee, pursuant to performance review, and adjusted as needed to conform with the actual amount of the set-aside in fiscal year 2009-2010 based on the 3.0% of actual unrestricted General Purpose Fund (Fund 1010) formula set forth in this Act.

Each Three-Year Strategic Investment Plan shall be developed with the involvement of young people, parents, and service providers throughout the city, and the Oakland Unified School District, the County of Alameda, and the City of Oakland. Each Three-Year Strategic Investment Plan shall take into consideration the results and findings of the independent third-party evaluation.

Each Three-Year Strategic Investment Plan shall:

1. identify current service needs and gaps relative to addressing this measure's four outcome goals:

- a. support the healthy development of young children;
- b. help children and youth succeed in school and graduate high school;
- c. prevent and reduce violence, crime, and gang involvement among young people;
- d. prepare young people for healthy and productive adulthood.

2. describe specific three-year program initiatives that address the needs and gaps relative to each outcome goal, including:

- a. target population
- b. performance and impact objectives
- c. intervention strategy
- d. evaluation plan

- e. funding allocations

3. describe how each three-year program initiative is aligned and coordinated with other public and private resources to achieve maximum service performance and youth impacts.

Each Three-Year Strategic Investment Plan shall be evaluated for its service performance and youth impact results by an independent third-party evaluator.

### Open and Fair Application Process

**Section 1304.** All monies in the Fund shall be appropriated, pursuant to a Three-Year Strategic Investment Plan, to private non-profit and public agencies through an open and fair application process.

### Planning & Oversight Committee

**Section 1305.** The Children's Fund Planning and Oversight Committee ("Planning and Oversight Committee") established pursuant to Measure K which was approved by the voters of Oakland in 1996 shall continue to operate. Each City Councilmember shall appoint two Oakland residents, one of whom shall be a resident not older than 21 years, to serve as members of the Planning & Oversight Committee. The appointees shall demonstrate a strong interest in children and youth issues; and possess sound knowledge of, and expertise in, children and youth policy development and program implementation. Effective July 1, 2009, the Mayor shall only be permitted to appoint one (1) Oakland resident and shall therefore remove two of his previous appointments no later than June 30, 2009.

The Planning & Oversight Committee shall be responsible for:

1. preparing Three-Year Strategic Investment Plans;
2. soliciting funding applications from private non-profit and public agencies through an open and fair application process;
3. submitting to the Oakland City Council for its adoption Three-Year Strategic Investment Plans and funding recommendations;

4. submitting to the Oakland City Council for its adoption annual independent evaluation reports;

5. receiving City Auditor annual reports on the Fund's Financial Statement and the Base Spending Requirement.

### **Base Spending Requirement**

**Section 1306.** The City of Oakland shall not reduce the amount of expenditures for eligible services in any fiscal year paid from sources other than the Fund below the Base Spending Requirement.

The Base Spending Requirement is the amount required based on the application of the base year percentage to the total audited actual City unrestricted General Purpose Fund (Fund 1010) expenditures in a fiscal year.

The Base Year Percentage is defined as the ratio of actual unrestricted General Purpose Fund (Fund 1010) appropriations for eligible services for children and youth paid from sources other than the Fund to total City actual unrestricted General Purpose Fund (Fund 1010) appropriations in fiscal year 1995-1996.

If the City Auditor finds that in any fiscal year the amount of funds expended for eligible services is less than the Base Percentage Requirement, the City of Oakland shall increase expenditures for eligible services within the following two years so that the correct amount of funds is expended.

Monies from the Fund shall not be appropriated for services that substitute for or replace services included in the City Auditor's Base Spending Requirement, except to the extent that the City of Oakland ceases to receive federal, state, county, or private foundation funds that the funding agency required to be spent only on those services.

Within 180 days following the completion of each fiscal year's external audit through 2020-2021 the City Auditor shall calculate and publish the actual amount of City of Oakland spending for children and youth services (exclusive of expenditures mandated by state or federal law).

### **Reauthorization**

**Section 1307.** This section may be extended for an additional twelve years beginning July 1 2021 by a simple majority vote of the City Council. If the City Council does not itself extend this section, then the City Council shall place the question of whether to extend this section on the November 2020 ballot for a vote of the electorate. This process will be repeated every twelve years or until reauthorization is rejected by a vote of the electorate. **(Added by: Stats. November 1996; Amended by: Stats. March 2004 and November 2008)**

## **ARTICLE XIV**

### **POLICE RELIEF AND PENSION FUND**

**Section 1400.** In order to continue in force, and make effectual pensions already existing in favor of the Police Force, the fund heretofore created, known and designated as the Police Relief and Pension Fund shall be continued in effect. The Mayor, the Health Officer, and the President of the Civil Service Board shall hereafter constitute the Board of Trustees of such fund, and the City Treasurer shall be the custodian of said fund. **(Amended by: Stats. 1931.)**

**Section 1401.** Any member of the Department who resigns or is discharged from the service previous to retirement, shall have all such sums as have been deducted from his pay and contributed to the Police Relief and Pension Fund pursuant to the provisions of Section 91a\* refunded to him plus simple interest at the rate fixed by the Board of Trustees. **(Added by: Stats. 1943.)**

\* This reference is to the Section or Article so designated in the former Charter.

**Section 1402.** The said Board of Trustees may retire and relieve from service any aged, infirm, or disabled member of the Department who has arrived at the age of fifty-five years, and who, upon examination by two regularly licensed and practicing physicians appointed by the Board of Trustees for that purpose, may be ascertained to be, by reason of such age, infirmity, or other disability unfit for the performance of his duty. Said Board

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of Trustees, at the request of any member of the Department who has arrived at the age of fifty-five years, and who shall have served twenty years in the aggregate in the Department, retire and relieve such member making such application. Said Board of Trustees shall, upon the request of any member of the Police Department who has served twenty-five years in the aggregate as a member of said Police Department, retire and relieve said member making such application. Such retired member shall receive from the Police Relief and Pension Fund a pension equal to one-half of the salary attached to the rank held by him one year prior to the date of said retirement, which pension shall be paid in equal monthly installments and shall cease at the death of such member. (**Amended by:** Stats. 1937.)

### **Compulsory Retirement At Age Seventy**

**Section 1403.** Notwithstanding any provision contained in this Article, retirement under Section 1402 shall be compulsory upon such member reaching the age of seventy years. (**Added by:** Stats. 1941.)

### **Absence By Reason Of War Or Other National Emergency**

**Section 1404.** Absence of a member of the Police Department by reason of service with the armed forces of the United States, either during a war involving the United States as a belligerent or in any other National emergency and for six months thereafter and who is not dishonorably discharged or released therefrom, shall be credited to such member as service for the City for retirement purposes. No contributions to the Police Relief and Pension Fund, for such period of compensation from the City, shall be required of such member.

This section shall be retroactively applied to extend its benefits to such members of the Police Department whose absence commenced prior to its effective date. (**Added by:** Stats. 1947.)

**Section 1405.** Any member of the Department who shall become physically disabled by reason of any bodily injury received in the performance of his duty, upon his filing with the Board of Trustees a verified petition, setting forth the facts constitut-

ing such disability, and the cause thereof, accompanied by a certificate signed by the Chief of Police, the Captain of the Division to which he belongs, and by two regularly licensed physicians of the City, recommending his retirement upon a pension, on account of such disability, may be retired from the Department upon an annual pension, equal to one-half of the amount of salary attached to the rank which he held one year prior to the date of such retirement, to be paid to him during his life, and to cease at his death. In case his disability shall cease, his pension shall cease, and he shall be restored to the service in the rank he occupied at the time of his retirement.

### **Retirement By Action Of Board Of Trustees After Disability In Performance Of Duty**

**Section 1406.** Notwithstanding any provisions set forth in Section 1405, the Board of Trustees may on its own motion retire any member, and any matron and substitute matron, under the provisions of Section 1405, who is physically disabled by reason of any bodily injury received in the performance of his or her duty, who upon examination by two regularly licensed and practicing physicians appointed by the trustees for that purpose may be ascertained to be by reason of such disability unfit for the performance of duty, provided, further that such disability shall have continued for one year. (**Added by:** Stats. 1941.)

### **Benefit To Dependents Of Deceased Member Retired For Disability Incurred In Performance Of Duty**

**Section 1407.** Notwithstanding any provision set forth in Section 1405, if a retired member, or retired matron or substitute matron, of the Department shall die at any time by reason of bodily injury for which he or she was pensioned, such pension shall not cease but shall continue and shall be paid to his widow or widower to whom he or she was married at the time of such injury, or to his or her orphan child or children, or to his or her parent or parents, in the manner and subject to the provisions of Section 1408(a), (b) and (c), provided, however, a surviving husband shall be entitled to the rights of a widow only if in the opinion

of the Board of Trustees he is unable to support himself by reason of physical or mental infirmity and has no other means of support. (**Added by: Stats. 1941.**)

#### **Pension To Dependents When Member Dies Of Injury Or Disability Incurred In Performance Of Duty**

**Section 1408.** The Board of Trustees shall, out of the Police Relief and Pension Fund, provide for the family of a member of the Department who may die as a result of an injury or disability incurred while in the performance of his duty as follows:

(a) Should the decedent be married, his widow shall, as long as she shall remain unmarried, be paid a pension equal to one-half of the salary attached to the rank held by the decedent at the time of his death.

(b) Should the decedent leave no widow, but leave an orphan child or children under the age of eighteen years, or should the decedent leave a widow and child or children under the age of eighteen years, and the widow die without remarrying while such child or children are yet under the age of eighteen years, such child, or children collectively, shall receive a pension equal to one-half of the salary attached to the rank held by the decedent at the time of his death until the youngest child attains the age of eighteen years, provided that no child shall receive any such pension after attaining the age of eighteen years, nor shall any child receive any such pension should he or she marry before reaching the age of eighteen years.

(c) Should the decedent leave no widow, or no orphan child or children but leave a parent or parents dependent solely upon him for support, such parent or parents so depending shall collectively receive a pension equal to one-half the salary attached to the rank held by the decedent at the time of his death during such time as the Board of Trustees may determine its necessity.

(**Amended by: Stats. 1941.**)

#### **Pension To Dependents When Retired Member Dies From Non-Service Connected Causes**

#### **Section 1409.**

(a) Upon the death of a member of the Department who had been retired under this Article and such death shall occur after the effective date of this section and shall result from causes other than injuries received in or illness caused by or arising out of the performance of duty, two-thirds of such member's



pension at the time of death shall be continued regardless of the age of the surviving widow, to dependents of the member in the order of succession and upon the conditions provided in Section 2612.

(b) There shall be deducted from each monthly installment of pension due to such retired member under the provisions of this article a sum equal to 1-1/2% of such monthly installment which sum shall be retained by the Treasurer of the City and forthwith paid by him into the Police and Fire Retirement Fund.

(c) The provisions of subdivisions (a) and (b) of this section shall not be applicable to any retired member of the Department who has not within 90 days after the ratification of this section by the State Legislature filed with the Secretary of the Police and Fire Retirement Board said member's written election to be subject to the provisions of said subdivisions. **(Added by: Stats. 1955.)**

**Section 1410.** The widow of a member of the Department who was retired for years of service under the provisions of Section 1402 and who died prior to the effective date of Section 1409 from causes other than injuries received in, or illness caused by, or arising out of, the performance of duty, provided such widow was married to the decedent at least one (1) year prior to his retirement and has remained unmarried since the date of his death, shall receive two-thirds of the decedent's pension. The widow of a member of the Department who died from causes other than injuries received in, or illness caused by, or arising out of, the performance of duty and whose death occurred prior to eligibility for membership in the retirement system created by Article XXVI, and who was not receiving a pension under this Article, but who was eligible for retirement for years of service under Section 1402 shall receive two-thirds of the pension which would have been provided for him by said Section 1402 if he had been retired for years of service at the time of death, provided she has remained unnamed since the date of his death. The pension(s) herein provided for shall commence on the first of the month next following the effective date of this section and shall be paid in equal

monthly installments as long as such respective widow(s) shall live and remain unmarried.

This section shall not be construed to provide any payment to such widow for any period of time prior to the first day of the month next following the effective date hereof, except that benefits under this section shall be in addition to any benefits heretofore received by the widow under Section 1411. **(Added by: Stats. 1957.)**

**Section 1411.** When a member of the Department shall die from causes other than those specified in Section 1408 after ten years of service, then his widow, and if there be no widow, then his children, and if there be no widow or children, then his mother, if dependent upon him for support, shall be entitled to the sum of One Thousand (\$1,000) Dollars; provided, further, when a member of the Department shall die from causes other than those specified in Section 1408 before retirement or eligibility for retirement, regardless of length of service, then his widow, and if there be no widow, then his children, and if there be no widow or children, then his parents or parent, and if there be none of these, then his estate, shall have and receive a refund of all such sums as have been deducted from his pay and contributed to the Police Relief and Pension Fund, plus simple interest at a rate fixed by the Board of Trustees. When a member of the Department dies at such time as to qualify under both provisions of this Section, the person or representative entitled to receive the payment or refund herein provided shall elect whether the One Thousand (\$1,000) Dollar payment or the refund of salary deductions shall be received, but in no event shall both be paid on account of the same death. **(Amended by: Stats. 1943.)**

**Section 1412.** Any person receiving a pension from the Police Relief and Pension Fund, who shall become convicted of a felony, or after notice and an opportunity to be heard shall be found by the Board of Trustees to have become dissipated or an habitual drunkard, or shall become a non-resident of this State except on leave by the Board of Trustees, shall forfeit all right to said pension. **(Amended by: Stats. 1941.)**

**Section 1413.** The Board of Trustees may, on notice from the Chief of Police, reward any member of

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the Department for conduct which is heroic and meritorious. The form or amount of such reward shall be discretionary with the Board of Trustees, but it shall not exceed in any one instance one month's salary, and may be paid only out of funds provided by the Council; and the Council may, on application of the Board of Trustees, provide money for such purposes.

**Section 1414.** The Board of Trustees shall hold quarterly meetings in April, July, October and January of each year, and special meetings upon the call of its President; it shall issue warrants, signed by its President and Secretary, to persons entitled thereto for the amount of money ordered paid to such persons from the Police Relief and Pension Fund. Each warrant shall state for what purpose the payment is made.

**Section 1415.** The Board of Trustees shall keep a public record of its proceedings. It shall at each quarterly meeting send to the Treasurer and to the Auditor a written or printed list of all persons entitled to payments from the Police Relief and Pension Fund, stating the amount of such payment and for what granted; such lists shall be certified and signed by the President and Secretary of the Board. The Auditor shall thereupon enter a copy of such list upon a book to be kept for that purpose, which shall be known as the Police Relief and Pension Fund Book. All warrants signed by the President and Secretary of the Board shall be presented to the Auditor and ordered paid by him out of said fund.

**Section 1416.** The Board of Trustees shall possess the power to make rules and regulations for its guidance. No compensation shall be paid to any member of the Board of Trustees for any duty required or performed as a member of said Board of Trustees.

**Section 1417.** The Board of Trustees shall make an annual estimate necessary to carry into effect the foregoing provisions, and transmit the same to the City Administrator, who shall cause the same to be included in his annual estimate of the probable expenditures of the City. (**Amended by:** Stats. 1931 and March 2004.)

**Section 1418.** In case of death of a matron or substitute matron the pension herein provided for shall be paid to her surviving husband only if in the opin-

ion of the Board of Trustees he is unable to support himself by reason of physical or mental infirmity and has no other means of support. (**Repealed by:** Stats. 1919; **Added by:** Stats. 1941.)

### Payment of Pension, Etc. As Credit On Compensation, Etc. Award

**Section 1419.** If any member of the Department, or the widow, child or children, parent or parents, of a deceased member of the Department, or if any matron or substitute matron, or the husband or child or children, or parent or parents, of a deceased matron or substitute matron shall receive any payment under the provisions of Division IV of the Labor Code, or any other act or acts of Legislature, or Constitution, of the State of California, providing for an award, compensation, death or disability payment because of the disability, sickness, injury or death arising out of the performance of duty of such member, matron or substitute matron, any payment on account thereof shall be applied as a credit and set-off against any payment on account of salary, pension or other benefit payable under this Article. (**Added by:** Stats. 1941.)

### No Benefits Based On Award Of Industrial Accident Commission

**Section 1420.** No pension shall be paid under this Article on the basis of an award by the Industrial Accident Commission of the State of California. (**Added by:** Stats. 1951.)

**Section 1421.** There shall be employed in the Department of Public Health and Safety such number of matrons and substitute matrons of the City Prison as the Council shall from time to time prescribe by ordinance; providing, that such number of matrons shall be not less than three and that such number of substitute matrons shall not be less than one. All appointments of matrons and substitute matrons shall be made by the City Administrator from the eligible list of the Civil Service Board. The compensation of said matrons shall not be less than \$2,676.00 per annum each. Such compensation shall be paid in equal monthly installments. The compensation of said sub

stitute matrons shall be at the rate of not less than \$2,676.00 per annum each, to be paid only for the time during which said substitute matrons shall actually perform the services of matrons. There shall be deducted from each monthly installment of salary due pursuant to the provisions of this Article, a sum equal to five per cent of such monthly installment, which sum so deducted shall be retained by the Treasurer of the City and forthwith paid by him/her into the Police Relief and Pension Fund. Such matrons and substitute matrons shall be entitled as if officers or members of the Police Department to all of the rights, privileges and benefits conferred by Sections 92, 1423, 1400, 1401, 1402, 1405, and 1408-1418 inc. of the Charter upon officers or members of the Police Department. (**Added by: Stats. 1919; Amended by: Stats. 1923, 1925, 1931, 1933, 1943, 1946 and 2004.**)

\* This reference is to the Section or Article so designated in the former Charter

### Policewomen

**Section 1422.** Notwithstanding any other provisions of this Charter to the contrary, the position of Matron and Substitute Matron provided for in this Charter shall be, from and after the approval of this amendment by the State Legislature, designated as Policewomen in the Police Department, and the Council shall have the power to fix the compensation thereof. All persons employed in the position of Matron and Substitute Matron upon said effective date of this amendment shall thereafter hold the rank of Policewoman without examination and without loss of any of their civil service and retirement rights. The provisions of this section are for the purpose of eliminating the positions heretofore designated as Matron and Substitute Matron, and creating said positions in the Police Department under the designation Policewomen with all rights thereunder. (**Added by: Stats. 1953.**)

### Allowance For Injury

**Section 1423.** Any officer or member of the Police Department sustaining an injury while in the performance of his duty shall be entitled to receive in addition to the benefits otherwise provided in Article XIV of this Charter\* such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches and apparatus, including artificial members, as may be required during the continuance of his disability, the same to be provided by the City; and the Council shall allow such officer or member so injured full pay during the continuance of his disability, or until such time as he may be retired on a pension. (**Added by: Stats. 1917; Amended by: Stats. 1919.**)

\* This reference is to the Section or Article so designated in the former Charter.

## ARTICLE XV

### FIREMEN'S RELIEF AND PENSION FUND

**Section 1500.** The fund heretofore created, known and designated as the Firemen's Relief and Pension Fund shall continue in effect. The Mayor, Health Officer, and the President of the Civil Service Board shall hereafter constitute the Board of Trustees of such fund, and the City Treasurer shall be the custodian of said fund. (**Amended by: Stats. 1919, 1931.**)

**Section 1501.** Any member of the Department who resigns or is discharged from the service previous to retirement, shall have all such sums as have been deducted from his pay and contributed to the Firemen's Relief and Pension Fund pursuant to the provisions of Section 97b\*, refunded to him plus simple interest at the rate fixed by the Board of Trustees. (**Added by: Stats. 1943.**)

\* This reference is to the Section or Article so designated in the former Charter.

**Section 1502.** The said Board of Trustees may retire and relieve from service any aged, infirm, or disabled member of the Department who has arrived at the age of fifty-five years, and who, upon examination by two regularly licensed and practicing physicians, appointed by the Trustees for that purpose may be ascertained to be, by reason of such age, infirmity, or other disability, unfit for the performance of his

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duty said Board of Trustees shall, at the request of any member of the Department who has arrived at the age of fifty-five years, and who shall have served twenty years in the aggregate in this Department, retire, and relieve such member making such application. And the said Board of Trustees shall, upon the request of any member of the Fire Department who has served twenty-five years in the aggregate as a member of said Fire Department, retire and relieve said member making such application. Such retired member shall receive from the Firemen's Relief and Pension Fund a pension equal to one-half of the salary attached to the rank held by him one year prior to the date of said retirement, which pensions shall be paid in equal monthly installments and shall cease at the death of such member. (**Amended by:** Stats. 1919.)

### Compulsory Retirement At Age Seventy

**Section 1503.** Notwithstanding any provision contained in this Article, retirement under Section 1502 shall be compulsory upon such member reaching the age of seventy years. (**Added by:** Stats. 1941.)

### Absence By Reason Of War Or Other National Emergency

**Section 1504.** Absence of a member of the Fire Department by reason of service with the armed forces of the United States, either during a war involving the United States as a belligerent or in any other National emergency and for six months thereafter and who is not dishonorably discharged or released therefrom, shall be credited to such member as service for the City for retirement purposes. No contributions to the Firemen's Relief and Pension Fund for such period of absence without compensation from the City shall be required of such member.

This section shall be retroactively applied to extend its benefits to such members of the Fire Department whose absence commenced prior to its effective date. (**Added by:** Stats. 1947.)

### Pension For Member Disabled In Performance Of Duty

**Section 1505.** Any member of the Department who shall become physically disabled by reason of any bodily injury received in the performance of his duty upon his filing with the Board of Trustees a verified petition, setting forth the facts constituting such disability, and the cause thereof, accompanied by a certificate signed by the Chief of the Fire Department, the Chief of the Battalion to which he belongs and by two regularly licensed physicians of the City recommending his retirement upon a pension, on account of such disability, may be retired from the Department upon an annual pension, equal to one-half the amount of salary attached to the rank which he held one year prior to the date of such retirement, to be paid to him in equal monthly installments during the balance of his lifetime and to cease at his death. In case his disability shall cease, his pension shall cease, and he shall be restored to the service in rank he occupied at the time of his retirement; provided that the said Board of Trustees may of its own motion retire any member who shall become physically disabled by reason of any bodily injury received in the performance of his duty, who upon examination by two regularly licensed and practicing physicians appointed by the Trustees for that purpose, may be ascertained to be by reason of such disability unfit for the performance of his duty, provided further that such disability shall have continued for one year. (**Amended by:** Stats. 1919, 1941.)

### Benefit To Dependents Of Deceased Member Retired For Disability Incurred In Performance Of Duty

**Section 1506.** Notwithstanding any other provision set forth in Section 1505, if a retired member of the Department shall die at any time by reason of the bodily injury for which he was pensioned, his pension shall not cease but shall continue and shall be paid to his widow to whom he was married at the time of such injury, or to his orphan child or children, or to his parent or parents, in the manner

and subject to the provisions of Section 1507 (a), (b) and (c). (Added by: Stats. 1941.)

### **Pension To Dependents When Member Dies Of Injury Or Disability Incurred In Performance of Duty**

**Section 1507.** The Board of Trustees shall, out of the Firemen's Relief and Pension Fund, provide for the family of a member of the Department who may die as a result of an injury or disability incurred while in the performance of his duty as follows:

(a) Should the decedent be married, his widow, as long as she shall remain unmarried, shall be paid a pension equal to one-half of the salary attached to the rank held by the decedent at the time of death.

(b) Should the decedent leave no widow, but leave an orphan child or children, under the age of eighteen years, or should the decedent leave a widow and child or children under the age of eighteen years, and the widow die without remarrying, while such child or children are yet under the age of eighteen years, such child, or children collectively, shall receive a pension equal to one-half of the salary attached to the rank held by the decedent at the time of his death until the youngest child attains the age of eighteen years, provided that no child shall receive any such pension after attaining the age of eighteen years, nor shall any child receive any such pension should he or she marry before reaching the age of eighteen years.

(c) Should the decedent leave no widow, or no orphan child or children but leave a parent or parents, dependent solely upon him for support, such parent or parents so depending shall collectively receive a pension equal to one-half the salary attached to the rank held by the decedent at the time of his death during such time as the Board of Trustees may determine its necessity. (Amended by: Stats. 1919, 1941.)

### **Section 1508.**

(a) Upon the death of a member of the Department who had been retired under this article, and such death shall occur after the effective date of this section and shall result from causes other than inju-

ries received in or illness caused by or arising out of the performance of duty, two-thirds of such member's pension at the time of death shall be continued regardless of the age of the surviving widow, the dependents of the member in this order of succession and upon the conditions provided in Section 2612.

(b) There shall be deducted from each monthly installment of pension due to such retired member under the provisions of this article a sum equal to 1-1/2% of such monthly installment which sum shall be retained by the Treasurer of the City and forthwith paid by him into the Police and Fire Retirement Fund.

(c) The provisions of subdivisions (a) and (b) of this section shall not be applicable to any retired member of the Department who has not within 90 days after the ratification of this section by the State Legislature filed with the Secretary of the Police and Fire Retirement Board said member's written election to be subject to the provisions of said subdivisions. (Added by: Stats. 1955.)

**Section 1509.** The widow of a member of the Department who was retired for years of service under the provisions of Section 1502 and who died prior to the effective date of Section 1508 from causes other than injuries received in, or illness caused by, or arising out of, the performance of duty, provided such widow was married to the decedent at least one (1) year prior to his retirement and has remained unmarried since the date of his death, shall receive two-thirds of the decedent's pension. The widow of a member of the Department who died from causes other than injuries received in, or illness caused by, or arising out of, the performance of duty and whose death occurred prior to eligibility for membership in the retirement system created by Article XXVI, and who was not receiving a pension under this Article, but who was eligible for retirement for years of service under Section 1502, shall receive two-thirds of the pension which would have been provided for him by said Section 1502 if he had been retired for years of service at the time of death, provided she has remained unmarried since the date of his death. The pension(s) herein provided

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for shall commence on the first of the month next following the effective date of this section and shall be paid in equal monthly installments as long as such respective widow(s) shall live and remain unmarried.

This section shall not be construed to provide any payment to such widow for any period of time prior to the first day of the month next following the effective date hereof, except that benefits under this section shall be in addition to any benefits heretofore received by the widow under Section 1510. (Added by: Stats. 1957.)

**Section 1510.** When a member of the Department shall die from causes other than those specified in Section 1507 after ten years of service, then his widow and if there be no widow, then his children, and if there be no widow or children, then his mother, if dependent upon him for support, shall be entitled to the sum of One Thousand (1,000) Dollars; provided, further, when a member of the Department shall die from causes other than those specified in Section 1507 before retirement or eligibility for retirement, regardless of length of service, then his widow, and if there be no widow, then his children, and if there be no widow or children, then his parents or parent, and if there be none of these, then his estate, shall have and receive a refund of all such sums as have been deducted from his pay and contributed to the Firemen's Relief and Pension Fund, plus simple interest at a rate fixed by the Board of Trustees. When a member of the Department dies at such time as to qualify under both provisions of this Section, the person or representatives entitled to receive the payment or refund herein provided shall elect whether the One Thousand (1,000) Dollar payment or the refund of salary deductions shall be received, but in no event shall both be paid on account of the same death. (Amended by: Stats. 1943.)

**Section 1511.** Any person receiving a pension from the Firemen's Relief and Pension Fund, who shall become convicted of a felony, or after notice and an opportunity to be heard shall be found by the Board of Trustees to have become dissipated or an

habitual drunkard, or shall become a non-resident of this State except on leave by the Board of Trustees, shall forfeit all right to said pension. (Amended by: Stats. 1941.)

**Section 1512.** The Board of Trustees may, on notice from the Chief of the Fire Department, reward any member of the Department for conduct which is heroic and meritorious. The form or amount of such reward shall be discretionary with the Board of Trustees, but it shall not exceed in any one instance one month's salary, and may be paid only out of funds provided by the Council; and the Council may, on application of the Board of Trustees, provide money for such purposes.

**Section 1513.** The Board of Trustees shall hold quarterly meetings in April, July, October and January of each year and special meetings upon the call of its President, it shall issue warrants, signed by its President and Secretary, to persons entitled thereto for the amount of money ordered paid to such persons from the Firemen's Relief and Pension Fund. Each warrant shall state for what purpose the payment is made.

**Section 1514.** The Board of Trustees shall keep a public record of its proceedings. It shall at each quarterly meeting send to the Treasurer and to the Auditor a written or printed list of all persons entitled to payments from the Firemen's Relief and Pension Fund, stating the amount of such payment and for what granted; such lists shall be certified and signed by the President and Secretary of the Board. The Auditor shall thereupon enter a copy of such list upon a book to be kept for that purpose which shall be known as the Firemen's Relief and Pension Fund Book. All warrants signed by the President and Secretary of the Board shall be presented to the Auditor and ordered paid by him out of said fund.

**Section 1515.** The Board of Trustees shall possess the power to make rules and regulations for its guidance. No compensation shall be paid to any member of the Board of Trustees for any duty required or performed as a member of said Board of Trustees.

**Section 1516.** The Board of Trustees shall make an annual estimate necessary to carry into effect the foregoing provisions and transmit the same to the City Administrator who shall cause the same to be included in his annual estimate of the probable expenditures of the City, and the Council shall, on application of the said Board of Trustees, provide the necessary money for the demands of this pension fund. (Amended by: Stats. 1919, 1931 and 2004.)

#### **Payment Of Pension, Etc., As Credit On Compensation, Etc., Award**

**Section 1517.** If any member of the Department, or the widow, child or children, parent or parents, of a deceased member of the Department, shall receive any payment under the provisions of Division IV of the Labor Code, or any other act or acts of the Legislature, or Constitution, of the State of California, providing for an award, compensation, death or disability payment, because of the disability, sickness, injury, or death arising out of the performance of duty of such member, any payment on account thereof shall be applied as a credit and set-off against any payment on account of salary, pension or other benefit payable under this Article. (Added by: Stats. 1941.)

#### **No Benefits Based On Awards Of Industrial Accident Commission**

**Section 1518.** No pension shall be paid under this Article on the basis of an award by the Industrial Accident Commission of the State of California. (Added by: Stats. 1951.)

#### **Allowance For Injury**

**Section 1519.** Any member of the Fire Department sustaining an injury while in the performance of his duty shall be entitled to receive, in addition to the sick leave provided for, such medical, surgical and hospital treatment including nursing, medicines, medical and surgical supplies, crutches and apparatus, including artificial members, as may be required during the continuance of his disability, the same to be provided for by the City; and the Council shall allow the member so injured full pay during the con-

tinuance of his disability or until such time as he may be retired on a pension. (Added by: Stats. 1917; Amended by: Stats. 1919.)

### **ARTICLE XX OAKLAND MUNICIPAL EMPLOYEES' RETIREMENT SYSTEM**

#### **Retirement Of Aged And Disabled City Employees**

**Section 2000.** The City Council, by ordinance, for a four-fifths vote, and under the conditions set forth herein, shall establish a retirement system and provide death benefits for persons employed by the City of Oakland who are not eligible for membership in any other City pension system; provided, that the system herein provided for shall not apply to elective officers or to members of boards or commissions appointed by the Mayor, by a Commissioner, or by the City Council.

The Council, subject to the provisions of Section 2013 of this Charter, may also by similar vote amend the system so adopted.

The words "employees" or "persons employed," wherever used in this section, shall include persons generally classed as "officers" or "officials." (Amended by: Stats. 1927.)

#### **Board Of Administration Of Retirement Fund Definitions**

**Section 2001.** The following words and phrases as used in this Article, unless a different meaning is plainly required by the context, shall have the following meaning:

"Retirement allowance," or "allowance," shall mean equal monthly payments, beginning to accrue upon the date of retirement, and continuing for life unless a different term of payment is definitely provided by the context.

"Compensation," as distinguished from benefits under the Labor Code of the State of California, shall mean all remuneration, whether in cash or by other allowances made by the City for service qualifying for credit under the Retirement System; provided that when the compensation of a member is a factor in

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any computation to be made under this System, there shall be excluded from such computation any compensation based on overtime put in by a member. For the purpose of this system, overtime is the aggregate service performed by an employee as a member in all positions, in excess of the hours of work considered normal for employees on a full-time basis and for which monetary compensation is paid.

“Compensation earnable” shall mean the monthly compensation as determined by the Board of Administration which would have been earned by the member had he worked, throughout the period under consideration, the average time ordinarily worked by persons in the same grade or class of positions as the positions held by him during such period and at the rate of pay attached to such positions. The computation for any absence of a member shall be based on the compensation earnable by him at the beginning of the absence, and that for time prior to entering the employ of the City, shall be based on the compensation earnable by him in the position first held by him in such employ.

“Benefit” shall include “allowance,” “retirement allowance,” and “death benefit.”

“Accumulated normal contributions” shall mean the sum of all contributions plus interest.

“Accumulated additional contributions” shall mean the sum of all additional contributions plus interest.

“Accumulated contributions” shall mean accumulated normal contributions plus accumulated additional contributions.

“Final compensation” means the highest average compensation earnable by a member during any period of three consecutive years of service; compensation earnable to be computed as described in the definition of “compensation earnable.” For the purpose of this paragraph, periods of service separated by breaks in service may be aggregated to constitute a period of three consecutive years, if the periods of service are consecutive except for such breaks. If a break in service did not exceed six months in duration, time included in the break and compensation earnable during such time shall be included in the computation of final compensation. If a break in ser-

vice exceeded six months in duration, the first six months thereof and the compensation earnable during those six months shall be included in the computation of final compensation, but time included in the break which is in excess of six months and the compensation earnable during such excess time shall be excluded in the computation of final compensation.

“Member” means any officer or employee who is included in the membership of this Retirement System.

“Retirement System” or “System” shall mean Oakland Municipal Employees’ Retirement System as heretofore created under authority granted in this Section, said Retirement System being hereby continued in effect.

“Board” or “Retirement Board” shall mean board of administration as created in this Section.

Words used in the masculine gender shall include the feminine and neuter genders, and singular numbers shall include the plural and the plural the singular.

“Interest” shall mean interest at the rate adopted by the Retirement Board.

“Service” shall mean any service rendered prior to July 1, 1939, as an employee of the City of Oakland which for the purpose of this System is designated as “prior service”; and any service rendered after June 30, 1939, in a status requisite for membership in the Retirement System, but only prior service and service rendered as a member of the Retirement System shall be credited under the System.

This Section shall become effective on the first day of the month next following approval by the Legislature and filing with the Secretary of State. (Amended by: Stats. 1971.)

### **Board Of Administration Of Retirement Fund**

**Section 2002.** A Board of Administration of said retirement system is hereby created consisting of the City Treasurer, the Auditor, three (3) members elected from the active, retired and deferred membership of the retirement system, a resident repre-

sentative of a life insurance company and the officer of a local bank. Notwithstanding the foregoing, in the event that less than three Board members are elected from the active, retired and deferred membership of the retirement system, such membership may elect widows, widowers and beneficiaries of retirement system members to the vacant seats designated for active, retired and deferred members of the retirement system.

The Council, shall, upon the recommendation by the Mayor, appoint the resident representative of a life insurance company and the officer of a local bank hereinbefore referred to. Persons holding membership on said Board upon the adoption of this amendment shall continue to serve the terms to which they were elected or appointed.

The City Treasurer and Auditor shall be members of the Board ex-officio.

All members shall serve without compensation.  
**(Amended by: Stats. 1927, 1931, 1974, March 1996.)**

#### **Who May Be Retired — Retirement Benefits**

**Section 2003.** Any member who completes at least twenty years of service in the aggregate with which he is entitled to be credited under the System, and attains the age of fifty-two years, or completes at least 10 years of such service and attains the age of sixty years, may retire for service at his option. Members shall be retired for service on the first day of the month next following the attainment by them of the age of seventy years, regardless of length of service. Upon retirement for service after the effective date hereof, a member shall receive a service retirement allowance equal to the fraction of one-sixtieth of his final compensation, set forth opposite his age at retirement, taken and applied by interpolation of said fractions to the preceding completed quarter year of age, in the following table in the column applicable to his sex, multiplied by the number of years of service with which he is entitled to be credited:

<b>Age at Retirement</b>	<b>Fraction Men</b>	<b>Fraction Women</b>
52	.6120636	.6352571
53	.6477249	.6692856
54	.6862515	.7059143
55	.7279876	.7454909
56	.7732616	.7882855
57	.8225384	.8346370
58	.8764127	.8850589
59	.9354005	.9399551
60	1.0000000	1.0000000
61	1.0564648	1.0569430
62	1.1156446	1.1169496
63	1.1782066	1.1807488
64	1.2444586	1.2487750
65 & over	1.3147929	1.3216755

The fractions herein set forth at ages other than age 60 are based on the interest rate and mortality tables used under the Retirement System on the effective date hereof and shall be adjusted by the Board in accordance with such interest and mortality tables as the Board may adopt thereafter. The Board shall declare from time to time the rate of interest at which interest shall be credited on contributions of members and the City, and the rate of interest which shall be used in determining actuarial equivalents, which rate shall not exceed a rate one-fourth of a percentage point below the net rate currently earned on the assets of the Retirement Fund.

The Retirement System also shall provide for death benefits for members of the System. The City Council also shall provide that a member retiring may elect, before the first payment of the retirement allowance is made, to receive the actuarial equivalent of his allowance in a lesser allowance to be received by him throughout his life and in other benefits payable after his death to another person, including an allowance throughout the life of such person.

For the purpose of this Section, the qualifying ten-year periods of service shall be accumulated during any continuous periods of not more than twelve years, provided any absence from or return

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to actual service during such twelve-year periods is approved by the Civil Service Board in the case of persons in the classified civil service or by the City Council in the case of other persons within the Retirement System.

This section shall become effective on the first day of the month next following approval by the Legislature and filing with the Secretary of State. **(Amended by: Stats. 1971.)**

**Section 2004.** Notwithstanding the provisions of Section 2003 to the contrary, the provisions of this Section shall apply to the Retirement System. The City Council also shall provide that a member retiring may elect before the first payment of his retirement allowance is made, and that a member may elect at any time before retirement, but only after qualification for service retirement, as provided in Section 2010 to receive the actuarial equivalent of the portion or all of his allowance, as the case may be, which would not be continued automatically regardless of dependents then living, in a lesser allowance to be received by him throughout his life and in other benefits payable after his death to another person, including an allowance throughout the life of such person. The amounts payable under options two (2) or three (3) as stated in Ordinance No. 713 C.M.S., which were elected prior to the effective date of Section 2007 by a person who is living on that date, shall be adjusted to amounts calculated as if the provisions of that Section had been in effect at the date of his retirement, but no adjustment shall be made because of payments made prior to such effective date.

This Section shall become effective on the first day of the month next following approval by the Legislature and filing with the Secretary of State. **(Amended by: Stats. 1971.)**

**Section 2004.5** The Retirement System also shall provide for retirement for disability after five years of service credited under the System, and before age 60, subject to the following conditions:

It is the intention of this section that allowances granted to or on account of members of the System for injury, illness or death incurred in the performance of duty shall not be cumulative with benefits

under the Labor Code of California awarded as the result of the same injury, illness or death. If any member of the System or dependent receives compensation under the Labor Code for disability or death arising out of and in the course of the performance of duty, any payment on account thereof shall be applied as a credit and set-off against any payment on account of salary granted to such member under Section 8.04 of the Laws and Rules of the Civil Service Board; or retirement allowances or other benefit granted to or on account of such member under the provisions of this article as follows:

(a) If the amount is paid in one sum or in installments equal to or greater than such salary, retirement allowance, or other benefit, such member or dependent shall not receive any salary, retirement allowance or other benefit until the total amount of the salary, retirement allowance, or other benefit which would otherwise be payable equals the total amount received under the Labor Code.

(b) If the amount is paid in installments less than such salary, retirement allowance or other benefit, the salary, retirement allowance or other benefit shall be reduced so that the total of salary, retirement allowance or other benefit plus the amounts received under the Labor Code will equal the salary, retirement allowance, or other benefit which would otherwise be due.

(c) In either case, any award specifically granted for medical, surgical or hospital expenses shall not reduce the salary, retirement allowance or other benefit.

No disability retirement benefits shall be paid under this section on the basis of an award by the Workmen's Compensation Appeals Board of the State of California.

This section shall become effective on the first day of the month next following approval by the Legislature and filing with the Secretary of State. **(Added by: Stats. 1971.)**

### Member's And City's Contributions

**Section 2005.** Contributions to the Retirement System, required of members and the City, shall be as follows:

(a) The normal rate of contribution of each member as determined by the actuary and approved by the Board and to be effective on the effective date hereof shall be based on his nearest age at the effective date of his membership in the Retirement System, and if effective from the effective date of his membership, shall be such as, on the average for such member, will provide, assuming service without interruption from said effective date until retirement, one-half of the portion of the service retirement allowance which is based on such service, and to which he would be entitled if retired at age 60, but not including automatic continuance to dependents. The actual amount of annuity including such continuance, however, provided for a member upon retirement, shall be the actuarial equivalent of his accumulated contributions. The normal rate established for age 59 shall be the rate for any member who has attained a greater age before entrance into the System, and that established for age twenty shall be the rate for any member who enters the System at a lesser age. Members' normal rates of contributions shall be changed by the Board on the basis of periodical actuarial valuation and investigation provided by the Charter. No adjustment shall be included in members' normal rates because of time during which they have contributed at different rates.

This amendment shall become effective on July 1, 1959, or the first day of the month next following approval by the Legislature, whichever is later.  
**(Amended by: Stats. 1959.)**

(b) There shall be deducted from each payment of compensation made to a member, a sum determined by applying the members normal rate of contribution to such compensation. The sum so deducted shall be paid forthwith to the Retirement System, and shall be credited to the individual account of the member from whose compensation it was deducted, and the total of said contributions, together with interest credited thereon, shall be applied to provide part of the retirement allowance granted to said members; or said total of said contributions, together with interest credited thereon shall be paid to said member upon termination of his employment by the City prior to retirement, or to

his estate or beneficiary upon his death, in the manner provided by the City Council. The City Council, however, shall provide for election by members who are entitled to be credited with at least 5 years of service and whose employment is terminated by cause other than death or retirement, to allow their accumulated contributions to remain in the Retirement fund, to continue as members of the System and to be subject to the same age and disability requirements as apply to other members for service or disability retirement, but they shall not be subject to a minimum service requirement, and the minimum retirement allowances shall not apply to them, unless they meet such minimum service requirement. Subject to rules prescribed by the Board, any member may elect to make contributions in excess of his contributions herein required, for the purpose of providing additional benefits, and benefits provided hereunder for such member shall be exclusive of such additional benefits. The exercise of this privilege by a member shall not require the City to make any contributions. Additional contributions shall be administered in the same manner as normal contributions.

This section shall become effective on the first day of the month next following approval by the Legislature and filing with the Secretary of State.  
**(Amended by: Stats. 1971.)**

(c) Contributions deducted prior to the effective date hereof, from compensation of members of the System, and standing with interest thereon, to the credit of such members on the records of the Retirement System on said date, shall continue to be credited to the individual accounts of said members and shall be combined with and administered in all respects in the same manner as the contributions deducted after said date.

(d) The total contributions, with interest thereon, made by or charged against the City and standing to its credit, on the effective date hereof, in the accounts of the Retirement System, shall be applied to provide part of the benefits under this System.

(e) The City shall contribute to the Retirement System such amounts as may be necessary, when added to the contributions referred to in the preced-

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ing paragraphs of this Article, to provide the benefits payable under the System. Such contributions of the City to provide the portion of the benefits hereunder which shall be based on service rendered prior to July 1, 1939, shall not be less during any fiscal year than the amount of such benefits paid during said year. Such contributions of the City to provide the portion of the benefits hereunder which shall be based on service rendered by respective members on and after July 1, 1939, shall be made in annual installments, and the installment to be paid in any year shall be determined by the application of a percentage to the total compensation paid to members during said year. Said percentage shall be the ratio of the value at the date of the periodical actuarial valuation and investigation into the experience under the System as provided by the Charter, of the benefits thereafter to be paid from contributions of the City, less the amount of such contributions, and plus accumulated interest thereon, then held by said System to provide said benefits on account of Service rendered by respective members on and after July 1, 1939, to the value at said date of compensation thereafter payable to said members. Said values shall be determined by the actuary, who shall take into account the interest which shall be earned on said contributions, the compensation experience of members, and the probabilities of separation by all causes, of members from service before retirement and of death after retirement. Said percentage shall be changed by the Board on the basis of said values determined in said periodical actuarial valuation and investigation into the experience under the System. The initial percentage to be used under this Section shall be six and eighty-four hundredths per cent (6.84%) until redetermined by the Board of Administration on the basis of the periodical investigation and actuarial valuation under the System.

This section shall become effective on July 1, 1953, or the 1st day of the month next following approval by the Legislature, whichever is later. (Amended by: Stats. 1927, 1953.)

### Absence By Reason of War or Other National Emergency

**Section 2006.** Absence of a member of the Retirement System by reason of service with the armed forces of the United States, either during a war involving the United States as a belligerent or in any other National emergency and for six months thereafter and who is not dishonorably discharged or released therefrom, shall be credited to such member as service for the City for retirement purposes.

While so absent without compensation from the City, the City shall contribute, for and on behalf of each member absent by reason of such service, amounts equal to the contributions which would have been made by such member and the City to the Retirement System if he had not been so absent. Any such member who contributed to the Retirement System under the provisions of Section 33 (4-1/2)\* of this Charter entitled "Contributions by Members in Military Service" before its repeal, shall have such contributions refunded or, at his election credited to his account as additional contributions, but such additional contributions when credited to his account shall not place on the City any additional financial obligation.

The contributions made by the City pursuant to the provisions of this Section shall be made available only for the purpose of retirement, and if employment by the City of any such member be discontinued before retirement, he shall be entitled to withdraw only that portion of his accumulated contributions actually made by him, or should he die before retirement, any death benefit payable by reason of his death shall include only that portion of his accumulated contributions actually made by him.

This Section shall be retroactively applied to extend its benefits to such members of the Retirement System whose absence commenced prior to its effective date. (Added by: Stats. 1947.)

\* This reference is to the Section or Article so designated in the former Charter.

### **Continuation of Retirement Allowances After Death**

**Section 2007.** Upon the death of a person after his retirement, including persons receiving allowances on the effective date of this Section, one-half of his retirement allowance as it was at death, before modification under an option shall be continued throughout life or until the remarriage of the surviving spouse if the remarriage occurs prior to January 1, 1985. If there be no surviving spouse entitled to an allowance hereunder, or if the surviving spouse so entitled dies before every child of such deceased member attains the age of eighteen years, then the allowance which the surviving spouse would have received, or which the surviving spouse would have received had she lived shall be paid to a child or children under said age, collectively, to continue until every such child dies or attains said age, provided that no child shall receive any allowance after marrying or attaining the age of eighteen years. Should said member leave no surviving spouse and no children under the age of eighteen years, but leave a parent or parents dependent upon him for support, the parents so dependent shall collectively receive a monthly allowance equal to that which a surviving spouse otherwise would have received, during such dependency. No allowance, however, shall be paid under this section to a surviving spouse, unless he or she was married to the member at least one year prior to retirement. Contributions necessary for the payment of the continuance of one-half of allowances of persons who are receiving allowances on the effective date of this Section, shall be provided from the reserves held by the Retirement System on account of active members, the necessary amount being transferred upon said effective date from said reserves to the reserves held by the Retirement System to meet obligations on account of benefits that have been granted.

This Section shall become effective on the first day of the month next following approval by the Legislature. (Added by: Stats. 1959. Amended by: Stats. June 3, 1986.)

### **Allowance Upon Death After Qualification For But Before Service Retirement**

**Section 2008.** Upon the death before retirement of a member who is qualified for service retirement under Section 2003 by attainment of the age of at least fifty-two (52) years with credit for twenty (20) or more years of service, or at least sixty (60) years with credit for ten (10) or more years of service, and on account of whose death the benefit provided for in accordance with such Section, is otherwise payable, a monthly allowance equal to one-half of the monthly retirement allowance prior to modification under options provided for in accordance with such Section which the member would have been entitled to receive if he had retired from service on the date of his death, shall be payable:

- (a) To the member's widow, or to the member's widower who was receiving at least one-half of her/his support from the member at the time of the member's death, and with respect to both widow and widower, who was married to such member prior to the occurrence of the injury or onset of the illness which resulted in death; or
- (b) If there is no qualifying spouse, or if such spouse dies or remarries, to unmarried children, including stepchildren, of the member, who are under 18 years of age.

The allowance payable under this Section shall be in lieu of the death benefit provided for in accordance with Section 2003 except for the accumulated additional contributions included herein, but a person qualifying for the allowance or such person's guardian may elect, before the first payment on account of it, to receive such death benefit in lieu of the allowance. The member's accumulated additional contributions shall be paid to the person qualifying for the allowance, and the remainder of the accumulated contributions of the member shall be applied toward providing the allowance, and the balance not so provided shall be payable from contributions of the City.

The allowance shall begin to accrue on the day next following the date of death of the member, and payments to the surviving spouse shall continue only until death or remarriage if remarriage occurs

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prior to January 1, 1985, and to or on account of children with respect to each child, until the attainment of age 18, death or prior marriage. If payment of the allowance provided by this Section is stopped because of remarriage of the surviving spouse prior to January 1, 1985, or the attainment of the age of 18 years by, or the death or marriage of, a child, before the sum of the monthly payments made equals the death benefit provided for in accordance with Section 2003, exclusive of accumulated additional contributions, a lump sum equal to the difference shall be paid to the remarried spouse who remarried prior to January 1, 1985, or if there is no such spouse, to the surviving children of the member, share and share alike.

This Section shall become effective on the first day of the month next following approval of the Legislature. (Added by: Stats. 1959; Amended by: Stats. June 3, 1986.)

### Withdrawals

**Section 2009.** Should any member discontinue to be an employee of the City, except by death or retirement, he shall be paid, under such rules as may be established by ordinance of the Council, all of his accumulated contributions, together with interest thereon at rates to be set by the Council upon the recommendation of the Board of Administration.

The Council may also, by ordinance, define the rights of former employees or of former members of the retirement system upon their re-entry into the City service. (Amended by: Stats. 1927.)

### Irrevocable Option Election After Qualification For But Before Service Retirement

**Section 2010.** Any member who has qualified for service retirement under Section 2003 by attainment of the age of at least fifty-two (52) years, with credit for twenty (20) or more years of City service, or at least sixty (60) years, with credit for ten (10) or more years of City service, may elect as provided in Section 2004 and without right or revocation or change after approval of the election by the Retirement Board, to receive the actuarial equivalent as of the date of his retirement of the retirement allow-

ance payable to him when and if he retires for service or disability, in a reduced retirement allowance according to the provisions of either Option 2 or Option 3, as stated in Ordinance No. 713 C.M.S. If such a member at the time of making the election has a living spouse who would qualify for an allowance under Section 2008, the election under this Section shall be invalid and of no effect unless and until the consent of such spouse to it is filed at the office of the Retirement System.

Upon such member's death at least thirty (30) days after the date upon which the election is received in the office of the Retirement System, and prior to the effective date of his retirement, the person who was nominated by him under the option he elected and who survives him, shall receive an allowance calculated under such option, upon the assumption that such member retired for service on the date of his death and died immediately thereafter. The payment of such allowance to such person shall be in lieu of both the death benefit provided for in accordance with Section 2004, and the allowance provided by Section 2008, and no such death benefit or such allowance shall be paid on account of such death to any person or beneficiary, regardless of whether the person nominated under the option elected survives the member.

If such member subsequently retires for service or disability, he shall receive, regardless of whether the person nominated by him under the option elected is then living, a reduced allowance according to the provisions of Section 2003 and the option elected. The amount of the allowance prior to optional modification shall be calculated on the basis of the member's age at death before retirement, or at retirement as the case may be, but the reduction of such allowance under the option elected shall be based on the ages of such member and the person nominated by him under such option at the effective date of such election.

This Section shall become effective on July 1, 1959, or the first day of the month next following approval by the Legislature, whichever is later. (Added by: Stats. 1959.)

## **Allowances — Oakland Municipal Employee's Retirement System**

**Section 2011.** Every retirement allowance payable by the Oakland Municipal Employees' Retirement System, for time commencing on the effective date of this section, hereby designated as the first day of July, 1953, or the first day of the month next following its approval by the Legislature, whichever is later, to or on account of any person who was retired prior to February 1, 1950, as a member of said system, is hereby increased by the amount of \$25.00 per month, provided such member was entitled to be credited under the Retirement System with at least twenty years of service upon which the retirement allowance was determined at retirement. If the member was entitled to be credited with less than twenty years of such service, said monthly increase shall be an amount which shall bear the same ratio to \$25.00 that the service with which the member was entitled to be credited at the effective date of retirement bears to twenty years. This section does not give any member retired prior to the effective date hereof, or his successors in interest, any claim against the City for any increase in any retirement allowance paid or payable for time prior to said effective date. If a member elected at retirement to have his retirement allowance modified under Options 2 or 3, provided by Ordinance 713 C.M.S. and if his beneficiary is living on said effective date, the increase in his allowance shall be modified under the option elected at retirement, and on the basis of current ages, mortality tables and interest rate. If the beneficiary of such a person who elected at retirement to have his allowance modified under one of said options is not living on said effective date and the beneficiary is receiving the modified retirement allowance, then the allowance shall be increased as provided herein for persons who did not elect an option.

The increase in the retirement allowance shall be apportioned between service rendered prior to the entry of the member into the Retirement System and service rendered as a member, in the same proportion that such prior and current service, respectively, bears to the total service credited at retirement. Contributions to the Retirement System necessary for the

payment of the portion of the increases in the retirement allowances provided in this Section, which are based on service as members, shall be provided from reserves held by the Retirement System to meet the obligations on account of benefits that have been granted and on account of prior service of members. If, however, the City's contributions on account of service rendered as members has been changed from an amount equal to members' contributions to an amount derived by applying a percentage to earned compensation of members, contributions to the Retirement System necessary for the payment of the increases in the retirement allowances provided in this section, shall be provided, with respect to the portion of the increase based on service rendered as members, from the reserves held by the Retirement System on account of miscellaneous members, the necessary amount being transferred upon said effective date, from said reserves to the reserves held by the Retirement System to meet the obligations on account of benefits that have been granted and on account of prior service of members. The contribution then being required of the city, as a percentage of salaries of persons who are members of the system, shall be increased by such increase in the percentage as is determined by the actuary as necessary to replace the reserves to be transferred. Contributions to the Retirement System necessary for the payment of the portion of said increases based on service rendered prior to membership in the Retirement System, shall be paid to the System by the City in annual appropriations, provided that such appropriation for any year shall not be less than the amount disbursed during that year on account of said portion of the increases. (Added by: Stats. 1953.)

## **Plan To Be Compulsory**

**Section 2012.** The system shall be applied to employees, officers, or officials, not excluded by the provisions of this Amendment, of all such departments, sections, or classes as the Council shall determine, and all persons in the employ of the City in such departments, sections, or classes after the system is adopted shall be members of the system; provided, that persons employed in the Office of the

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City Engineer prior to July 1, 1911, shall be classified as city employees during the period of such employment, for the purposes of membership in the Retirement System.

The Council may, however, provide that employees, officers, or officials of the aforementioned departments, sections, or classes who shall enter the service of the City after the system is adopted shall serve a period of six (6) months before becoming members of the system. (**Amended by: Stats. 1927.**)

### Contributions To Be Based On Actuarial Tables

**Section 2013.** It shall be the duty of the first Board of Administration created under this Section to recommend a retirement system to the Council and to secure from a competent actuary a report of the cost of establishing the same.

The mortality, service, experience, or other tables calculated by the said actuary and the valuations determined by him and approved by the Board shall be conclusive and final. Any system adopted by the Council shall be based thereon, and no changes shall be made in the system by the Council until the cost of such changes has been estimated by a competent actuary and the changes themselves have been approved by the Board of Administration.

The Board of Administration shall cause the tables on which the system is based to be reviewed at least every three (3) years by a competent Actuary and shall recommend to the Council any changes in the system that the Board may deem necessary as the result of such actuarial review. (**Amended by: Stats. 1927, September 1974.**)

### Liability For Prior Service

**Section 2014.** The system adopted hereunder shall include provision for an annual contribution by the City at least sufficient to meet the liability falling due in the current year for benefits to which members of the system are entitled by virtue of service rendered prior to the time the system becomes effective.

Said annual contribution for prior service shall be in addition to the contributions for current service required by Section 2005. (**Amended by: Stats. 1927.**)

### Administration Of The Plan

**Section 2015.** The Board of Administration shall elect one of their number President and shall appoint a Secretary. They may also employ such additional actuarial, clerical, or other assistance as the Council may provide. All regular and permanent employees of the Board, with the exception of the actuaries, shall be appointed under the provisions of Article XIII of this Charter.

The Board shall make all necessary rules and regulations, not inconsistent with this Charter and the ordinances establishing the Retirement System, and it shall be the sole judge, under such general ordinances as may be adopted by the Council, as to the conditions under which persons may be admitted to benefits of any sort under the system.

The Board shall also have exclusive control of the administration and investment of such funds as may be established under the system; provided, that the Auditor shall refuse to allow any warrant drawn for the payment of a benefit if in his opinion such benefit has been granted in contravention of this Section or of any ordinance passed under the authority granted herein; and provided further, that the City Treasurer shall be custodian of the funds under the direction of the Board of Administration as aforesaid. (**Amended by: Stats. 1927.**)

### Additional Ordinances Authorized

**Section 2016.** The Council shall enact any and all ordinances necessary, in addition to the ordinance authorized in Section 2000, for the proper operations of the aforementioned Retirement System. The Board of Administration shall make an annual estimate of the cost of administering the Retirement System and shall transmit the same to the City Administrator at such time as he may direct. The amount necessary for the administration of the aforementioned Retirement System shall be paid out of the Oakland Municipal Employees' Retirement Fund. (**Added by: Stats. 1927; Amended by: Stats. November 1992 and March 2004.**)

## ARTICLE XXI

### MISCELLANEOUS

**Section 2100. (Repealed by: Stats. June 1976)**

**Municipal Court Employees — Civil Service and Retirement**

**Section 2101.** The Council may by ordinance provide for the retention in the Retirement System and the Classified Civil Service of the City of Oakland of any employee, who upon the establishment of such court, are members of such Retirement System or Classified Civil Service, and shall, pursuant to the Municipal Court Act, become employees of the County of Alameda in the performance of duties relating to the court or the accounting for and auditing of fines, forfeitures and other revenues which become the property of the City under the law. Or, at its option, the City may reimburse the County for the costs of taking such employees into the retirement system applicable to county employees without loss to such members of their retirement compensation, death and other benefits.

**Section 2102. (Repealed by: Stats. June 1976.)**

## ARTICLE XXVI

### Added By: Stats. 1951

### POLICE AND FIRE RETIREMENT SYSTEM

**Section 2600.** There is hereby added to the Charter of the City of Oakland a new Article to be known as Article XXVI for the purpose of combining into one system, hereby created and to be known as THE POLICE AND FIRE RETIREMENT SYSTEM, and the separate system heretofore created by the provisions of Article XIV and XV of this Charter. All persons who become members of the Police or Fire Departments as defined in Article XIV\* and XV\* of this Charter, including all persons hereafter employed to perform the duties now performed by matrons and substitute matrons of the City Prison, on or after the effective date of this Article, hereby defined as July 1, 1951, or the first of the month next following approval by the Legislature, whichever is the later, shall be members of the Retirement System established by

this Article and shall be subject to the provisions hereof. All members of the Police or Fire Departments who are subject to the Relief and Pension Systems under the provisions of Article XIV and XV of this Charter, and not permanently retired, including matrons and substitute matrons of the City Prison, shall have the option of being members of this Retirement System under the provisions of this Article, said option to be exercised in writing on a form furnished by the Retirement Board as hereinafter defined, to be filed with the Secretary of the Board not later than 90 days after the effective date of this Article. Upon filing said written option, such persons shall be subject to the provisions of this Article as of its effective date, notwithstanding any other provisions of this Charter; provided that any of such persons who are absent by reason of service in the armed forces of the United States, and any persons on disability retirement under Article XIV or XV on the effective date of this Article, shall have the right to exercise said option within 90 days after return of such persons to service in said departments. Members of the Relief and Pension Systems under Articles XIV and XV of this Charter, who do not exercise the option in this section, shall remain members under the provisions of said articles and under the provisions of Section 2619 and benefits being paid, on the effective date hereof, to or on account of persons who are or have been members under said articles, shall be continued at their existing rates and in accordance with the provisions of said articles, but shall be paid from the fund created under this article.

(a) Notwithstanding any other provision of this Article XXVI, active members of PFRS shall be permitted to terminate their membership in PFRS and become members of the California Public Employees' Retirement Systems ("PERS") (hereinafter referred to as "transfer to PERS"); provided that active members may transfer to PERS only if the following occur:

- (1) the City Council authorizes the transfer to PERS; and
- (2) the PFRS Board authorizes transfer of PFRS retirement funds representing the employer and em-

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ployee contributions to PFRS for each PFRS member who exercises the option to transfer to PERS.

The decision to authorize the transfer to PERS shall be based on the City Council's sole judgment and discretion. The City shall have absolutely no obligation to authorize such transfer and the City Council's decision shall be final and binding and without recourse to a court or law, section 910 of the City Charter, which provides for binding interest arbitration, or any other administrative, contractual or legal avenue or remedy.

The decision of the PFRS Board to authorize transfer of PFRS retirement funds to PERS as described above, shall be based upon the board's sole judgment and discretion exercised in accordance with board members' fiduciary obligations, the prudent person standard, the provision of Article XXVI of the City Charter, the California Constitution and other applicable law. (**Amended by: Stats November 2000.**)

\* This reference is to the Section or Article so designated in the former Charter.

### Police and Fire Retirement Board

**Section 2601.** In order to continue in force and make effectual pensions and retirements already existing or that may be granted in the future in favor of members of the Police or Fire Departments, the systems heretofore existing under the provisions of Articles XIV and XV of this Charter are hereby combined into one system to be known as the Police and Fire Retirement System and the funds heretofore created, existing and known as the Police Relief and Pension Fund and the Firemen's Relief and Pension Fund, are hereby combined in a common fund to be known and designated as the Police and Fire Retirement Fund. This System and fund shall be managed and administered by a Board hereby created to be known and designated as the Police and Fire Retirement Board, which shall be the successor of and shall have the powers and duties heretofore possessed and exercised by the Board of Trustees of the Police Relief and Pension Fund and Board of Trustees of the Firemen's Relief and Pension Fund. This Retirement Board shall consist of seven (7) members as follows:

the Mayor of the City; one active member of the Police Department, or a retired member elected by the active and retired members of the Police Department if no active member of the Police Department is elected to serve on the Board; one active member of the Fire Department, or a retired member elected by the active and retired members of the Fire Department if no active member of the Fire Department is elected to serve on the Board; a life insurance executive of a local office, a senior officer of a local bank; a community representative; and a Police-Fire retired member who shall be elected from the retired members of the Fire Department for a first three (3) year term commencing the first day of the month next following his or her election, and from the retired members of the Police Department for the next successive three (3) year term, and thereafter alternately from the retirement rolls of each of said departments for successive three (3) year terms. The election of the first such Police-Fire retired member by the vote of the retired members of the Fire Department shall be held within ninety (90) days following the effective date of this amendment in the manner heretofore established by and under the supervision of the Retirement Board. In the event an active or retired Police-Fire member does not serve out his or her three (3) year term, his or her successor shall be elected from the department which has most recently elected him/her or her for the remainder of said unexpired three (3) year term. All members elected from the Police and Fire Departments or from the police-fire retirement rolls shall be elected by vote of the active or retired Police and Fire Retirement System members of the respective departments as the case may be, and the Retirement Board may from time to time revise the manner of conducting such elections. The representative of a life insurance company, the representative of a bank, and the community representative shall be appointed by the City Council upon the recommendation of the Mayor. The Mayor, with the approval of the City Council, may designate a City officer or official to serve in his or her place and stead as a member of the Retirement Board for the term of his or her office. The terms of the incumbent board members who are serving terms immediately

prior to the effective date of this amendment shall not be affected by this amendment, and those members shall be entitled to serve the balances of their respective terms on the Retirement Board; the terms of office of the future elected member of the Fire Department, of the future elected member of the Police Department and of the future insurance and bank representatives shall be five (5) years and shall follow successively the end of the term of the respective incumbent member of the Fire Department, member of the Police Department, and insurance and bank representative members; the first term of office of the community representative shall be two (2) years commencing the first day of the month next following the effective date of this amendment, and thereafter such member shall be appointed for successive five (5) year terms. The Mayor or his or her designated alternate shall serve the term of the Mayor. In the event of a vacancy, a successor shall be elected or appointed as the case may be for the unexpired portion of the term vacated. Election or appointment of successors as hereinabove provided shall be held or made not more than ninety (90) days prior to the expiration of the term of office of the member to be succeeded, or in the event of a vacancy in an office prior to the termination thereof not more than ninety (90) days immediately following the occurrence of such vacancy. The members of the Board shall serve without compensation.

(a) The City Attorney shall attend all meetings of the Board in person or by authorized representative.

(b) The Board shall hold regular meetings monthly and special meetings at any time upon the call of its President. A majority of the members of the Board shall constitute a quorum for the transaction of business. The powers conferred by this Article upon the Board shall be exercised by order or resolution adopted by the affirmative votes of at least four (4) members of the Board. At the regular meeting in September of each year, the Board shall select one of its members to act as President for the ensuing year. The Board shall keep a written record of its proceedings which shall be public.

(c) The Board shall appoint a Secretary who shall hold office at its pleasure and who shall have the

power to administer oaths and affirmations and issue subpoenas in all matters pertaining to the administration and operation of the System. The Board shall also appoint an actuary who shall hold office at its pleasure, and medical examiners in connection with disability retirement, and such additional clerical and other assistants as the City Council may authorize. All regular and permanent employees of the Board shall, with the exception, of the Secretary, Actuary and Medical Examiners, be appointed under the provisions of Article XIII of this Charter.

(d) The Board shall make an annual estimate of the cost of administering the Retirement System and shall transmit the same to the City Administrator at such time as he may direct. The amount necessary for the administration of the System shall be paid out of the Police and Fire Retirement Fund.

(e) The Board shall possess power to make all necessary rules and regulations for its guidance and shall have exclusive control of the administration and investment of the fund established for the maintenance and operation of the system, subject to the terms, conditions, limitations and restrictions herein-after set forth. All funds received by the Board not required for current disbursements shall be invested in, but not limited to:

(1) Those investments of a character legal for banks in the State of California.

(2) Interest bearing obligations of the United States Government, any agency of the United States Government, any bank which is a member of the Federal Deposit Insurance Corporation, or any corporation whose bonds are eligible for investment by banks in the State of California.

(3) Common stocks provided that:

a. The Board shall make investment decisions regarding such investments in accordance with the prudent person standard as defined by applicable court decisions and as required by the California Constitution.

b. Such stock is registered on a national securities exchange, as provided in the "Securities Exchange Act of 1934" as amended. Such registration shall not be required with respect to the following stocks:

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1. The common stock of a bank which is a member of the Federal Deposit Insurance Corporations and has capital funds, represented by capital, surplus, and undivided profits of at least fifty million dollars (\$50,000,000);

2. The common stock of an insurance company which has capital funds, represented by capital, special surplus funds, and unassigned surplus of at least fifty million dollars (\$50,000,000).

c. Not more than 2% of the book value of the invested funds of the retirement system may be invested in common stock of a single corporation.

d. The total number of shares held in any single corporation single corporation shall not exceed 5% of the issued and outstanding common shares of such corporation.

(4) Shares of diversified management investment companies (Mutual Funds) provided that:

a. The Board shall make investment decisions regarding such investments in accordance with the prudent person standard as defined by applicable court decisions and as required by the California Constitution.

b. Such diversified management investment companies shall be registered under the "Investment Company Act of 1940" and shall each have total assets of at least \$50,000,000.

(5) Preferred stocks and securities convertible into common stocks, provided:

a. That of the funds invested in such stocks or convertibles not more than 2% of the book value of the invested funds of the Retirement System may be invested in such stocks or convertibles of a single corporation; and

b. That the total number of such shares or convertibles held in any single corporation shall not exceed 5% of the issued and outstanding preferred stock or convertibles of such corporation; and

c. That the corporations in whose preferred stock or convertible securities the funds of the Retirement System are invested shall be only those whose common stock would qualify for investment of funds of the Retirement System under subsection 3 above; and

d. That such investments authorized by this subsection 5 does not exceed ten percent of the book

value of the invested funds of the Retirement System.

(6) F.H.A. mortgages, certificates and shares of state or federal chartered savings and loan associations if insured as defined in Title IV of the National Housing Act, provided that such investments shall not exceed fifteen percent of the book value of the invested funds of the Retirement System.

(7) Equity or mortgage debt investments in existing real property or in property to be constructed, except that no mortgage investments may be funded until the improvements on the property are substantially complete. Such investments shall not exceed twenty percent of the book value of the invested funds of the Retirement Systems. The Board shall obtain the opinion of competent real estate advisors that such investment is prudent and that it meets the current investment guidelines of the Board, before committing to make such investment, and provided:

a. The Board is owner in fee title and/or a leasehold in the real property and/or real property and improvements in and upon which such investment is to be made, with the exceptions of convertible and take-out loans and mortgage pool investments.

b. Before making such an investment the Board shall appoint a qualified real property appraiser acceptable to the City Administrator who shall examine the property of the plans and specifications of any improvement proposed to be constructed and who shall determine and report to the Board whether the project in his opinion will have a fair rental value sufficient to return the investment together with interest over a period of time not to exceed 30 years.

In order to make the provisions of this section relating to the investment of retirement funds completely effective, the Board is authorized for investment purposes only to purchase, sell or lease real property or to enter into options therefor and when necessary for investment purposes to enter into contracts for the construction of buildings and may repair and maintain such property and do any and all things necessary to protect the investment including, but not limited to, purchasing insurance against the loss of the property or the loss of use and occupancy of the property. It may also take any other action necessary to carry out the investment provisions of

this section. In the construction of buildings, the Board shall follow, substantially and insofar as applicable, the procedure and limitations prescribed by law for the construction of buildings by the City of Oakland.

The Board may secure from competent investment counsel, not a member of the Board, such counsel and advice as to investing the funds of the Retirement System as it deems necessary. Discretionary powers granted such investment counsel will be at the option of the Board. The Board shall pay for such counsel and advice such compensation as it deems reasonable, payable from Retirement System funds.

The City Treasurer shall be the custodian of the Retirement Fund, subject to the exclusive control of the Board as to the administration and investment of said fund. All payments from the said fund shall be made by the Finance Director as authorized by the Board. All demands against said fund shall be presented, audited and paid as provided in the Charter of the City. Interest on any cash and on any investments constituting a part of the said fund shall be paid into said fund as received. Except as herein provided, no member and no employee of the Board, shall have any interest, direct or indirect, in the making of any investment, or in the gains or profits accruing therefrom. And no member or employee of said Board, directly or indirectly, for himself/herself or as an agent or partner of others, shall borrow any of its funds or deposits or in any manner use the same except to make such current and necessary payments as are authorized by said Board; nor shall any member or employee of said Board become an endorser or surety or become in any manner an obligor for monies invested by the Board.

(f) Board shall have such additional power and authority as is conferred by Section 20\* of this Charter.

(g) If any section, word, clause or provision of this Article shall be held unconstitutional, the remaining sections, clauses, words or provisions thereof shall not be affected thereby. All the provisions of this Article are to be liberally construed.  
**(Amended by: Stats. 1971, 2004 and 2007)**

\* This reference is to the Section or Article so designated in the former Charter

### **Duties of Retirement Board, Actuarial Investigation And Valuation**

#### **Section 2602.**

The Board shall exercise the powers and perform the duties conferred on it by other sections hereof, and in addition thereto:

(a) **Interest on Contributions.** Shall credit contributions of members, of beneficiaries, and of the City with interest at a rate fixed by the Board from time to time.

(b) **Actuarial Data.** Shall keep in convenient form such data as shall be necessary for the actuarial valuation of the Retirement System. As of June 30, 1956, and thereafter at intervals of not to exceed three (3) years, the Board shall make an actuarial investigation into the mortality, service, and compensation experience of the members and beneficiaries, and further (1) with respect to persons exercising the option in Section 2600 and (2) with respect to persons who become members on and after the effective date of this Article, shall make an actuarial valuation of the assets and liabilities of the Retirement System. From time to time, the Board shall determine the rate of interest being earned on the Retirement Fund. Upon the basis of all or any of such investigation, valuation, and determination, the Board shall:

(1) Adopt for the Retirement System such interest rate and such mortality, service and other tables, or any of such items, as shall be deemed necessary;

(2) Make sure revision in the City's and members' rates of contribution under the Retirement System with respect to persons who become members of the Police or Fire Department, after the effective date of this Article, as shall be deemed necessary to comply with Section 2619 of this Article.

(c) **Additional Records.** In addition to other records and accounts shall keep such records and accounts as shall be necessary to show at any time:

(1) The total contributions of members made after the effective date hereof, with credited interest;

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(2) The total contributions of retired members made after the effective date hereof, with credited interest; less the annuity payments made to such members;

(3) The accumulated contributions of the City held for the benefit of members on account of service rendered as members of the Retirement System.

(4) All other accumulated contributions of the City, which shall include the amounts available to meet the obligation of the City on account of benefits that have been granted.

(d) The morality, service, and other tables and the City's members' rates of contribution with respect to persons who become members of the Police or Fire Department after the effective date of this Article, as recommended by the actuary and the valuations determined by him and approved by the Retirement Board shall be conclusive and final, and the Retirement System shall be based thereon. **(Amended by: Stats. June 1976.)**

### Section 2603.

The Board may and in disputed matters shall hold public hearings in all proceedings pertaining to retirement and to the granting of retirement allowances, pensions, and death benefits. Notice of the time and place of such hearing shall be given in writing to the member or dependents affected thereby either by personal service of a copy of said notice or by depositing a copy thereof in the United States Mail postage prepaid addressed to the member or dependents affected thereby at his or their last known address at least five (5) days prior to said hearing. Proof of said service must be made at said hearing. The member or dependents affected thereby shall be entitled to appear personally at said hearing and to have counsel.

### Section 2604.

A rehearing in any matter may be applied for by filing a written petition for rehearing with the Secretary of the Board within ninety (90) days after mailing of notice by registered mail to the interested party or his attorney, of the rendition of any order or decision of the Board. The Board shall grant or deny such petition within forty (40) days from the filing thereof,

provided that the time so limited may be extended by the Board for not to exceed forty (40) additional days. If a hearing is granted, the same shall be heard within forty (40) days after the rendition of the order granting the same. At such rehearing additional evidence not produced at the original hearing may be introduced. The petition must designate the grounds upon which it is based.

### Section 2605.

Any member of the System or dependent affected thereby who is dissatisfied with any order or decision of the Board may, without first applying to the Board for a rehearing, apply to the Superior Court of the State of California in and for the County of Alameda for a Writ of Mandate in accordance with the provisions of the Code of Civil Procedure of the State of California. Upon the hearing of any such application for a Writ of Mandate, all questions of both law and fact must be tried or heard anew in the Superior Court.

### Section 2606.

The provisions of Sections 2604 and 2605 shall be available to any member of the System or dependent affected by any order or decision of the Board without prejudice to the right to pursue any other remedy provided for by the laws of the State of California.

### Section 2607.

The following words and phrases, as used in this Article, unless a different meaning is plainly required by the context, shall have the following meaning:

“Retirement allowance,” “Death allowance,” or “allowance” shall mean equal monthly payments, beginning to accrue upon the date of retirement, or upon the day following the date of death, as the case may be, and continuing for life, unless a different term of payment is definitely provided by the context.

“Compensation” as distinguished from benefits under the Labor Code of the State of California, shall mean the monthly remuneration payable in cash, by the City, without deduction, for time during which the individual receiving such remuneration is

a member of the Police or Fire Department, but excluding remuneration paid for overtime and for special details or assignments as provided in Sections 91 and 97\* of the Charter.

“Benefit” shall include “retirement allowance,” “death allowance,” “allowance,” and “death benefit.”

“Compensation attached to the average rank held” shall mean the compensation attached to the lowest rank held during the three years immediately preceding retirement plus one thirty-sixth (1/36) of the



difference between it and the compensation attached to any higher rank held during that period of each month, and fraction thereof, the higher rank was held.

For the purposes of the Retirement System established by this Article, the terms "member of the Police or Fire Departments," "member of the Department," "member of the System," or "member" shall mean any regularly appointed member of the Police or Fire Department of the City of Oakland who became members of the Retirement System established by this Article, prior to July 1, 1976, including matrons or substitute matrons of the City Prison and emergency patrolmen and horsemen.

"Retirement System" or "System" shall mean the Police and Fire Retirement System established by this Article.

"Charter" shall mean the Charter of the City of Oakland.

"Interest" shall mean interest at the rate adopted by the Retirement Board.

"Retirement Board," or "Board" shall mean the Police and Fire Retirement Board created by this Article.

"Children" shall include, with respect to service retirement, children adopted at least five (5) years prior to retirement, and with respect to disability retirement and death before retirement, children adopted at any time prior to such retirement or death.

Words used in the masculine gender shall include the feminine and neuter genders; singular numbers shall include the plural, and the plural the singular, and wife shall include husband, and widow shall include widower.

"Accumulated contributions" shall mean contributions made by the member since May 3, 1943, plus credited interest. **(Amended by: Stats. June 1976.)**

\* This reference is to the Section or Article so designated in the former Charter.

## **Retirement for Service**

### **Section 2608.**

(a) Any member of the Police or Fire Department who completes at least ten (10) years of service in

the aggregate (said service to be computed under Section 2609) may retire at his option on or after the twenty-fifth (25th) anniversary of his date of employment. Said member shall receive a retirement allowance equal to twenty percent (20%) of the compensation attached to the average rank held during the three (3) years immediately preceding such retirement, plus an additional allowance at the rate of two percent (2%) for each additional year of service beyond ten (10) years, not to exceed a period of an additional ten (10) years.

(b) Any member of the Police or Fire Department who completes at least twenty (20) years of service in the aggregate (said service to be computed under Section 2609), regardless of age, may retire at his option. Said member shall receive a retirement allowance equal to forty percent (40%) of the compensation attached to the average rank held during the three (3) years immediately preceding such retirement, plus an additional allowance at the rate of two percent (2%) for each additional year of service beyond twenty (20) years, not to exceed a period of an additional five (5) years.

(c) Any member of the Police or Fire Department who completes at least twenty-five (25) years of service in the aggregate (said service to be computed under Section 2609), regardless of age, or any member who completes at least twenty (20) years of service in the aggregate at or after attaining the age of fifty-five (55) years, may retire for service at his option.

(d) Members shall be retired on the first day of the month next following the attainment by them of the age of sixty-five (65) years. Any such member who attains the age set forth in the preceding sentence as the compulsory age of retirement during any twelve (12) months, prior to the beginning of the twelve (12) months, shall be retired on the first day of the twelve (12) months.

(e) A member retired after meeting the requirements of paragraphs (c) or (d) next preceding, shall receive a retirement allowance equal to fifty percent (50%) of the compensation attached to the average rank held during the three (3) years immediately preceding such retirement, plus an additional allow-

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ance at the rate of one and two-thirds percent (1-2/3%) of said compensation for each year of service rendered after July 1, 1951, and after qualifying for service retirement, not to exceed ten (10) years. A member required to retire under paragraph (d) next preceding before completing twenty (20) years of service in the aggregate computed under Section 2609, shall receive a retirement allowance which bears the same ratio to the retirement allowance which said member would receive if he were entitled to be credited with twenty (20) years of service, as the service with which he is entitled to be credited, bears to twenty (20) years.

(f) Upon the death of member after qualification for service retirement, or after retirement for service or because of disability, and if death shall result from other cause than injury received in or illness caused by the performance of duty, two-thirds (2/3) of the retirement allowance to which the member would have been entitled if he had retired for service at the time of death, or two-thirds (2/3) of the retirement allowance as it was at death, as the case may be, shall be continued, regardless of the age of the surviving widow, to the dependents of the member in the order of succession as defined in Section 2612, provided that if retirement was for injury received in or illness caused by the performance of duty and if death occurs prior to the date upon which the member would have qualified for service retirement, the allowance continued shall be reduced upon said date in the same manner as it would have been reduced had the member not died.

(g) After having qualified for service retirement under the provisions of paragraph (a) of this section, a member shall be entitled to retire at any time thereafter and nothing shall deprive said member of said right.

(h) The age of a member which was accepted for appointment to the Police or Fire Department shall be admissible in evidence as *prima facie* proof of his age for retirement purposes.

(i) If, at the date of retirement for service or disability, said member has no wife, children or dependent parents, who would qualify for the continuance of the allowance after the death of said member, or

with respect to the portion of the allowance which would not be continued, regardless of dependents, a member retired under this Article may elect, before the first payment of the retirement allowance is made, to receive the actuarial equivalent of his allowance or the portion which would not be continued, regardless of dependents, as the case may be, partly in a lesser amount to be received by him throughout his life, and partly in other benefits payable after his death to another person or persons, provided that such election shall be subject to all of the conditions prescribed by the Council to govern similar election by members of the Oakland Municipal Employees' Retirement System. (Amended by: Stats. June 1976.)

(j) The retirement allowances payable pursuant to this section are subject to the limitations provided by Section 2620. This subsection shall be null and void and without further effect should the United States Internal Revenue Code Section 415 be amended to exempt municipal pension plans from the stated benefit limitations. (Added by: Stats. November 1992.)

### Time and Service To Be Included

**Section 2609.** The following time and service shall be included in the computation of the service to be credited to a member for the purpose of qualification for retirement and death benefits and for calculation of retirement benefits:

(1) Time during and for which said member received compensation as a member of the Police or Fire Department prior or subsequent to the effective date of this Article, including all such time said member was unable to perform his duties by reason of injury or sickness from any cause.

(2) Time during which said member was absent by reason of service with the armed forces of the United States either during a war involving the United States as a belligerent, or in any other National Emergency and for six (6) months thereafter and who is not dishonorably discharged or released therefrom.

(3) Any police or fire service outside the limits of the City of Oakland performed by a member of

the Police or Fire Department and under orders of a superior officer of such member, shall be considered as city service and any disability or death resulting therefrom shall be considered as received in and arising out of the performance of duty.

### **Disability Retirement**

#### **Section 2610.**

(a) Any member of the Police or Fire Department who is incapacitated for the performance of duty by reason of any injury received in, or illness caused by or arising out of the performance of duty may be retired not sooner than one (1) year after said member first became incapacitated by reason of said injury or illness unless the member requests and the Board grants earlier retirement; and, if not qualified for service retirement shall receive a retirement allowance equal to seventy-five percent (75%) of the compensation attached to the average rank held by such member during one (1) year immediately preceding such retirement. Such retirement allowance shall be paid until the date upon which said member would have completed twenty-five (25) years of service and qualified for service retirement had such member rendered service without interruption, and on and after said date said retirement allowance shall be equal to the retirement allowance said member would have received if retired for service on said date, based on the compensation attached to the average rank held during the one (1) year next preceding retirement. If at the time of retirement for disability, the member is qualified for retirement for service, said member shall receive a retirement allowance computed under the provisions of Section 2608.

(b) Any member of the Police or Fire Department who is incapacitated for the performance of duty for any cause not included in the provisions of the preceding paragraph (a) and who shall have completed at least five (5) years of service in the aggregate, shall be retired upon a retirement allowance calculated under Section 2608, if he has attained the age of fifty-five (55) years, otherwise upon a retirement allowance equal to one and one-half percent (1-1/2%) of the compensation attached to the average rank held by such member during the three (3) years next

preceding such retirement for each year of service, provided that said retirement allowance shall not be less than thirty-three and one-third percent (33-1/3%) of said compensation. The question of retiring a member under this section may be brought before the Board on the Board's own motion, by recommendation of the City Administrator or by petition of said member or his guardian.

(c) The Board may at any time order any member who has been retired for disability to be examined by one or more physicians appointed by the Board for that purpose, and if it is found that the disability has ceased, shall order that the retirement allowance shall cease and said member shall be restored to the service in the rank occupied at the time of retirement.

(d) The retirement allowances payable pursuant to this section are subject to the limitations provided by Section 2620. This subsection shall be null and void and without further effect should the United States Internal Revenue Code Section 415 be amended to exempt municipal pension plans from the stated benefit limitations. **(Added by: Stats. November 1992: Amended by: Stats. March 2004.)**

### **Death From Service-Connected Causes**

**Section 2611.** If a member of the System shall die before or after retirement by reason of an injury received in, or illness caused by or arising out of the performance of duty, an allowance shall be paid to the dependents of such member in the order of succession established by Section 2612, in the following amount:

(1) If the member at the time of death was qualified for service retirement but had not retired, the allowance shall be equal to the retirement allowance which the member would have received if he had retired for service on the date of death, but such allowance shall not be less than one-half (1/2) of the compensation attached to the rank held by such member at the time of his death.

(2) If death occurs prior to qualification for service retirement, the allowance shall be equal to one-half (1/2) of the compensation attached to the rank held by such member at the time of death.

(3) If death occurs after retirement, the allowance shall be equal to the retirement allowance of the member, except that if retirement was for disability due to performance of duty, and if death occurred prior to the date upon which the member would have qualified for service retirement, the allowance shall be reduced upon said date in the same manner as it would have been reduced had the member not died. If retirement was for disability not due to performance of duty, the allowance shall not be less than one-half (1/2) of the compensation attached to the average rank held by the member during the one (1) year immediately preceding retirement.

(4) The allowance provided for in paragraphs (1) and (2) immediately preceding, if payable to the widow of such member, shall be increased while there are children of such member as provided in Section 2612.

(5) The widow of such member shall be eligible to receive the allowance provided for in this section without regard to the time of her marriage to such member; provided that in the event the death of such member shall occur after retirement, such marriage shall have occurred at least one year prior to retirement.

#### **Death of Member; Payment of Benefits; Order of Succession**

##### **Section 2612.**

(1) In cases in which a benefit is payable to the dependent of a deceased member under the provisions of this Article, such benefit shall be payable to the family of such member in the following order of succession:

(a) To the surviving spouse of such member as long as he or she shall not remarry prior to January 1, 1985, provided that, if death occurred after retirement, the surviving spouse shall have been married to the decedent at least one (1) year prior to the member's retirement; and provided further that in the event such decedent leaves a surviving child or children and if death occurred prior to retirement, an additional amount shall be paid to such surviving spouse during the lifetime of each child until said child shall have married or attained the age of eight-

een (18) years as follows: For one child, twenty-five percent (25%) of the allowance provided for in this Article; for two children, forty percent (40%) of such allowance, and for three or more children fifty percent (50%) of such allowance, provided that the aggregate payments to the surviving spouse under this section shall not exceed seventy-five (75%) percent of the compensation attached to the rank held by the decedent at the time of his or her death. Upon a remarried spouse's death, the member's retirement allowance shall cease unless there are eligible children.

(b) In the event the decedent shall not leave surviving an eligible spouse to receive said allowance, but shall leave a child or children under the age of eighteen (18) years, or should the decedent leave an eligible spouse and a child or children under the age of eighteen (18) years and the spouse dies while said child or children are yet under the age of eighteen (18) years, then the retirement allowance is payable to such child or children collectively until the youngest child attains the age of eighteen (18) years, provided that no child shall receive any such allowance after attaining the age of eighteen (18) years or marrying.

(c) In the event the decedent shall leave surviving him no eligible widow, child or children but shall leave a parent or parents dependent on said member for their support, then to such parent or parents collectively in an amount or amounts to be determined by the Board in the proportion that the degree of support furnished by decedent bears to the allowance which would have been payable to an eligible widow of such decedent. **(Amended by: Stats. June 3, 1986.)**

(2) In the event a deceased member leaves no dependents qualified to receive an allowance, there shall be payable a death benefit as follows:

(a) If death occurs before retirement, a sum equal to the member's accumulated contributions in the Fund plus an amount equal to one-twelfth (1/12th) of the annual compensation attached to the rank held by such member at the time of death for each com-

pleted year of service as a member at the time of death for each completed year of service as a member of the Police or Fire Department, not to exceed six (6), to his designated beneficiary, and if none, then to the estate of such member.

(b) If death occurs after retirement, then the sum of One Thousand Dollars (\$1,000.00) to the beneficiary designated by such member, or if none, then to the estate of such decedent.

#### No Forfeiture Of Pension Earned

**Section 2613.** Whenever any member of the System or a dependent of such member receiving a retirement allowance under the provisions of this Article shall willfully disobey any rule or regulation of the Board with the intention of being insubordinate, or shall be convicted of felony or shall become dissipated or shall become an habitual drunkard, in such event the Board may order that the retirement allowance payable to such member or dependent shall not be paid to such person but shall thereupon become payable to the family of such member next in order of succession as provided in Section 2612 of the Article.

#### Hernia, Heart Trouble and Pneumonia

**Section 2614.** The terms "injury" or "illness" as used in this Article shall be construed to include hernia, heart trouble and pneumonia which develops or manifests itself during a period while a member of the System is in the active service of the Police or Fire Department. Such hernia, heart trouble or pneumonia so developing or manifesting itself shall be presumed to have been caused by and to have arisen out of and in the course of the performance of duty in such active service. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the Board is bound to find in accordance with it.

#### City Service, Restrictions

##### **Section 2615.**

(1) No member of the System who is retired for service or disability under this Article shall hold an elective or appointive position in the service of the

City of Oakland, including membership on Boards or Commissions, except that retired members of the Police and Fire Departments may serve on the Police and Fire Retirement Board as provided in Section 2601, nor shall any such person receive any payment for service rendered to the City, provided that service such as an election officer or juror shall not be affected by this section.

Notwithstanding any other provision of this section 2615 or this City Charter, retired members of the System may hold employment with the City pursuant to a Deferred Retirement Option Plan ("DROP") authorized by the City. DROP shall mean a program under which, after the effective date of a System member's retirement, (1) he/she continues to work for the City (a) for a period of time prescribed by the City and (b) in the position and assignment determined by the City in its sole judgment and discretion; (2) neither the City nor the System member makes retirement contributions; (3) the System member receives no service credit for the period of time he/she is employed by the City; and (4) the System member's monthly retirement allowances are paid into a fund established by PFRS until the member terminates his/her City employment. DROP is intended to encompass all types of DROP programs. (Amended by: Stats. November 2000.)

(2) Retired members of the System or dependents of such members under the provisions of this Article shall not be subject to residence requirements. (Amended by: Stats. May 13, 1982.)

##### **Section 2616.**

(1) In the event of the death of or injury to any member of the System caused by the unlawful or negligent act of a third person while such member is acting in the performance of duty as a member of the Police or Fire Department or otherwise, any judgment for damages for such death or injury recovery by such member or dependent or personal representative shall not affect in any manner the amount of any allowance or death benefit payable to such member or dependents under the provisions of this Article. This section shall not be construed as in any manner prohibiting the City of Oakland or

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the Retirement System from recovering from said third person its damages.

(2) It is the intention of this section that allowances granted to or on account of members of the System for injury, illness or death incurred in the performance of duty shall not be cumulative with benefits under the Labor Code of California awarded as the result of the same injury, illness or death. If any member of the System or dependent receives compensation under the Labor Code for disability or death rising out of and in the course of the performance of duty, any payment on account thereof shall be applied as a credit and set-off against any payment on account of salary granted to such member under Articles XIV and XV, or retirement allowance or other benefit granted to or on account of such member under the provisions of this Article as follows:

(a) If the amount is paid in one sum or in installments equal to or greater than such salary, retirement allowance, or other benefit, such member or dependent shall not receive any salary, retirement allowance, or other benefit until the total amount of the salary, retirement allowance, or other benefit which would otherwise be payable equals the total amount received under the Labor Code.

(b) If the amount is paid in installments less than such salary, retirement allowance, or other benefit, the salary retirement allowance or other benefit shall be reduced so that the total of salary, retirement allowance, or other benefit plus the amounts received under the Labor Code will equal the salary, retirement allowance or other benefit which would otherwise be due.

(c) In either case any award specifically granted for medical, surgical, or hospital expenses shall not reduce the salary, retirement allowance, or other benefit.

(3) No benefits shall be paid under this Article on the basis of an award by the Industrial Accident Commission of the State of California.

### Death From Non-Service-Connected Causes

**Section 2617.** In the event of the death of a member of the System under this Article, from

causes other than injury received in or illness caused by or arising out of the performance of duty, a benefit shall be payable as follows:

(a) Whenever any member of the System, other than a retired member or a member eligible to retire for service, who shall have completed ten (10) years or more of service in the aggregate, shall die from causes other than those arising out of the performance of duty, then an allowance equal to thirty-three and one-third (33-1/3%) percent of the compensation attached to the rank held by such member at the time of death, shall be paid to the dependents of such members as provided in Section 2612, and increased while there are children of such member as provided in that section.

(b) Where the member does not qualify under the provisions of paragraph (a) next preceding, one-twelfth (1/12th) of the annual compensation attached to the rank held by the member at the time of his death, for each completed year of service in the Police or Fire Department, not to exceed six (6), plus the accumulated contributions of such member in the Fund, said aggregate sum to be payable to the dependents of such member pursuant to the order of succession established by Section 2612.

(c) If there be no dependents eligible to receive such benefits under the provisions of Section 2612, said aggregate amount in paragraph (b) next preceding shall be payable to the designated beneficiary of such member or if none, then to the estate of such member.

### Resignation Or Dismissal

#### Section 2618.

(a) Should a member of the System cease to be a member of the Police or Fire Department through any cause other than death or retirement prior to completing ten (10) years of service, the member's contributions, plus interest thereon credited in accordance with Section 2602(a), shall be refunded to such member.

(b) Should a member of the System cease to be a member of the Police or Fire Departments after completing at least ten (10) years of service, said member may withdraw his contributions, plus inter-

est thereon credited in accordance with Section 2602(a) from the fund at any time provided such person is not then an active member of the Police or Fire Department, but such person will not be entitled to a retirement allowance unless he is a member who has redeposited in the Fund in accordance with subsection (c) below and who has complied with the requirements of Section 2608.

(c) If any person who has been refunded his contributions under paragraph (a) preceding, or who has withdrawn his contributions under paragraph (b) preceding shall subsequently become a member of the Police or Fire Department, he shall redeposit in the Fund in a manner to be determined by the Board, the amount so refunded or withdrawn plus interest from the date of the refund or withdrawal to the date of the redeposit, in which event said member shall be entitled to credit for all service rendered prior to withdrawal as such member.

**(Amended by: Stats. June 1976.)**



**Members' And City's Contributions**

**Section 2619.** All payments provided for or on account of persons who are members under this Article and for or on account of persons who remain as members or who have been members of the Funds under Articles XIV and XV, shall be made from funds derived from the following sources, plus interest earned on said funds.

(1) The normal rate of contribution of each member who exercised the option in Section 2600 shall be five and one-half percent (5-1/2%). The normal rate of contribution of each person who became a member of the Police or Fire Department after the effective date of this Article and prior to July 1, 1976, shall be based on his age taken to the next lower completed quarter year, at the date he becomes a member of the Police or Fire Department, and shall be such as, on the average for each such member, will provide, assuming service without interruption, one-fourth (1/4) of that portion of the service retirement allowance to which he would be entitled, without continuance to dependents, upon first qualifying for retirement under Section 2608, and assuming the contribution to be made from the date of his entrance into the Police or Fire Department. Provided that said members' contribution rates shall never decrease below the table of members' contribution rates in effect as of January 1, 1971, and provided further that no member's contribution rate shall exceed thirteen percent (13%) so long as no improvements in the members' benefits occur after July 1, 1976.

(2) The dependent rate of contribution of each person who becomes a member of the Police or Fire Department after the effective date of this Article, shall be such as, on the average for such member, will provide, assuming service without interruption, and upon his first qualifying for service retirement under Section 2608, one-fourth (1/4) of the portion of his allowance which is to be continued under Section 2608, after his death and throughout the life of a surviving wife whose age at said death is three years less than the age of said member, or, as the case may be, a surviving husband whose age at said death is three years more than the age of said mem-

ber. The dependent rate of contribution of each member who exercises the option in Section 2600, shall be one and one-half percent (1-1/2%). If at the date of retirement for service or retirement for disability, said member has no wife who would qualify for the continuance of the allowance to her after the death of said member, the dependent contributions with accumulated interest thereon, shall be paid to him forthwith.

(3) The normal rate of contribution of persons who remain members under Article XIV and XV shall be five percent (5%). Such rate shall be applied to compensation, on and after the effective date of this Article, as described in paragraph 4 of this section. Such persons shall not have dependent contribution rates.

(4) There shall be deducted from each payment of compensation made to a member throughout his membership, a sum determined by applying the member's normal and dependent rates of contribution to such compensation payment. Except for persons who remain members under Article XIV and XV, the sum so deducted shall be accumulated with interest as set from time to time as provided in Section 2602(a). Such accumulated contribution shall be used to provide benefits for said members, or shall be paid to said member or his estate or beneficiary as provided in this Article.

(5) Members' contributions deducted from compensation earned prior to the effective date of this Article, and after May 3, 1943, shall not be considered in the determination of allowances, and shall be paid to the Retirement System, with interest, by the City when said accumulated contributions otherwise are payable to or on account of members by the Retirement System.

(6) The City shall contribute to the Retirement System such amounts as may be necessary, when added to the contributions referred to in the preceding paragraphs of this Section, to provide the benefits payable under this Article and Articles XIV and XV. The City contributions made periodically during the year shall be such as when added to member contributions will actuarial fund all liabilities for all members prior to July 1, 1976, by July 1, 2026.

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Any fund established pursuant to the 1971 amendment to this subsection and implemented by Retirement Board Resolution No. 3968 which provided for payment of improved or additional benefits shall continue only for the purposes stated herein. Any monies held in such fund as of July 1, 1976, and any interest credited thereon pursuant to Section 2602(a) shall continue to be payable to members of this system as follows:

(a) For all individuals who received retirement allowances as of December 31, 1972, said allowance commencing January 1, 1973, shall be increased as follows:

(1) A computation of an additional one percent (1%) of the gross allowance due in December, 1972, shall be made for each said individual. Any additional monies added to the basic retirement allowance because of minor children under Charter Section 2612(a) shall not be included in the computation of said one percent (1%).

(2) The amount of each said December, 1972, one percent (1%) computation shall become a fixed, non-fluctuating amount which shall be added each month, commencing in January, 1973, to the retirement allowance of each said individual and to any continuation (and in the appropriate percentage to any partial continuation) of each said retirement allowance.

(b) For members of the System retiring after December 31, 1972, at the date of retirement, a computation of an additional five percent (5%) of the compensation attached to the average rank held by such member during the three (3) years next preceding said retirement shall be made for each individual retiring with at least twenty-five (25) years of service.

The amount of each said five percent (5%) computation shall become a fixed, non-fluctuating benefit amount which shall be added in monthly installments to the retirement allowance of each said individual retiring or who is considered as retiring with at least twenty-five (25) years of service and to any continuation (and in the appropriate percentage to any partial continuation) of each said retirement allowance.

No additional monies from any source whatsoever shall be paid into said fund, and said fund shall cease to exist when the monies held payable for the aforementioned purposes are expended.

(7) During the absence of a member by reason of service with the armed forces of the United States, either during a war involving the United States as a belligerent, or in any other National Emergency and for six (6) months thereafter, and who is not dishonorably discharged or released therefrom, the City shall contribute for and on behalf of such member, amounts equal to the contributions which would have been made by such member and by the City to the Police and Fire Retirement Fund if he had not been so absent. The contributions made by the City pursuant to the provisions of this paragraph in lieu of contributions which the member otherwise would have made, shall be made available only for the purpose of retirement and death after the completion of ten (10) years of service in the aggregate, and in the event of the resignation or dismissal of said member from service as a member of the Police or Fire Department prior to qualifying for service retirement, or in the event of the death of such member from causes not arising out of the performance of duty prior to the completion of ten (10) years of such service, any withdrawal of accumulated contributions by such member or any death benefit payable by reason of such death shall include only that portion of the accumulated contributions actually made by such member. For the purposes of this Article, a war involving the United States as a belligerent exists: (a) whenever Congress has declared war, and peace has not been formally restored; (b) whenever the United States is engaged in active military operations against any foreign power, whether or not war has been formally declared; or (c) whenever the United States is assisting the United Nations, in actions involving the use of armed force, to maintain or restore international peace and security. (Added by: Stats. 1951; Amended by: Stats. June 1976, Stats. June 1988.)

### **Exemption From Requirements of United States Internal Revenue Code Section 415**

**Section 2620.** This section effects an election as authorized under the provisions of Section 415 of the United States Internal Revenue Code to exempt members of the System from the annual pension benefit limitations of United States Internal Revenue Code Section 415.

Notwithstanding any other statute or section of this Charter, the retirement allowance payable to any member of the System shall be subject to the greater of the following limitations as provided by United States Internal Revenue Code Section 415(b), subdivision (10):

- (1) The limitations set forth in Section 415 of the United States Internal Revenue Code of 1986; or
- (2) The accrued benefit of the plan member (determined without regard to any amendment to the System after October 14, 1987).

If any of the provisions of United States Internal Revenue Code Section 415 should be repealed, the provisions of this section shall be deemed repealed to the same extent. (Added by: Stats. November 1992.)

### **ARTICLE XXVII**

**Added By: Stats. 1955**

### **OFF-STREET VEHICULAR PARKING**

#### **General**

**Section 2700.** In addition to all other powers elsewhere enumerated in this Charter or granted or hereafter granted to the City of Oakland by the Constitution or laws of the State of California, the City of Oakland shall have power to acquire (whether by purchase, lease, eminent domain, or otherwise), construct, establish, improve, extend, maintain, operate, administer, lease and sublease off-street vehicular parking facilities, and places within the City of Oakland, including any and all public parking lots, garages, or other automotive parking facilities, in order to relieve traffic congestion and promote the welfare of the citizens and inhabitants of said City, and, for the payment of the cost thereof, to issue bonds payable from the revenues of any

such off-street vehicular parking facilities and from other revenues, all as hereinafter provided in this Article. One of the prime purposes of conferring the above mentioned powers upon the City of Oakland is to aid in providing low cost off-street parking for automotive vehicles within sections or portions of the City where additional off-street parking is needed.

#### **Definitions**

**Section 2701.** The following terms whenever used or referred to in this Article, or in any resolution of issue, shall have the following meanings, respectively, unless a different meaning appears from the context:

(a) **BONDS.** The term "bonds" or "revenue bonds" means the written evidence of any obligation issued by the City, payment of which is secured by a pledge of revenues or any part of revenues, as provided in this Article, in order to obtain funds with which to carry out any of the purposes of this Article, irrespective of the form of such obligation. All revenue bonds issued pursuant to this Article shall be payable exclusively from revenues.

(b) **PROJECT.** The term "project" means any one or more off-street vehicular parking facilities referred to in Section 2700 and designated by the City as a project in a resolution of issue.

(c) **EXISTING OFF-STREET PARKING FACILITIES.** The term "existing off-street parking facilities" means and includes any off-street vehicular parking facilities now or hereafter owned by the City and operated or controlled by the City at the time of adoption of a resolution of issue and not theretofore designated by the City as a project in a resolution of issue and not acquired, constructed, established, improved, extended, maintained, or operated, in whole or in part from the proceeds of sale of any revenue bonds.

(d) **REVENUES.** The term "revenues" means and includes any and all rates, fees and other charges received or receivable in connection with, and any and all income and receipts of whatever kind and character derived by the City from, the operation of a project, or arising from a project, including any

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such revenues as may have been or may be impounded or deposited in any fund created for the security or further protection of revenue bonds or for the purpose of providing for the payment of the principal thereof or the interest thereon. The term "revenues" also includes (a) net revenues from on-street parking meters within the City now owned or controlled or hereafter acquired or controlled by the City and (b) net revenues of any existing off-street parking facilities to the extent that net revenues from either or both of said sources shall be pledged or otherwise made available for the payment of operation and maintenance costs of any project or as security or further protection for bonds by a resolution of issue.

(e) NET REVENUES. The term "net revenues" when used with reference to on-street parking meters within the City means and includes the gross revenues collected by the City during any fiscal year from the establishment and operation of such on-street parking meters after deducting therefrom the actual necessary costs and expenses of (a) the acquisition, installation, maintenance and replacement of such parking meters, (b) the collection of revenues therefrom and (c) enforcement of all parking meter ordinances and regulations, all calculated on sound accounting principles, but without any allowance for depreciation or obsolescence. The Council of the City of Oakland may determine that the term "net revenues" when used with reference to any existing off-street parking facilities means and includes the gross revenues collected by the City during any fiscal year from the establishment and operation of such existing off-street parking facilities after deducting therefrom all taxes and payments in lieu of taxes payable with respect to such facilities and the actual necessary expenses of maintaining and operating such facilities, calculated on sound accounting principles, but without any allowance for depreciation or obsolescence.

(f) RESOLUTION OF ISSUE. The term "resolution of issue" means any agreement entered into by the Council, including any resolution adopted by the Council, pursuant to which revenue bonds are issued, and includes any agreement entered into or

resolution adopted by the Council amending, modifying or supplementing a resolution of issue irrespective of the form thereof.

### Grant of Power

**Section 2702.** Without limiting the generality of Section 2700, the Council of the City of Oakland for any of the purposes of this Article shall have the powers set forth in this section.

(a) **Acquisition and Disposition of Property.** To acquire, by grant, purchase, gift, devise, lease or by the exercise of right of eminent domain, and to hold, use, sell, lease, sublease or dispose of any real or personal property or any interest in any thereof, including rights-of-way, necessary or appropriate for the full exercise, or convenient or useful for the carrying on of any of its powers pursuant to this Article, except property being used as a facility for the parking of motor vehicles shall not be condemned by the City, unless (a) the project to be furnished or constructed which necessitates the acquisition of the existing parking facility when completed will provide a parking capacity at least three times the parking capacity provided by the existing facility; (b) unless affirmative action indicating the intent of the City to that end shall have been taken prior to the commencement of said condemnation proceedings; and (c) the proposed off-street parking improvement is planned or located in a manner which will be most compatible with the greatest public good and the least private injury. Properties devoted to off-street parking owned by the same person, corporation or other entity and operated under the same general management, under similar rules and regulations, intended generally to serve the same area and within one hundred feet of each other shall be considered an "existing parking facility" for the purposes of this subdivision (a) of Section 2702.

(b) **Acquisition for Project Ingress and Egress.** To acquire, by any of the means specified in the foregoing paragraph (a) any lands, property or rights-of-way necessary or convenient for the opening, widening, straightening and extending of streets

or alleys necessary or convenient for the ingress to or egress from any project.

(c) **Improvements.** To improve any lands so acquired by the construction thereon of garages or other buildings or improvements necessary or convenient for any project.

(d) **Control of Project.** To construct or cause to be constructed, established, improved, extended, maintained, operated, and to administer, lease and sublease any project.

(e) **Rates, Fees and Charges.** To fix rates, fees or charges for the use of the facilities provided by any project, or for any services rendered in connection therewith, and to alter, change or modify the same at its pleasure, subject to any contractual obligation which may be entered into by the City with respect to the fixing of such rates, fees or charges; and, by a resolution of issue or otherwise, to enter into covenants to increase or decrease rates, fees or charges from time to time, except as may be otherwise specifically provided in a resolution of issue. All rates, fees and charges shall be paid only in such coin or currency as on the date of payments is legal tender for public and private debts, or in scrip or tokens issued only upon payment of the face value thereof in such coin or currency.

(f) **Issuance of Revenue Bonds.** At any time and from time to time to issue revenue bonds in order to raise funds for the purpose of establishing any project or of acquiring lands including rights-of-way for any project or for acquiring, constructing, improving, extending, maintaining, operating or administering any project, or of refinancing any project, or for any combination of such purposes, which bonds may be secured as hereinafter provided.

(g) **Agreements and Leases.** To make contracts, leases, subleases and agreements relative to the acquisition, construction, improvement, operation or maintenance of any project or any part of any project with any person, private corporation or public corporation, political subdivision, city, county, district, the State of California, or the United States of America, or any department or agency of any thereof, subject to any contractual obligation which may

be entered into by the City with respect to the issuance of bonds.

(h) **Lease of Space for Commercial Purposes.** To rent or lease for commercial purposes space in any project which in the opinion of the Council is not and will not during the term of such lease be required for off-street vehicular parking facilities, provided that the aggregate of all such space so rented or leased for commercial purposes at any one time in any project shall not exceed twenty percent (20%) of the surface area of such project and that the term of any such rental or lease shall not exceed a period of fifteen (15) years from its date.

(i) **Rules and Regulations.** To adopt such rules and regulations as may be necessary regarding the operation and maintenance of any project and to enable the City to exercise the powers and perform the duties conferred or imposed by this Article.

(j) **Miscellaneous.** To do any and all acts or things necessary or appropriate to carry out the purposes of this Article and the provisions, covenants and agreements contained in any resolution of issue adopted pursuant to the authority conferred by this Article; provided that nothing in this section or elsewhere in this Article contained shall be construed directly or by implication to be in any way in derogation or in limitation of any powers conferred upon or existing in the City by virtue of the provisions of the Constitution or laws of the State of California or any other provision of this Charter.

#### **Pledge Of Net Parking Meter Revenues**

**Section 2703.** In addition to all other powers elsewhere enumerated in this Article, the Council shall have power to pledge, place a charge upon, or otherwise make available and authorize payment of all or any part of net revenues collected by the City from the establishment and operation of (a) on-street parking meters within the City now owned or controlled or hereafter acquired or controlled by the City, and (b) existing off-street parking facilities for such periods of years as shall be determined by the Council, for the payment of operation and maintenance costs of any one or more projects authorized by this Article or as security or further protection

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for the payment of principal of and interest on bonds issued pursuant to this Article.

### Authorization Of Revenue Bonds

**Section 2704.** Each issue of revenue bonds shall be authorized by the Council by a resolution of issue adopted by affirmative votes of at least a majority of the members of the Council at a duly assembled meeting. Resolutions of issue shall provide for the aggregate principal amount, date or dates, maturities, interest rates, denominations and form, and may provide for the registration, transfer and interchange, of any revenue bonds and coupons issued pursuant to this Article; and shall prescribe the purpose or purposes for which said bonds are to be issued and the terms and conditions on which said bonds are to be executed, issued, secured, sold and paid, and, if desired, the terms and conditions on which said bonds may be redeemed prior to maturity or refunded. The Council may provide for one or several issues of bonds and may issue bonds in series, or may divide any issue into one or more series or divisions and fix different maturities or dates for each series or division, different rates of interest, or different terms and conditions for the bonds of the several series or divisions. Bonds of the same authorized issue need not be of the same kind or character, have the same security, or be of the same interest rate, but the terms thereof shall in each case be provided for by the Council.

### Provisions Relating To Bonds And Resolutions Of Issue

**Section 2705.** The terms and provisions of all revenue bonds issued pursuant to this Article shall be as provided in the resolution of issue pursuant to which such bonds are issued, subject only to the provisions of this Article, and each such resolution of issue adopted by the Council may contain such provisions as shall be determined by the Council, subject only to the provisions of this Article.

### Recital In Bonds: Reference On Bonds To Resolution Of Issue

**Section 2706.** All revenue bonds shall contain a recital on their face that neither the payment of principal of nor of interest on such bonds constitutes a debt, liability or obligation of the City of Oakland, except as provided in this Article. Reference on the face of a revenue bond to the resolution of issue by its date of adoption is sufficient to incorporate all of the provisions thereof and of this Article into the body of said revenue bond and its appurtenant coupons. Each taker and subsequent holder of a revenue bond or coupons, whether such coupons are attached to or detached from said revenue bond, shall have recourse to all of the provisions of the resolution of issue and of this Article and shall be bound thereby.

### Security

**Section 2707.** Subject to the provisions of Section 2703 hereof all revenue bonds shall be secured by an exclusive pledge and charge upon all or a portion of (a) the gross revenues of the project for the acquisition, construction and completion of which said bonds are issued or authorized to be issued, (b) revenues from on-street parking meters, and (c) revenues of any existing off-street parking facilities subject to any pledges, liens or charges then existing, all as provided for in the resolution of issue. Gross revenues of a project include improvements and extensions of such project later constructed or acquired. The gross revenues of the project, any interest earned on the gross revenues of the project, and all pledged on-street parking meter revenues and pledged revenues of existing off-street parking facilities shall constitute a trust fund for the security and payment of the principal of and interest on the bonds and so long as any bonds or interest thereon are unpaid said revenues and interest shall not be used for any other purpose; provided, however, that a resolution of issue may provide that if the principal of and interest on the bonds and all charges to protect and secure them are paid when due, an amount for the maintenance and operation costs of the project and any and all other costs and expenses relative to the project or the bond, may be apportioned among the bonds.

tioned from revenues, but only to the extent specified in the resolution of issue. A resolution of issue may also provide for the use and application of any surplus revenues over and above revenues provided for the payment of the principal of and interest on the bonds, maintenance and operation, costs of the project and any and all other charges, provided that such surplus revenues shall be used only in the manner and to the extent specified in the resolution of issue.

#### **Bonds Of Same Issue To Be Equally Secured**

**Section 2708.** Bonds of the same issue shall be equally secured by a pledge and charge upon revenues without priority for number, date of bonds, of sale, of execution, or of delivery; except that if the Council authorizes the issuance of bonds of different series it may provide that the bonds in any series shall, to the extent and in the manner prescribed in the resolution of issue, be subordinated and be junior in standing with respect to the payment of principal and interest and the security thereof to such other bonds as may be specified in the resolution of issue.

#### **Sale of Bonds**

**Section 2709.** Notice inviting sealed bids shall be given in such manner as the Council may prescribe prior to the sale of any revenue bonds. If satisfactory bids are received, the bonds offered for sale shall be awarded to the highest responsible bidder. If no bids are received or if the Council determines that the bids received are not satisfactory as to price or responsibility of the bidders, the Council may reject all bids received, if any, and either readvertise or sell the bonds at private sale. The Council may sell bonds at a price below the par or face value thereof, provided that the maximum net interest cost (computed on a 360-day year basis) on bonds sold below par or face value shall not exceed an average of six percent (6%) per annum, payable semiannually, to the respective maturity dates of said bonds.

#### **Payment Of Incidental Expenses And Interest And Creation Of Funds From Proceeds Of Sale Of Bonds**

**Section 2710.** All costs and expenses incidental to the issuance and sale of bonds, including (without limiting the generality of the foregoing) the cost of preparation of the bonds and coupons, the cost of all surveys, of preparation of plans and specifications, of all architectural, engineering, inspection, legal, financial and economic consultant's, trustee's, and fiscal agent's fees, the creation of a bond reserve fund, the creation of a working capital fund, and bond interest estimated to accrue during the period of acquisition or construction of a project and for a period of not to exceed six (6) months thereafter, all as provided for in the resolution of issue, may be paid out of the proceeds of sale of the bonds.

#### **Construction Fund; Investment**

**Section 2711.** The proceeds of sale of revenue bonds shall either be deposited in a fund separate and apart from all other funds of the City or paid direct to any bank or trust company designated by the Council as the fiscal agent of the City, and said proceeds shall be held by the City or such fiscal agent in a separate account to be designated the "Construction Fund" and be disbursed in the manner and upon the conditions provided in the resolution of issue for the object and purpose of the acquisition, construction and completion of the project therein designated, including the payment of all incidental expenses and interest and the creation of funds as provided for in Section 2610 of this Article. Moneys in any construction fund may be invested as the Council in its sole discretion shall determine, subject only to such limitations as may be provided in the resolution of issue. Moneys in a construction fund remaining unexpended after said object and purpose shall have been completed shall be applied to the payment of the principal and interest on said bonds, and none of said moneys shall be transferred to any other fund of the City or used for any purpose other than as specified in the resolution of issue.

### **Continuous Operation Of Project; Repairs, Renewals and Replacements**

**Section 2712.** So long as any revenue bonds shall be outstanding, the City shall operate or cause to be operated the project, designated in the resolution of issue relating to such bonds, continuously and in an efficient and economical manner and in good working order and condition and shall make all necessary repairs, improvements and replacements.

### **Rates, Fees And Other Charges**

**Section 2713.** The Council shall prescribe, revise and collect rates, fees and charges (a) for use of the facilities provided by the project acquired, constructed or completed from the proceeds of sale of bonds, (b) for any services rendered in connection with such project, and (c) for use of any on-street parking meters and existing off-street parking facilities any revenues from which are pledged to secure the bonds. Such rates, fees and charges shall at all times be sufficient to yield revenues from the project and net revenues from such on-street parking meters and existing off-street parking facilities equal to all redemption payments and interest charges on said bonds as the same fall due, together with such additional sums as may be required for any sinking fund, reserve fund or other special fund provided for the security or further protection of said bonds, or as a depreciation charge or other charge in connection with such project. Such rates, fees and charges shall not be reduced below an amount sufficient to provide funds to meet all obligations specified in the resolution of issue.

### **Trustee; Fiscal Agent; Paying Agents**

**Section 2714.** The Council may designate a bank or trust company, qualified to do business in the State of California, as a trustee or fiscal agent for the City and holders of revenue bonds, and may authorize any such trustee to act on behalf of the holders of the bonds or any stated percentage thereof, and to exercise and prosecute on behalf of the holders of the bonds such rights and remedies as may be available to the holders. The Council may designate any bank or trust company in any city in

which any bonds are made payable as the City's paying agent in such city. The Council may fix and determine the conditions upon which any trustee, fiscal agent or paying agent shall receive, hold or disburse any or all revenues deposited with it by or by authority of the City; and may prescribe the duties and powers, if any, of any such trustee, fiscal agent or paying agent with respect to the issuance, authentication, sale and delivery of bonds, the payment of the principal thereof and interest thereon, the redemption thereof, the registration and discharge from registration of bonds, and the management of any funds provided for in the resolution of issue as security for the bonds.

### **Competitive Projects**

**Section 2715.** A resolution of issue may contain a covenant that the City shall not, while any revenue bonds authorized by this Article are issued or outstanding, acquire, construct, complete or maintain within the City or permit any person to maintain on any city-owned property within the City any off-street vehicular parking facilities or places, excepting those therein described, which compete with any off-street vehicular parking facilities or places maintained or operated by the City through the issuance of revenue bonds pursuant to this Article. A resolution of issue may define the word "compete" as used in the preceding sentence and in such resolution of issue. A resolution of issue may except from the covenant authorized to be made by this section any and all off-street vehicular parking facilities then or thereafter maintained by the City.

### **Use Of Surplus**

**Section 2716.** After all of the revenue bonds issued pursuant to a resolution of issue shall have been fully paid or discharged, or provision for their payment and discharge irrevocably made, any surplus moneys in any construction fund or other fund provided for the security or further protection of the bonds shall become and be the property of the City and be used by the City for any lawful purpose.

**Rights Of Bondholders**

**Section 2717.** Except as provided otherwise in any resolution of issue, the holder of any bond issued pursuant to this Article may be mandamus or other appropriate proceedings require and compel the performance of any of the duties imposed upon the City or any official or employee of the City or assumed by any thereof in connection with the acquisition, construction, completion, operation, maintenance, repair, reconstruction or insurance of any project, or the collection, deposit, investment, application and disbursement of rates, fees and charges derived from the operation and use of any project and all other revenues, or in connection with the deposit, investment or disbursement of the proceeds received from the sale of the bonds under this Article. The enumeration of such rights and remedies does not, however, exclude the exercise or prosecution of any other rights or remedies available to the holders of bonds issued pursuant to this Article.

**Article Confers Complete Authority; Provisions of Article Alternative**

**Section 2718.** The provisions of this Article constitute full and complete authority for the issuance of revenue bonds as herein provided by the Council of the City of Oakland and no procedure, or proceedings, consents, approvals, orders or permission from any municipal officer or board of the City of Oakland, shall be required for the acquisition, construction or completion of any project, or the issuance of any revenue bonds under this Article, except as specifically provided in this Article. The powers and authorities conferred by this Article are in addition to and supplemental to all other powers and authorities conferred upon the City of Oakland. The method provided in this Article for the acquisition, construction and completion of projects and the issuance of revenue bonds shall be deemed an additional method for acquiring, constructing and completing such projects and providing funds therefore; provided that the City of Oakland may, in its discretion, acquire any properties for off-street vehicular parking facilities and issue general obligation bonds

of the City of Oakland therefor, subject, however, to the condition that the City of Oakland shall not, while any revenue bonds authorized by this Article are issued and outstanding, acquire, construct or complete any off-street vehicular parking facilities, other than those specifically described in a resolution of issue pursuant to the provisions of Section 2715 of this Article, which compete with any project operated or maintained through the issuance of revenue bonds by the Council. Revenue bonds issued under this Article shall not be taken into consideration in determining the bonded indebtedness which the City of Oakland is authorized to incur and shall be excluded from any limitation provided by this Charter or by law on the amount of bonded indebtedness of the City.



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## **Title 1**

### **GENERAL PROVISIONS**

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- 1.01      Code Adoption**
- 1.04      General Provisions**
- 1.08      Civil Penalties**
- 1.12      Administrative Citations**
- 1.16      Alternative Administrative Procedure for  
                Abatement of Certain Violations**
- 1.20      Administrative Appeals; Claims for Money  
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- 1.24      Arrest and Citation Procedure**
- 1.28      General Penalty**



## Chapter 1.01

### CODE ADOPTION

**Sections:**

- 1.01.010** Adoption.
- 1.01.020** Title—Citation—Reference.
- 1.01.030** Reference applies to all amendments.
- 1.01.040** Title, chapter and section headings.
- 1.01.050** Reference to specific ordinances.
- 1.01.060** Ordinances passed prior to adoption of the code.
- 1.01.070** Effect of code on past actions and obligations.
- 1.01.080** Constitutionality.
- 1.01.090** References to prior code.

**1.01.010 Adoption.**

There is adopted the "Municipal and Planning Codes," as compiled, edited and published by Book Publishing Company, Seattle, Washington. (Ord. 12009 § 1, 1997)

**1.01.020 Title—Citation—Reference.**

This code shall be known as the "Oakland Municipal and Planning Codes" and it shall be sufficient to refer to said code as the "Oakland Municipal and Planning Codes" in any prosecution for the violation of any provision thereof or in any proceeding at law or equity. It shall be sufficient to designate any ordinance adding to, amending, correcting or repealing all or any part or portion thereof as an addition to, amendment to, correction or repeal of the "Oakland Municipal and Planning Codes." References may be made to the titles, chapters, sections and subsections of the "Oakland Municipal and Planning Codes" and such references shall apply to those titles, chapters, sections or subsections as they appear in the code. (Ord. 12009 § 2, 1997)

**1.01.030 Reference applies to all amendments.**

Whenever a reference is made to this code as the "Oakland Municipal and Planning Codes" or to any portion thereof, or to any ordinance of the city of Oakland, California, codified herein, the reference shall apply to all amendments, corrections and additions heretofore, now or hereafter made. (Ord. 12009 § 3, 1997)

**1.01.040 Title, chapter and section headings.**

Title, chapter and section headings contained herein shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of any title, chapter or section hereof. (Ord. 12009 § 4, 1997)

**1.01.050 Reference to specific ordinances.**

The provisions of this code shall not in any manner affect matters of record which refer to, or are otherwise connected with ordinances which are therein specifically designated by number or otherwise and which are included within the code, but such reference shall be construed to apply to the corresponding provisions contained within this code. (Ord. 12009 § 5, 1997)

**1.01.060 Ordinances passed prior to adoption of the code.**

The last ordinance included in this code was Ordinance Number 11947 C.M.S., passed November 12, 1996. The following ordinances, passed subsequent to Ordinance Number 11947 C.M.S., but prior to adoption of this code, are adopted and made a part of this code: Ordinance Numbers 11949, 11954, 11956, 11957, 11960, 11961, 11964, 11969, 11970, 11971, 11973, 11974, 11975, 11979, 11985, 11988, 11989, 11990, 12003 and 12005. (Ord. 12009 § 6, 1997)

**1.01.070      Effect of code on past actions and obligations.**

The adoption of this code does not affect prosecutions for ordinance violations committed prior to the effective date of this code, does not waive any fee or penalty due and unpaid on the effective date of this code, and does not affect the validity of any bond or cash deposit posted, filed or deposited pursuant to the requirements of any ordinance. (Ord. 12009 § 7, 1997)

**1.01.080      Constitutionality.**

If any section, subsection, sentence, clause or phrase of this code is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this code. (Ord. 12009 § 8, 1997)

**1.01.090      References to prior code.**

References in city forms, documents, citations and regulations to the chapters and sections of the former city code shall be construed to apply to the corresponding provisions contained within this code. (Ord. 12009 § 9, 1997)

## Chapter 1.04

### GENERAL PROVISIONS

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**1.04.010      Definitions.**

The following words and phrases, whenever used in the ordinances of the city of Oakland, shall be construed as defined in this section unless from the context a different meaning is intended or unless a different meaning is specifically defined and more particularly directed to the use of such words or phrases:

“Association” means and includes individuals and groups of individuals.

“City” means the city of Oakland, or the area within the territorial limits of the city, and such territory outside the city over which the city has jurisdiction or control by virtue of any constitutional or statutory provision.

“City Manager” means the City Manager of the city of Oakland; further provided, that the use of the title of any officer or to any office shall refer to such officer or office of the city of Oakland.

“Council” means the City Council of the city of Oakland. “All its members” or “all Council-members” means the total number of Council-members holding office.

“County” means the county of Alameda.

“Law” denotes applicable federal law, the Constitution and statutes of the state of California, the ordinances of the city, and when appropriate, any and all rules and regulations which may be promulgated thereunder.

“May” is permissive.

“Month” means a calendar month.

“Must” and “shall” are each mandatory.

“Oath” means and includes an affirmation or declaration in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the words “swear” and “sworn” shall be equivalent to the words “affirm” and “affirmed.”

“Owner,” applied to a building or land, means and includes any part owner, joint owner, tenant in common, joint tenant, tenant by the entirety, of the whole or a part of such building or land.

“Person” means and includes a natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization, or the manager, lessee, agent, servant, officer or employee of any of them.

“Personal property” means and includes money, goods, chattels, things in action and evidences of debt.

“Preceding” and “following” mean next before and next after, respectively.

“Property” means and includes real and personal property.

“Real property” means and includes lands, tenements and hereditaments.

“Sidewalk” means that portion of a street between the curbline and the adjacent property line intended for the use of pedestrians.

“State” means the state of California.

“Street” means and includes all streets, highways, avenues, lanes, alleys, courts, places, squares, curbs, or other public ways in the city which have been or may hereafter be dedicated and open to public use, or such other public property so designated in any law of this state.

“Tenant” and “occupant,” applied to a building or land, mean and include any person who occupies the whole or a part of such building or land, whether alone or with others.

“Written” means and includes printed, typewritten, mimeographed, multigraphed, or otherwise reproduced in permanent visible form.

“Year” means a calendar year. (Ord. 11941 § 1, 1996)

**1.04.020 Interpretation of language.**

All words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in the law shall be construed and understood according to such peculiar and appropriate meaning. (Ord. 11941 § 2, 1996)

**1.04.030 Grammatical interpretation.**

The following grammatical rules shall apply in the ordinances of the city unless it is apparent from the context that a different construction is intended:

A. Gender. Each gender includes the masculine, feminine and neuter genders.

B. Singular and Plural. The singular number includes the plural and the plural includes the singular.

C. Tenses. Words used in the present tense include the past and the future tenses and vice versa, unless manifestly inapplicable. (Ord. 11941 § 3, 1996)

**1.04.040 Acts by agents.**

When an act is required by an ordinance, the same being such that it may be done as well by an agent as by the principal, such requirement shall be construed to include all such acts performed by an authorized agent. (Ord. 11941 § 4, 1996)

**1.04.050 Prohibited acts include causing and permitting.**

Whenever in the ordinances of the city any act or omission is made unlawful, it shall include causing, allowing, permitting, aiding, abetting, suffering, or concealing the fact of such act or omission. (Ord. 11941 § 5, 1996)

**1.04.060 Computation of time.**

Except when otherwise provided, the time within which an act is required to be done shall be computed by excluding the first day and including the last day, unless the last day is Sunday or a holiday, in which case it shall also be excluded. (Ord. 11941 § 6, 1996)

**1.04.070 Construction.**

The provisions of the ordinances of the city, and all proceedings under them are to be construed with a view to effect their objects and to promote justice. (Ord. 11941 § 7, 1996)

**1.04.080 Repeal shall not revive any ordinances.**

The repeal of an ordinance shall not repeal the repealing clause of an ordinance or revive any ordinance which has been repealed thereby. (Ord. 11941 § 8, 1996)

## Chapter 1.08

### CIVIL PENALTIES

**Sections:**

- |                 |                                 |
|-----------------|---------------------------------|
| <b>1.08.010</b> | <b>Purpose.</b>                 |
| <b>1.08.020</b> | <b>Scope.</b>                   |
| <b>1.08.030</b> | <b>Violations.</b>              |
| <b>1.08.040</b> | <b>Authority.</b>               |
| <b>1.08.050</b> | <b>Notification.</b>            |
| <b>1.08.060</b> | <b>Assessment.</b>              |
| <b>1.08.070</b> | <b>Administrative expenses.</b> |
| <b>1.08.080</b> | <b>Administrative hearing.</b>  |
| <b>1.08.090</b> | <b>Remedies not exclusive.</b>  |

**1.08.010      Purpose.**

The purpose of this chapter is to provide for the protection, health, safety, and general public welfare of the residents of the city and to preserve the livability, appearance, property values, and social and economic stability of the city by providing an alternative method of code enforcement to effect abatement of violations of the laws, codes, ordinances and regulations identified in this chapter. (Ord. 12550 § 1 (part), 2003; Ord. 11805 § 1 (part), 1995: prior code § 1-6.01)

**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), 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 Protec-

tion, Storm Water Management and Discharge Control Code (OMC Chapter 13.16) 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. (Ord. 12550 § 1, (part), 2003; Ord. 12025 § 6, 1997; Ord. 12019 § 3, 1997; Ord. 11989 § 5, 1997; Ord. 11805 § 1 (part), 1995: prior code § 1-6.02)

**1.08.030      Violations.**

A. Violation. A violation shall exist whenever any provision of the codes and ordinances identified in this chapter has been violated and the real property or structure thereon identified with the violation has been declared and remains a public nuisance.

B. Public Nuisance. For the purposes of this chapter, a public nuisance shall exist whenever a condition on a property is maintained in violation of codes and ordinances identified in this chapter or in violation of California Civil Code Sections 3479 and 3480, or at common law or in equity jurisprudence. A public nuisance shall also exist whenever a condition so identified is corrected but recurs, and continues as a recurrent problem.

C. **Responsible Department.** The responsible department shall be the city department, its Director or Deputy Director, or other person so designated either by the City Manager or code or ordinance as responsible for enforcement of the provisions of the codes and ordinances identified in this chapter.

D. **Responsible Person.** The responsible person shall be a natural person, heirs, executors, administrators, or assigns, firm, partnership, or corporation, its heirs or their successors or assigns, or the agent of any of the aforesaid, responsible for the creation, existence, commission, and/or maintenance of a violation of the codes and ordinances identified in this chapter. (Ord. 12550 § 1 (part), 2003; Ord. 11805 § 1 (part), 1995: prior code § 1-6.03)

#### **1.08.040 Authority.**

A. Whenever conditions upon a property or structure thereon constitute a major violation as defined in this chapter, administrative civil penalties may be assessed to affect abatement.

B. The City Manager, or his or her designee, is authorized to assess civil penalties administratively in accordance with the procedures established in this chapter.

C. The responsible person(s) creating, committing, condoning, or maintaining a major violation of any provision of the codes and ordinances identified in this chapter shall be subject to civil penalties as established in this chapter.

D. Each and every day a major violation of any provision of the codes and ordinances identified in this chapter exists shall constitute a separate and distinct offense.

E. Separate civil penalties may be assessed for separate major violations or separate dates of occurrence.

F. Full or partial reimbursement or recovery of civil penalties and administrative expenses shall not excuse the failure to correct the major violations wholly and permanently nor shall it preclude the assessment of additional civil penalties or other abatement actions by the city.

G. Civil penalties and related administrative expenses, including attorneys' fees, shall accrue to the

account of the responsible department and may be recovered by all appropriate legal means, including but not limited to nuisance abatement lien and special assessment/priority lien of the general tax levy, or by civil and small claims action brought by the city, or both. (Ord. 12623 § 2 (part), 2004: Ord. 11805 § 1 (part), 1995: prior code § 1-6.04) (Ord. 12550 § 1 (part), 2003; Ord. 11805 § 1 (part), 1995: prior code § 1-6.04)

#### **1.08.050 Notification.**

A. Whenever civil penalties are administratively assessed, a notification of the abatement action shall be served upon the responsible person and, as applicable, to any other party revealed by public records to have record title or similar legal interest in the property. Such notification may be served in conjunction with notification of other actions by the city to abate the violation.

B. The assessment notice shall be served by one or more of the following methods:

1. Personal delivery with acknowledged receipt;
2. Certified mail with return receipt requested to the last known mailing address; or
3. Constructive public notification, including but not limited to the following:

- a. Publication in a newspaper of general circulation, or
- b. Filing of an affidavit with the Office of the City Clerk certifying to the time and manner in which such notification was sent by regular mail, or
- c. Conspicuous posting on or in the vicinity of the property.

C. Failure to serve such person(s) or failure of such person(s) to receive timely notification shall not affect in any manner the validity of any abatement actions taken or procedures conducted as established in this chapter.

D. The assessment notice shall minimally identify the following factors:

1. The provisions of the code or ordinance violated and the descriptive nature of the major violations;

2. The locations of the major violations and the dates of occurrence;
3. The remedial actions required to correct the violations wholly and permanently and the time constraints for commencing and completing the corrections;
4. The dollar amount and rate of recurrence and duration of civil penalties;
5. The dates when civil penalties will begin to accrue and will cease;
6. The criteria used in determining the amount and rate of recurrence and duration of civil penalties;
7. Other consequences, as applicable, should the violations not be wholly and permanently corrected in accordance with the terms and conditions and time constraints identified; and
8. The procedures for obtaining an administrative hearing regarding the assessment of civil penalties. (Ord. 12550 § 1 (part), 2003: Ord. 11805 § 1 (part), 1995: prior code § 1-6.05)

#### **1.08.060 Assessment.**

A. The City Manager, or his or her designee, is authorized to establish a schedule of violations and assessments or similar guidelines for assessing the amount, rate of recurrence, and duration of civil penalties.

B. Civil penalties, excluding accruing interest, shall not be assessed at more than one thousand dollars (\$1,000.00) each day nor more than three hundred sixty five thousand dollars (\$365,000.00) cumulatively each calendar year for an individual parcel or separate structure thereon for any related series of major violations.

C. The assessment of civil penalties may begin to accrue on the date of initial occurrence of the violation, as identified by the city.

D. The assessment of civil penalties shall cease when all major violations are wholly and permanently corrected.

E. Civil penalties shall be assessed based upon the following factors:

1. The duration and frequency of recurrence of the major violation;

2. The detrimental effects of the major violation on the occupants of the property and the surrounding neighborhood and the community at large;
3. The history of compliance efforts by the responsible person to correct the major violation wholly and permanently;
4. The viability of the civil penalty to effect abatement of the major violation wholly and permanently;
5. Other factors that serve justice. (Ord. 12623 § 2 (part), 2004: Ord. 12550 § 2 (part), 2003: Ord. 11805 § 1 (part), 1995: prior code § 1-6.06)

#### **1.08.070 Administrative expenses.**

Administrative costs, charges, fees, and interest shall be as established in the master fee schedule of the city. (Ord. 12550 § 1 (part), 2003: Ord. 11805 § 1 (part), 1995: prior code § 1-6.07)

#### **1.08.080 Administrative hearing.**

A. The responsible person(s) may request an administrative hearing to adjudicate the assessment of civil penalties by filing such request in writing with the City Manager, or his or her designee, pursuant to standards and procedures established in the Oakland Housing Code except that alternate or additional standards may be promulgated by the City Manager, or his or her designee, for requesting an administrative hearing regarding the assessment of civil penalties for violations of codes and ordinances other than the Oakland Housing Code.

B. The City Manager, or his or her designee, is authorized to establish standards and procedures for conducting an administrative hearing and evaluating evidentiary testimony and either affirming the assessment of civil penalties or remanding for further determination, pursuant to standards and procedures established in the Oakland Housing Code, Section 15.08.350C, except that alternate or additional standards and procedures may be promulgated by the City Manager, or his or her designee, for conducting an administrative hearing and evaluating evidentiary testimony regarding the violation of codes and ordinances other than the Oakland Housing Code.

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C. In all instances, the determination regarding civil penalties resulting from the administrative hearing shall be final and conclusive.

D. The City Manager, or his or her designee, is authorized to establish standards and procedures for adjustment of civil penalties previously assessed for extraordinary circumstances which are expressly demonstrated to serve the best interests of the city. (Ord. 12550 § 1 (part), 2003; Ord. 11805 § 1 (part), 1995; prior code § 1-6.08)

**1.08.090 Remedies not exclusive.**

Remedies under this chapter are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive. The enforcement official shall have the discretion to select a particular remedy to further the purposes and intent of the chapter, depending on the particular circumstances. The enforcement official's decision to select a particular remedy is not subject to appeal. (Ord. 12550 § 1 (part), 2003)

## Chapter 1.12

### ADMINISTRATIVE CITATIONS

**Sections:**

- 1.12.010      Purpose.**
- 1.12.020      Scope.**
- 1.12.030      Violations.**
- 1.12.040      Authority.**
- 1.12.050      Notification.**
- 1.12.060      Assessment.**
- 1.12.070      Administrative expenses.**
- 1.12.080      Administrative appeal.**
- 1.12.090      Remedies not exclusive.**

**1.12.010      Purpose.**

The purpose of this chapter is to provide for the protection, health, safety, and general public welfare of the residents of the city and to preserve the livability, appearance, property values, and social and economic stability of the city by providing an alternative method of code enforcement to effect abatement of violations of the laws, codes, ordinances and regulations identified in this chapter. (Ord. 12550 § 2 (part), 2003; Ord. 11805 § 1 (part), 1995: prior code § 1-7.01)

**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), Hotel Rates & Register Code (CIVIC Chapter 5.34), 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. (Ord. 12550 § 2 (part), 2003; Ord. 12401 § 1 (part), 2002; Ord. 12025 § 7, 1997; Ord. 12019 § 4, 1997; Ord. 11982 § 6, 1997; Ord. 11805 § 1 (part), 1995: prior code § 1-7.02)

**1.12.030      Violations.**

A. Violation. A violation shall exist whenever any provision of the codes and ordinances identified in this chapter has been violated or the real property or structure thereon identified with the violation has been declared and remains a public nuisance.

B. Public Nuisance. For the purposes of this chapter, a public nuisance shall exist whenever a condition on a property is maintained in violation of codes and ordinances identified in this chapter or in violation of California Civil Code Sections 3479 and 3480, or at common law or in equity jurisprudence. A public nuisance shall also exist whenever a condition so identified is corrected but recurs, and continues as a recurrent problem.

C. Responsible Department. The responsible department shall be the city department, its Director or Deputy Director, or other person so designated either by the City Manager or code or ordinance as responsible for enforcement of the provisions of the codes and ordinances identified in this chapter.

D. Responsible Person. The responsible person shall be a natural person, heirs, executors, administrators, or assigns, firm, partnership, or corporation, its heirs or their successors or assigns, or the agent of any of the aforesaid, responsible for the creation, existence, commission, and/or maintenance of a violation of the codes and ordinances identified in this chapter. (Ord. 12550 § 2 (part), 2003; Ord. 11805 § 1 (part), 1995; prior code § 1-7.03)

#### **1.12.040 Authority.**

A. Whenever any provision of the codes and ordinances identified in this chapter has been violated, administrative citations may be assessed to affect abatement

B. The City Manager, or his or her designee, is authorized to assess citations administratively. In accordance with the procedures established in this chapter.

C. The responsible person(s) creating, committing, condoning, or maintaining a violation of any provision of the codes and ordinances identified in this chapter shall be subject to administrative citations as established in this chapter.

D. Each and every day a violation of any provision of the codes and ordinances identified in this chapter exists shall constitute a separate and distinct offense.

E. Separate administrative citations may be issued for separate violations or separate dates of occurrence.

F. Full or partial reimbursement or recovery of administrative citations and administrative expenses shall not excuse the failure to correct violations wholly and permanently nor shall it preclude the assessment of additional administrative citations or other abatement actions by the city.

G. Administrative citations and related administrative expenses, including attorneys' fees, shall ac-

crue to the account of the responsible department and may be recovered by all appropriate legal means, including but not limited to nuisance abatement lien and special assessment/priority lien of the general tax levy, or civil and small claims action brought by the city, or both (Ord. 12623 § 3, 2004; Ord. 12550 § 2 (part), 2003; Ord. 11805 § 1 (part), 1995; prior code § 1-7.04)

#### **1.12.050 Notification.**

A. Whenever administrative citations are issued, notification shall be served on the responsible person and, as applicable, to any other party revealed by public records to have record title or similar legal interest in the property. Such notification may be served in conjunction with notification of other actions by the city to abate the violation.

B. The notification shall be served by one or more of the following methods:

1. Personal delivery with acknowledged receipt; or
2. Certified mail with return receipt requested to the last known mailing address; or
3. Constructive public notification, including but not limited to the following:
  - a. Publication in a newspaper of general circulation, or
  - b. Filing of an affidavit with the Office of the City Clerk certifying to the time and manner in which such notification was sent by regular mail, or

c. Conspicuous posting on or in the vicinity of the property.

C. Failure to serve such person(s) or failure of such person(s) to receive timely notification shall not affect in any manner the validity of any abatement actions taken or procedures conducted as established in this chapter.

D. The notification shall minimally identify the following factors:

1. The provisions of the code or ordinance violated and the descriptive nature of the violations; and

2. The locations of the violations and the dates of occurrence; and

3. The remedial actions required to correct the violations wholly and permanently and the time constraints for commencing and completing the corrections; and

4. The dollar amount and rate of recurrence and duration of administrative citations; and

5. The dates when administrative citations will begin to accrue and will cease; and

6. Other consequences, as applicable, should the violations not be wholly and permanently corrected in accordance with the terms and conditions and time constraints identified; and

7. The procedures for obtaining an administrative hearing regarding the assessment of administrative citations. (Ord. 12550 § 2 (part), 2003: Ord. 11805 § 1 (part), 1995: prior code § 1-7.05)

#### **1.12.060 Assessment.**

A. The City Manager, or his or her designee, is authorized to establish a schedule of violations and assessments or similar guidelines for issuing administrative citations.

B. Except as otherwise provided herein, administrative citations, excluding accruing interest, shall not be assessed at more than five thousand dollars (\$5,000.00) cumulatively per calendar year for an individual parcel or separate structure thereon for any related series of violations. The citation amount shall not exceed one hundred dollars (\$100.00) for the first issuance, two hundred fifty dollars (\$250.00) for the second issuance, and five hundred dollars (\$500.00) for all subsequent issuances for any related series of

violations occurring within a calendar year. For offenses involving violations of Oakland Municipal Code Sections 8.28.060, 8.28.070, 8.28.150, 8.28.160, 13.16.100 and 13.16.110, administrative citations shall not exceed seven hundred fifty dollars (\$750.00) for the first issuance, one thousand dollars (\$1000.00) for the second issuance, and one thousand five hundred dollars (\$1500.00) for all subsequent issuances for any related series of violations occurring within a calendar year.

C. The issuance of administrative citations may begin to accrue on the date of initial occurrence of the violation, as identified by the city.

D. The issuance of administrative citations shall cease when all violations are wholly and permanently corrected.

E. Administrative citations shall be issued in accordance with the following factors:

1. The duration and frequency of recurrence of the violation;

2. The detrimental effects of the violation on the occupants of the property and the surrounding neighborhood and the community at large;

3. The history of compliance efforts by the responsible person to correct the violation wholly and permanently;

4. The viability of the administrative citation to effect abatement of the violation wholly and permanently;

5. Other factors that serve justice.

(Ord. 12550 § 2 (part), 2003: Ord. 12509 (part), 2003: Ord. 12401 § 1 (part), 2002; Ord. 11805 § 1 (part), 1995: prior code § 1-7.06)

#### **1.12.070 Administrative expenses.**

Administrative costs, charges, fees, and interest shall be as established in the master fee schedule of the city. (Ord. 12550 § 2 (part), 2003: Ord. 11805 § 1 (part), 1995: prior code § 1-7.07)

#### **1.12.080 Administrative appeal.**

A. The responsible person(s) may request an administrative hearing to adjudicate the issuance of administrative citations by filing such request in writing with the City Manager, or his or her designee,

## **1.12.090**

pursuant to standards and procedures established in the Oakland Housing Code, Section 15.08.350C, except that alternate or additional standards and procedures may be promulgated by the City Manager, or his or her designee, for requesting an administrative hearing regarding the issuance of administrative citations for violations of codes and ordinances other than the Oakland Housing Code.

B. The City Manager, or his or her designee, is authorized to establish standards and procedures for conducting an administrative hearing and evaluating evidentiary testimony and either affirming the issuance of administrative citations or remanding for further consideration, pursuant to standards and procedures established in the Oakland Housing Code, except that alternate or additional standards and procedures for conducting an administrative hearing and evaluating evidentiary testimony may be promulgated by the City Manager, or his or her designee, for codes and ordinances other than the Oakland Housing Code.

C. In all instances, the determination regarding administrative citations resulting from the administrative hearing shall be final and conclusive.

D. The City Manager, or his or her designee, is authorized to establish standards and procedures for adjustment of administrative citations previously issued for extraordinary circumstances which are expressly demonstrated to serve the best interests of the residents of the city. (Ord. 12550 § 2 (part), 2003; Ord. 11805 § 1 (part), 1995; prior code § 1-7.08)

### **1.12.090 Remedies not exclusive.**

Remedies under this chapter are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive. The enforcement official shall have the discretion to select a particular remedy to further the purposes and intent of the chapter, depending on the particular circumstances. The enforcement official's decision to select a particular remedy is not subject to appeal. (Ord. 12550 § 2 (part), 2003)

## **Chapter 1.16**

### **ALTERNATIVE ADMINISTRATIVE PROCEDURE FOR ABATEMENT OF CERTAIN VIOLATIONS**

**Sections:**

- 1.16.010      Purpose.**
- 1.16.020      Scope.**
- 1.16.030      Violations.**
- 1.16.040      Authority.**
- 1.16.050      Notification.**
- 1.16.060      Limitation of property use.**
- 1.16.070      Administrative expenses.**
- 1.16.080      Administrative appeal.**
- 1.16.090      Remedies not exclusive.**

**1.16.010      Purpose.**

The purpose of this chapter is to provide for the protection, health, safety, and general public welfare of the residents of the city and to preserve the livability, appearance, property values, and social and economic stability of the city by providing an alternative method of code enforcement to effect abatement of minor violations of the codes and ordinances identified in this chapter. (Ord. 12550 § 3 (part), 2003; Ord. 11805 § 1 (part), 1995; prior code § 1-8.01)

**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), 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.

B. Abatement actions 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. (Ord. 12550 § 3 (part), 2003; Ord. 12025 § 8, 1997; Ord. 12019 § 5, 1997; Ord. 11989 § 7, 1997; Ord. 11805 § 1 (part), 1995; prior code § 1-8.02)

**1.16.030      Violations.**

A. Minor Violation. A minor violation shall exist whenever any provision of the codes and ordinances identified in this chapter has been violated or the real property or structure thereon identified with the violation has been declared and remains a public nuisance.

B. Public Nuisance. For the purposes of this chapter, a public nuisance shall exist whenever a condition on a property is maintained in violation of codes and ordinances identified in this chapter or in violation of California Civil Code Sections 3479 and

## **1.16.040**

3480, at common law or in equity jurisprudence. A public nuisance shall also exist whenever a condition so identified is corrected but recurs, and continues as a recurrent problem.

C. Responsible Department. The responsible department shall be the city department, its Director or Deputy Director, or other person so designated either by the City Manager or code or ordinance as responsible for enforcement of the provisions of the codes and ordinances identified in this chapter.

D. Responsible Person. The responsible person shall be a natural person, heirs, executors, administrators, or assigns, firm, partnership, or corporation, its heirs or their successors or assigns, or the agent of any of the aforesaid, responsible for the creation, existence, commission, and/or maintenance of a violation of the codes and ordinances identified in this chapter. (Ord. 12550 § 3 (part), 2003; Ord. 11805 § 1 (part), 1995; prior code § 1-8.03)

### **1.16.040 Authority.**

A. Whenever any provision of the codes and ordinances identified in this chapter has been violated, administrative limitation of property use may be enforced to affect abatement

B. The City Manager, or his or her designee, is authorized to enforce the abatement actions established in this chapter.

C. The responsible person(s) creating, committing, condoning, or maintaining a violation of any provision of the codes and ordinances identified in this chapter shall be subject to abatement actions established in this chapter.

D. Each and every day a violation of any provision of the codes and ordinances identified in this chapter exists shall constitute a separate and distinct offense.

E. Separate abatement actions established in this chapter may be enforced for separate violations or separate dates of occurrence.

F. Enforcement of abatement actions established in this chapter and/or full or partial reimbursement or recovery of administrative expenses shall not excuse the failure to correct violations wholly and excuse the failure to correct violations

wholly and permanently nor shall it preclude initiation of additional abatement actions by the city.

G. Administrative expenses, including attorneys' fees, shall accrue to the account of the responsible department and may be recovered by all appropriate legal means, including but not limited to nuisance abatement lien and special assessment' priority lien of the general tax levy, or civil and small claims action brought by the city, or both. (Ord. 12623 § 4 (part), 2004; Ord. 12550 § 3 (part), 2003; Ord. 11805 § 1 (part), 1995; prior code § 1-8.04)

## **1.16.050 Notification.**

A. Whenever the limitation of property use is enforced, a notification of the abatement action shall be served upon the responsible person and, as applicable, to any other party revealed by public records to have record title or similar legal interest in the property. Such notification may be served in conjunction with notification of other actions by the city to abate the violation.

B. The notice shall be served by one or more of the following methods:

1. Personal delivery with acknowledged receipt; or
2. Certified mail with return receipt requested to the last known mailing address; or
3. Constructive public notification, including but not limited to the following:

- a. Publication in a newspaper of general circulation, or
  - b. Filing of an affidavit with the Office of the City Clerk certifying to the time and manner in which such notification was sent by regular mail, or
  - c. Conspicuous posting on or in the vicinity of the property.
- C. Failure to serve such person(s) or failure of such person(s) to receive timely notification shall not affect in any manner the validity of any abatement actions taken or procedures conducted as established in this chapter.

D. The notice shall minimally identify the following factors:

- 1. The provisions of the code or ordinance violated and the descriptive nature of the violations; and
- 2. The locations of the violations and the dates of occurrence; and
- 3. The remedial actions required to correct the violations; and
- 4. Other consequences, as applicable, should the violations not be corrected; and
- 5. The procedures for obtaining an administrative hearing regarding the enforcement of the limitation of property use. (Ord. 12550 § 3 (part), 2003: Ord. 11805 § 1 (part), 1995: prior code § 1-8.05)

#### **1.16.060 Limitation of property use.**

A. Conditional and ministerial permits or approvals for existing or future work identified with an individual parcel or separate structure thereon shall be subject to the following abatement actions:

- 1. Denial of a permit application; and
- 2. Suspension and subsequent expiration of a permit application or issued permit; and
- 3. Revocation of a permit application or issued permit; and
- 4. Forfeiture of all fees.

B. Record title for an individual parcel shall be subject to encumbrance by a notice of limitation of property use recorded with the Alameda County Recorder's Office.

C. The City Manager, or his or her designee, is authorized to establish standards and procedures for the termination of a recorded encumbrance of the

property title, including but not limited to the following factors:

- 1. All identified violations have been corrected; and
- 2. All required approvals, permits, and inspections have been obtained, issued and finalized; and
- 3. All administrative expenses for abatement actions, including attorneys' fees, have been fully recovered. (Ord. 12550 § 3 (part), 2003: Ord. 11805 § 1 (part), 1995: prior code § 1-8.06)

#### **1.16.070 Administrative expenses.**

Administrative costs, charges, fees, and interest shall be as established in the master fee schedule of the city. (Ord. 12550 § 3 (part), 2003: Ord. 11805 § 1 (part), 1995: prior code § 1-8.07)

#### **1.16.080 Administrative appeal.**

A. The responsible person(s) may request an administrative hearing to adjudicate the limitation of property use by filing such request in writing with the City Manager, or his or her designee, pursuant to standards and procedures established in the Oakland Housing Code, Section 15.08.350C, except that alternate or additional standards and procedures may be promulgated by the City Manager, or his or her designee, for requesting an administrative hearing regarding the limitation of property use resulting from the violation of codes and ordinances other than the Oakland Housing Code.

B. The City Manager, or his or her designee, is authorized to establish standards and procedures for conducting an administrative hearing and evaluating evidentiary testimony and either affirming the enforcement of this chapter or remanding for further consideration, pursuant to standards and procedures established in the Oakland Housing Code, except that alternate or additional standards and procedures may be promulgated by the City Manager, or his or her designee, for codes and ordinances other than the Oakland Housing Code.

C. In all instances, the determination regarding property use limitation resulting from the administrative hearing shall be final and conclusive. (Ord.

**1.16.090**

12550 § 3 (part), 2003; Ord. 11805 § 1 (part), 1995;  
prior code § 1-8.08)

**1.16.090 Remedies not exclusive.**

Remedies under this chapter are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive. The enforcement official shall have the discretion to select a particular remedy to further the purposes and intent of the chapter, depending on the particular circumstances. The enforcement official's decision to select a particular remedy is not subject to appeal. (Ord. 12550 § 3 (part), 2003)

## Chapter 1.20

### **ADMINISTRATIVE APPEALS; CLAIMS FOR MONEY OR DAMAGES**

**Sections:**

- 1.20.010      Statute of limitations.**
- 1.20.020      Claims.**

**1.20.010      Statute of limitations.**

The limitation period provided pursuant to Code of Civil Procedure Section 1094.6 shall apply to all petitions filed seeking judicial review of administrative determinations made by any commission, board, officer or agent of the city. (Prior code § 1-5.01)

**1.20.020      Claims.**

A. Authority. This ordinance is enacted pursuant to Section 935 of the California Government Code.

B. Claims Required. All claims against the city for money or damages not otherwise governed by the claim presentation requirements, Government Claims Act, California Government Code Sections 900 et seq. or another state law (hereinafter in this section, "claims") shall be presented within the time, and in the manner, prescribed by Part 3 of Division 3.6 of Title 1 of the California Government Code (commencing with Section 900 thereof) for the claims to which that Part applies by its own terms, as those provisions now exist or shall hereafter be amended, and as further provided by this section.

C. Form of Claim. All claims shall be made in writing and verified by the claimant or by his or her guardian, conservator, executor or administrator. No claim may be filed on behalf of a class of persons unless verified by every member of that class as required by this section. In addition, all claims shall contain the information required by California Government Code Section 910.

D. Claim Prerequisite to Suit. In accordance with California Government Code Sections 935(b) and 945.6, all claims shall be presented as provided in this section and acted upon by the city prior to the filing of any action on such claims and no such

action may be maintained by a person who has not complied with the requirements of subdivision (B) of this section.

D. Suit. Any action brought against the city upon any claim or demand shall conform to the requirements of Sections 940—949 of the California Government Code. Any action brought against any employee of the city shall conform with the requirements of Sections 950—951 of the California Government Code. (Ord. 12840 § 3, 2007)

## **Chapter 1.24**

### **ARREST AND CITATION PROCEDURE**

#### **Sections:**

- 1.24.010      Authority to arrest for Penal  
Code violations.**
- 1.24.020      Power of arrest.**

**1.24.010      Authority to arrest for Penal Code  
violations.**

A. Pursuant to Section 836.5 of the California Penal Code, Supervising Housing Representatives of the city are authorized to enforce Section 402b of the California Penal Code and arrest violators thereof.

B. Pursuant to Section 836.5 of the California Penal Code, the City Manager's designees are authorized to enforce Sections 374.3 and 374.4 of the California Penal Code and arrest violators thereof.  
(Prior code § 1-4.01)

**1.24.020      Power of arrest.**

A. The following officers and their subordinates shall have and are vested with the authority to arrest any person who violates the following provisions of this code in the manner provided by Section 836.5 of the California Penal Code:

1. Sr. Park Maintenance Supervisor	Chapters 6.04, 6.08
Sr. Golf Supervisor	Section 8.06.010
Management Assistant (Parks)	Chapter 8.18
Park Specialist	Sections 9.04.030—9.04.060, 9.08.210, 9.16.010, 9.16.050, 9.36.010—9.36.040
Sr. Tree Supervisor	Chapters 12.32, 12.36 Section 12.60.070 Chapter 12.64
2. Animal Control Supervisor	Chapters 6.04, 6.08
3. Deputy Directors of Public Works Manager, Inspectional Services	Sections 8.04.080—8.04.150 Chapters 8.26, 8.28 Section 9.16.060

	Chapters 12.04, 12.08, 12.12, 12.16, 12.20, 12.24, 12.28, 12.52, 13.04, 13.08, 13.12, 15.04, 15.16, 15.32, 15.40, 15.44, 15.48, 15.64
4. Office of Community Development Housing Conservation, Supervising Housing	Chapters 8.04, 8.10, 8.18, 8.24, 8.26, 8.28 Section 9.16.060 Chapters 12.04, 12.08, 12.12, 12.16, 12.20, 12.24, 12.28, 12.52 Sections 12.60.010—12.60.060 Chapters 13.04, 13.08, 13.12, 15.04, 15.32, 15.40, 15.48
5. Oakland Housing Authority, Chief of Security	Section 9.08.250
6. Revenue Manager	Chapters 4.04, 4.08, 4.12, 4.20, 4.24, 4.28, 5.02, 5.04, 5.06, 5.08, 5.12, 5.14, 5.16, 5.20, 5.22, 5.28, 5.30, 5.32, 5.36, 5.38, 5.42, 5.44, 5.46, 5.48, 5.50, 5.52, 5.54, 5.56, 5.58, 5.60, 5.68, 5.70, 8.02 Section 8.40.010
7. Police Service Technicians, Police Services Aide and Jailer	All provisions of the code
8. Litter Control Officer	Sections 8.28.060, 8.28.070, 8.28.150, 8.28.160, 13.16.100, 13.16.110
9. Office of Fire Services - Fire Marshal, Assistant Fire Marshal, Fire Inspector, Arson Investigator and all Personnel Assigned to the Fire Department and members of the Fire Prevention Bureau and Office of Emergency Services	Chapter 15.12, City of Oakland Fire Code (also known as "Uniform Fire Code")

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B. The City Manager shall have the power to designate, by written order, that particular officers or employees shall be authorized to enforce particular provisions of this code, in addition to those officers enumerated in subsection A of this section. Officers or employees so designated shall have the

authority to arrest persons who violate any of said provisions.

C. An officer or employee designated pursuant to subsection B of this section shall be determinative of the enforcement powers of such officer or employee notwithstanding a designation of a different officer or employee within the particular provi-

sion of this code referred to in subsection A of this section. (Ord. 12481 § 1, 2003; Ord. 12414 § 3 (part), 2002; Ord. 12295 § 2, 2000; Ord. 11989 § 4, 1997; prior code § 1-4.02)

## **Chapter 1.28**

### **GENERAL PENALTY**

#### **Sections:**

**1.28.010      Violations a misdemeanor.**

**1.28.020      Violations as infraction.**

#### **1.28.010      Violations a misdemeanor.**

A. Unless otherwise provided in this code, any person violating any of the provisions or failing to comply with any of the regulatory requirements of this code shall be guilty of a misdemeanor. Any person convicted of a misdemeanor under the provisions of this code shall be punishable by imprisonment in the county jail not exceeding six months or by fine not exceeding one thousand dollars (\$1,000.00) or by both.

B. Except as otherwise provided in this code, each person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this code is committed, continued or permitted by such person and shall be punishable accordingly. In addition to the penalties here and above provided, any condition caused or permitted to exist in violation of any of the provisions of this code shall be deemed a public nuisance and may be summarily abated as such by the city. (Ord. 11922 § 1, 1996; prior code § 1-3.01)

#### **1.28.020      Violations as infraction.**

A. Any person violating any of the provisions or failing to comply with any of the regulatory requirements of the following code sections shall be guilty of an infraction:

1. Public Safety
  - a. Chapter 15.32. Dangerous Structures
  - b. Chapters 5.62, 8.36: Sections 8.40.120—8.40.170, 12.64.190. Accident Prevention

c. Section 15.04.780. Grading, Excavations and Fills

d. Chapter 15.64, Bedroom Window Security Bar and Smoke Detector Permit Requirements

e. Chapter 8.44.040. Activities prohibited within the parking facility

2. Public Welfare, Morals and Policy

a. Chapter 8.18. Public Nuisances

b. Chapter 5.18. Charities and Relief

c. Sections 9.04.030—9.04.060, 9.08.210.

Fraud and Deceit: Section 9.04.050: Defacing Notices. Violations of other provisions of Sections 9.04.030—9.04.060, 9.08.210 shall be a misdemeanor.

d. Chapters 6.04, 6.08. The Animal Control Ordinance, with the exception of Sections 6.08.120, 6.08.130, 6.08.150—6.08.180, and 6.08.200, vicious dogs, the violation of which shall be a misdemeanor.

e. Sections 9.04.070, 9.04.080, 9.08.220—9.08.240. Miscellaneous

f. Sections 8.04.080—8.04.150. Theft Provision: Title 10. Vehicles and Safety.

g. Section 9.08.250; Chapter 9.32. Trespass. Notwithstanding the provisions of Section 1.28.010A of this code, a person shall be guilty of a separate violation of Section 9.08.250 for loitering, prowling, wandering or being present without lawful business on the property of the Housing Authority of the city of Oakland for each and every instance of failure to leave upon request of a peace officer or authorized agent of the Housing Authority of the city of Oakland or for each return to the property of the Housing Authority of the city of Oakland within seventy-two (72) hours after being asked to leave by a peace officer or authorized agent of the Housing Authority of the city of Oakland.

h. Chapter 5.40. Mechanical or Electronic Games

i. Chapter 5.10. Bingo Games with exception of Section 5.10.370, which shall remain a misdemeanor punishable by a ten thousand dollar (\$10,000.00) fine.

- j. Chapter 8.26. Abatement of Illegal Scrapyards and Recyclable Materials Held Illegally in Open Storage.
  - 3. Businesses, Professions and Trades
    - a. Chapter 5.04. Taxation and Control
    - b. Chapter 4.24. Transient Occupancy Tax
    - c. Chapter 4.12. Cigarette Tax
    - d. Chapter 4.28. Utility Users Tax
    - e. Chapter 4.08. Bedroom Tax
    - f. Chapter 4.20. Real Property Transfer Tax
    - g. Chapter 5.64. Taxicab Standards, with the exception of Section 5.64.050A, operating a taxicab without a vehicle permit; Section 5.64.100D, refusal to pay fare; and Section 5.64.080K, operating a taxicab without an insurance medallion, all of which shall be misdemeanors punishable under Section 1.28.010.
  - 4. Public Works
    - a. Chapter 12.04; Sections 12.08.010—12.08.190; Chapter 12.52. Sidewalks and Curbs
    - b. Sections 9.16.060, 12.08.200—12.08.240; Chapters 12.12, 12.16, 12.20, 12.24, 12.28, 13.12, 15.44. Streets
    - c. Sections 9.16.010, 9.16.050; Chapter 12.32; Sections 12.60.070, 12.64.010—12.64.180, 12.64.200—12.64.240. Parks and Boulevards
    - d. Chapter 8.28. Solid Waste Collection and Disposal and Recycling
    - e. Section 9.16.040. Watercourses
    - f. Chapter 13.08. Building Service
    - g. Chapter 13.04. Sewer Service
    - h. Sections 12.64.250—12.64.370. Park Permits
  - 5. Land and Resource Development
    - a. Chapter 15.40. Building Numbers
    - b. Section 9.16.030 and Chapter 15.48. Setback Lines and Miscellaneous
    - c. Chapters 16.04—16.20, 16.28, 16.32. Real Estate Subdivision Regulations
    - d. Chapter 12.36. Trees. Notwithstanding the provisions of Section 1.28.010B of this code, the removal of each protected tree shall be deemed a separate and distinct offense punishable under this provision.
  - e. Chapter 16.36. Condominium Conservation Ordinance
  - f. Chapter 9.48. Prohibiting discrimination and housing on the basis of pregnancy, or tenancy of a minor child.
  - 6. Chapter 8.24. Property Blight
  - 7. Chapter 8.10. Vandalism by Defacement of Property (Graffiti). Violations of Chapter 8.10 for persons applying graffiti shall be misdemeanors and not infractions except where specifically provided for in that chapter (amended and restated).
- B. Any person convicted of an infraction under the provisions of this code shall be punishable upon a first conviction by a fine of not more than one hundred dollars (\$100.00) and, for a second conviction within a period of one year, by a fine of not more than two hundred dollars (\$200.00) and, for a third or any subsequent conviction within a one-year period, by a fine of not more than five hundred dollars (\$500.00). 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 one thousand dollars (\$1,000.00) or by imprisonment in the county jail for a period of not more than six months or by both. Exceptions: See Section 6.04.345, Feeding of feral pigeons; see also Section 6.04.070, Dogs at large.
- (Ord. No. 13146, § 2, 1-22-2013; Ord. 12835 § 1 (part), 2007; Ord. 12817 § 1 (part), 2007; Ord. 12607 § 3, 2004; Ord. 12290 (part), 2000; Ord. 11989 § 3, 1997; amended during 1997 codification; prior code § 1-3.04)



## Title 2

### ADMINISTRATION AND PERSONNEL

#### Chapters:

- |             |   |
|-------------|---|
| <b>2.04</b> | <b>Purchasing System</b>                                      |
| <b>2.06</b> | <b>Prompt Payment</b>   |
| <b>2.07</b> | <b>Grant Award Approval</b>                                   |
| <b>2.08</b> | <b>Civil Service Rules and Procedures</b>                     |
| <b>2.12</b> | <b>Debarment Program</b>                                      |
| <b>2.16</b> | <b>Map of City Council Districts</b>                          |
| <b>2.20</b> | <b>Public Meetings and Public Records</b>                     |
| <b>2.24</b> | <b>Public Ethics Commission</b>                               |
| <b>2.28</b> | <b>Living Wage Ordinance</b>                                  |
| <b>2.29</b> | <b>City Agencies, Departments and Offices</b>                 |
| <b>2.30</b> | <b>Equal Access to Services</b>                               |
| <b>2.32</b> | <b>Equal Benefits Ordinance</b>                               |
| <b>2.34</b> | <b>Identification Cards</b>                                   |
| <b>2.36</b> | <b>Worker Retention at Large-Scale Hospitality Businesses</b> |
| <b>2.38</b> | <b>Oakland Whistleblower Ordinance</b>                        |
| <b>2.40</b> | <b>Prohibition on Nepotism in City Employment</b>             |



<b>Chapter 2.04</b>	<b>2.04.140</b>	<b>Collusion with bidder—Effect on officer.</b>
<b>PURCHASING SYSTEM</b>	<b>2.04.150</b>	<b>Unauthorized purchases—Exceptions.</b>
<b>Article I</b>	<b>2.04.160</b>	<b>Acceptance, appropriation and expenditures from restricted gift proceeds.</b>
<b>Bidding, Contracting and Purchasing Sections:</b>	<b>2.04.170</b>	<b>Affirmative action program for supplies, materials, commodities and equipment.</b>
<b>2.04.010 Definitions.</b>	<b>2.04.180</b>	<b>Design-build project delivery method.</b>
<b>2.04.015 Scope of the purchasing ordinance.</b>	<b>2.04.190</b>	<b>Construction Manager-at-risk project delivery method.</b>
<b>2.04.016 Reserved.</b>		
<b>2.04.017 Reserved.</b>		
<b>2.04.018 Pay-go funded purchase of services, goods and materials—Conditions for exemption from Council approval.</b>		
<b>2.04.020 Authority of the City Administrator.</b>		
<b>2.04.021 City Auditor authority.</b>		
<b>2.04.030 City Council approval requirements.</b>		
<b>2.04.040 Contracting procedures.</b>		
<b>2.04.045 Pre-qualification and bid processes for general construction services and the Preferred Small Local Business ("PSLB") program.</b>		
<b>2.04.050 Bid procedure.</b>		
<b>2.04.051 Competitive process and qualification-based awards for professional services contracts.</b>		
<b>2.04.060 Lowest responsible bidder.</b>		
<b>2.04.070 Open market purchase.</b>		
<b>2.04.080 Cooperative purchasing agreements.</b>		
<b>2.04.090 Surplus supplies, purchases.</b>		
<b>2.04.100 Inspection and testing.</b>		
<b>2.04.110 Contract splitting prohibited.</b>		
<b>2.04.120 Surplus supplies and equipment—Disposal or destruction.</b>		
<b>2.04.130 Administrative controls.</b>		

**Article II**  
**City Policy Regarding Banks and Firms Which Do Business in or with Burma\***

\* Editor's Note: Ordinance 11885, which added Article II, §§ 2.04.180 – 2.04.280, was suspended by Ordinance 12294, passed 11/28/00.

**Article I**

**Bidding, Contracting and Purchasing**

**2.04.010 Definitions.**

The following words and phrases whenever used in this article shall be construed as defined in this section:

"Apprentice" is defined as that term is defined in the Oakland Municipal Code.

"Appropriation Resolution" is defined as a city of Oakland resolution approved by the City Council that includes:

1. A description of the material or service to be obtained under contract;
2. A not-to-exceed contract amount for the material or service;
3. Identification of the funding source for the material or service;
4. An estimated time frame for execution and completion of the contract; and
5. A statement identifying the contract-related program or project as "new" or "previously existing."

"City Administrator" means the City Administrator of the city of Oakland or an officer specifically designated to act for the City Administrator. Authorizations not specified in this article shall be made in writing by the City Administrator and filed with the City Clerk.

"Disadvantaged business enterprise (DBE) is defined as that term is defined in the Oakland Municipal Code.

"Formal bidding, solicitation or proposals/qualifications" means the competitive processes (advertising and bidding or solicitation) required in Sections 2.04.050 (supplies, services or combination) and 2.04.051 (professional services), for the purchase of supplies, services or combination in excess of fifty thousand dollars (\$50,000.00), or for the purchase of professional services in excess of twenty-five thousand dollars (\$25,000.00)

"Informal bidding" means the competitive processes (advertising and bidding or solicitation) required by the City Administrator in a city administrative instruction for the purchase of supplies, services or combination up to and including fifty thousand dollars (\$50,000.00), or for the purchase of professional services up to and including twenty-five thousand dollars (\$25,000.00).

"Local business" means a business firm with fixed offices or distribution points located within city of Oakland boundaries and listed in the permits and license tax paid file with an Oakland business street address.

"Local business enterprise" and "small business enterprise" means a business firm with fixed offices or distribution points located within the city boundaries and as otherwise defined under Oakland's LBE/SLBE construction, procurement and professional services contracting programs.

"Local hire" is defined as that term is defined in the Oakland Municipal Code.

"Pay-go funds" are the annual appropriations to the Mayor and each Councilmember to pay for discretionary projects.

"Prevailing wages" is defined as that term is defined in the Oakland Municipal Code.

"Professional services" means services which are of an advisory nature that provide a recommended course of action or personal expertise that will result in a transmittal of information to the city, either verbal or written, related to city administration and management or program management, innovation and which must be performed by appropriately licensed consultants, architectural or engineering personnel, or which are so technical or complex in nature that such services must be performed by persons possessing unique or special training, education or skills. Notwithstanding the above, this definition shall not include contracts for services between the city and another public entity.

"Local business enterprise" is defined as that term is defined in the Oakland Municipal Code.

"Purchase" means and includes rental or lease of supplies, as well as purchase.

"Services" means and includes labor, professional services, consulting services, or a combination of services and supplies which shall include public works projects.

"Supplies" means and includes supplies, materials, commodities and equipment.

(Ord. 12703 § 1, 2005; Ord. 12634 § 2 (part), 2004; Ord. 12388 § 2, 2001; Ord. 9739 § 1, 1979; Ord. 7937 § 1, 1969)

## **2.04.015 Scope of the purchasing ordinance.**

The provisions of this chapter shall apply to city contracts for public works projects, public works construction projects, procurements and purchases (as defined in Section 2.04.010), and to services including, but not limited to, contracts for services that are professional, technical or scientific in nature as well as contracts for any other services. However, this chapter has not applied to and shall not apply to agreements for grants awards given by the City of Oakland to support nonprofit and similar organizations providing service programs to the public at large, nor shall it apply to pay-go grants to non-City entities which are governed by Chapter 2.07.

(Ord. No. 13051, § 3, 1-18-2011; Ord. 12388 § 3, 2001)

**2.04.016 Reserved.**

**Editor's note**—Ord. No. 13051, § 1, passed January 18, 2011, amended the Code by renumbering former Section 2.04.016 as a new Section 2.07.020.

**2.04.017 Reserved.**

**Editor's note**—Ord. No. 13051, § 1, passed January 18, 2011, amended the Code by renumbering former Section 2.04.016 as a new Section 2.07.020

**2.04.018 Pay-go funded purchase of services, goods and materials—Conditions for exemption from Council approval.**

A. The City Administrator is authorized to purchase services (professional or otherwise), goods, materials or equipment for capital improvement projects, in any amount, designated by the Mayor or individual Councilmembers from their respective balances in the City's pay-go fund account without review or action by the City Council subject to each of the following requirements:

1. Such purchases may be made only for the purposes permitted by the funding source(s) of the pay-go account;

2. Such purchases shall be paid for only with pay-go funds or by a combination of pay-go and private funds, such as funds raised by community groups or individuals for a park or other community project; and

3. Such purchases shall be subject to all City of Oakland contracting laws, programs and policies such as, but not limited to, living wage, prevailing wages, equal benefits, local and small local business enterprise and nondiscrimination or City Council waiver by resolution shall be obtained as necessary by each of these programs or policies.

B. City Administrator Must Maintain Separate Record of Pay-Go Purchases and Make Annual Report to City Council Identifying Prior Fiscal Year's Purchases. The City Administrator shall maintain a separate record of pay-go purchases including the name of the person who designated the purchase, the amount of the purchase, the purpose of the purchase, and the name, address and any other information sufficient to identify

the consultant, contractor or vendor. No later than October of each year, the City Administrator shall provide an informational report to the City Council's Finance Committee and to the City Council regarding pay-go purchases that were made during the prior fiscal year.

(Ord. 12703 § 2, 2005)

**2.04.020 Authority of the City Administrator.**

A. City Administrator's Purchase Authority. Except as provided in Section 2.04.020.B, the City Administrator shall have authority to bind the City by written contract or purchase order without previous specific action of the Council as follows:

1. Supplies, Services or a Combination. Purchases up to one hundred thousand dollars (\$100,000.00) in any single transaction or term agreement; and

2. Professional Services. Purchases up to one hundred thousand dollars (\$100,000.00) in any single transaction or term agreement.

B. Limits for Nonbudget Identified, Redevelopment Agency Funded, Affordable Housing, Voter-Approved Measure Funded and Technological, Computer-Related Purchases or Contracts. The City Administrator's contract authority is subject to lower limits for certain types of purchases or contracts.

1. Purchases or Contracts Subject to Lower Limits:

a. Purchases or contracts related to programs or projects that have not been previously identified in:

- i. The current, approved CIP budget;
- ii. The approved operating budget; or

b. Purchases or contracts for services or supplies related to affordable housing projects;

c. Purchases or contracts that are or will be funded, directly or indirectly, by the Redevelopment Agency;

d. Purchases or contracts that are or will be funded, directly or indirectly, by funds generated by a voter-approved measure; or

e. Purchases or contracts for any technological, computer or computerized system services, software, equipment, hardware or products.

2. Purchase Limits. The City Administrator is authorized to bind the City by written contract or purchase order for the types of purchases or contracts identified above without previous specific action of the Council as follows:

a. Supplies, Services or a Combination. Purchases up to fifty thousand dollars (\$50,000.00) in any single transaction or term agreement;

b. Professional Services. Purchases up to fifteen thousand dollars (\$15,000.00) in any single transaction or term agreement.

3. Appropriation Resolution. Notwithstanding the limits in this section, any purchase or contract identified in a Council-approved Appropriation Resolution is subject to the City Administrator's limits in Section 2.04.020.A.

C. Advertising and Bidding or Solicitation. The City Administrator shall conduct competitive solicitation processes required in this chapter (Section 2.04.040.B) for all purchases or contracts within City Administrator authority.

D. Reports. The City Administrator shall present the following reports to the City Council on an annual basis:

1. Redevelopment Agency-Funded Contracts. A prospective report listing all contracts anticipated within the next year to be directly or indirectly paid from Redevelopment Agency funds.

2. General Report. A report listing all purchases and contracts authorized by the City Administrator, or the City Administrator designee, within the City Administrator's contract authority during the prior year.

E. Findings Required for Service Contracts. The City Administrator shall make determinations required by Oakland Charter Section 902(e) for service contracts as follows:

1. Professional Services Contracts. Contracts for professional services shall be of a professional, scientific or technical and temporary nature.

2. Council Approval for Other Service-Only Contracts. The City Administrator shall submit

all other service-only contracts to the Council for approval. Such contracts shall be in the public interest because of economy or better performance and must obtain a vote of two-thirds of the members of the Council.

3. Loss of Employment or Salary. Contracts for professional services or service-only shall not result in the loss of employment or salary by any person having permanent status in the competitive service.

F. Local Vendor Preferences. The City Administrator is authorized in the evaluation of all sealed, faxed and telephone bids for the purchase of supplies, to extend a two and one half percent preference to local business enterprises and an additional two and one half percent preference to small local business enterprises in award of all purchase orders.

The City Administrator shall semiannually prepare and submit to the City Council a report on participation by local and small local business enterprises in City contracts for the prior year.

G. Emergency Supply and Services Procurement. In a situation deemed by the City Adminis-

trator to be an emergency for the immediate preservation of the public peace, health or safety, the City Administrator may authorize a contract or purchase order exceeding the City Administrator's non-emergency purchase authority in any one transaction, without advertising or previous specific action by the City Council, for the purchase of supplies or payment for services, or a combination thereof, to be furnished to the City. All emergency contracts awarded by the City Administrator shall be presented for informational purposes to the City Council within a reasonable time of contract execution.

**H. Emergency Professional Services and Consultant Agreements.** In a situation deemed by the City Administrator to be an emergency for the immediate preservation of the public peace, health or safety, the City Administrator may authorize a contract exceeding the City Administrator's non-emergency purchase authority in any one transaction, without previous specific action by the City Council, for the payment for services, or a combination thereof, to be furnished to the City. All emergency contracts awarded by the City Administrator shall be presented for informational purposes to the City Council within a reasonable time of contract execution.

**I. City Administrator Authority During City Council Annual Recess.** Notwithstanding the provisions of subsections A and B of this section, during the month of August through the first City Council meeting in September, known as the annual recess of the City Council, as provided for in the City Council's Rules of Procedures, the City Administrator shall be authorized: (1) to bind the City, by written contract or purchase order, involving an expenditure not exceeding five hundred thousand dollars (\$500,000.00), without previous specific action by the City Council, for the purchase of supplies or payment for services, or a combination thereof, in any one transaction, to be furnished to the City, subject to the availability of funds and procedures set forth in this article, including competitive bidding, and (2) to bind the City, by written contract, involving an expenditure

not exceeding three hundred thousand dollars (\$300,000.00) in any one transaction, subject to the availability of funds for the payment for professional services and consultant services furnished to the City and procedures set forth in this article, without previous specific action of the City Council. Contracts for professional services, supplies, services or combination that are in excess of the City Administrator's authority shall be subject to the City Council's recess agenda process and shall be presented to the City Council for ratification upon return from its annual recess.

**J. Apprentice Hiring and Local Hire.** The City Administrator is authorized in evaluation of all sealed, faxed and telephoned bids for public works projects to require contractors to comply with the City's apprentice hire and programs as set forth in this code.

**K. Living Wage.** The City Administrator is authorized in evaluation of all sealed, faxed and telephoned bid and/or proposals for services to require contractors or consultants to comply with the City's living wage ordinance, as set forth under Chapter 2.28 of this code.

**L. Prevailing Wage.** The City Administrator is authorized in evaluation of all sealed, faxed and telephoned bids and/or proposals for public works projects to require bidders/contractors to pay prevailing wages as required under this code.

**M. Oakland Specifications for Public Works Construction ("Greenbook").** The City Administrator is authorized in evaluation of all sealed, faxed and telephoned bid and/or proposals for public works construction to require bidders/contractors to comply with and perform construction in accord with the Oakland Specifications for Public Works Construction ("Greenbook"), as set forth in this code. Notwithstanding the above, nothing herein is intended to limit authority of the City Council to modify the specifications for public works construction by legislative action on a case-by-case basis.

**N. Local Business Contracting Programs.** The City Administrator is authorized in the evaluation of all sealed, faxed and telephoned bids for public

works projects, for the purchase of supplies and in evaluation of proposals for professional services contracts, to require contractors to comply with, and to extend the benefits of, Oakland's LBE/ SLBE construction, procurement and professional services contracting programs, as set forth in this code.

O. Equal Benefits Program. The City Administrator is authorized in the evaluation of all sealed, faxed and telephoned bids and/or proposals for services to require contractors or consultants to comply with the City's Equal Benefits Program requirements.

(Ord. No. 12976, § 1, 11-3-2009; Ord. 12634 § 1 (part), 2004; Ord. 12388 § 4, 2001; Ord. 12071 § 1, 1998; Ord. 11724 § 1, 1994; Ord. 10447 § 1, 1984; Ord. 10066 § 3, 1981; Ord. 9739 §§ 2, 3 (part), 1979; Ord. 7937 § 2, 1969)

## **2.04.021 City Auditor authority.**

A. City Auditor Purchase Authority. The City Auditor shall have the authority to bind the City by written contract in any amount without previous specific action of the Council or City Administrator to obtain professional, technical or scientific services needed to audit the books, accounts, money and securities of all departments and agencies of the City and such other matters as the Council may request; to report to the Council periodically the results of such audits and to advise and make recommendations to the City Administrator regarding accounting forms design, fiscal and statistical reports and the methods or procedures for maintaining the accounts and accounting system throughout all departments, offices and agencies of the City; to report to the Council instances of noncompliance with accepted accounting principles where recommendations for compliance have not been implemented by the City Administrator after reasonable time and opportunity; and to conduct surveys, reviews, and audits as the Auditor deems to be in the best public interest or as required by the Council or Mayor as specified in Oakland Charter Article IV, Section 403.

B. City Auditor Contracts Subject to Council Appropriation of Contract Funds. All contracts authorized by the City Auditor pursuant to this section shall be subject to the prior or concurrent appropriation and allocation of funds by the City Council in (1) the current two-year or mid-cycle adjusted budget for the City Auditor, including any budget adjustments allowed, or (2) an appropriation resolution as defined in section 2.04.010 above, or (3) a funding resolution specific to a particular contract(s).

C. Reports. The City Auditor shall present to the City Council, on an annual basis, a report listing all professional services contracts authorized by the City Auditor during the prior year.

D. Compliance with Competitive Process, Personnel Findings, Purchasing Programs and Other Purchasing Requirements. With the exception of the contract authority granted under this section, all contracts entered into by the City Auditor pursuant to this section are subject to the competitive processes required under sections 2.04.050 and 2.04.051, below, and the personnel findings, purchasing programs and other purchasing requirements set forth or referenced in the remainder of this chapter.

(Ord. 12820 § 1, 2007)

## **2.04.030 City Council approval requirements.**

A. Council Award of Purchases or Contracts in Excess of City Administrator's Authority. The Council shall award any purchase orders or contracts in excess of the City Administrator's authority as follows:

1. City Council Authority. Except for purchases subject to limits in Section 2.04.030.A(2), the Council shall award all contracts in the following amounts:

a. Supplies, Services or Combination. Purchases in excess of one hundred thousand dollars (\$100,000.00) in any single transaction or term agreement; and

b. Professional Services. Purchases in excess of one hundred thousand dollars (\$100,000.00) in any single transaction or term agreement.

2. Nonbudget Identified, Redevelopment Agency Funded, Affordable Housing, Voter-Approved Measure Funded and Technological, Computer-Related Purchases or Contracts. The Council shall award all contracts in excess of the City Administrator's limits as follows:

a. Supplies, Services or Combination. Purchases in excess of fifty thousand dollars (\$50,000.00) in any single transaction or term agreement;

b. Professional Services. Purchases in excess of fifteen thousand dollars (\$15,000.00) in any single transaction or term agreement;

c. Appropriation Resolution. Notwithstanding the limits in this section, any purchase or contract identified in a Council-approved Appropriation Resolution is subject to the City Administrator's limits in 2.04.020.A.

B. Validity of Contracts. Legislative actions of the Council awarding any contract shall not constitute a contract. No contract shall be binding or of any force or effect until signed by the City Administrator. The City Administrator's signature shall constitute certification that there remains unexpended and unapplied balances of the appropriations or funds sufficient to pay the estimated expense of executing the contract.

C. Contract Extensions, Renewals, Amendments. The requirements for City Council approval specified in Section 2.04.030 shall apply to all expenditures, extensions, amendments or renewals of an existing or expired contract or term agreement whenever aggregated expenditures under the original contract or term agreement, or extensions, renewals or amendments that exceed: (1) the City Administrator's contract approval limit, or (2) the total contract amount approved by Council in a City resolution.

(Ord. No. 12976, § 1, 11-3-2009; Ord. 12634 § 1 (part), 2004; Ord. 11724 § 2, 1994; Ord. 10066 § 2 (part), 1981; Ord. 9739 § 3 (part), 1979; Ord. 7937 § 3, 1969)

## **2.04.040 Contracting procedures.**

A. Contracts Subject to Council Appropriation and Allocation of Program or Contract Funds.

All contracts authorized by the Council or City Administrator shall be subject to the prior appropriation and allocation of funds by the City Council for the City programs, activities, functions or operations, which the purchase of any supplies, professional or other services or combination are intended to support.

B. Limits for Informal and Formal Solicitation Procedures and Exemptions.

1. **Solicitation of Qualifications and Bids and Proposals for Pre-Qualified Contractors.** Pre-qualification activities for the preferred small local business (PSLB) pre-construction and construction programs are exempt from the advertising and/or formal bidding/request for proposal requirements of this section, and are instead subject to the requirements set forth in Subsections 2.04.045 B. and 2.04.051 C. for solicitation of qualifications and bids or proposals.

2. **Informal Advertising and Bidding.** Informal advertising and bidding procedures established by the City Administrator are required for purchase orders or contracts for supplies, services or combination involving expenditures between \$500.00 and \$50,000.01 in any single transaction or term agreement;

3. **Formal Advertising and Bidding.** Formal advertising and bidding, described in Section 2.04.050, is required for purchase orders or contracts for supplies, services or combination involving expenditures in excess of \$50,000.00 in any one transaction or term agreement.

4. **Informal RFP/RFQ Process.** Informal advertising and solicitation of proposals/qualifications is required for professional services contracts involving expenditures of \$25,000.00 or less;

5. **Formal RPF/RFQ Process.** Formal advertising and solicitation of proposals/qualifications described in Section 2.04.051 is required for professional services contracts involving expenditures of more than \$25,000.00.

C. Purchase Orders, Contract Format, Petty Cash.

1. Purchase orders shall be used for all purchases of supplies, services or combination or pro-

fessional services in excess of five hundred dollars (\$500.00). The purchase order shall incorporate by reference all relevant agreements, including but not limited to the City of Oakland Professional Services Agreement, negotiated agreements, vendor agreements and exhibits, attachments, addendums and other supporting documents that, together, constitute the entire agreement.

2. All purchases and contracts for supplies, services or combination of professional services in excess of five hundred dollars (\$500.00) shall be in writing, in a format approved by the City Attorney.

3. The City Administrator shall institute control procedures for petty cash funds without prior use of purchase orders or contracts.

#### D. Miscellaneous Procedures.

1. Notwithstanding the above, nothing shall preclude the City Administrator from placing any purchase, procurement or contract within the City Administrator's approval limit on the City Council agenda for discussion or approval.

2. The City Administrator shall institute informal contacting procedures for the purchase of supplies, services or combination.

3. The City Administrator shall institute informal and formal contracting procedures for the purchase of professional services.

4. The City Administrator shall maintain a centralized list of all contracts executed by the City Administrator, or the City Administrator's designees, within the City Administrator's authorization limit, for the prior year.

5. Pursuant to the City Charter, the City Attorney will draft standardized contract terms and conditions and standardized contracts for professional services, purchasing, procurement and for supplies, services or combination.

6. Pursuant to the City Charter, the City Attorney will approve the form and legality of all contracts before their execution.

(Ord. No. 13102, § 1, 12-20-2011; Ord. 12634 § 1 (part), 2004; Ord. 9739 § 3 (part), 1979; Ord. 7937 § 4, 1969)

#### **2.04.045 Pre-qualification and bid processes for general construction services and the Preferred Small Local Business ("PSLB") program.**

A. Optional Prequalification for Construction Work over \$250,000.00. The City may, in its discretion and when deemed by the City Administrator to be in the best interests of the City, establish a list of pre-qualified businesses to perform as-needed and specified construction work in excess of \$250,000.00 ("large projects").

1. When deemed by the City Administrator to be in the best interests of the City, the City will advertise a request for qualifications for licensed construction services in accord with Subsection 2.04.050 A., below, to perform as-needed or specified construction work exceeding \$250,000.00.

2. When a pre-qualified list is established for large projects, the City may limit solicitations for bids for such work to three or more business on the pre-qualified list.

3. Contracts awarded through a pre-qualified process are subject to the City's insurance, bond, labor and all social equity policies such as, but not limited to, payment of prevailing wages, local and small local business participation and local hire.

B. Mandatory Preferred Small Local Business Program (MPSLB)—Pre-Qualification for Construction Work Under \$250,000.00. The City will establish a list of pre-qualified businesses to perform as-needed and specified construction work less than \$250,000.00 ("small projects").

1. The City will solicit qualifications solely from Oakland certified small, local business enterprises in order to establish a MPSLB pre-qualified list of small local businesses to perform small project construction contracts.

2. When a pre-qualified list is established the City will limit solicitations for bids for such work to three or more business on the MPSLB pre-qualified list.

3. Reserved.

4. MPSLB contracts are exempt from the requirements of Oakland's Local and Small Local Business Enterprise (L/SLBE) program for construction contracts.

5. With the exception of the L/SLBE program, MPSLB contracts are subject to insurance, bond, labor and social equity policies such as, but not limited to, payment of prevailing wages and local hire.

6. Circumstance for Open Market Solicitation. The City Administrator may solicit bids on the open market, without advertising, when all responsive bids exceed the engineer's estimate.

C. Award of Construction Contracts. Contracts awarded through a pre-qualification process shall be awarded to the lowest responsible, responsive bidder.

D. Construction contracts awarded through a pre-qualification process exceeding \$100,000.00 are subject to Council approval in accord with Section 2.04.030, above.

E. Removal From Pre-Qualified List. Businesses that lose necessary qualifications to perform the work, including, but not limited to, licenses or insurance, or that become disqualified or debarred, shall be removed from the pre-qualified list.

(Ord. No. 13102, § 1, 12-20-2011)

## **2.04.050 Bid procedure.**

A. When Advertising Required. Where the cost of services, supplies or combination required by the city exceeds fifty thousand dollars (\$50,000.00), the City Clerk shall call for formal bids by advertising at least once in the official newspaper of city not less than ten calendar days before the date for receiving bids. The City Administrator may deem it advisable to require more than one advertising of the call for bids.

Notwithstanding the foregoing, the requirements of this section shall not apply to the mandatory preferred small local business (MPSLB) pre-qualification program in Subsection 2.04.045 B., above, for construction services.

B. Bid Security. Whenever the city calls for bids for services and whenever the City Administrator deems it advisable in calls for bid supplies, each bidder shall be required to submit with the bid as bid security either cash, certified check or a

cashier's check of or on some responsible bank in the United States, in favor of and payable at sight to the city, in an amount not less than ten percent of the aggregate amount of the bid.

Alternatively, any bid may be accompanied by a surety bond as follows:

1. For contract bids of five hundred thousand dollars (\$500,000.00) or less, the surety bond must be furnished by a United States nonadmitted corporate surety that has an A.M. best rating A-, at minimum, guaranteeing to the city that the bidder will enter into the contract and file the required bonds within the period;

2. For contract bids over five hundred thousand dollars and one cent (\$500,000.01) and less than one million dollars (\$1,000,000.00), the surety bond must be furnished by a United States nonadmitted corporate surety that has an A.M. best rating of A+, at minimum;

3. For contract bids over one million dollars (\$1,000,000.00) and less than five million dollars (\$5,000,000.00), the surety bond must, at minimum, be furnished by a United States nonadmitted corporate surety that appears on the Treasury List subject to the bonding limits which the Treasury List imposes on such surety;

4. For contract bids in excess of five million dollars (\$5,000,000.00), the surety bond must be furnished by a corporate surety admitted in the state of California or Lloyds or London; and

5. Prospective bidders may file annual surety bonds covering all bids to be made by such bidder during a calendar year with approval of the City Administrator.

If the bidder to whom the contract is awarded shall, for twenty (20) calendar days after receipt of the contract, fail or neglect to enter into the contract and file the required bonds, the bid security or bid surety bond shall be forfeited. The City Administrator shall draw the money due on such bid security or bid surety bond and pay the same or any cash deposited into the City Treasury, and under no circumstances shall it be returned to the defaulting bidder.

C. Multiple Bids. No person, firm or corporation shall be allowed to make or file or be interested in more than one bid for the same supplies, services or both.

D. Bid Forms. All bids shall be made upon forms to be prepared by city and furnished upon application. All bids shall be clearly written without any erasure or interlineations.

E. Opening of Bids and Awards. All bids submitted under this section shall be sealed, identified as bids on the envelope and submitted to the City Clerk at the place and time specified in the public notice inviting bids. Bids shall be opened by the City Administrator or the City Administrator's designated representative, in public, at the time and place designated in the notice inviting bids. Bids received after the specified time shall not be accepted and shall be returned to the bidder unopened. The contract shall be let to the lowest responsible bidder, as defined herein and taking into account current bid discounts and/or preference points awarded under Oakland's social equity programs, by the City Council at any time not exceeding 60 calendar days after bid opening. The City Council may reject any and all bids and waive informalities or minor irregularities in the bids.

In the bid for Public Works Construction Projects, the City Administrator may deem it advisable to delay the submission of a list of subcontractors to be on the project. Such list shall be sealed, identified as a subcontractor list on the envelope and submitted to the City Clerk at the place and time specified in the public notice inviting bids.

F. Disposition of Bid Security. All bid securities and bid bonds shall be returned to the unsuccessful bidders after award of the contract. The bid security and bid bond of the successful bidder shall be returned after execution of the contract and deposit of the necessary bonds.

G. Approval of Faithful Performance and Labor and Materials Bonds—Waiver. Faithful performance and labor and material bonds in an amount equal to at least fifty (50) percent of the contract price shall be required by city specifications of contracts for services and shall be ap-

proved as to form by the City Attorney. Whenever the City Administrator deems it advisable in the purchase of supplies, City Administrator may require the furnishing of a faithful performance bond in an amount equal to at least twenty-five (25) percent of the contract price; that bond shall be approved as to form by the City Attorney.

H. Time of Completion. The contract shall specify the time within which the work shall begin and when it shall be completed according to specifications. The City Administrator may extend time for acts of the city, acts of God, weather or strikes, or other circumstances over which the contractor has no control. The Council may extend the time, but in no event shall the time for the performance of any contract be extended more than ninety (90) days in addition to extensions as authorized by the City Administrator, except by a two-thirds vote of the Council.

In case of failure on the part of the contractor to complete the contract within the time specified in the contract or within the extension of the time as provided, the contract may be terminated and the contractor shall not be paid or allowed any further compensation for any work done under the contract, and the City Administrator may proceed to complete such contract either by reletting or otherwise, and the contractor and contractor's surety shall be liable to the city for all loss or damage that the city may suffer because contractor fails to complete the contract on time.

I. Exceptions to Competitive Bidding. Upon a finding in each instance by the City Council that any of the following conditions exist, the provisions of this section shall not apply:

1. To contracts involving professional or specialized services such as, but not limited to, services rendered by architects, engineers and other specialized professional consultants;
2. When calling for bids on a competitive basis is impracticable, unavailing or impossible;
3. Placement of insurance coverage;
4. When public work is performed by the city with its own employees;

5. In other cases when specifically authorized by the City Council after a finding and determination that it is in the best interests of the city.

J. No Bids. If no valid bids are received after advertising as required, the City Administrator may proceed to hire or have the services performed or purchase the supplies in the open market.

(Ord. No. 13102, § 1, 12-20-2011; Ord. 12634 § 1 (part), 2004; Ord. 11724 § 3, 1994; Ord. 11297, 1991; Ord. 10066 §§ 1, 2 (part), 1981; Ord. 9739 § 3 (part), 1979; Ord. 7937 § 5, 1969)

#### **2.04.051 Competitive process and qualification-based awards for professional services contracts.**

A. Request for Qualifications or Proposal for Professional Services Contracts in Excess of Twenty-Five Thousand Dollars (\$25,000.00). The City Administrator, or the City Administrator's designee, shall conduct a request for proposal ("RFP") or request for qualifications ("RFQ") process for the award of contracts that exceed twenty-five thousand dollars (\$25,000.00) and are exempt from bidding under Section 2.04.050.I.1. The city's RFP and RFQ processes shall be set forth in a City Administrator's administrative instruction. The RFP or RFQ requirement applies, but is not limited to, contracts for professional, technical or specialized services. The selection and award of contracts for professional services shall be based on demonstrated competence and qualifications for the types of services to be performed, at fair and reasonable prices to the city, but shall also take into account preference points awarded under Oakland's social equity policies and compliance with applicable Oakland's purchasing policies such as living wage and equal benefits.

B. Waiver. Upon a finding by the City Council or its designee that it is in the best interests of the city, the City Council may waive the requirement for an RFP or RFQ process.

C. Pre-Qualification for Pre-Construction and Other Professional Services Work Under

\$250,000.00—Mandatory and Optional Preferred Small Local Business Programs (MPSLB and OPSLB).

1. Mandatory Preferred Small Local Business (MPSLB) Program for Pre-Construction Services. The City shall establish a list of pre-qualified businesses to perform as-needed and specified pre-construction work, such as architectural and engineering work, less than \$250,000.00 ("small projects"). The City shall solicit qualifications solely from Oakland certified small, local business enterprises to establish the pre-qualified business list for MPSLB professional pre-construction services.

2. Optional Preferred Small Local Business (OPSLB) Program for Other Professional Services (Pre-Construction Services Excluded). The City may, in its discretion and when deemed by the City Administrator to be in the best interests of the City, establish a list of pre-qualified Oakland certified small local businesses to perform as-needed or specified professional services (pre-construction excluded) under \$250,000.00 ("small projects"). When authorized by the City Administrator, the City shall solicit qualifications solely from Oakland certified small, local business enterprises to establish a pre-qualified business list for OPSLB professional (non-pre-construction) services.

3. When a pre-qualified list is established for small projects, the City will limit solicitations for proposals for such work to three or more business on the MPSLB or OPSLB pre-qualified lists.

4. MPSLB and OPSLB contracts are exempt from the requirements of Oakland's Local and Small Local Business Enterprise (L/SLBE) program for professional services.

5. With the exception of the L/SLBE program, MPSLB and OPSLB contracts are subject to insurance and social equity policies such as, but not limited to, living wages and equal benefits.

6. Circumstance for Open Market Solicitation. The City Administrator may solicit proposals on the open market, without advertising, if less than three proposals are submitted by MPSLB or OPSLB pre-qualified businesses.

2.04.051

7. MPSLB or OPSLB contracts exceeding \$100,000.00 are subject to Council approval in accord with Section 2.04.030, above.

8. Removal From Pre-Qualified List. Businesses that lose necessary qualifications to perform the work, including, but not limited to, licenses or insurance, or that become disqualified or debarred, shall be removed from the MPSLB or OPSLB pre-qualified list.

(Ord. No. 13102, § 1, 12-20-2011; Ord. 12634 § 1 (part), 2004)

## **2.04.060      Lowest responsible bidder.**

In addition to price, in determining the lowest responsible bidder, consideration shall be given to:

- A. The quality and performance of the supplies to be purchased or services to be provided by the seller;
- B. The ability, capacity and skill of the bidder to perform the contract or provide the supplies or services required;
- C. The ability of the bidder to provide the supplies or services promptly, or within the time specified, without delay;
- D. The character, integrity, reputation, judgment, experience and efficiency of the bidder;
- E. The quality of bidder's performance on previous purchases by, or contracts with, the city;
- F. The ability of the bidder to provide future maintenance, repair parts and services for the use of the supplies purchased;
- G. As permitted by law, a certified bidder's affirmative action hiring plan to be submitted with all sealed bids for supplies and commodities over five thousand dollars (\$5,000.00).

1. To be considered responsible and as permitted by law, bidder shall submit certification that bidder is in compliance with all provisions of Executive Order No. 11246 (as amended by Executive Order No. 11375), and

2. To be considered responsible and as permitted by law, the bidder must have a current work force racially and ethnically proportionate to the population parity for the area from which bidder's work force is drawn (national, state, or local), must comply with subsection (G)(1) of this section, or must have an affirmative action plan to achieve population parity for the area in which they do business. The plan should include all aspects of employment recruiting, hiring, promotions, and layoff. (Ord. 12634 § 1 (part), 2004: Ord. 9739 § 4, 1979; Ord. 7937 § 6, 1969)

## **2.04.070      Open market purchase.**

Except as otherwise provided by this chapter or unless otherwise directed by the City Administrator, all purchases of supplies or services involving an ex-

pense of city funds in an amount not exceeding fifteen thousand dollars (\$15,000.00) shall be purchased, when feasible and when in the best interest of the city, in the open market by written quotation or telephone solicitation, without newspaper advertisement and without observing the procedure prescribed for the award of formal bid purchases.

The procedure for such open-market purchases shall be as specified in control procedures to be established by the City Administrator. (Ord. 12634 § 1 (part), 2004: Ord. 9739 § 3 (part), 1979; Ord. 7937 § 7, 1969)

## **2.04.080      Cooperative purchasing agreements.**

Where advantageous for the city, the City Administrator may purchase supplies or services as defined in Section 2.04.010, through legal contracts of other governmental jurisdictions or public agencies without further contracting, solicitation, or formal bidding. (Ord. 12634 § 1 (part), 2004: Ord. 9739 § 5, 1979: Ord. 7937 § 8, 1969)

## **2.04.090      Surplus supplies, purchases.**

When it is advantageous to the city, the City Administrator may direct the purchase of surplus supplies from the United States Government, or any agency thereof, or from the state of California, or any agency thereof, or any public body, without compliance with open market purchase provisions, formal bidding requirements or entering into a formal contract. (Ord. 12634 § 1 (part), 2004: Ord. 7937 § 9, 1969)

## **2.04.100      Inspection and testing.**

The receiving department shall inspect supplies delivered and services performed to determine their conformity with the specifications set forth in the purchase order or contract and shall report any deficiencies to the City Administrator or officer authorized by the City Administrator. The city may require chemical and physical tests of samples submitted with bids and samples of deliveries which are necessary to determine their quality and conformance with

specifications. (Ord. 12634 § 1 (part), 2004: Ord. 7937 § 10, 1969)

#### **2.04.110 Contract splitting prohibited.**

A. It is unlawful to split or separate into smaller work orders, projects, purchase orders or contracts or any public work project for the purpose of evading the provisions of this article.

B. Splitting or separating a transaction means reducing the amount of any supply or service to be furnished to the city when there is a reasonable knowledge that the same supply or service will be additionally required within the same budgetary term, when there are funds available for the project or purchase and the sole purpose is to knowingly avoid the formal calling of bids. When it is to the benefit of the city to split or separate a transaction, the proposed splitting or separation shall be referred to the City Council for its determination in accordance with Section 2.04.050.I. (Ord. 12634 § 1 (part), 2004: Ord. 7937 § 11, 1969)

#### **2.04.120 Surplus supplies and equipment—Disposal or destruction.**

A. Authority of Purchasing Supervisor. All using departments shall submit to the Purchasing Supervisor, at such times and in such form as Purchasing Supervisor shall prescribe, reports showing all supplies that are no longer used or that have become obsolete or worn out. The Purchasing Supervisor shall have authority to sell at public auction after advertising for one day in the official newspaper of city all supplies that cannot be used by any department or that have become unsuitable for city use, or to exchange or trade in the same for new supplies. However, the sales of such supplies may be made to other public bodies at the fair market value.

B. Authority of City Administrator. Except as otherwise prohibited by law, the City Administrator may authorize the abandonment, destruction or donation to public bodies, charitable, civic or nonprofit organizations, of city property which has no commercial value or of which the estimated cost of continued care, handling, maintenance or storage would exceed the estimated proceeds of sale. Such determini-

nation shall be made in writing and countersigned by the Director of Finance and Management and City Administrator.

C. Donation of Property. Except as otherwise prohibited by law, the donation to public bodies, charitable or nonprofit civic organizations, of surplus supplies or any other surplus property owned by the city (excluding real property) that has a value exceeding its continued care, handling, maintenance or storage, may be authorized only by resolution or ordinance of the City Council upon a finding by the City Council that such property is surplus to city needs and that the donation is in the best interests of the city.

D. Sale of Property. Sale by means other than public auction of surplus supplies or any other surplus property owned by the city (excluding real property) may be authorized only by resolution or ordinance of this City Council upon a finding by the City Council that such sale is in the best interests of the city. However, such sales shall be authorized only at or above the fair market value of the property as determined by the City Administrator. (Ord. 12634 § 1 (part), 2004: Ord. 10066 § 2 (part), 1981; Ord. 9739 § 6, 1979; Ord. 8611 §§ 1, 2, 1972; Ord. 7937 § 12, 1969)

#### **2.04.130 Administrative controls.**

The City Administrator shall prepare administrative directives and controls sufficient to carry out the intent of this article. (Ord. 12634 § 1 (part), 2004: Ord. 7937 § 13, 1969)

#### **2.04.140 Collusion with bidder—Effect on officer.**

Any officer of the city, or of any department thereof, who shall aid or assist a bidder in securing a contract to furnish labor, material or supplies at a higher price than that proposed by any other bidder, or who shall favor one bidder over another by giving or withholding information or who shall wilfully mislead any bidder in regard to the character of the material or supplies called for, or who shall knowingly accept materials or supplies of a quality inferior to those called for by the contract, or who shall know-

ingly certify to a greater amount of labor performed than has been actually performed or to the receipt of a greater amount or different kind of material or supplies than has been actually received, shall be deemed guilty of malfeasance and shall be removed from office, and be forever ineligible to hold any office or employment. (Ord. 12634 § 1 (part), 2004: Ord. 7937 § 14, 1969)

#### **2.04.150      Unauthorized purchases—Exceptions.**

It is unlawful for any officer or employee to purchase or contract for supplies or services for the city other than as hereinafter prescribed, excepting purchases made from petty cash, emergency purchases or other purchases conforming to control procedures established by the City Administrator. Any purchases, contracts or obligations to pay made contrary to the provisions of this article shall be null and void. (Ord. 12634 § 1 (part), 2004: Ord. 7937 § 15, 1969)

#### **2.04.160      Acceptance, appropriation and expenditures from restricted gift proceeds.**

Notwithstanding any other provision of this article, the City Administrator is delegated limited authority to accept restricted gifts and donations to the city up to fifty thousand dollars (\$50,000.00), including money gifts, and to appropriate and expend monies derived from such gifts/donations, without City Council action, provided that: 1) the gift/donation does not create unbudgeted costs for the city, 2) the gift/donation is for a program or project that has been approved by the Council in the biennial or mid-cycle operating or Capital Improvement Program (CIP) budget, or by City Council legislation during the fiscal year, and 3) the gift/donations or proceeds therefrom are used in accord with restrictions and/or special conditions of the donor.

Notwithstanding the above, the City Administrator is authorized to expend monies derived from restricted gifts/donations that exceed fifty thousand dollars (\$50,000.00) without City Council action when the gift has been approved, accepted and appropriated by City Council resolution provided such

expenditure is in accord with any restrictions or special conditions of donor.

All funds accepted hereunder shall be deposited into the City Treasury. The City Administrator will provide an annual report to Council on all gifts and donations accepted hereunder during the previous year. (Ord. 12731 § 1, 2006: Ord. 12634 § 1 (part), 2004: Ord. 8884 § 1, 1973)

#### **2.04.170      Affirmative action program for supplies, materials, commodities and equipment.**

A. To the extent permitted by law, the Purchasing Supervisor will establish a goal in the purchase of supplies and commodities that reflects the minority composition of the Standard Metropolitan Statistical Area (SMSA). Separate goals will be established for public works projects, community development projects and economic development and employment contractors.

B. To the extent permitted by law, the Purchasing Supervisor will submit a yearly affirmative action plan for the purchasing of supplies and commodities to the City Administrator. The plan is to include: affirmative action requirements of vendors; a local vendor report that includes a local minority supplier development program, a progress report and new year participation goals; and an outline of new ideas developed to advance the affirmative action program during the coming year. (Ord. 12634 § 1 (part), 2004: Ord. 9739 § 7, 1979)

#### **2.04.180      Design-build project delivery method.**

The city may use the alternative fast-track project delivery method commonly known as "design-build" with or without formal bidding when the circumstances surrounding the project substantiate that it is in the "best interests of the city" to waive formal bidding pursuant to Section 2.04.050. The City Administrator, or the City Administrator's designee, will prepare and publish an administrative instruction, that will contain guidelines for the use of such alternative project delivery methods. These guidelines will provide the criteria and administrative proce-

## **2.04.180**

dures for the use of such alternative project delivery methods such as design-build. (Ord. 12634 § 1 (part), 2004; Ord. 12388 § 5, 2001)

### **2.04.190      Construction manager-at-risk project delivery method.**

The city may use the alternative project delivery method commonly known as “construction manager-at-risk” with or without formal bidding when it is in the “best interests of the city” to waive formal bidding pursuant to Section 2.04.050. The City Administrator, or the City Administrator’s designee, will prepare and publish an administrative instruction, that will contain guidelines for the use of such alternative project delivery methods. These guidelines will provide the criteria and procedures for alternative project delivery methods such as construction manager-at-risk. (Ord. 12634 § 1 (part), 2004; Ord. 12388 § 6, 2001)

## **Article II**

### **City Policy Regarding Banks and Firms Which Do Business in or with Burma\***

\* Editor's Note: Ordinance 11885, which added Article II, §§ 2.04.180—2.04.280, was suspended by Ordinance 12294, passed 11/28/00

## Chapter 2.06

### PROMPT PAYMENT

**Sections:**

- 2.06.010      Definitions.**
- 2.06.020      Purpose.**
- 2.06.030      Local business and subcontractor payment liaison.**
- 2.06.040      Local prime contractors, contractor retention.**
- 2.06.050      Subcontractor payment, retention, mobilization fees.**
- 2.06.060      Interest penalty.**
- 2.06.070      Bid solicitations, request for proposals/qualifications, contracts.**
- 2.06.080      Complaint and investigation.**
- 2.06.090      Administrative procedures and regulations.**
- 2.06.100      Exemptions.**
- 2.06.110      Applicable to new contracts.**

**2.06.010      Definitions.**

The following definitions apply to this chapter:

“City” as used in this chapter, means the City of Oakland as a municipal organization, City agencies or departments or City officials authorized by the City Council or City Administrator to enter into purchase contracts on behalf of the City of Oakland when acting in his/her official capacity.

“Claim” means a bill, invoice or written request for payment provided by the vendor. Written request includes “contract” as defined below.

“Claimant” means a prime local contractor or subcontractor that files a claim with the city for overdue payment and associated interest penalties.

“Disputed Invoice” means an improperly executed invoice or invoice that contains errors or requires additional evidence of its validity.

“Local Business” as used in this chapter and in accord with the City of Oakland Local and Small Local Business Enterprise Program means a business: (a) with a substantial presence in the City of Oakland’s geographic boundaries, (b) with a full op-

eration conducting business for at least twelve (12) consecutive months in the City of Oakland, (c) with a valid City of Oakland business tax certificate, and (d) that is an independent business headquartered in Oakland.

“Local Prime Contractor” means a “local business” as defined above that is in direct or in privity of contract with the City of Oakland.

“Goods” means products, goods, materials, equipment or other tangible items rendered pursuant to a purchase contract.

“Invoice” means a bill or claim that requests payment for goods and/or services rendered pursuant to a city purchase contract by a local prime contractor or by a subcontractor.

“Managers and Operators” means a non-profit or for-profit business that is contracted by the City of Oakland to operate and/or manage city programs, programs open to the public on City of Oakland property, city facilities or concession businesses on City of Oakland property.

“Purchase contract” as used in this chapter means any enforceable City of Oakland agreement executed expressly for the purchase, lease or rental of goods and/or services, including purchase orders, sub-purchase orders, delegated purchase orders, service agreements or subcontracts. Purchase contracts must be approved and executed in accordance with all purchasing requirements of the City of Oakland. Claimants shall not be entitled to relief, hereunder, for payment delays that occur prior to the proper execution of a purchase contract.

“Services” means any and all services rendered pursuant to a purchase contract including, but not limited to, professional, scientific or technical services.

“Subcontractor” means a subcontractor, supplier, vendor or any business or organization, other than the prime contractor, that delivers goods and/or services in connection with a purchase contract.

“Undisputed Invoice” means an invoice executed by the claimant for goods and/or services rendered in connection with a purchase contract for which additional evidence is not required to determine its validity. Undisputed invoices include:

1. A once disputed invoice which has been corrected or for which additional evidence of its validity has been provided and received by the city, the prime contractor or subcontractor responsible for issuing payment.

2. An improper invoice whether goods and/or services have been received by the city, the prime contractor or subcontractor responsible for issuing payment, but the city, the prime contractor or subcontractor responsible for issuing payment fails to notify the claimant that the invoice is improper within fifteen (15) working days of receipt of the invoice. (Ord. 12857 § 1 (part), 2008)

#### **2.06.020 Purpose.**

The purpose of this Prompt Payment Ordinance is to establish policies and procedures to assure that local contractors and all subcontractors working on City of Oakland purchase contracts receive prompt payment, and to enhance and increase local business contracting opportunities with the City of Oakland by establishing: (1) shortened payment requirements for City of Oakland businesses and all subcontractors, regardless of location, that provide goods and/or services in connection with a City of Oakland contract purchase contract, and (2) a City Liaison to serve as a single point of contact to address payment delays and other issues relative to City of Oakland purchase contracts. (Ord. 12857 § 1 (part), 2008)

#### **2.06.030 Local business and subcontractor payment liaison.**

A. The city will appoint a single point of contact (Liaison) to address invoice payment or other issues raised by City of Oakland Local Prime Contractors or any subcontractor in connection with City of Oakland purchase contracts for goods and/or services, or invoice payment issues raised by a subcontractor in connection with a City of Oakland Manager/Operator contract. The Liaison position will be assigned to perform duties within the Office of Contract Compliance. The Liaison will be the city's central point of contact for local prime contractors and subcontractors, and will be responsible for coordinating the ac-

tions required to resolve issues with city agencies and departments and Manager/Operators.

B. The Office of Contract Compliance will establish a city-wide procedural mechanism to identify local contractors, will inform such businesses of the program through electronic means as well as through existing and ongoing training programs and workshops, and will issue a statement of the requirements of this ordinance with bid notices and requests for proposals/qualifications. (Ord. 12857 § 1 (part), 2008)

#### **2.06.040 Local prime contractors, contractor retention.**

A. Local Prime Contractors. The City of Oakland shall pay all Local Prime Contractors for goods and/or services rendered pursuant to a purchase contract within twenty (20) business days after receipt of an undisputed invoice. In the event an invoice is disputed, the city shall notify the subcontractor and Liaison in writing within five business days of receiving the disputed invoice that there is a bona fide dispute, in which case the city may withhold the disputed amount but shall pay the undisputed amount.

B. Retention. The city shall not withhold any monies as project retention associated with the rendering of goods. (Ord. 12857 § 1 (part), 2008)

#### **2.06.050 Subcontractor payment, retention, mobilization fees.**

A. Prompt Payment. All Manager/Operators, city prime contractors and subcontractors shall pay their subcontractors for goods and/or services rendered in connection with a purchase contract within twenty (20) business days of receipt of the subcontractor's undisputed invoice. In the event an invoice is disputed, Manager/Operators, prime contractors and subcontractors shall notify the Liaison in writing within five business days of receiving the disputed invoice that there is a bona fide dispute, in which case the prime contractor or subcontractor may withhold the disputed amount but shall pay the undisputed amount.

B. If a subcontractor files a claim for all or a portion of a disputed invoice pursuant to Section

2.06.080 below, Manager/Operators or contractors shall be required to post with the city cash, a certified check, or a bond in an amount sufficient to cover the disputed amount and penalty. Upon the Liaison's determination that the invoice is valid, the cash, certified check or bond shall be released to the claimant. If the Liaison finds in favor of the contractor the cash, certified check or bond shall be returned to the contractor. If the Manager/Operator or contractor fails or refuses to post security, the Liaison may withhold funds from the next progress payment sufficient to cover the claim.

C. Affidavit Reporting Subcontractor Payments. Contracts in which subcontracting is used shall require the prime contractor or subcontractor, within five business days following receipt of a payment from the city, to file an affidavit, under penalty of perjury, that he or she has paid all subcontractors. The affidavit shall provide the names and address of all subcontractors and the amount paid to each.

D. Retention.

1. Manager/Operators, prime contractors and subcontractors shall not withhold any monies for project retention associated with the rendering of goods; and

2. Manager/Operators, prime contractors and subcontractors shall release retention held for services in proportion to the percentage of subcontractor services for which payment is due and undisputed within five business days of payment.

Manager/Operators, prime contractors and subcontractors shall file notice with the city within five business days of release of retention.

E. Mobilization Fee. Prime contractors and subcontractors shall pay subcontractors that will render goods and/or services their portion of mobilization fees within five business days of being paid such fees. Prime contractors and subcontractors shall file notice with the city within five business days of payment of mobilization fees to a subcontractor.

F. Website Posting. Information regarding the city's retention release and payment of mobilization fees shall be posted on the city's website within

five business days of such payment or release. Information regarding Manager/Operators, prime contractor and subcontractor retention release and payment of mobilization fees, and affidavits reporting subcontractor payments shall be posted on the website within five business days of the filing of such notices and affidavits with the city. (Ord. 12857 § 1 (part), 2008)

**2.06.060 Interest penalty.**

A. If any amount due by the city to a Local Prime Contractor for goods and/or services rendered pursuant to a purchase contract is not timely paid in accordance with this chapter, the Local Prime Contractor is entitled to interest penalty in the amount of ten (10%) percent of the improperly withheld amount per year for every month that payment is not made, provided the Local Prime Contractor agrees to release the city from any and all further claims for interest penalties that may be claimed or collected on the amount due and paid. Local Prime Contractors that receive interest penalties for late payment pursuant to this chapter may not seek further interest penalties on the same late payment in law or equity.

B. If any amount due by a Manager/Operator to a claimant for goods and/or services rendered pursuant to a Manager/Operator purchase contract is not timely paid in accordance with this chapter, the claimant is entitled to interest penalty in the amount of ten (10%) percent of the improperly withheld amount per year for every month that payment is not made, provided the claimant agrees to release the Manager/Operator and city from any and all further claims for interest penalties that may be claimed or collected on the amount due and paid. Claimants that receive interest penalties for late payment pursuant to this chapter may not seek further interest penalties on the same late payment in law or equity.

C. If any amount due by a prime contractor or subcontractor to any claimant for goods and/or services rendered in connection with a purchase contract is not timely paid in accordance with this chapter, the prime contractor or subcontractor

shall owe and pay to the claimant interest penalty in the amount of ten (10%) of the improperly withheld amount per year for every month that payment is not made, provided the claimant agrees to release the prime contractor or subcontractor from any and all further interest penalty that may be claimed or collected on the amount paid. Claimants that receive interest penalties for late payment pursuant to this chapter may not seek further interest penalties on the same late payment in law or equity.

(Ord. 12857 § 1 (part), 2008)

#### **2.06.070 Bid solicitations, request for proposals/qualifications, contracts.**

A. All notices inviting bids, requests for proposals/qualifications and city contracts for the purchase of goods and/or services, and requests for proposals/qualifications and contracts for Manager/Operators as defined in Section 2.06.010, above, shall contain the following or substantially equivalent language:

This contract is subject to the Prompt Payment Ordinance of Oakland Municipal Code, Title 2, Chapter 2.06. The Ordinance requires that, unless specific exemptions apply, contractor and its subcontractors shall pay undisputed invoices of their subcontractors for goods and/or services within twenty (20) business days of submission of invoices unless the contractor or its subcontractors notify the Liaison in writing within five business days that there is a bona fide dispute between the contractor or its subcontractor and claimant, in which case the contractor or its subcontractor may withhold the disputed amount but shall pay the undisputed amount.

Disputed payments are subject to investigation by the City of Oakland Liaison and, and upon the filing of a compliant, contractor or its subcontractors opposing payment shall provide security in the form of cash, certified check or bond to cover the disputed amount and penalty

during the investigation. If contractor or its subcontractor fails or refuses to deposit security, the city will withhold an amount sufficient to cover the claim from the next contractor progress payment. The city, upon a determination that an undisputed invoice or payment is late, will release security deposits or withhold directly to claimants for valid claims.

Contractor and its subcontractors shall not be allowed to retain monies from subcontractor payments for goods as project retention, and are required to release subcontractor project retention in proportion to the subcontractor services rendered, for which payment is due and undisputed, within five business days of payment. Contractor and its subcontractors shall be required to pass on to and pay subcontractors mobilization fees within five business days of being paid such fees by the City.

For the purpose of posting on the city's website, contractor and its subcontractors are required to file notice with the city of release of retention and payment of mobilization fees, within five business days of such payment or release; and contractor is required to file an affidavit, under penalty of perjury, that he or she has paid all subcontractors, within five business days following receipt of payment from the city. The affidavit shall provide the names and address of all subcontractors and the amount paid to each.

B. Any contractor or subcontractor that delivers goods and/or services, pursuant to a purchase contract, shall include the same or similar provisions as those set forth in this Section in their subcontracts.

(Ord. 12857 § 1 (part), 2008)

#### **2.06.080 Complaint and investigation.**

A. Any claims made pursuant to Sections 2.06.040 and 2.06.050 above are subject to investigation and notice of violation and demand for payment and interest penalties by the Liaison. A

local prime contractor or subcontractor who alleges violation of any provision of this chapter may report such acts to the Liaison.

**B. Complaints shall be handled as follows:**

1. The complainant shall submit a completed complaint form and copies of invoices or billing documents that have been submitted to the city, to a city purchase contractor or to a Manager/Operator. To expedite investigation, complainant shall also submit any documents in their possession showing that his/her goods and/or services or other deliverables have been rendered to and inspected or reviewed and accepted by the city or Manager/Operator in connection with the claim.

2. The Liaison shall collect a security deposit in the form of cash, certified check, or bond in an amount sufficient to cover the claim from the Manager/Operator or contractor that has disputed the invoice. If a Manager/Operator or contractor that is required to post security fails or refuses to do so, the Liaison may withhold funds from the next progress payment sufficient to cover the claim. Upon the Liaison's determination that the invoice is valid the cash, certified check or bond shall be released to the claimant. If the Liaison finds in favor of the contractor the cash, certified check or bond shall be returned to the contractor.

3. The Liaison shall contact the city agency, department, Manager/Operator or contractor responsible for payment within five business days of receipt of the complaint form to investigate the claim. The Liaison's determination of whether an invoice is valid shall be based on the following:

(i) Whether the invoice conformed to requirements defined in Section 2.06.020 of this chapter, at the time of submission to the contractor,

(ii) Whether there is a discrepancy between the invoice or claimed amount and the provisions of the purchase contract,

(iii) Whether there is a discrepancy between the invoice or claimed amount and either the contractor's actual delivery of goods and/or services to the city, or the city's acceptance of such goods and/or services,

(iv) Whether the city agency, prime contractors or subcontractor responsible for payment provided timely notice of the disputed invoice as required under 2.06.050 (A), and

(v) Whether additional evidence supporting the validity of the invoice or claimed amount must be provided by the claimant.

4. There shall be no appeal of the Liaison's determination in favor of the claimant. If, however, the Liaison determines that the claimant's invoice provides insufficient evidence for payment, the claimant shall be advised of the additional information required for payment and given an opportunity to provide the same.

5. When the Liaison determines that a violation of this chapter has occurred, the Liaison shall assess interest penalties at the rate provided in Section 2.06.060 of this chapter and issue a demand to the city employee responsible for administering the related purchase contract, the Manager/Operator, the prime contractor or the subcontractor responsible for the late payment. The city shall issue a check for the amount of the undisputed claim and interest penalties assessed by the Liaison to the Local Prime Contractor within five business days of the date of the Liaison determination. The city may seek review by the City Administrator of Liaison determinations for claims submitted by Local Prime Contractors.

(Ord. 12857 § 1 (part), 2008)

**2.06.090      Administrative procedures and regulations.**

The City Administrator shall develop administrative procedures and regulations for determining city, Manager/Operator, prime contractor and subcontractor compliance with, and full implementation of, this chapter including, but not limited to, establishment of an interest penalty scheme and investigation procedures.

(Ord. 12857 § 1 (part), 2008)

**2.06.100      Exemptions.**

City and Manager/Operator purchase contracts are exempt from this chapter when:

A. Issued in response to a local disaster or emergency, provided: (i) the emergency or disaster

is acknowledged by a public declaration of emergency or disaster of the United States, State of California, County of Alameda, Oakland City Council or City Administrator, (ii) the purchase contract is issued without advertising or competitive bid pursuant to the City Administrator's emergency authority in Oakland Municipal Code Chapter 2, Sections 2.04.020 (G) or (H), and (iii) the purchase contract is completed within the declared period of emergency or disaster.

B. State or Federal laws preempt the local or other regulation of the purchase, in which case State or Federal mandates shall take precedence.

(Ord. 12857 § 1 (part), 2008)

**2.06.110      Applicable to new contracts.**

Except for procurement or construction contracts for which fixed, sealed bids were required on a date prior to the date of final adoption of this chapter set forth below, the provisions of this chapter shall apply to any purchase contract or Manager/Operator contract, or amendment, extension, change order or modification of such contracts, entered into or consummated after the effective date of the ordinance codified in this chapter.

(Ord. 12857 § 1 (part), 2008)

## Chapter 2.07

### GRANT AWARD APPROVAL

#### Sections:

- 2.07.010 Definitions.**
- 2.07.020 City Council approval of grant awards.**
- 2.07.030 Pay-go grants—Policy and requirements.**

#### **2.07.010 Definitions.**

"Pay-go" shall have the same meaning as defined in Section 2.04.010. See Section 2.04.018 for use of pay-go for the purchase of services (professional or otherwise), goods, materials or equipment for capital improvements to City-owned facilities and not grants.

(Ord. No. 13051, § 2, 1-18-2011)

#### **2.07.020 City Council approval of grant awards.**

Notwithstanding any authority granted herein, all grant awards made from money or funds donated, given or granted to the city from any public or private source shall be approved by the City Council regardless of the amount of grant award. (Ord. No. 13051, § 1, 1-18-2011; Ord. 12634 § 2 (part), 2004)

**Editor's note**—Former § 2.04.016. Renumbered by Ord. No. 13051, § 1, adopted January 18, 2011.

#### **2.07.030 Pay-go grants—Policy and requirements.**

A. Policy—Permissible Pay-Go Grants. The City will establish by resolution or ordinance the policy stating the purposes for which pay-go grants may be designated.

B. Requirements Applicable to Pay-Go Grants to Non-City Entities. The Mayor and individual Councilmembers may designate grants from their respective balances in the City's pay-go fund account subject to the following requirements: (1) such grants may be made only for the purposes permitted by the funding source(s) of the pay-go account; (2) such grants and grant agreements

shall be authorized, administered and executed by the City Administrator on behalf of the City; and (3) grant agreements shall be required for all grants.

C. City Administrator Must Maintain Separate Record of Pay-Go Grants and Make Annual Report to City Council Identifying Prior Fiscal Year's Grants. The City Administrator shall maintain a separate record of pay-go grants, including the name of the person who designated the grant, the amount of the grant, the purpose of the grant, and the name, address and any other information sufficient to identify the grant recipient. No later than October of each year, the City Administrator shall provide an informational report to the City Council's Finance Committee and to the City Council regarding pay-go grants that were made during the prior fiscal year.

(Ord. No. 13051, § 1, 1-18-2011; Ord. 12637 § 1, 2004)

**Editor's note**—Former § 2.04.017. Renumbered by Ord. No. 13051, § 1, adopted January 18, 2011.

## **Chapter 2.08**

### **CIVIL SERVICE RULES AND PROCEDURES**

#### **Sections:**

- 2.08.010 Adoption of a personnel system.**
- 2.08.020 Administration.**
- 2.08.030 Civil Service Board.**
- 2.08.040 Personnel Manual.**
- 2.08.050 Port Department.**
- 2.08.060 Nondiscrimination.**

#### **2.08.010 Adoption of a personnel system.**

In order to achieve the values of a modern system of personnel administration, enumerated in Section 900 of the Charter, and to provide for a personnel system based on merit as required by Section 900 of the Charter, including the constitution of the Civil Service Board in accordance with Section 901 of the Charter, the following personnel system is hereby adopted.

(Ord. No. 13120, § 1, 6-5-2012; Ord. 8979 § 1, 1974)

#### **2.08.020 Administration.**

The City Administrator shall be responsible for the administration of the personnel system, in accordance with Section 503 of the Charter and subject to the provisions of this chapter. The City Administrator shall appoint a Personnel Director who shall, subject to the direction of the City Administrator:

- A. Be responsible for the efficient operations of the Personnel Department of the City.
- B. Prepare and maintain the Personnel Manual.
- C. Prepare and maintain the uniform position classification plan, including detailed position descriptions.
- D. Administer competitive examination for positions in the classified civil service and maintain eligible lists of qualified candidates.

E. Perform such other duties as the City Administration may assign.

(Ord. No. 13120, § 1, 6-5-2012; Ord. 8979 § 2, 1974)

#### **2.08.030 Civil Service Board.**

It shall be the function and duty of the Civil Service Board to enforce, through general supervision of the personnel system, the provisions of this chapter and of Article IX of the Charter; to study, investigate and research into such areas and matters as the City Administrator, or the Council through the City Administrator, or the Board of Port Commissioners, may request, or as it may deem advisable; to make reports and recommendations in writing thereon and to formulate policy recommendations or recommended changes to the Personnel Manual for the better realization of the objectives of the personnel system, as set forth in Section 900 of the Charter; to approve the exception of positions under Section 902(f) of the Charter; to perform the appellate duties and functions hereafter described; to review and approve changes to the Personnel Manual, excepting those which are administrative in nature, proposed by the City Administrator, provided that changes in which the Board does not concur may be made with the approval of Council; and to perform such other duties and functions as the City Administrator may for time to time request. The following special provisions shall apply to the Civil Service Board.

A. Composition. The Board shall consist of seven members who will be appointed pursuant to Section 601 of the Charter and who shall serve without compensation. Two members shall be appointed for a term of one year, two for two years, and three for four years, said terms to commence upon the date of appointment. Thereafter, each appointment shall be for a term of four years, except that an appointment to fill a vacancy shall be for the unexpired term only.

B. Vacancy. A vacancy in the Board will exist whenever a member dies, resigns, or is removed, or whenever an appointee fails to be confirmed by Section 601 of the Charter. Convictions of a fel-

ony, misconduct, incompetence, inattention to or inability to perform his duties, and unexcused absence from meetings pursuant to procedures adopted in accordance with Subsection D. below shall constitute cause for removal.

C. Officers, Meetings. Each year at its first regular meeting in July, the Board shall elect a chairman and vice-chairman from amongst its members. The Board shall meet at least once each month in the City Hall, at an established time suitable for its purpose. Such meetings shall be designated regular meetings. Meetings called by the Mayor or City Administrator, and meetings scheduled for a time or place other than for regular meetings shall be designated special meetings. Written notices of special meetings shall be given to the Board members, the Council, the City Administrator, the Board of Port Commissioners, and the public press at least 24 hours before the meeting is convened.

D. Procedures. The Board shall, in consultation with the City Administrator and with the approval of the Council establish procedures for the conduct of its meetings. The affirmative vote of four members shall be required for the adoption of any motion. The Board shall make its reports, findings and recommendations in writing unless otherwise requested. All reports, findings and recommendations shall be made to the City Administrator who shall forward those matters within the province of the Council, or the Board of Port Commissioners, as jurisdiction may be.

E. Staffing. The City Administrator shall provide the Board with assistance from City employees under his/her jurisdiction. The provisions of Section 221 of the Charter shall apply to members of the Board.

F. Appeals. An employee having permanent status in the competitive civil service shall have the right to appeal suspension, fine, demotion, or discharge for incompetence, misconduct, or failure to properly perform his/her duties or to observe department rules and standards provided that such appeal shall not involve considerations of the merits or necessity of any departmental practice, pro-

cedures, rules, regulations orders, standards or level of service. Any such appeal shall be governed by the following procedures provided that alternative procedures are not set forth in a memorandum of understanding approved by the City Council.

- As soon as practicable but within a maximum of 72 hours after making the order of suspension, fine, demotion or discharge, the appointing authority of his designated representative shall serve on the affected employee written notice which shall fairly apprise the employee of the reasons for such action, such notice to be served in accordance with the Personnel Manual.

- The employee who elects to appeal such disciplinary action shall file his/her appeal in writing, in the manner prescribed in the Personnel Manual, within ten calendar days of the date of such written notice. The appeal shall address each of the reasons for the disciplinary action enumerated in the written notice and may provide any relevant additional information. The appeal shall thereafter be heard according to the provisions of the Personnel Manual, pursuant to Section 2.08.040 of this chapter.

- Subject to the foregoing provisions, a supervisor may suspend any subordinate then under his/her direction for a period not to exceed one working day.

- As used in this chapter, the term "appointing authority" shall mean the City Administrator, or the City Attorney, or the City Auditor, or the Board of Port Commissioners, as the jurisdiction may be.

(Ord. No. 13120, § 1, 6-5-2012; Ord. 10793, 1986; Ord. 8979 § 3, 1974)

## **2.08.040      Personnel Manual.**

The Personnel Manual shall provide such administration policies, procedures, rules, and regulations as may be appropriate to carry out the intent of the Charter and this chapter for the administration of the civil service system. The Personnel Manual may include but need not be limited to, the following matters: appeal procedures, classification of positions, salary adminis-

tration, personnel records, selection, examination, eligible lists, probationary period, disciplinary actions, resignations and lay-offs, work schedules, leaves and vacations, training, and employee safety and health. The City Administrator may provide in the Personnel Manual for special recognition, in an appropriate manner, other than by promotion or appointment, of City employees who have demonstrated outstanding merit in the service of the City of an extraordinary nature. The rules of the Civil Service Board in existence at the time of adoption of this chapter, insofar as they are consistent with this chapter, shall continue in effect until amended or revised by provision of the Personnel Manual, or by such rules as may be provided by the Board of Port Commissioners in a Personnel Manual for the Port Department.

(Ord. No. 13120, § 1, 6-5-2012; Ord. 8979 § 4, 1974)

#### **2.08.050      Port Department.**

Consistent with Section 714 of the Charter of the City of Oakland, all employees of the Port Department, except for those specifically exempted by Charter, procedures established by the Charter, or action of the Civil Service Board, shall be included within the personnel (civil service) system of the City.

Subject to the approval of the Civil Service Board, the Board of Port Commissioners is authorized to establish personnel rules and procedures to provide for the administration of such rules for employees of the Port Department. Any such rules and procedures shall be consistent with and subordinate to: (1) the City Charter, (2) this chapter, and (3) rules adopted by the Civil Service Board (Personnel Manual) (collectively, "City Civil Service Rules"). In the event of any conflict between the Port personnel rules and procedures and the City Civil Service Rules, the City Civil [Service] Rules shall control.

Personnel rules and procedures promulgated by the Board of Port Commissioners shall not be effective until approved by the Civil Service Board. The Civil Service Board may approve such person-

nel rules and procedures at any public meeting, by simple majority vote finding that the rules and procedures are consistent with the City Civil Service Rules.

The Board of Port Commissioners has no authority to create, modify, or eliminate any classification subject to the personnel system. However, it may propose that the Civil Service Board establish, modify, or eliminate any classification included within the personnel system of the City and utilized by the Port Department. The Civil Service Board retains the sole authority to establish, modify, or eliminate any classification within the personnel system of the City and to determine whether any classification (not specifically exempted by Charter) shall be exempt from the personnel system. However, to the extent permitted by law, classifications not included in the "Common Classes" list in Appendix B to the City's Personnel Manual shall remain in effect unless modified or eliminated by the Civil Service Board. (Ord. No. 13120, § 1, 6-5-2012; Ord. 8979 § 5, 1974)

#### **2.08.060      Nondiscrimination.**

No person employed in the service of the City, or seeking admission thereto, shall be employed, promoted, demoted, dismissed, or discriminated against because of political opinions or affiliations, or because of race, color, ancestry, natural origin, religious belief, or sex. It is the intent of this chapter to facilitate the realization of equal employee opportunities in the City service. Such policies as the Council may adopt to that end shall be applicable to the entire personnel system.

(Ord. No. 13120, § 1, 6-5-2012; Ord. 8979 § 6, 1974)

## Chapter 2.12

### DEBARMENT PROGRAM

#### **Sections:**

- 2.12.010 Definitions.**
- 2.12.020 Coverage.**
- 2.12.030 General.**
- 2.12.040 Investigation, referral and temporary suspension.**
- 2.12.050 Debarment of contractors—Grounds.**
- 2.12.060 Notice of proposed debarment to contractor (respondent).**
- 2.12.070 Documents submitted to the debarment hearing board.**
- 2.12.080 Service.**
- 2.12.090 Time computation.**
- 2.12.100 Debarment Hearing Board powers and responsibilities.**
- 2.12.110 Debarment hearing procedure.**
- 2.12.120 Standard of proof.**
- 2.12.130 Burden of proof.**
- 2.12.140 Closing of the hearing record.**
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- 2.12.160 Scope of debarment.**
- 2.12.170 Period of debarment.**
- 2.12.180 Debarment decision.**
- 2.12.190 Excluded contractor list.**
- 2.12.200 Effect of debarment.**
- 2.12.210 Imputed conduct.**
- 2.12.220 Continuation of current contracts.**
- 2.12.230 Restrictions on subcontracting.**
- 2.12.240 Actions other than debarment.**
- 2.12.250 Judicial review.**
- 2.12.260 Pre-emption.**

#### **2.12.010 Definitions.**

The following terms, whenever used in this chapter, shall be construed as defined in this section:

"Affiliate" means entities and/or persons are affiliates of each other:

1. Who is an assignee, successor, subsidiary of, or parent company of another person or contractor;

2. Who has the same or similar management of the debarred corporate or other legal entity; or

3. If, directly or indirectly, either one controls or has the power to control the other, or, a third person or entity controls or has the power to control both. Indicia of control include, but are not limited to:

a. Interlocking management or ownership;

b. Identity of interests among family members or relatives;

c. Shared facilities and equipment, common use of employees or a business entity organized following the debarment or suspension pending debarment, or proposed debarment of a person which has the same or similar management, ownership or principal employees as the contractor that was debarred or suspended pending debarment;

d. The debarred person or entity created after debarment or suspension pending debarment which operates in a manner designed to evade the application or defeat the purpose of this chapter;

e. Bankruptcy, dissolution, or reorganization of a contractor or entity which has the same or similar management, ownership, or principal employees as the, debarred; or

f. Ineligible, or voluntarily excluded entity or person.

"Bid" means any response to a notice inviting firm, fixed and/or sealed bids or quotes, solicitation for or invitation to submit firm, fixed and/or sealed bids or similar communication by or on behalf of a contractor seeking to participate or receive a benefit, directly or indirectly, in or under a covered or related transaction.

"City Administrator" means the City Administrator of the City of Oakland, or an officer specifically designated by the City Administrator or by



another City official in accord with the City Charter, to act for and carry out the City Administrator's duties.

"City" means the City of Oakland acting through its City Council, City Administrator or through any officer with powers delegated by the City Charter, City Council, City Administrator or as authorized by law.

"Benefits" means money or any other thing of value provided by or realized because of a contract with the City. A thing of value includes insurance or guarantees of any kind and designation as a City "local business enterprise" or "small local business enterprise."

"City contracting policies" means any policies of the City Council applicable to City contracts for goods and services, or to such contracts considered or awarded in connection with a covered or related transactions, including, but not limited to, City's prevailing wages, living wage, equal benefits, local and small local business enterprise, apprentice and local hire, nuclear free and nondiscrimination policies.

"Civil judgment" means a decision in a civil action at the trial or appellate level by any court of competent jurisdiction, whether entered by verdict, settlement, stipulation or otherwise creating a civil liability for the wrongful acts complained of.

"Consent decree" means a settlement between the City and a contractor whereby the contractor promises to refrain from certain acts or omissions.

"Contract" means any agreement to provide goods to, or perform services for or on behalf of, the City, or such contracts considered or awarded in connection with a covered or related transaction.

"Contractor" means any person, partnership, corporation, joint venture, company, vendor or other business entity who seeks to contract, submits a qualification statement, proposal, bid or quote or contracts directly or indirectly with the City for the purpose of providing goods or services to or for the City, or who seeks to or contracts to provide goods or services in connection

with a covered or related transaction, including, without limitation, any contractor, subcontractor, consultant, sub-consultant or supplier at any tier. The term "contractor" shall include any responsible managing corporate officer who has personal involvement and/or responsibility in obtaining a contract with the City or in supervising and/or performing the work prescribed by the contract.

"Contracting officer" means the City employee responsible for administering the contract.

"Covered transaction" means application for or participation in a City contracting policy program, activity, contract or related transaction, regardless of type, amount or source of funding.

"Conviction" means a judgment or conviction of a criminal offense of a type which would give rise to debarment of the convicted party under the terms of this chapter by any court of competent jurisdiction at the trial or appellate level whether entered upon a verdict or a plea, and includes a conviction upon a plea of nolo contendere.

"Debarment" means an administrative action taken by the City that results in a contractor, and any affiliate of the contractor, being prohibited from bidding upon or being awarded a contract with the City and/or performing a contract in connection with covered or related transactions for a period of up to five years. A contractor and affiliate who has been determined by the City to be subject to such a prohibition is "debarred."

"Debarment Hearing Board" means the three-member board appointed by the City Administrator to hold hearings, take evidence and make determinations about debarment for the City. Members of the Board shall be unbiased, executive level persons and may be City or other public sector employees with subject matter expertise, but shall not be employees that participated in the complaint, investigation or decision to recommend debarment, or employees subject to the authority, direction or discretion of employees who participated in the decision to recommend debarment.

"Ex parte communication" means any communication with a member of the Debarment Hear-

ing Board, other than by Board member's staff, which is direct, or indirect, oral or written, concerning the merits or procedures of any pending proceeding which is made by a party in the absence of any other party.

"Final notice of debarment" means a written notice under signature of the City Administrator to the affected person(s), contractor or affiliates of the debarment decision of the Debarment Hearing Board.

"Indictment" means indictment for a criminal offense. An information or other filing by the City charging a criminal offense shall be given the same effect as an indictment.

"Ineligible" means excluded from City contracting (and subcontracting, if appropriate) pursuant to statutory, or regulatory authority of the City.

"Notice of proposed debarment" means the written communication issued by the City Administrator and served on a contractor in accordance with Section 2.12.060, to notify a contractor of proposed debarment and initiate a debarment action. The City Administrator may issue a notice of proposed debarment against any contractor relative to any matter consistent with the grounds for debarment. Notice shall be considered to have been received by the contractor and any other related-party so served five days after being deposited in the US Mail, postage pre-paid, and addressed by the City to the contractor's or affiliates' last known address based on information provided by the contractor or affiliates.

"Participant" means any person who submits a bid or proposal for, enters into, or reasonably may be expected to enter into a contract or covered or related transaction. This term also includes any person who is legally authorized to act on behalf of or to commit a participant to a contract or in a covered or related transaction.

"Person" means any individual, corporation, partnership, association, member of a joint venture, unit of government or legal entity, for-profit or non-profit, however organized.

"Preponderance of the evidence" means proof by information that, compared with that opposing it, tends to the conclusion that the fact at issue is more probably true than not.

"Principal" means officer, director, owner, partner, key employee or other person with significant management or supervisory responsibilities for a contractor; a person who has a critical influence on or substantive control over a contractor's participation in a covered or related transaction, whether or not employed by the participant, contractor or any affiliate of a participant or contractor, the operations of which are so intertwined with the participant that the separate corporate identities may be disregarded.

"Proposal" means any response to a solicitation, application, request for proposal, invitation to submit a proposal or similar communication by or on behalf of a contractor seeking to participate or receive a benefit, directly or indirectly, in or under a covered or related transaction.

"Related transaction" means a transaction directly related to a covered transaction, which assists the participant in executing a covered transaction, regardless of the extent of the influence on or substantive control over the covered transaction by the person performing the related transaction. Related transactions include, but are not limited to, transactions of the participant with any of the following persons:

1. Contractors (including direct subcontractors);
2. Principal investigators;
3. Loan officers;
4. Staff appraisers and inspectors;
5. Underwriters;
6. Bonding companies;
7. Appraisers and inspectors;
8. Real estate agents and brokers;
9. Management and marketing agents;
10. Accountants, consultants, investment bankers, architects, engineers, attorneys and others in a business relationship with participants in connection with a covered transaction under an City contracting or agreement or activity;

11. Vendors of materials and equipment in connection with an City contracting, agreement or activity;

12. Closing agents;

13. Turnkey developers of projects;

14. Title companies;

15. Escrow agents;

16. Project owners;

17. Employees or agents of any of the above.

"Respondent" means a person against whom a debarment action has been initiated.

"Suspend" or "suspension" means the temporary disqualification of a contractor from participating in covered or related transactions pending the completion of an investigation and any proceedings before a Debarment Hearing Board. A contractor so disqualified is "suspended."

"Voluntary exclusion" or "voluntarily excluded" means a status, assumed by a person, who is excluded from participating in covered and related transactions in accordance with the terms of a written settlement agreement with the City.

"Warning letter" means a written communication from the City to one or more persons concerning acts and omissions prohibited by this chapter. (Ord. No. 12926, § 1, 5-5-2009)

## **2.12.020 Coverage.**

This chapter applies to:

A. Any contractor who has participated, is currently participating, or may reasonably be expected to participate, in a covered transaction, irrespective of the source of funding;

B. Any contractor who has participated, is currently participating, or may reasonably be expected to participate, in a related transaction, irrespective of the source of funding including, without limitation, projects involving City funding, regardless of amount, or any other City interest, including, without limitation, a real or personal property interest;

C. Any principal of the contractors described in subsections A. and B.; and

D. Any affiliate of the contractors described in subsections A., B. or C.

(Ord. No. 12926, § 1, 5-5-2009)

## **2.12.030 General.**

A. The grounds for debarment set forth in Section 2.12.050 are not intended to be an exhaustive list of the acts or omissions for which a person may be debarred; grounds other than those enumerated in this section may be a basis for debarment.

B. The City may debar a contractor for any of the debarment grounds set forth in Section 2.12.050. The purpose of this chapter is, generally, to authorize debarment of contractors who engage in a pattern and practice of, or who are recurrently responsible for, any single or combination of debarment ground(s). However, a single occurrence of any debarment ground(s) may also subject contractors to debarment, depending on the egregious or serious nature of the acts or omissions. The existence of a cause or ground for debarment, however, does not necessarily require that the contractor be debarred; the seriousness of the contractor's acts or omissions and any mitigating factors shall be considered in making any debarment decision. Debarment actions shall be carried out in accordance with the procedures in Sections 2.12.060 through 2.12.180.

C. Debarment constitutes debarment of all divisions or other organizational elements of the contractor named in the debarment proceedings, unless the debarment decision is limited by its terms to specific affiliates, divisions, organizational elements and individuals. The City Administrator may extend the debarment decision to include any affiliates of the contractor and persons if they are:

1. Specifically named, and

2. Given written notice of the proposed debarment and an opportunity to respond.

D. The City hereby delegates the debarment of contractors to the City Administrator.

(Ord. No. 12926, § 1, 5-5-2009)

**2.12.040      Investigation, referral and temporary suspension.**

A. The City shall utilize City personnel and other appropriate resources to conduct the investigation and develop the documentation required by subsection C.

B. Information concerning the existence of a cause for debarment from any source shall be promptly investigated, reported, and referred to the City Administrator for consideration. The City Administrator shall be responsible for deciding whether or not to proceed with the action. After consideration, the City Administrator may issue a notice of proposed debarment, pursuant to Section 2.12.060.

C. Basic documentation shall be developed that includes but is not limited to:

1. The name of the specific respondent(s) against whom the action is being proposed or taken;

2. The reason(s) for proposing the debarment;

3. A short narrative stating the facts and/or describing other evidence supporting the reason(s) for the need to debar;

4. The recommended time period for the debarment;

5. Copies of any relevant support documentation identified under this section.

D. The Office of the City Attorney is responsible for reviewing the documentation and notices for legal sufficiency.

E. The City Administrator may temporarily suspend a contractor upon the determination that adequate evidence exists supporting debarment and doing so in the public interest. The City Administrator shall notify the contractor of the suspension in accordance with Section 2.12.060, pending the Debarment Hearing Board ruling on the matter. Once the City Administrator has suspended a contractor, the suspension shall continue until the Debarment Hearing Board makes a final decision on the decision on the proposed debarment.

(Ord. No. 12926, § 1, 5-5-2009)

**2.12.050      Debarment of contractors—Grounds.**

In accord with Section 2.12.030, the City may debar a contractor if the City finds, in its discretion, that the contractor has, or is engaged in, any of the following:

A. Willful or intentional misconduct in connection with any City bid, request for qualifications, request for proposals, purchase order and/or contract including, without limitation:

1. Collusion in obtaining a City contract or payment thereunder;

2. Submission of false information in response to a solicitation, advertisement or invitation for bids or quotes;

3. Submission of false information in response to a solicitation or request for qualifications or proposals;

4. Submission of false claims as defined in California Government Code, Section 12650 et seq. and Title 31 U.S.C. Section 3729 et seq.;

5. Issuance of a verdict, judgment, settlement, stipulation or plea agreement establishing the contractor's violation of any civil or criminal law against any government entity relevant to the contractor's ability or capacity to honestly perform under or comply with the terms and conditions of a City contract;

B. Willful or intentional failure to perform in accordance with the terms of one or more contracts including, but not limited to, terms pertaining to City contracting policies;

C. Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public agreement or transaction;

D. Violation of federal or state antitrust statutes, including those prescribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

E. Commission of embezzlement, theft, forgery, bribery, making false statements, submitting false information, attempting to commit a fraud against the City, receiving stolen property, making false claims to any public entity, obstructing justice, fraudulently obtaining public funds;

- F. Taking or misappropriating City property or using City property, including real and personal property, in an unauthorized manner;
  - G. Performance or conduct on one or more private or public agreements or transactions that caused or may have caused a threat to the health or safety of the contractor's employees, any other persons involved with the transaction, the general public or property;
  - H. Debarment by any other governmental agency for the period imposed by that agency;
  - I. Violation of federal regulations for disadvantaged business entity status including, but not limited to, violation of 49 CFR part 26 et seq. and misrepresenting minority or disadvantaged business entity status;
  - J. Noncompliance with the prevailing wage requirements of the Labor Law, including any pending violations by the contractor or any affiliate. A "pending violation" is defined as an investigation by any governmental entity (e.g. another city, county, school district, etc.). Investigations by private businesses will not be recognized.
  - K. Violation of any nondiscrimination provisions included in any public agreement or transaction;
  - L. Any other significant Labor Law violations, including, but not limited to, child labor violations, failure to pay wages, or unemployment insurance tax delinquencies.
  - M. Violation of any licensing, subletting or sublisting laws;
  - N. Falsification, concealment, withholding and/or destruction of records;
  - O. Violation of settlement agreements and/or consent decrees which impose obligations on the contractor to perform certain activities and/or to refrain from certain acts;
  - P. Violation of any law, regulation or agreement relating to conflict of interest with respect to government funded contracting;
  - Q. Knowingly or negligently doing business with a debarred, suspended, ineligible, or voluntarily excluded contractor in connection with a covered or related transaction;
  - R. Violation of a material provision of any settlement of a debarment action;
  - S. Commission of an egregious act or unlawful offense which indicates a lack of business integrity or business honesty;
  - T. Failure to perform or history of unsatisfactory performance of one or more contracts including, without limitation, default on contracts with the City or any other public agency;
  - U. Failure to perform or unsatisfactory performance of one or more City contracting policies;
  - V. Commission of any act or omission which negatively reflects on the contractor's quality, fitness or capacity to perform a contract with the City or any other public entity, or which negatively reflects on same including, but not limited to, deficiencies in on-going contracts, false certifications or statements, fraud in performance or billing or lack of financial or technical resources;
  - W. Any other cause of so serious or compelling a nature that it affects the present responsibility of a contractor.
- (Ord. No. 12926, § 1, 5-5-2009)

#### **2.12.060      Notice of proposed debarment to contractor (respondent).**

- A. The City Administrator shall initiate a debarment proceeding by issuing a notice of proposed debarment to the contractor and any affiliates that City determines should be parties to the action (hereafter, collectively, "respondent"), at least 90 days prior to the date of the debarment hearing advising.
  - 1. That debarment is being considered;
  - 2. That respondent is suspended pending final determination in the debarment proceeding when the City Administrator has determined that suspension is in the public interest;
  - 3. Information on the specific debarment action proposed;
  - 4. Of the reasons for the proposed debarment in terms sufficient to put the respondent on notice of the conduct or transaction(s) upon which it is based;

5. Of the cause(s) relied upon under Section 2.12.050 for proposing debarment;
  6. Of the provisions of Sections 2.12.070—2.12.180, and any other procedures, if applicable, governing debarment decision making;
  7. That the respondent must submit a written response within 15 days of the receipt of the notice of proposed debarment and the consequence of not providing a response;
  8. The date, time and place of the debarment hearing;
  9. Of the potential effect of a debarment;
  10. Of the right to a hearing before the Debarment Hearing Board;
  11. That the respondent may appear at the debarment hearing to challenge the debarment action, and that failure to appear may result in a waiver of the respondent's defenses to the debarment action, and be taken as an admission by the party failing to appear that the basis for the debarment is accurate, except to the extent the respondent challenges the debarment action solely by means of a written submission.
  12. That the City may submit a reply to the written response of the respondent within 30 days following receipt of the response made by or on behalf of the respondent.
- B. The notice to the respondent shall be signed by the City Administrator and transmitted by certified mail, return receipt requested to the last known address provided the City by the respondent.
- C. Notice to the respondent shall be deemed sufficient if it is served by any of the means authorized by California Code of Civil Procedure Section 1013, or as otherwise specified in Section 2.12.080.
- D. Any attempt by the respondent to affirmatively avoid service by way of example, and not limitation, refusing to pick-up a certified letter, shall be deemed ineffective and shall not prevent the debarment proceeding from going forward.
- (Ord. No. 12926, § 1, 5-5-2009)

#### **2.12.070 Documents submitted to the debarment hearing board.**

- A. Contractor (Respondent) Response.
  1. The respondent shall submit to the Debarment Hearing Board, and serve in accordance with Section 2.12.080, a response to the notice of proposed debarment not later than 30 days of receipt which shall:
    - a. State whether the respondent will appear at the hearing;
    - b. Respond to the allegations of the City. Allegations contained in the City's notice to the respondent may be deemed admitted by the Debarment Hearing Board when not specifically denied in the respondent's response.
    2. The response may set forth any affirmative defenses and evidentiary support therefore to the City's allegations. Respondent must set forth any affirmative defense in which it intends to rely in the response.
    3. If the respondent intends to waive its right to a hearing and rely solely on the response in support of its position, the response must clearly state such intention. Failure to clearly state such intention may be deemed a waiver of the respondent's defenses to the debarment action if the respondent does not appear at the hearing.
    4. In the event that the respondent fails to file a written response not later than 30 days of receipt of the City Administrator's notice of proposed debarment in accordance with this section, the allegations of the City may be deemed admitted, the Debarment Hearing Board may enter an order of default and transmit it to the City Administrator. The City Administrator's decision shall thereafter issue, with service on the parties.
  - B. Reply by the City. The City may submit to the Debarment Hearing Board and serve in accordance with Section 2.12.080, a reply to the respondent's response not later than 30 days after receiving the respondent's response.
  - C. Stipulations. The parties are encouraged to meet and resolve as many matters as possible by stipulated agreement prior to the hearing. The parties may stipulate as to any relevant matters of

fact or law. Stipulations may be received in evidence at the hearing, and when received shall be binding on the parties with respect to the matter stipulated.

**D. Document and Submission Requirements.**

1. An original and one copy of all documents to be presented to the Debarment Hearing Board and copies of all documents served on said Board shall be served simultaneously on the opposing party at the specific location designated on the notice of debarment in accordance with Section 2.12.080.

2. All documents required or permitted under this chapter, in addition to being served on Debarment Hearing Board in accordance with this section, shall be served upon:

a. The Office of the City Administrator at One Frank Ogawa Plaza, 3rd Floor, Oakland, CA 94612;

b. The respondent or respondent's representative;

3. Documents served in accordance with this section and Section 2.12.080 shall state clearly the party's name and the title of the document. All documents should be typewritten or printed in clear, legible form.

(Ord. No. 12926, § 1, 5-5-2009)

**2.12.080 Service.**

A. Service of documents on the respondent, including the notice, shall be made by any reasonable means, including by first class mail, fax, e-mail or delivery to:

1. The respondent to be served or that respondent's designated representative or agent, at the last known address;

2. The respondent's last known place of business; or

3. A principal of the respondent, of the entity for which the respondent is a principal.

B. Proof of service shall not be required unless the fact of service is denied under oath and put in issue by appropriate objection on the part of the respondent allegedly served. In such cases, service may be established by written receipt signed or on

behalf of the respondent to be served, or may be established *prima facie* by any responsible means, including, but not limited to affidavit or certificate of service of mailing.

C. Service of documents on other interested parties, such as insurance and bonding companies, shall follow the service procedures set forth in this section.

(Ord. No. 12926, § 1, 5-5-2009)

**2.12.090 Time computation.**

Any period of time prescribed or allowed by this chapter shall include in its computation of the prescribed period, Saturdays, Sundays and national holidays, except that when the last day of the period is Saturday, Sunday, national holiday or other day that the City is closed, the period shall run until the end of the next following business day.

(Ord. No. 12926, § 1, 5-5-2009)

**2.12.100 Debarment Hearing Board powers and responsibilities.**

A. To ensure the fair and efficient administration of debarment proceedings, they shall be presided over by the Debarment Hearing Board, as defined in Section 2.12.010, appointed by the City Administrator, unless the City Administrator elects to appoint a retired judge under subsection B. below.

B. The City Administrator may, in his/her sole discretion, appoint a retired judge to conduct the debarment hearing for matters expected to be unusually complex or of extended duration, or for any other reason. The retired judge shall have all of the powers and duties otherwise reserved to the Debarment Hearing Board.

**C. Powers of the Debarment Hearing Board.**

1. The Debarment Hearing Board shall conduct a fair and impartial hearing and, to that end, shall have the power to:

a. Schedule the debarment hearing date, time and place;

b. Postpone the debarment hearing date;

- c. Regulate the course of the hearing and the conduct of the parties and their counsel;
  - d. Hold conferences to facilitate the settlement or simplification of the issues by consent of the parties or at the request of a party;
  - e. Consider and rule upon all evidentiary and procedural matters pertaining to the hearing, including, but not limited to, setting page limits on documents that may be submitted;
  - f. Make findings of fact and take notice of any material fact not appearing in evidence in the record which would properly be a matter of judicial notice;
  - g. Receive evidence and rule on offers of proof;
  - h. Administer oaths and affirmations;
  - i. Issue a final decision imposing debarment of the respondent with respect to future City contracts and covered or related transactions, or imposing no sanction;
  - j. Recommend to the City staff, if so requested, a course of action to remedy respondent's past actions which gave rise to the debarment action;
  - k. Take any other action necessary to protect each party's rights, to avoid delay in the disposition of the debarment proceeding and to maintain order.
2. Prohibition Against Ex Parte Communications.

- a. Ex-partie communications are prohibited unless:
  - (1) The purpose and content of the communication has been disclosed in advance or simultaneously to all parties involved; or
  - (2) The communication is a request for information to the Debarment Hearing Board's staff concerning the status of the debarment action.

(Ord. No. 12926, § 1, 5-5-2009)

## **2.12.110 Debarment hearing procedure.**

### **A. Right to Hearing.**

- 1. All respondents subject to debarment pursuant to this chapter shall be entitled to a hearing at the date, time and place set forth in the notice.
- 2. The respondent may elect to waive its right to a hearing and rely solely on a written response.

If the respondent elects to waive its right to a hearing, such waiver must be clearly stated in the respondent's response. If respondent fails to file a written response as required under Subsection 2.12.070 A., the allegations of the City shall be deemed admitted, and an order of default shall be entered pursuant to Subsection 2.12.070 A.4.

3. The Debarment Hearing Board shall perform no independent collection of evidence and shall render a decision based on the evidence as submitted by the parties, although the Debarment Hearing Board may take judicial notice of common, uncontested facts.

### **B. Conduct of Hearing.**

- 1. The hearing shall be informal in nature and members of the Debarment Hearing Board may ask questions at any time.
- 2. The hearing shall proceed with all reasonable speed. The Debarment Hearing Board may order the hearing be recessed for good cause, stated on the record. The Hearing Board may, for convenience of the parties, or in the interest of justice, order that the hearing be continued or extended to a later date.

### **C. Representation of the Parties.**

- 1. The City may be represented by a member of the staff of the Office of the City Attorney and/or by an attorney assigned by the Office of the City Attorney, as may be appropriate in a particular case.
- 2. The respondent may be represented at the hearing as follows:
  - a. Individuals may appear on their own behalf;
  - b. A member of a partnership or joint venture may appear on behalf of the partnership or joint venture;
  - c. A bona fide officer may appear on behalf of a corporation or association upon a showing of adequate authorization;
  - d. An attorney who submits a notice of appearance and representation with the Debarment Hearing Board may represent the respondent; or
  - e. An individual not included within subsections 2.a. through 2.d. may represent the respondent upon an adequate showing, as determined by

the Debarment Hearing Board, that the individual possesses the legal, technical or other qualifications necessary to advise and assist in the presentation of the respondent's case.

D. All testimony provided at the hearing shall be under oath.

E. At the request of either the respondent or the City, the proceedings shall be transcribed by an authorized court reporter. The cost of the transcript of the proceedings shall be paid by the party requesting the transcript, or in the event both parties request the transcript, the cost shall be divided evenly between them.

(Ord. No. 12926, § 1, 5-5-2009)

#### **2.12.120 Standard of proof.**

The cause for debarment must be established by a preponderance of the evidence.

(Ord. No. 12926, § 1, 5-5-2009)

#### **2.12.130 Burden of proof.**

A. The City has the burden of proof to establish the cause for debarment. The respondent has the burden of proof to establish mitigating circumstances.

B. Where the proposed debarment is based upon a conviction, civil judgment, or a debarment by another governmental agency and the City submits evidence as to the existence of such, the City shall be deemed to have met its burden of proof to establish cause for debarment.

(Ord. No. 12926, § 1, 5-5-2009)

#### **2.12.140 Closing of the hearing record.**

A. The closing of the hearing record may be postponed by the Debarment Hearing Board, in its discretion, in order to permit the admission of other evidence into the record. In the event further evidence is admitted, each party shall be given an opportunity within a reasonable time to respond to such evidence.

B. Once the Debarment Hearing Board deems the hearing to be concluded there shall be no further proceedings before it or evidence accepted by it on the cause for debarment unless a request is

made in writing within three days following the conclusion of the hearing and good cause shown. (Ord. No. 12926, § 1, 5-5-2009)

#### **2.12.150 Rules of evidence.**

A. Every party shall have the right to present its case or defense by oral or documentary evidence and to submit rebuttal evidence. The Debarment Hearing Board may, within its discretion, permit cross-examination of witnesses on request. The Debarment Hearing Board may exclude irrelevant, immaterial or unduly repetitious evidence.

B. The debarment hearing need not be conducted according to technical rules relating to evidence and witnesses except as hereinafter provided. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law statutory rule which might make improper the admission of the evidence over objection in civil actions.

C. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. An objection is timely if made before submission of the case or on reconsideration.

D. The rules of privilege as set forth in the California Code of Civil Procedure shall apply.

E. The Debarment Hearing Board has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time.

F. The Debarment Hearing Board shall not have the power to compel any witness or party to give evidence in contravention of any evidentiary privilege recognized under applicable law, including, but not limited to, the Fifth Amendment privilege against self-incrimination under the Constitution of the United States of America and the attorney-client privilege.

(Ord. No. 12926, § 1, 5-5-2009)

**2.12.160 Scope of debarment.**

A. Debarment of a contractor or affiliate under this chapter constitutes debarment of all its specifically identified principals, individuals, divisions and other organizational elements from all contracts and covered and related transactions with the City, unless the debarment decision is limited by its terms to one or more principals, individuals, divisions or other organization elements or to specific types of transactions.

B. As may be appropriate, the debarment action may include any affiliate of the participant that is specifically named and given notice of the proposed debarment and an opportunity to respond.

C. The debarment of a contractor and its affiliates under this chapter may include the debarment of any other business that is, has been or will be controlled or owned by the contractor and its affiliates, or by any entity owned or controlled by a person or persons who own a controlling interest in a contractor and its affiliates, then or at the time the debarment was imposed.

(Ord. No. 12926, § 1, 5-5-2009)

**2.12.170 Period of debarment.**

Debarments shall be for a period commensurate with the seriousness of the respondent's conduct, up to a maximum of five years.

(Ord. No. 12926, § 1, 5-5-2009)

**2.12.180 Debarment decision.**

A. The debarment decision shall be made within 45 days after conclusion of the hearing, unless the Debarment Hearing Board extends this period for good cause.

B. In debarment actions where any respondent fails to provide any submission in opposition by the time provided in Subsection 2.12.070 A., the Debarment Hearing Board may, in its discretion, decide against the respondent, and notice shall be provided by the City Administrator;

C. Written findings of fact shall be prepared if requested by the parties. The Debarment Hearing Board shall base its decision on the facts as found,

together with any information and argument submitted by the parties and any other information in the administrative record.

D. If the Debarment Hearing Board decides to impose debarment, it shall forward its decision, in writing, to the City Administrator.

E. The City Administrator shall, within 45 days of the close of the hearing, provide notice to the respondent which notice shall include, but not be limited to, the following:

1. Reference to the notice of proposed debarment;

2. Whether the Debarment Hearing Board determined that cause for debarment has been established;

3. If the cause for debarment has been established:

- a. Specifying the reasons for debarment;

- b. Stating the period of debarment, including effective dates;

- c. Advising of the scope of the debarment;

- d. The time period in which the respondent may submit an appeal under this section.

F. The notice to the respondent shall be in writing, signed by the City Administrator, and transmitted by certified mail, return receipt requested. The Office of the City Attorney will be consulted on all debarment actions prior to the notice being sent to the respondent.

(Ord. No. 12926, § 1, 5-5-2009)

**2.12.190 Excluded contractor list.**

The City shall maintain an "excluded contractor list." Such list shall contain the names of all contractors that have been temporarily suspended or debarred by the City and suspended or debarred by any local, state or federal agency, and shall state the period of the suspension and/or debarment.

(Ord. No. 12926, § 1, 5-5-2009)

**2.12.200 Effect of debarment.**

A. Persons and contractors debarred are ineligible for City contracts and excluded from covered and related transactions as participants, prin-

cipals, subcontractors or subconsultants for the period set forth in the City debarment order. Such persons or contractors shall be placed on the excluded contractor list. For the period of debarment, City shall not solicit or accept offers from or award contracts to such persons or contractors; nor shall City accept bids including debarred persons or contractors as subcontractors, or consider for award any proposal that identifies debarred persons or contractors as subcontractors, subconsultants or team members. Persons and contractors debarred are also excluded from conducting business with the City as agents or affiliates of other persons or contractors. For purposes of this section, persons on the excluded contractor list are referred to as "listed persons."

B. City will include notice to interested and solicited parties of the excluded contractor list in solicitations for bids and proposals.

C. Persons and contractors debarred are excluded from acting as individual sureties to any person, contractor, principal or participant.

D. Contracting officers shall review all bids and all proposals upon opening or receipt, whichever is applicable, for listed persons and shall reject bids that include listed persons, or notify persons submitting a proposal for professional services that include listed persons that such proposal cannot be considered for award unless listed persons are removed.

E. Proposals, quotations, or offers received from any listed person shall not be evaluated for award nor shall discussions be conducted with a listed person during a period of ineligibility. If the period of ineligibility expires or is terminated after bid opening in response to a solicitation for bids or price quotations, or after the deadline for submission of proposals for professional services, the City shall not consider such bids, quotations, proposals or offers.

F. Immediately prior to award, the contracting officer shall again review the excluded contractors list to ensure that no award is made to a person or contractor on such list.

G. Persons who participate in City transactions during the period of their debarment will not be paid for goods and services provided and their contracts shall be deemed void.

(Ord. No. 12926, § 1, 5-5-2009)

#### **2.12.210 Imputed conduct.**

A. The conduct of the type described in Section 2.12.050 by an officer, director, shareholder, partner, employee, principal, affiliate or other individual associated with a contractor may be imputed to the contractor when the conduct occurred in connection with the individual's performance or duties for or on behalf of the contractor, or with the contractor's knowledge, approval or acquiescence. The contractor's acceptance of the benefits derived from the conduct shall constitute evidence of such knowledge, approval or acquiescence.

B. The conduct of the type described in Section 2.12.050 by a contractor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the contractor who participated in, knew of, or had reason to know of the contractor's conduct.

C. The conduct of the type described in Section 2.12.050 by one contractor participating in a joint venture or similar arrangement may be imputed to the other participating contractors if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the knowledge, approval, or acquiescence of these contractors. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.

(Ord. No. 12926, § 1, 5-5-2009)

#### **2.12.220 Continuation of current contracts.**

A. Notwithstanding debarment, or proposed debarment, the City may at its sole discretion continue contracts with contractors or that include subcontractors who are proposed for debarment which are in existence at the time the person, contractor or subcontractor was debarred or proposed for debarment, unless the City Administra-

tor directs otherwise. A decision as to the type of termination action, if any, to be taken should be made only after review by City contracting and technical personnel, the City Attorney's Office and the City Administrator to ensure the propriety of the proposed action.

B. The City shall not award additional contracts to or in any way extend the duration of or increase current contract amounts with, persons or contractors who have been debarred or are proposed for debarment; nor shall the City award additional contracts or extend the duration of or increase a current contract amount that identifies or lists a person or contractor debarred or proposed for debarment as a subcontractor, subconsultant or team member, or who are listed persons, unless specifically approved in writing by the City Administrator for good cause shown.

(Ord. No. 12926, § 1, 5-5-2009)

#### **2.12.230      Restrictions on subcontracting.**

When a person or contractor is debarred or proposed for debarment City shall not award a contract that includes such person or contractor as a subcontractor, supplier, subconsultant, team member or other party to the contract.

(Ord. No. 12926, § 1, 5-5-2009)

#### **2.12.240      Actions other than debarment.**

In the event that the City determines that a contractor's acts or omissions are insufficient to warrant debarment, the City Administrator may take one or more of the following actions:

##### A. Voluntary Exclusion.

1. The City and a contractor may agree to a voluntary exclusion of the contractor and any of its principals and/or affiliates from participation in City contracts and covered and related transactions for a period of up to five years.

2. A contractor and any of its principals and/or affiliates who agree to voluntary exclusion shall be placed on the excluded contractor list.

3. A contractor and any of its principals and/or affiliates who participate in City contracts and covered and related transactions during the period

of their voluntary exclusion will not be paid for goods and services provided, and may be considered for debarment.

B. Consent Decree. A contractor and any of its principals and/or affiliates found to be in violation of one or more provisions of this chapter may enter into a settlement in the form of a consent decree with the City. The consent decree will specifically provide that the person will refrain from the act(s) or omission(s) that had been found to be in violation of this chapter. A consent decree may be entered into alone or in conjunction with one or more of the procedures described in this section.

C. Warning Letter. Where there appears to be an act or omission in violation of this chapter, a warning letter may be issued to the contractor and any of its principals and/or affiliates. In all subsequent transactions between the contractor and any of its principals and/or affiliates and the City, the warning letter will be considered notice concerning such acts or omissions and may be submitted as evidence in a subsequent debarment proceeding.

(Ord. No. 12926, § 1, 5-5-2009)

#### **2.12.250      Judicial review.**

A. Judicial review of any final decision reached by the City under this chapter shall be conducted by the Superior Court of the County of Alameda, pursuant to an administrative writ of mandate as described under Section 1094.5 of the Code of Civil Procedure (CCP), provided that the petition for writ of mandate is filed within the time limits set forth in Section 1.20.010, which incorporates the limitation on the filing of actions provided in the Code of Civil Procedure Section 1094.6 for administrative determinations of the City.

B. In every final decision reached under this chapter, notice of such final decision shall only be given directly to the respondent and such notice shall explain that CCP Section 1094.6 governs the time period within which judicial review of any

such final decision must be sought. Final notice to the respondent shall conclude with the following statement:

THE CITY HAS REACHED A FINAL DECISION IN THE ADMINISTRATIVE MATTER PENDING BEFORE THE CITY. IF YOU CHOOSE TO SEEK JUDICIAL REVIEW OF CITY'S FINAL DECISION IN THIS MATTER, SUCH ACTION SHALL BE INITIATED UNDER CCP SECTION 1094.5 AND TIME LIMITS FOR FILING SUCH AN ACTION AS ARE SET FORTH IN CCP SECTION 1094.6. IT IS YOUR SOLE RESPONSIBILITY TO TAKE WHATEVER ACTION YOU DEEM APPROPRIATE IN RESPONSE TO THIS NOTICE.

(Ord. No. 12926, § 1, 5-5-2009)

**2.12.260 Pre-emption.**

In the event any contract is subject to federal and/or state laws that are inconsistent with the terms of this chapter, such laws shall control.

(Ord. No. 12926, § 1, 5-5-2009)

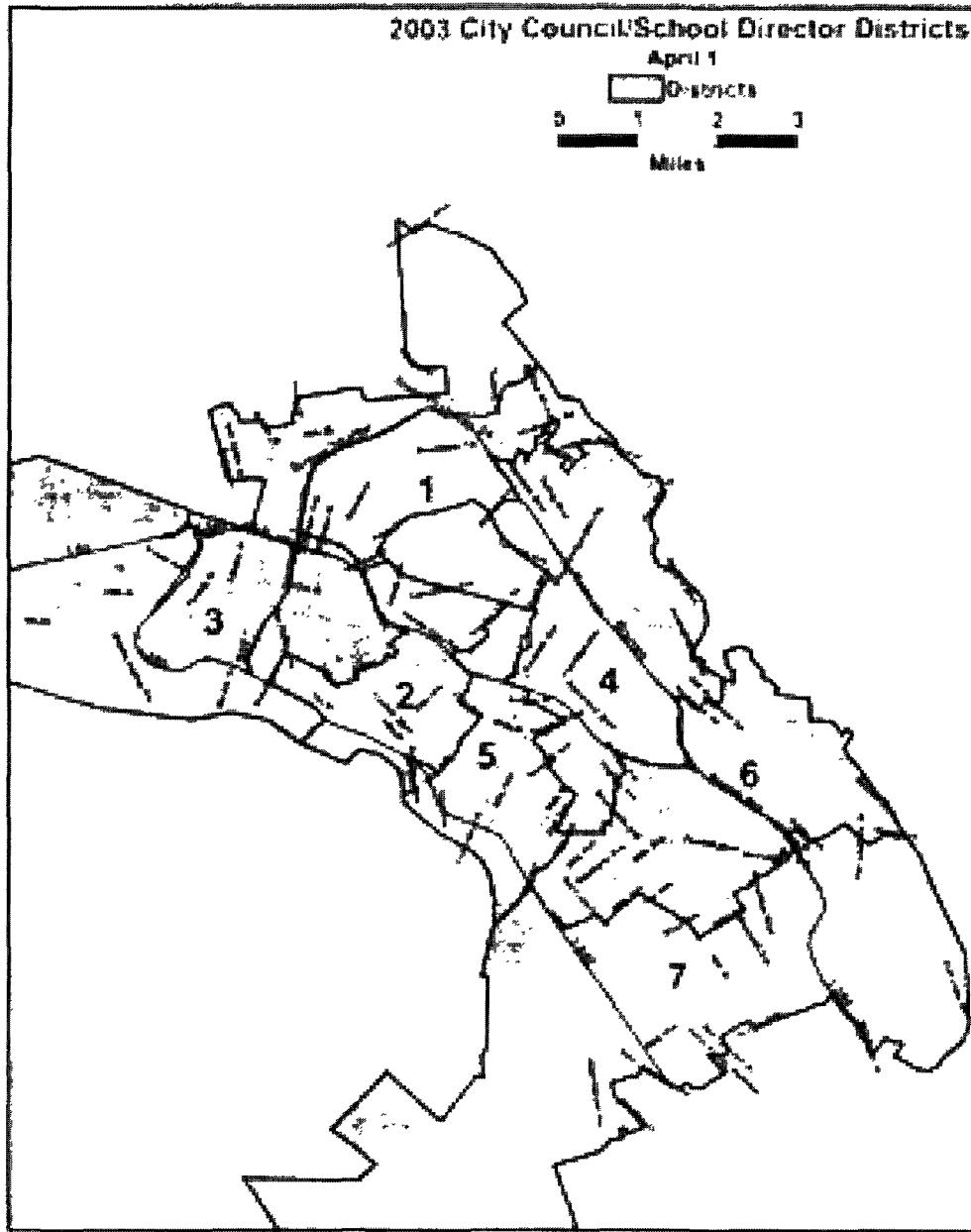
**Chapter 2.16**

**MAP OF CITY COUNCIL DISTRICTS**

**Sections:**

**2.16.010 Map of 2003 City Council/School Director Districts.**

**2.16.010 Map of 2003 City Council/School Director Districts.**



(Ord. 12495 Exh. A, 2003)

**Chapter 2.20****PUBLIC MEETINGS AND PUBLIC RECORDS****Sections:****Article I.  
In General**

- 2.20.010 Findings and purpose.**  
**2.20.020 Citation.**

**Article II.****Public Access to Meetings**

- 2.20.030 Definitions.**  
**2.20.040 Conduct of meetings for additional bodies covered by the chapter.**  
**2.20.050 Meetings to be open and public: Application of Brown Act.**  
**2.20.060 Conduct of business: Time and place for meetings.**  
**2.20.070 Notice and agenda requirements: Special meetings.**  
**2.20.080 Notice and agenda requirements: Regular meetings.**  
**2.20.090 Agenda-related materials as public records: Agenda subscribers.**  
**2.20.100 Agenda and oral disclosures: Closed sessions.**  
**2.20.110 Statement of reasons for closed sessions.**  
**2.20.120 Conduct of closed session.**  
**2.20.130 Disclosure of closed session discussions and actions.**  
**2.20.140 Barriers to attendance prohibited.**  
**2.20.150 Public testimony at regular and special meetings.**  
**2.20.160 Minutes and recordings.**  
**2.20.170 Public comment by members of local bodies.**

**Article III.****Public Information**

- 2.20.180 Definitions.**  
**2.20.190 Release of documentary public information.**  
**2.20.200 Release of oral public information.**  
**2.20.210 Public review file—Policy body communications.**  
**2.20.220 Non-exempt public information.**  
**2.20.230 Immediate disclosure request.**  
**2.20.240 Minimum withholding.**  
**2.20.250 Justification for withholding.**  
**2.20.260 Fees for duplication.**

**Article IV.****Policy Implementation**

- 2.20.270 City of Oakland Public Ethics Commission.**  
**2.20.280 Responsibility for administration.**  
**2.20.290 Severability.**  
**2.20.300 Effective date.**

**Article I.****In General****2.20.010 Findings and purpose.**

The Oakland City Council finds and declares:

A. A government's duty is to serve the public and in reaching its decisions to accommodate those who wish to obtain information about or participate in the process.

B. Commissions, boards, councils, advisory bodies and other agencies of the city exist to conduct the people's business. This chapter is intended to assure that their deliberations and that the city's operations are open to the public.

C. This chapter is intended in part to clarify and supplement the Ralph M. Brown Act and the California Public Records Act to assure that the

people of the city of Oakland can be fully informed and thereby retain control over the instruments of local government in their city.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.1, 1997)

## **2.20.020 Citation.**

This chapter may be cited as the Oakland Sunshine Ordinance.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.2, 1997)

## **Article II.**

### **Public Access to Meetings**

#### **2.20.030 Definitions.**

Words or phrases in this chapter shall be defined pursuant to the Ralph M. Brown Act, Government Code Section 54950 et seq. and the Public Records Act, Government Section 6250 et seq., unless otherwise specified as follows:

A. "Agenda" means the agenda of a local body which has scheduled the meeting. The agenda shall meet the requirements of Government Code Section 54954.2, except that the timing requirements of this chapter shall control. For closed sessions, the agenda shall meet the requirements set forth in Government Code Section 54954.5. The agenda shall contain a brief, general description of each item of business to be transacted or discussed during the meeting and shall avoid the use of abbreviations or acronyms not in common usage and terms whose meaning is not known to the general public. The agenda may refer to explanatory documents, including but not limited to, correspondence or reports, in the agenda-related material. A description of an item on the agenda is adequate if it is sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information on the item.

B. "Agenda-related materials" means the agenda, all reports, correspondence and any other document prepared and forwarded by staff to any local body, and other documents forwarded to the local body, which provide background informa-

tion or recommendations concerning the subject matter of any agenda item. Notwithstanding the foregoing, agenda related materials shall not include:

1. The written text or visual aids for any oral presentation so long as such text or aids are not substituted for, or submitted in lieu of, a written report that would otherwise be required to meet the filing deadlines of this chapter; and

2. Written amendments or recommendations from a member of a local body pertaining to an item contained in agenda related materials previously filed pursuant to Section 2.20.070 or Section 2.20.080.

- C. "Agenda subscriber" means any person or organization who requests in writing, on an annual basis, the receipt of an agenda or agenda-related materials as specified in Section 2.20.090 of this chapter.

- D. "City" means the city of Oakland.

- E. "Local body" means:

1. The Oakland City Council, the Oakland Redevelopment Agency, and the Board of Port Commissioners;

2. Any board, commission, task force or committee which is established by City Charter, chapter or by motion or resolution of the City Council, the Oakland Redevelopment Agency or the Board of Port Commissioners;

3. Any advisory board, commission or task force created and appointed by the Mayor and which exists for longer than a twelve (12) month period; and,

4. Any standing committee of any body specified in subsections (E)(1)(2) or (3).

"Local body" shall not mean any congregation or gathering which consists solely of employees of the city of Oakland, the Oakland Redevelopment Agency, or the Port of Oakland.

- F. "Meeting" shall mean any congregation of a majority of the members of a local body at the same time and location, including teleconference location as permitted by Government Code Sec-

tion 54953, to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the local body.

1. A majority of the members of a local body shall not, outside a meeting defined in this subsection F., use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the local body.

2. Subsection F.1. shall not be construed as preventing an employee or official of a local agency, from engaging in separate conversations or communications outside of a meeting defined in this subsection F. with members of a local body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency, if that person does not communicate to members of the local body the comments or position of any other member or members of the local body.

3. Nothing in this subsection F. shall impose the requirements of this chapter upon any of the following:

a. Individual contacts or conversations between a member of a local body and any other person that do not violate subsections F.1. and 2.;

b. The attendance of a majority of the members of a local body at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the local body, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the subject matter jurisdiction of the local agency. Nothing in this paragraph is intended to allow members of the public free admission to a conference or similar gathering at which the organizers have required other participants or registrants to pay fees or charges as a condition of attendance;

c. The attendance of a majority of the members of a local body at an open and publicized meeting organized to address a topic of local com-

munity concern by a person or organization other than the local agency, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the subject matter jurisdiction of the local body of the local agency;

d. The attendance of a majority of the members of a local body at an open and noticed meeting of another local body of the local agency or at an open and noticed meeting of a legislative body of another local agency, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of the local body of the local agency;

e. The attendance of a majority of the members of a local body at a purely social or ceremonial occasion, provided that a majority of the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the local body of the local agency; or

f. The attendance of a majority of the members of a local body at an open and noticed meeting of a standing committee of that body, provided that the members of the local body who are not members of the standing committee attend only as observers.

"Meeting" shall also mean a meal or social gathering of a majority of the members of a local body immediately before, during or after a meeting of a local body.

G. "Notice" means the posting of an agenda in a location that is freely accessible to the public twenty-four (24) hours a day and as additionally specified in Section 2.20.070 and 2.20.080.

H. "On-line" means accessible by computer without charge to the user.

I. "Software or hardware impairment" means the city is unable to utilize computer software, hardware and/or network services to produce agendas, agenda related material or to post agendas on-line due to inoperability of software or hard-

ware caused by the introduction of a malicious program (including, but not limited to, a computer virus), electrical outage affecting the city's computer network, or unanticipated system or equipment failure. "Software or hardware impairment" may also include situations when the city is unable to access the internet due to required or necessary maintenance or the installation of system upgrades that necessitate deactivating the system network; however, the city shall make reasonable efforts to avoid a delay in the preparation, distribution, or posting of agendas and agenda related material as a result of required or necessary maintenance or installation of system upgrades.

J. "Standing committee" means any number of members of a local body which totals less than a quorum and which has a continuing subject matter jurisdiction or a meeting schedule fixed by charter, ordinance, resolution or formal action of the local body.

(Ord. No. 12909, § 3, 1-6-2009; Ord. 12668 § 3, 2005; Ord. 12483 (part), 2003; Ord. 11957 § 00.3, 1997)

#### **2.20.040 Conduct of meetings for additional bodies covered by the chapter.**

A. To the extent not inconsistent with state or federal law, a local body shall require, as a condition of any express delegation of power to any public agency, including joint powers authorities, or other person(s), whether such delegation of power is achieved by legislative act, contract, lease or other agreement, that any meeting by such a public agency or other person(s) at which an item concerning or subject to the delegated power is discussed or considered, shall be conducted pursuant to the Ralph M. Brown Act (Government Code Section 54950 et seq.).

B. To the extent not inconsistent with state or federal law, a private entity that owns, operates or manages any property in which the city, Redevelopment Agency, or the Port Department has or will have an ownership interest, including a mortgage, and on which property the private entity

performs a governmental function or service, shall conduct any meeting of its governing board at which an item relating to the administration of the property or the public function or service is discussed or considered subject to the following conditions:

1. Such meetings need not be formally noticed, although the time, place and nature of the gathering shall be disclosed upon inquiry by a member of the public, and any agenda actually prepared for the meeting be made available upon request;

2. Such meetings need not be conducted in any particular location to accommodate spectators, although spectators shall be permitted to observe on a space available basis consistent with legal and practical restrictions on occupancy;

3. Such business meetings need not provide opportunities for comment by spectators, although the governing board may, in its discretion, entertain questions or comments from spectators as may be relevant to the item considered; and,

4. The private entity or persons may restrict the attendance of spectators only to the specific item(s) directly relating to the administration of the property or of the public function or service and, as to such specific item(s), may prohibit the attendance of spectators during the discussion or consideration of any item that would be the permitted subject of a closed session hearing under the Ralph M. Brown Act.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.4, 1997)

#### **2.20.050 Meetings to be open and public: Application of Brown Act.**

All meetings of local bodies specified in Sections 2.20.030(E) and Section 2.20.040(A) shall be open and public, to the same extent as if that body were governed by the provisions of the Ralph M. Brown Act (Government Code Sections 54950 et seq.) unless greater public access is required by this chapter, in which case this chapter shall be applicable.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.5, 1997)

#### **2.20.060 Conduct of business: Time and place for meetings.**

A. Every local body specified in Section 2.20.030(E) shall establish by formal action the

time and place for holding regular meetings and shall conduct such regular meetings in accordance with such resolution or formal action. Whenever reasonably possible local bodies specified in Section 2.20.030(E)(1) and (2) shall conduct their regular meetings on weekday evenings.

B. Regular and special meetings of legislative bodies specified in Section 2.20.030(E) shall be held within the city of Oakland except to do any of the following:

1. Comply with state or federal law or court order, or attend a judicial or administrative proceeding to which the local body is a party;

2. Inspect real or personal property which cannot be conveniently brought to Oakland, provided that the topic of the meeting is limited to items directly related to the real or personal property;

3. Participate in meetings or discussions of multi-agency significance that are outside Oakland. However, any meeting or discussion held pursuant to this subsection shall take place within the jurisdiction of one of the participating agencies and be noticed by the respective local body specified in this chapter; or

4. Meet outside the city of Oakland with elected or appointed officials of the United States or the State of California when a local meeting would be impractical, solely to discuss a legislative or regulatory issue affecting the city of Oakland, the Oakland Redevelopment Agency or the Port of Oakland, and over which issue the other federal or state agency has jurisdiction.

C. If a regular meeting for any local body falls on a holiday, the meeting shall be held on the next scheduled regular meeting day unless otherwise noticed as a special meeting for which notice is given at least five days in advance.

D. If, because of fire, flood, earthquake or other emergency, it would be unsafe to meet in the customary location, the meetings may be held for the duration of the emergency at some other place specified by the presiding officer of the local body or his or her designee. The change of meeting site shall be announced, by the most rapid means of

communication available at the time, in a notice to media organizations who have requested written notice of meetings.

E. No local body shall take any action at a meeting which occurs when a quorum of the local body becomes present at a meeting of a standing or ad hoc committee of the local body, although the committee may take action consistent with its jurisdiction and authority.

(Ord. 12483 (part), 2003; Ord. 12463 § 2, 2003; Ord. 11957 § 00.6, 1997)

## **2.20.070 Notice and agenda requirements: Special meetings.**

A. Special meetings of any local body may be called at any time by the presiding officer thereof or by a majority of the members thereof. All local bodies calling a special meeting shall provide notice by:

1. Posting a copy of the agenda in a location freely accessible to the public at least forty-eight (48) hours (excluding Saturdays, Sundays and holidays) before the time of the meeting set forth in the agenda;

2. Filing a copy of the agenda and copies of all agenda-related material in the Office of the City Clerk at least forty-eight (48) hours (excluding Saturdays, Sundays and holidays) before the time of the meeting set forth in the agenda; and,

3. Delivering a copy of the agenda to each member of the local body, to each local newspaper of general circulation, to each agenda subscriber, and to each media organization which has previously requested notice in writing, so that a copy of the agenda is received at least forty-eight (48) hours (excluding Saturdays, Sundays and holidays) before the time of the meeting set forth in the agenda. Receipt of the agenda shall be presumed upon reasonable proof that delivery was made.

B. Local bodies specified in Section 2.20.030 (E)(1) shall, in addition to the noticing requirements of this section, post a copy of the agenda for any special meeting on-line at the local body's website at least forty-eight (48) hours (excluding Saturdays, Sundays and holidays) before the time

of the meeting set forth in the agenda. Failure to timely post a copy of the agenda online because of software or hardware impairment, as defined in Section 2.20.030, shall not constitute a defect in the notice for a special meeting if the local body complies with all other posting and noticing requirements.

C. Notwithstanding the requirements of 2.20.070(A) and (B), if a special meeting is called for a Monday, notice shall be deemed timely made if the filing, posting and distribution requirements of subsections (A) and (B) are made no later than 12:00 p.m. (noon) on the preceding Friday.

D. No business other than that set forth in the agenda shall be considered at a special meeting. Each special meeting shall be held at the regular meeting place of the local body except that the local body may designate an alternative meeting location provided that such alternative location is specified in the agenda and that notice pursuant to this section is given at least ten days prior to the special meeting. This ten day notice requirement shall not apply if the alternative location is within the same building at which regular meetings of the local body occur.

E. To the extent practicable, the presiding officer or the majority of members of any local body may cancel a special meeting by delivering notice of cancellation in the same manner and to the same persons as required for the notice of such meeting.

F. Special meetings may not be noticed on the same day as a previously scheduled regular meeting that was not noticed in compliance with this chapter if the special meeting is called to consider any of the items that were included in the notice for such regular meeting.

(Ord. 12668 § 4, 2005; Ord. 12483 (part), 2003; Ord. 12463 § 3, 2003; Ord. 12106, 1999; Ord. 11957 § 00.7, 1997)

## **2.20.080 Notice and agenda requirements: Regular meetings.**

A. Ten Day Advance Notice Requirement for Regular Meetings of the City Council, Redevelop-

ment Agency, Board of Port Commissioners, Public Ethics Commission, and Their Standing Committees. The City Council, Redevelopment Agency, Board of Port Commissioners, Public Ethics Commission, and any of their standing committees shall provide notice before any regular meeting by:

1. Posting a copy of the agenda in a location freely accessible to the public twenty-four (24) hours a day no later than ten days before the date of the meeting;

2. Filing a copy of the agenda and all agenda-related material with the Office of the City Clerk and the Oakland main library no later than ten days before the date of the meeting; and,

3. Posting a copy of the agenda on-line at the local body's website no later than ten days before the date of the meeting. Notwithstanding Section 2.20.080(D), the failure to timely post a copy of the agenda online because of software or hardware impairment, as defined in Section 2.20.030, shall not constitute a defect in the notice for a regular meeting, if the local body complies with all other posting and noticing requirements.

B. Supplemental Agenda and Related Materials Requirements for Regular Meetings of the City Council Redevelopment Agency, Board of Port Commissioners, Public Ethics Commission, and Their Standing Committees. Notwithstanding the notice provisions of 2.20.080(A), the City Council, Redevelopment Agency, Board of Port Commissioners, Public Ethics Commission, and any of their standing committees, may amend or supplement a posted agenda or agenda-related materials no later than seventy-two (72) hours before a regular meeting and only for the following reasons or under the following conditions:

1. To add an item due to an emergency or urgency, provided the local body makes the same findings as required by Section 2.20.080(E) before taking action;

2. To delete or withdraw any item from a posted agenda; however, nothing herein shall limit the ability of a local body to delete or withdraw an item during the meeting as long as the local body permits members of the public to address the deleted or withdrawn item;

3. To provide additional information to supplement the agenda-related material previously filed with the Office of the City Clerk provided that the additional information was not known to the Mayor or staff or considered to be relevant at the time the agenda-related materials were filed. Examples of supplemental material permitted by this section are reports responding to questions or requests raised by members of a local body after posting and filing of the ten day agenda and materials, and analyses or opinions of the item by the Office of the City Attorney, City Auditor, or any member of the City Council;

4. To correct errors or omissions, or to change a stated financial amount, or to clarify or conform the agenda title to accurately reflect the nature of the action to be taken on the agenda item;

5. To consider the recommendations, referrals, minutes, modifications of or actions taken on any item heard by a standing committee of the City Council, Redevelopment Agency, Board of Port Commissioners, and Public Ethics Commission provided that the item has not been materially changed after the committee considered the item;

6. To place an ordinance on the agenda pursuant to Oakland City Charter Section 216 because the Mayor has caused its reconsideration by the City Council under the Mayor's power to suspend an ordinance receiving five votes; or,

7. To place an item on the agenda to allow the Mayor to cast a vote pursuant to Oakland City Charter Section 200; or

8. To continue an agendized item to the next regular meeting of the local body so long as members of the public are given an opportunity to address the local body on the item at the meeting from which the item is continued.

C. Seventy-two (72) Hour Advance Notice Requirement for Regular Meetings of All Local Bodies Other Than the City Council, Redevelopment Agency, Board of Port Commissioners, Public Ethics Commission, and Their Standing Committees. Any local body specified in Section 2.20.030(E)(2), (3), and (4), with the exception of standing committees of the City Council, Redevelopment

Agency, Board of Port Commissioners, and Public Ethics Commission, shall provide notice for any regular meeting in compliance with the Ralph M. Brown Act and shall also file a copy of the agenda and all agenda-related material with the Office of the City Clerk at least seventy-two (72) hours before the time of any regular meeting.

D. Excuse of Sunshine Notice Requirements. If an item appears on an agenda but the local body fails to meet any of the additional notice requirements under this section, the local body may take action only if:

1. The minimum notice requirements of the Brown Act have been met; and,

2. The local body, by a two-thirds vote of those members present, adopts a motion determining that, upon consideration of the facts and circumstances, it was not reasonably possible to meet the additional notice requirements under this section and any one of the following exists:

a. The need to take immediate action on the item is required to avoid a substantial adverse impact that would occur if the action were deferred to a subsequent special or regular meeting;

b. There is a need to take immediate action which relates to federal or state legislation or the local body's eligibility for any grant or gift; or,

c. The item relates to a purely ceremonial or commendatory action. Notwithstanding the provisions of this subsection, the City Council, Redevelopment Agency, Board of Port Commissioners or Public Ethics Commission may excuse, by a two-thirds vote of those members present, any of the additional notice requirements imposed by Section 2.20.080 so long as the failure to meet any additional notice requirement was due to a software or hardware impairment as defined by Section 2.220.030(I) and such additional notice requirements are satisfied no later than eight days before the date of the meeting.

E. Action on Items Not Appearing on the Agenda. Notwithstanding subsection (D) of this section, a local body may take action on items not appearing on a posted agenda only if:

1. The matter is an emergency. Upon a determination by a majority vote of the local body that

a work stoppage, crippling disaster or other activity exists which severely impairs public health, safety or both; or,

2. The matter is urgent. Upon a determination by a two-thirds vote by the members of the local body present at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those present, that there is a need to take immediate action which came to the attention of the local body after the agenda was posted, and that the need to take immediate action:

- a. Is required to avoid a substantial adverse impact that would occur if the action were deferred to a subsequent special or regular meeting;
- b. Relates to federal or state legislation; or,
- c. Relates to a purely ceremonial or commendatory action.

F. Nothing in this section shall prohibit a local body from taking action to schedule items for a future meeting to which regular or special meeting notice requirements will apply, or to distribute agenda-related materials relating to items added pursuant to 2.20.080(E) before or during a meeting.

G. Nothing in this section shall prohibit the Office of the City Attorney from conforming a document to comply with technical requirements as to form and legality.

H. The Mayor, City Administrator and City Attorney in their capacities with the city and Redevelopment Agency must submit public agenda related materials to the City Clerk in sufficient time to meet the deadlines of this section and Section 2.20.070. However, the referenced officers may submit additional documents to the legislative body and the legislative body may accept the documents if the legislative body makes a finding by two-thirds vote of the members present that the additional information in the documents was not known to the officers or considered to be relevant by the officers at the time of the filing deadlines. Copies of such documents shall be made available to the public at the related meeting. This subsection shall not apply to the City Auditor, and the City Council may consider reports from the City

Auditor that are presented to the Council after the deadlines specified in this chapter. Nothing in this section or in any other provision of this chapter shall be interpreted to require that the Mayor, City Administrator or City Attorney submit to the City Clerk any documents that are not public records.

(Ord. 12668 § 5, 2005; Ord. 12483 (part), 2003; Ord. 11957 § 00.8, 1997)

## **2.20.090      Agenda-related materials as public records: Agenda subscribers.**

In addition to providing access to all records which are public records pursuant to the California Public Records Act (Government Code 6250 et seq.) and this ordinance, every local body specified in Section 2.20.030(E) shall make available for immediate public inspection and copying all agendas and agenda-related materials.

A. Every local body may charge a fee to agenda subscribers and media organizations to cover reasonable mailing costs of the agenda and agenda-related materials. Neither this section nor the California Public Records Act shall be construed to limit or delay the public's right to inspect any record required to be disclosed by that act or this ordinance.

B. Every local body shall make available for immediate public inspection and copying all documents that have been distributed to a majority of its members. The right to immediate public inspection and copying provided in this section shall not include any material exempt from public disclosure under this ordinance or under state or federal law.

C. All requests by agenda subscribers to receive agendas or agenda-related materials by mail shall be made in writing and delivered to the Office of the City Clerk or, in the case of the Board of Port Commissioners, to the Secretary of the Board. The City Clerk shall maintain a list of all local bodies and shall immediately forward a copy of the written request to the appropriate local body to ensure compliance with the request. Any writ-

ten request shall be valid for the calendar year in which it is filed, and must be renewed after January 1 of each year.

D. Notwithstanding any other provision of this ordinance, the failure of an agenda subscriber to timely receive the agenda or agenda-related material pursuant to this section shall not constitute grounds for invalidation of the actions of the local body taken at the meeting for which the agenda or the agenda-related material was not timely received.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.9, 1997)

#### **2.20.100      Agenda and oral disclosures: Closed sessions.**

A. In addition to the brief general description of agenda items to be discussed or acted upon in open session, the permissive provisions of Government Code Section 54954.5 are mandatory under this ordinance with respect to any closed session item.

B. Any action taken without proper agenda disclosure pursuant to this section is subject to invalidation pursuant to the provisions of Government Code Section 54960.1.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.10, 1997)

#### **2.20.110      Statement of reasons for closed sessions.**

A. Prior to any closed session, a local body shall announce in open session the general reason or reasons for the closed session, and must cite and explain the statutory or case authority under which the session is being closed.

B. In the case of an item added to the agenda pursuant to Government Code Section 54954.2(b) or Section 2.20.080(E) herein, the statement shall be made in open session concurrent with the findings required pursuant to that section.

C. A local body shall re-state the reasons for closed session before convening a closed session at any meeting and as to any item that has been adjourned or continued from a prior meeting.

D. The public shall have the right to comment on any item of closed session before the closed session convenes.

E. Nothing in this section shall require or authorize a disclosure of information that is confidential under law.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.11, 1997)

#### **2.20.120      Conduct of closed session.**

A. A local body shall consider in closed session only those matters specified in the statement required in Section 2.20.110.

B. After any initial closed session to consider the sale, lease, gift, purchase, or exchange of any property to which the city, Redevelopment Agency, or Port of Oakland has or will have an ownership or possessory interest, such local bodies shall notice for open session a discussion of the advisability of taking such an action before a final action is taken in the matter. This requirement shall not apply if the local body adopts a finding that holding an open session discussion would prejudice the local body in the proposed proceeding or transaction.

C. With respect to any closed session discussion pertaining to employee salaries and benefits, a local body shall not discuss compensation or other contractual matters with one or more employees having a direct interest in the outcome of the negotiations.

D. The following provisions of the Brown Act apply to the conduct of closed session by local bodies and are hereby incorporated by reference as though fully set forth herein: Government Code Sections 54956.8; 54956.9; 54957; and 54957.6.

E. The Offices of the City Attorney, the City Clerk, and the Public Ethics Commission shall provide any person with a copy of the Brown Act or Public Records Act without charge.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.12, 1997)

#### **2.20.130      Disclosure of closed session discussions and actions.**

A. After every closed session, in addition to the required disclosures pursuant to Government

Code Section 54957.1, a local body shall reconvene into open session prior to adjournment and shall disclose publicly all portions of its discussion which are not confidential. The local body may, by motion and vote in open session, elect to disclose any other information which a majority deems to be in the public interest. Any disclosure pursuant to this section shall be made through the presiding officer or such other person, present in the closed session, designated to convey the information.

B. Immediately following the closed session a local body shall publicly report any action taken in closed session and the vote or abstention of every member present thereon, as follows:

1. Real property negotiations: Approval of an agreement concerning real estate negotiations pursuant to Government Code Section 54956.8 shall be reported as soon as the agreement is final. If its own approval renders the agreement final, the local body shall report that approval, the substance of the agreement and the vote thereon in open session immediately. If final approval requires action from another party to the negotiations, the local body shall disclose the fact of its approval, the substance of the agreement and the body's vote or votes thereon upon inquiry by any person, and, in any event, at the next meeting of said local body after the other party or its agent has informed the local body of its action. If notwithstanding the final approval there are conditions precedent to the final consummation of the transaction, or if there are multiple contiguous or closely located properties that are being considered for transfer, the report specified in this section need not be made until the condition has been satisfied or an agreement has been reached with respect to all the properties, or both.

2. Litigation: Direction or approval given to the local body's legal counsel to prosecute, defend, seek or refrain from seeking appellate review or relief, or to otherwise enter as a party, intervenor or amicus curiae in any form of litigation as the result of a consultation under Government Code Section 54956.9 shall be reported in open session as soon as given, or at the first meeting after an

adverse party has been served in the matter if immediate disclosure of the local body's intentions would not be contrary to the public interest. The report shall identify the names and capacities of all parties to the litigation, the court of jurisdiction and case number, the type of case, any existing claim or order to be defended against, or any factual circumstances or contractual dispute giving rise to the litigation.

3. Settlement: If a local body accepts a settlement offer signed by an opposing party, the local body shall report its vote of approval and identify the substance of the agreement. If final approval rests with another part or with the court, the local body shall disclose its vote of approval and the substance of the agreement to any person upon inquiry as soon as the settlement becomes final, but in no case later than the next meeting following final approval of settlement. A local body shall neither solicit nor agree to any term in a settlement agreement which would preclude the release, upon request, of the text of the settlement agreement itself and any related documentation communicated to or received from the adverse party or parties. Where the disclosure of documents in settled litigation could affect litigation on a closely related case, the report, settlement agreement and any documents described in this section need not be disclosed until the closely related case is settled or otherwise finally concluded.

C. Reports required to be made pursuant to this section may be made orally or in writing. Copies of any contracts, settlement agreements, or other documents related to the items or transactions that were finally approved or adopted in closed session and which contain the information required to be disclosed under this section shall be made available for inspection and copying, upon request, at the time the report is made or after any substantive amendments have been retyped into the document.

D. A written summary of the information required to be reported immediately pursuant to this section, or documents containing that information, shall be made available for inspection and

copying by the close of business on the next business day following the meeting. Written notice that such a written summary or supporting documentation is available as to every reported document shall be posted the next business day following the meeting in the place where the meeting agendas of the local body are usually posted.

E. Action taken in closed session which is not immediately disclosable under this section shall be disclosed and noticed under the procedures set forth in Section 2.20.130(D) at such time as disclosure is required.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.13, 1997)

#### **2.20.140 Barriers to attendance prohibited.**

A. No local body specified in this ordinance shall conduct any meeting, conference or other function in any facility which is inaccessible to persons with physical disabilities, or where members of the public may not be present without making a payment or purchase. Whenever a local body anticipates that the number of persons attending the meeting may exceed the legal capacity of the room, a public address system shall be used to permit the overflow audience to listen to the proceedings, unless the speakers would disrupt the operation of a local agency office.

B. Any person attending an open meeting of a local body shall have the right to record, photograph or broadcast the proceedings unless such activities constitute a persistent disruption of the proceedings.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.14, 1997)

#### **2.20.150 Public testimony at regular and special meetings.**

A. Every agenda for every regular or special meeting shall provide an opportunity for members of the public to directly address a local body on items of interest to the public that are within the local body's subject matter jurisdiction, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by Government Code Section 54954.2(b). The agenda of local bodies need not

provide an opportunity for members of the public to address the local body on any item that has already been considered by a committee, composed exclusively of members of the local body, at a meeting in which members of the public were afforded the opportunity to address the committee before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the local body.

B. Every agenda for regular or special meetings at which action is proposed to be taken on an item shall provide an opportunity for each member of the public to directly address the body concerning that item before taking action. The presiding officer of any local body may request speakers representing similar views to designate a spokesperson in the interest of time. Nothing shall prohibit a local body from adopting rules for allocating additional time to a speaker who desires to speak on multiple agenda items so that the speaker shall address all items at one time before the local body's consideration of those items.

C. Every local body shall adopt a rule providing that each person wishing to speak on an item shall be permitted to speak once based upon previously adopted time constraints which are reasonable and uniformly applied. It shall be the policy of the city that all speakers be entitled to a minimum of two minutes of speaking time per agenda item, subject to the discretion of the presiding officer of the local body. The presiding officer shall announce publicly all reasons justifying any reduction in speaker time. The stated reasons shall be based at least on a consideration of the time allocated or anticipated for the meeting, the number and complexity of agenda items, and the number of persons wishing to address the local body.

D. No local body shall abridge or prohibit public criticism of the policies, procedures, programs or services of the local body or agency, or of any other aspect of its proposals or activities, or of the acts or omissions of the local body, even if the criticism implicates the performance of one or

## **2.20.150**

more public employees. Nothing in this subsection shall confer any privilege or protection beyond that which is otherwise provided by law.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.15, 1997)

### **2.20.160 Minutes and recordings.**

A. All local bodies specified in Section 2.20.030(E)(1) and (2) and their standing committees shall record the minutes for each regular and special meeting convened under the provisions of this ordinance. At a minimum, the minutes shall state the time the meeting was called to order, the names of the members attending the meeting, a one-sentence summary of, and the roll call vote on, each matter considered at the meeting, the time the local body began and ended any closed session, those members of the public who spoke on each matter if the speakers identified themselves, and the time the meeting was adjourned. The draft minutes of each meeting shall be available for inspection and copying upon request no later than ten business days after the meeting. The officially adopted minutes shall be available for inspection and copying upon request no later than five business days after the meeting at which the minutes are adopted.

B. Every local body specified in Section 2.20.030(E)(1) shall make a visual and audio recording of every open meeting. Local bodies specified in Section 2.20.030(E)(2) and (4) shall audio tape each regular and special open meeting and may make a visual recording of any meeting. Any recording of any open meeting shall be a public record subject to inspection and copying and shall not be erased, deleted or destroyed for at least four years, provided that if during that four-year period a written request for inspection or copying of any recording is made, the recording shall not be erased, deleted or destroyed until the requested inspection or copying has been accomplished. Inspection of any such recording shall be provided without charge on a player or computer made available by the local body. Notwithstanding any

other provision of law, every local body specified in Section 2.20.030(E)(1) shall permanently maintain all recordings of all meetings.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.16, 1997)

### **2.20.170 Public comment by members of local bodies.**

Every member of a local body retains the rights of any citizen to comment publicly on the wisdom or propriety of government actions, including those of the local body of which he or she is a member. Local bodies shall not sanction, reprove or deprive members of their rights as elected or appointed officials to express their judgments or opinions, including those judgments or opinions pertaining to the disclosure or non-disclosure of discussions or actions taken in closed session. The release of specific factual information made confidential by state or federal law, including, but not limited to, privileged attorney-client communications, other than by the procedures set forth under state law or this ordinance, may constitute grounds for censure or for an action for injunctive or declaratory relief by the local body. Nothing in this section shall confer any privilege or protection for expression beyond that which is otherwise provided by law.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.17, 1997)

## **Article III.**

### **Public Information**

#### **2.20.180 Definitions.**

Whenever in this Article the following words or phrases are used, they shall mean:

A. "Agency" means an agency of the city of Oakland.

B. "Department" means a department of the city of Oakland or a department of the Port Department of the city of Oakland.

C. "Public information" means the content of "public records" as defined in the California Public Records Act (Government Code Section 6250 et seq.) whether contained in public records or in oral communications.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.18, 1997)

**2.20.190      Release of documentary public information.**

Release of public records by a local body or by any agency or department, whether for inspection of the original or by providing a copy, shall be governed by the California Public Records Act (Government Code Section 6250 et seq.) in any particulars not addressed by this Article. The provisions of Government Code Section 6253.9 are incorporated herein by reference.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.19, 1997)

**2.20.200      Release of oral public information.**

Release of oral public information shall be accomplished as follows:

A. Every Agency director for the city and Redevelopment Agency, and department head for the Port shall designate a person or persons knowledgeable about the affairs of the respective agency or department, to facilitate the inspection and copying of public records and to provide oral public information about agency or department operations, plans, policies, and positions. The name of every person so designated under this section shall be filed with the City Clerk and posted online.

B. It shall be the duty of every designated person or persons to provide information on a timely and responsive basis to those members of the public who are not requesting information from a specific person. It shall also be the duty of the person or persons so designated to assist members of the public in identifying those public records they wish to obtain pursuant to Government Code Section 6253.1. This section shall not be interpreted to curtail existing informal contacts between employees and members of the public when these contacts are occasional, acceptable to the employee and the department, not disruptive of his or her operational duties and confined to accurate information not confidential by law.

C. Public employees shall not be discouraged from or disciplined for the expression of their personal opinions on any matter of public concern while not on duty, so long as the opinion is not represented as that of the agency or depart-

ment and does not materially misrepresent the agency or department position. Nothing in this section shall be construed to provide rights to public employees beyond those recognized by law or agreement, or to create any new private cause of action or defense to disciplinary action.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.21, 1997)

**2.20.210      Public review file—Policy body communications.**

Every local body specified in Section 2.20.030(E)(1) shall maintain a communications file, organized chronologically and accessible to any person during normal business hours, containing a copy of any letter, memorandum or other writing which the clerk or secretary of such local body has distributed to, or sent on behalf of, a quorum of the local body concerning a matter that has been placed on the local body's agenda within the previous thirty (30) days or is scheduled or requested to be placed on the agenda within the next thirty (30) days. Excepted from the communications file shall be commercial solicitations, agenda and agenda-related material, periodical publications or communications exempt from disclosure under the California Public Records Act or this chapter. Multiple-page reports, studies or analyses which are accompanied by a letter or memorandum of transmittal need not be included in the communications file provided that the letter or memorandum of transmittal is included in the communications file.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.22, 1997)

**2.20.220      Non-exempt public information.**

Notwithstanding any right or duty to withhold certain information under the California Public Records Act or other law, the following shall govern specific types of requests for documents and information:

A. Drafts and Memoranda. No completed preliminary drafts or memoranda shall be exempt from disclosure under Government Code Section 6254(a) if said completed preliminary draft or memorandum has been retained in the ordinary

course of business or pursuant to law or agency or department policy. Completed preliminary drafts and memoranda concerning contracts, memoranda of understanding or other matters subject to negotiation and pending a local body's approval need not be subject to disclosure until final action has been taken.

**B. Litigation Material.** Unless otherwise privileged or made confidential by law, records of all communications between a local body's representatives and the adverse party shall be subject to public inspection and copying, including the text and terms of any settlement agreement, once the pending litigation has been settled or finally adjudicated.

**C. Personnel Information.** None of the following shall be exempt from disclosure under Government Code Section 6254(c):

1. Job pool information, to the extent such information is compiled for reporting purposes and does not permit the identification of any particular individual. Such job pool information may include the following:

- a. Sex, age and ethnic group;
- b. Years of graduate and undergraduate study, degree(s) and major or discipline;
- c. Years of employment in the private and/or public sector;
- d. Whether currently employed in the same position for another public agency;
- e. Other non-identifying particulars as to experience, credentials, aptitudes, training or education entered in or attached to a standard employment application form used for the position in question.

2. The professional biography or curriculum vitae of every employee who has provided such information to the city, Redevelopment Agency or the Board of Port Commissioners excluding the home address, home telephone number, social security number, date of birth, and marital status of the employee.

3. The job description of every employment classification.

4. The exact gross salary and paid benefits available to every public employee.

5. Any adopted memorandum of understanding between the city or Board of Port Commissioners and a recognized employee organization.

**D. Law Enforcement Information.** The Oakland Police Services Agency shall cooperate with all members of the public making requests for law enforcement records and documents under the California Public Records Act or other applicable law. Records and documents exempt from disclosure under the California Records Act pertaining to any investigation, arrest or other law enforcement activity shall be disclosed to the public to the full extent permitted by law after the District Attorney or court determines that a prosecution will not be sought against the subject involved or the statute of limitations for filing charges has expired, whichever occurs first. Information may be redacted from such records and documents and withheld if, based upon the particular facts, the public interest in nondisclosure clearly outweighs the public interest in disclosure. Such redacted information may include:

- a. The names of juvenile witnesses or suspects;
  - b. Personal or otherwise private information related or unrelated to the investigation if disclosure would constitute an unwarranted invasion of privacy;
  - c. The identity of a confidential source;
  - d. Secret investigative techniques or procedures;
  - e. Information whose disclosure would endanger law enforcement personnel, a witness, or party to the investigation; or
  - f. Information whose disclosure would endanger the successful completion of an investigation where the prospect of enforcement proceedings is likely.
2. The Oakland Police Services Agency shall maintain a record, which shall be a public record and which shall be separate from the personnel records of the agency, which reports the number of citizen complaints against law enforcement agencies or officers, the number and types of cases in

which discipline is imposed and the nature of the discipline imposed. This record shall be maintained in a format which assures that the names and other identifying information of individual officers involved is not disclosed directly or indirectly.

**E. Contracts, Bids and Proposals.** Contracts, contract bids, responses to requests for proposals and all other records of communications between the city, Redevelopment Agency and Board of Port Commissioners and individuals or business entities seeking contracts shall be open to inspection and copying following the contract award or acceptance of a contract offer. Nothing in this provision requires the disclosure of a person's net worth or other proprietary financial information submitted for qualification for a contract until and unless that person is awarded the contract. All bidders and contractors shall be advised that information covered by this subdivision will be made available to the public upon request.

**F. Budgets and Other Financial Information.** The following shall not be exempt from disclosure:

1. Any proposed or adopted budget for the city, Redevelopment Agency and the Port Department, including any of their respective agencies, departments, programs, projects or other categories, which have been submitted to a majority of the members of the City Council, Redevelopment Agency or Board of Port Commissioners or their standing committees.

2. All bills, claims, invoices, vouchers or other records of payment obligations, as well as records of actual disbursements showing the amount paid, the payee and the purpose for which payment is made, other than payments for social or other services whose records are confidential by law.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.23, 1997)

## **2.20.230      Immediate disclosure request.**

**A.** Notwithstanding any other provision of law and subject to the requirements of this section, a written request to inspect or obtain copies of public records that is submitted to any department or agency or to any local body shall be satisfied no

later than three business days unless the requestor is advised within three business days that additional time is needed to determine whether:

1. The request seeks disclosable public records or information;
2. The requested records are in the possession of the agency, department or local body;
3. The requested records are stored in a location outside of the agency, department or local body processing the request;
4. The requested records likely comprise a voluminous amount of separate and distinct writings;
5. Reasonably involves another agency, department or other local or state agency that has a substantial subject matter interest in the requested records and which must be consulted in connection with the request; or,
6. There is a need to compile data, to write programming language or a computer program or to construct a computer report to extract data.

**B.** All determinations made pursuant to Section 2.20.230(A)(1)-(6) shall be communicated in writing to the requestor within seven days of the date of the request. In no event shall any disclosable records be provided for inspection or copying any later than fourteen (14) days after the written determination pursuant to 2.20.230(A)(1)-(6) is communicated to the requestor. Additional time shall not be permitted to delay a routine or readily answerable request. All written requests to inspect or copy documents within three business days must state the words "Immediate Disclosure Request" across the top of the first page of the request and on any envelope in which the request is transmitted. The written request shall also contain a telephone number, email or facsimile number whereby the requestor may be contacted. The provisions of Government Code Section 6253 shall apply to any written request that fails to state "Immediate Disclosure Request" and a number by which the requestor may be contacted.

**C.** An Immediate Disclosure Request is applicable only to those public records which have been previously distributed to the public, such as past

meeting agendas and agenda-related materials. All Immediate Disclosure Requests shall describe the records sought in focused and specific language so they can be readily identified.

D. The person seeking the information need not state a reason for making the request or the use to which the information will be put.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.24, 1997)

#### **2.20.240 Minimum withholding.**

No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure by law. Any redacted, deleted or segregated information shall be keyed by footnote or other clear reference to the appropriate justification for withholding. Such redaction, deletion or segregation shall be done personally by the attorney or other staff member conducting the exemption review.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.25, 1997)

#### **2.20.250 Justification for withholding.**

Any withholding of information shall be justified, in writing, as follows:

A. A withholding under a permissive exemption in the California Public Records Act or this ordinance shall cite the legal authority and, where the exemption is based on the public interest in favor of not disclosing, explain in practical terms how the public interest would be harmed by disclosure.

B. A withholding on the basis that disclosure is prohibited by law shall cite the applicable legal authority.

C. A withholding on the basis that disclosure would incur civil or criminal liability shall cite any statutory or case law supporting that position.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.26, 1997)

#### **2.20.260 Fees for duplication.**

A. No fee shall be charged for making public records available for inspection.

B. No fee shall be charged for a single copy of a current meeting agenda.

C. A fee may be charged for: 1) single or multiple copies of past meeting agenda or any agenda-related materials; 2) multiple copies of a current meeting agenda; and, 3) any other public record copied in response to a specific request.

D. The agency, department or the city may, rather than making the copies itself, contract at market rate to have a commercial copier produce the duplicates and charge the cost directly to the requester.

E. No charge shall be made for a single copy of a Draft or Final Environmental Impact Report and Environmental Impact Statement.

F. All fees permitted under this section shall be determined and specified in the city of Oakland Master Fee Schedule, as amended.

G. Nothing in this section shall be interpreted as intending to preempt any fee set by or in compliance with State law.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.27, 1997)

### **Article IV.**

#### **Policy Implementation**

#### **2.20.270 City of Oakland Public Ethics Commission.**

A. Duties: In the implementation of this ordinance, the Public Ethics Commission shall:

1. Advise the City Council and the Board of Port Commissioners and provide information to other city departments and local bodies on appropriate ways in which to implement this ordinance with a priority on simple, standard procedures.

2. Assist in citywide training for implementing the ordinance.

3. Develop and maintain an administrative process for review and enforcement of this ordinance, among which may include the use of mediation to resolve disputes arising under this ordinance. No such administrative review process shall preclude, delay or in any way limit a person's remedies under the Brown Act or Public Records Act.

4. Propose amendments to the City Council of this ordinance as needed.

5. Report to the City Council on any practical or policy problems encountered in the administration of this chapter.

**B. Enforcement.**

1. Upon the conclusion of the administrative review process, as implemented pursuant to subsection (A)(3) herein, any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce his or her rights under this chapter.

2. A court may award costs and reasonable attorneys' fees to the plaintiff in an action brought pursuant to this section where it is found that a local body has violated this ordinance. The costs and fees shall be paid by the local body and shall not become a personal liability of any public officer or employee of the local body.

3. If the litigation is judged to be frivolous by the court, the defendant local body may assert its right to be paid reasonable court costs and attorneys' fees.

**C. Mediation.**

1. Notwithstanding any other provision of law, any person whose request to inspect or copy public records has been denied by any local body, agency or department, may demand immediate mediation of his or her request with the Executive Director of the Public Ethics Commission, or some mutually agreed person who agrees to volunteer his or her time, serving as mediator.

2. Mediation shall commence no later than ten days after the request for mediation is made, unless the mediator determines the deadline to be impracticable. The local body, agency or department shall designate a representative to participate in the mediation. Nothing shall prevent the parties from mediating any dispute by telephone.

3. The mediator shall attempt to resolve the dispute to the mutual satisfaction of the parties. The mediator's recommendations shall not be binding on any party. All statements made during mediation shall not be used or considered for any purpose in any subsequent or related proceeding.

**D. Cure and Correction.**

1. Nothing in this ordinance shall prevent a local body from curing or correcting an action challenged on grounds that a local body violated any material provision of this chapter. A local body shall cure and correct an action by placing the challenged action on a subsequent meeting agenda for separate determinations of whether to cure and correct the challenged action and, if so, whether to affirm or supersede the challenged action after first taking any new public testimony.

2. In the event the Public Ethics Commission, upon the conclusion of a formal hearing conducted pursuant to its General Complaint Procedures, determines that a local body violated any material provision of this chapter, or took action upon an item for which the agenda related material was not timely filed pursuant to Section 2.20.080(H), the local body shall agendize for immediate determination whether to correct and cure the violation. Any violation shall have no effect on those actions described in Government Code Section 54960.1(d)(1)-(4), inclusive.

**E. Reports or Recommendations From Meetings Alleged To Have Been Held In Violation of this Chapter.**

If the sole purpose or nature of an action that is challenged for violation of this chapter is to make or convey an advisory report or recommendation to another local body, such local body shall not be precluded from hearing or taking action on the item if it is within the authority or jurisdiction for said local body to hear or take action on the item in the absence of such report or recommendation.

**F. Limitation of Actions.**

No person may file a complaint with the Public Ethics Commission alleging violation of the notice provisions of Section 2.20.080 if he or she attended the meeting or had actual notice of the item of business at least seventy-two (72) hours prior to the meeting at which the action was taken. No person may file a complaint with the Public Ethics Commission alleging violation of the notice provisions of Section 2.20.070 if he or she attended the meeting or had actual notice of the

item at least forty-eight (48) hours prior to the meeting at which the action was taken. No person may file a complaint with the Public Ethics Commission alleging the failure to permit the timely inspection or copying of a public record unless he or she has requested and participated in mediation as specified in Section 2.20.270(C).

(Ord. 12668 § 6, 2005; Ord. 12483 (part), 2003; Ord. 11957 § 00.28, 1997)

#### **2.20.280 Responsibility for administration.**

A. The City Manager shall administer and coordinate the implementation of the provisions of this chapter for all local bodies, agencies and departments under his or her authority, responsibility or control.

B. The City Manager shall provide the Public Ethics Commission with staff to permit the Public Ethics Commission to fulfill the functions and duties set forth herein. The City Attorney shall provide the Public Ethics Commission with legal assistance, to the extent such assistance does not constitute a conflict.

C. The Office of the City Clerk shall be responsible for timely posting all agendas and shall make available for immediate public inspection and copying all agendas and agenda-related material filed with it. The Office of the City Clerk shall retain copies of agenda-related materials filed with it by local bodies specified in Section 2.20.030(E)(2)(3) and (4) for a period of at least sixty (60) days following the meeting for which said agenda-related materials were submitted.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.29, 1997)

#### **2.20.290 Severability.**

The provisions of this chapter are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this chapter, or the invalidity of the application thereof to any person or circumstances, shall not affect the validity of the remainder of this chapter, or the validity of its application to other persons or circumstances.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.30, 1997)

#### **2.20.300 Effective date.**

The amendments herein shall become effective on May 1, 2003.

(Ord. 12483 (part), 2003; Ord. 11957 § 00.31, 1997)

## Chapter 2.24

### PUBLIC ETHICS COMMISSION

#### **Sections:**

- 2.24.010 Creation.**
- 2.24.020 Functions and duties.**
- 2.24.030 Authority.**
- 2.24.040 Composition—Terms of office.**
- 2.24.050 Qualifications.**
- 2.24.060 Election of chairperson and meetings.**
- 2.24.070 Rules, regulations and procedures.**
- 2.24.080 Staff assistance.**
- 2.24.090 Legal assistance.**
- 2.24.100 Protection against retaliation.**

#### **2.24.010 Creation.**

Oakland City Charter Section 202 has established the Public Ethics Commission.

(Ord. 11961 § 1, 1997)

#### **2.24.020 Functions and duties.**

It shall be the function and duty of the Public Ethics Commission, for and on behalf of the city, its elected officials, officers, employees, boards and commissions:

- A. Oversee compliance with the city Campaign Reform Ordinance.
- B. Oversee compliance with the city Code of Ethics.
- C. Oversee compliance with conflict of interest regulations as they pertain to city elected officials, officers, employees, and members of boards and commissions.
- D. Oversee the registration of lobbyists in the city should the City Council adopt legislation requiring the registration of lobbyists.
- E. Oversee compliance with any ordinance intended to supplement the Brown Act or Public Records Act.
- F. Review all policies and programs which relate to elections and campaigns in Oakland, and

report to the City Council regarding the impact of such policies and programs on city elections and campaigns.

G. Make recommendations to the City Council regarding amendments to the city Code of Ethics, Campaign Reform Ordinance, Conflict of Interest Code, any ordinance intended to supplement the Brown Act or Public Records Act, and lobbyist registration requirements should the City Council adopt lobbyist registration legislation, and submit a formal report to the City Council every two years concerning the effectiveness of all local regulations and local ordinances related to campaign financing, conflict of interest, lobbying, the Brown Act, the Public Records Act, and public ethics.

H. Set compensation for the office of City Councilmember which shall be reviewed by the Commission and adjusted as appropriate, in odd-numbered years. In 1997, the Commission shall first establish a base salary for the Office of Councilmember at a level which shall be the same or greater than that which is currently received. Thereafter, the Commission shall fix City Councilmember compensation at a level not to exceed ten percent above the base salary as adjusted.

I. Each year, and within the time period for submission of such information for the timely completion of the city's annual budget, provide the City Council with an assessment of the Commission's staffing and budgetary needs.

J. Make recommendations to the City Council regarding the imposition of fees to administer and enforce local ordinances and local regulations related to campaign financing, conflict of interest, registration of lobbyists, supplementation of the Brown Act and Public Records Act and public ethics.

K. Make recommendations to the City Council regarding the adoption of additional penalty provisions for violation of local ordinances and local regulations related to campaign financing, conflict of interest, registration of lobbyists, and public ethics.

L. Issue oral advice and formal written opinions, in consultation with the City Attorney when necessary, with respect to a person's duties pursuant to applicable campaign financing, conflict of interest, lobbying, and public ethics laws.

M. Prescribe forms for reports, statements, notices, and other documents related to campaign financing, conflict of interest, lobbying, and public ethics.

N. Develop campaign financing, conflict of interest, lobbying, Brown Act, Public Records Act and public ethics informational and training programs, including but not limited to:

1. Seminars, when appropriate, to familiarize newly elected and appointed officers and employees, candidates for elective office and their campaign treasurers, lobbyists, and government officials, with city, state and federal laws related to campaign financing, conflicts of interest, the Public Records Act, the Brown Act, lobbying, and public ethics.

2. Preparation and distribution of manuals to include summaries of ethics laws and reporting requirements applicable to city officers, members of boards and commissions, and city employees, methods of bookkeeping and records retention, instructions for completing required forms, questions and answers regarding common problems and situations, and information regarding sources of assistance in resolving questions. The manual shall be updated when necessary to reflect changes in applicable city, state and federal laws related to campaign financing, conflicts of interest, lobbying, and public ethics.

O. Perform such other functions and duties as may be prescribed by the Oakland Code of Ethics, conflict of interest regulations, ordinances as they may be adopted to supplement the Brown Act and the Public Records Act or to require the registration of lobbyists in the city and Campaign Reform Ordinance.

In prescribing the above duties and functions of the Commission, it is not the intent of the Council to duplicate or overlap the functions, duties, or responsibilities heretofore or hereafter assigned to

any other city board or commission or to a city department. As to such functions or responsibilities of another board or commission or of a department of the city, the Commission will render assistance and advice to such board, commission or department as may be necessary. Nothing in this section shall be construed to prevent city officers, employees, and elected or appointed officials from seeking advice directly from the City Attorney, or, when appropriate, the Fair Political Practices Commission, concerning regulations and ordinances related to campaign financing, conflicts of interest, lobbying, and public ethics.

(Ord. 11961 § 2, 1997)

#### **2.24.030 Authority.**

In furtherance of the above enumerated duties and functions, the Oakland Public Ethics Commission is authorized to:

A. Conduct investigations, audits and public hearings.

B. Issue subpoenas to compel the production of books, papers and documents and take testimony on any matter pending before the Commission. The Commission may find a person in contempt as provided by the general law of the state for failure or refusal to appear, testify, or to produce required books, papers and documents.

C. Impose penalties and fines as provided for by ordinance. The Commission's decision to impose penalties and fines for violation of any regulation or ordinance over which the Commission has authority shall be appealable to a mutually agreed upon arbitrator whose decision shall be final. The decision of the arbitrator is not appealable to the City Council.

(Ord. 11961 § 3, 1997)

#### **2.24.040 Composition—Terms of office.**

A. The Oakland Public Ethics Commission shall consist of seven members. The Commission shall be appointed as follows: Three members who represent local civic organizations with a demonstrated history of involvement in local governance issues shall be nominated for appointment by the

Mayor, with confirmation by the City Council, pursuant to Section 601 of the City Charter. Four members shall be appointed, following a public recruitment and application process by the unanimous vote of the three representatives appointed by the Mayor with confirmation by the City Council. The four members so appointed shall reflect the interests of the greater Oakland neighborhood and business communities. Commissioners shall serve without compensation. Prior to appointment of a Commission member or members, by the Mayor, each member of the City Council may provide the Mayor with a list of up to three individuals qualified by experience and background to serve on the Commission. In appointing members to the Commission, the Mayor shall consider the recommendations of the City Council.

B. Four members shall constitute a quorum.

C. Members of the Commission shall be appointed to overlapping terms, to commence upon date of appointment, except that an appointment to fill a vacancy shall be for the unexpired term only. Members of the Commission shall serve for a term of three years, except that for terms commencing immediately preceding adoption of the ordinance codified in this chapter, two members shall be appointed for a one-year term, two members shall be appointed for a two-year term, and three members shall be appointed for a three-year term. No member may serve more than one consecutive three-year term.

D. A vacancy on the Commission will exist whenever a member dies, resigns, or is removed, or whenever an appointee fails to be confirmed by the Council within fourteen (14) days of appointment. A vacancy shall be filled no sooner than thirty (30) days and no later than sixty (60) days from the date that such vacancy occurs. Any member of the City Council who chooses to recommend a person or persons to fill a vacancy of a position appointed by the Mayor and confirmed by the City Council pursuant to subsection A of this section shall forward such recommendation to the Mayor for consideration no later than thirty (30) days from the date that a vacancy occurs.

E. A member appointed by the Mayor may be removed pursuant to Section 601 of the Charter. A member appointed by the unanimous vote of the three members appointed by the Mayor and confirmed by the Council may be removed by the unanimous vote of the three members appointed by the Mayor and confirmed by the Council. Among other things, conviction of a felony, misconduct, incompetence, inattention to or inability to perform duties, or absence from three consecutive regular meetings except on account of illness or when absent from the city by permission of the Commission, shall constitute cause for removal.  
(Ord. 11961 § 4, 1997)

#### **2.24.050 Qualifications.**

Each member of the Commission shall be a resident of Oakland and registered to vote in Oakland elections. During his or her tenure, and for one year thereafter, no member of the Commission shall:

A. Be employed by the city or have any direct and substantial financial interest in any work or business or official action by the city.

B. Seek election to any other public office, or participate in or contribute to an Oakland municipal campaign.

C. Endorse, support, oppose, or work on behalf of any candidate or measure in an Oakland election.

(Ord. 11961 § 5, 1997)

#### **2.24.060 Election of chairperson and meetings.**

At the first regular meeting of each year the members shall elect a chairperson and a vice-chairperson. The Commission shall hold regular meetings at an established time and place suitable for its purpose. Other meetings scheduled for a time or place other than for regular meetings shall be designated special meetings. Written notice of special meetings shall be provided the members, the Council, and the public press at least seventy-two (72) hours before the meeting is scheduled to convene.

(Ord. 11961 § 6, 1997)

**2.24.070 Rules, regulations and procedures.**

The Commission shall establish rules, regulations and procedures for the conduct of its business by a majority vote of the members present. The Commission must vote to adopt any motion or resolution. The Commission shall transmit to the City Council any rules, regulations and procedures adopted by the Commission within seven calendar days of adoption. A rule, regulation or procedure adopted by the Commission shall become effective sixty (60) days after the date of adoption by the Commission unless before the expiration of this sixty (60) day period two-thirds of all the members of the City Council vote to veto the rule, regulation or procedure.

(Ord. 11961 § 7, 1997)

ence to discourage, restrain or interfere with any other person for the purpose of preventing such person from acting in good faith to report or otherwise bring to the attention of the Commission or other appropriate agency, office or department, information regarding the violation of any regulation or ordinance over which the Commission has authority.

(Ord. 11961 § 10, 1997)

**2.24.080 Staff assistance.**

The City Manager, or designees thereof, shall provide the Commission with staff assistance as necessary to permit the Commission to fulfill the functions and duties as set forth above.

(Ord. 12101, 1998; Ord. 11961 § 8, 1997)

**2.24.090 Legal assistance.**

The City Attorney is the Commission's legal advisor. The City Attorney shall provide the Commission with legal assistance, to the extent such assistance does not constitute a conflict. In the event of a conflict, the City Attorney shall retain outside counsel.

(Ord. 11961 § 9, 1997)

**2.24.100 Protection against retaliation.**

A. No officer or employee of the city shall use or threaten to use any official authority or influence to effect any action as a reprisal against a city officer or employee for acting in good faith to report or otherwise bring to the attention of the Commission or other appropriate agency, office or department, information regarding the violation of any regulation or ordinance over which the Commission has authority.

B. No officer or employee of the city shall use or threaten to use any official authority or influ-

## Chapter 2.28

### LIVING WAGE ORDINANCE

**Sections:**

- 2.28.010 Title and purpose.**
- 2.28.020 Definitions.**
- 2.28.030 Payment of minimum compensation to employees.**
- 2.28.040 Duration of requirements.**
- 2.28.050 Notifying employees of their potential right to the federal earned income credit.**
- 2.28.060 Contract review process and city reporting and record keeping.**
- 2.28.070 Noncompliance review and appeal.**
- 2.28.080 Waivers.**
- 2.28.090 Exemptions.**
- 2.28.100 RFP, contract and financial assistance agreement language.**
- 2.28.110 Obligations of contractors and financial assistance recipients.**
- 2.28.120 Retaliation and discrimination barred.**
- 2.28.130 Monitoring, investigation and compliance.**
- 2.28.140 Employee complaint process.**
- 2.28.150 Private right of action.**
- 2.28.160 Collective bargaining agreement supersession.**
- 2.28.170 Expenditures covered by this article.**
- 2.28.180 Ordinance applicable to new contracts and city financial assistance.**
- 2.28.190 Implementing regulations.**

**2.28.010 Title and purpose.**

This chapter shall be known as the "Oakland living wage ordinance." The purpose of this chapter is to require that nothing less than a prescribed

minimum level of compensation (a living wage) be paid to employees of service contractors of the city and employees of CFARs.

(Ord. 12050 § 1, 1998)

**2.28.020 Definitions.**

The following definitions shall apply throughout this chapter:

"Agency" means that subordinate or component entity or person of the city (such as a department, office, or agency) that is responsible for solicitation of proposals or bids and responsible for the administration of service contracts or financial assistance agreements.

"City" means the city of Oakland and all city agencies, departments and offices.

"City financial assistance recipient" (CFAR) means any person who receives from the city financial assistance as contrasted with generalized financial assistance such as through tax legislation, in an amount of one hundred thousand dollars (\$100,000.00) or more in a twelve (12) month period.

1. Categories of such assistance include, but are not limited to, grants, rent subsidies, bond financing, financial planning, tax increment financing, land writedowns, and tax credits. City staff assistance shall not be regarded as financial assistance for purposes of this article. The forgiveness of a loan shall be regarded as financial assistance, and a loan provided at below market interest rate shall be regarded as financial assistance to the extent of any differential between the amount of the loan and the present value of the payments thereunder, discounted over the life of the loan by the applicable federal rate as used in 26 U.S.C. Sections 1274(d), 7872(f).

2. A tenant or leaseholder of a CFAR who occupies property or uses equipment or property that is improved or developed as a result of the assistance awarded to the CFAR and who will employ at least twenty (20) employees for each working day in each of twenty (20) or more calendar weeks in the twelve (12) months after occupying or using such property, shall be considered a

"city financial assistance recipient" for the purposes of this chapter and shall be covered for the same period as the CFAR of which they are a tenant or leaseholder.

"Contractor" means any person that enters into a service contract with the city in an amount equal to or greater than twenty-five thousand dollars (\$25,000.00).

"Employee" means any person who is employed (1) as a service employee of a contractor or subcontractor under the authority of one or more service contracts and who expends any of his or her time thereon, including but not limited to: hotel employees, restaurant, food service or banquet employees; janitorial employees; security guards; parking attendants; health care employees; gardeners; waste management employees; and clerical employees; or (2) by a CFAR and who expends at least half of his or her time on the funded project/program or property which is the subject of city financial assistance, or (3) by a service contractor of a CFAR and who expends at least half of his or her time on the premises of the CFAR and is directly involved with the funded project/program or property which is the subject of city financial assistance. Any person who is a managerial, supervisory or confidential employee is not an employee for purposes of this definition.

"Employer" means any person who is a city financial assistance recipient, contractor, or subcontractor.

"Person" means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into contracts.

"Service contract" means (1) a contract let to a contractor by the city for the furnishing of services, to or for the city, except contracts where services are incidental to the delivery of products, equipment or commodities, and that involves an expenditure equal to or greater than twenty-five thousand dollars (\$25,000.00), or (2) a lease or license under which services contracts are let by the lessee or licensee. A contract for the purchase

or lease of goods, products, equipment, supplies or other property is not a "service contract" for the purposes of this definition.

"Subcontractor" means any person who enters into a contract with (1) a contractor to assist the contractor in performing a service contract or (2) a CFAR to assist the recipient in performing the work for which the assistance is being given or to perform services on the property which is the subject of city financial assistance. Service contractors of CFARs shall not be regarded as subcontractors except to the extent provided by the definition of "employee" in this section.

"Trainee" means a person enrolled in a job training program which meets the city job training standards.

(Ord. 12050 § 2, 1998)

## **2.28.030 Payment of minimum compensation to employees.**

A. Wages. Employers shall pay employees a wage to each employee of no less than the hourly rates set under the authority of this chapter. The initial rate shall be eight dollars (\$8.00) per hour worked with health benefits, as described in this chapter, or otherwise nine dollars and twenty-five cents (\$9.25) per hour. Such rate shall be upwardly adjusted annually, no later than April 1st in proportion to the increase immediately preceding December 31st over the year earlier level of the Bay Region Consumer Price Index as published by the Bureau of Labor Statistics, U.S. Department of Labor, applied to nine dollars and twenty-five cents (\$9.25). The city shall publish a bulletin by April 1st of each year announcing the adjusted rates, which shall take effect upon such publication. Such bulletin will be distributed to all city agencies, departments and offices, city contractors and CFARs upon publication. The contractor shall provide written notification of the rate adjustments to each of its employees and to its subcontractors, who shall provide written notices to each of their employees, if any, and make the necessary payroll adjustments by July 1st.

B. 1. Compensated Days Off. Employers shall provide at least twelve (12) days off per year for sick leave, vacation, or personal necessity at the employee's request. Employees shall accrue one compensated day off per month of full-time employment. Part-time employees shall accrue compensated days off in increments proportional to that accrued by full-time employees. The employees shall be eligible to use accrued days off after the first six months of employment or consistent with company policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required twelve (12) compensated days off.

2. Employers shall also permit employees to take at least an additional ten days a year of uncompensated time to be used for sick leave for the illness of the employee or a member of his or her immediate family where the employee has exhausted his or her compensated days off for that year. This chapter does not mandate the accrual from year to year of uncompensated days off.

C. Health Benefits. Health benefits required by this chapter shall consist of the payment of at least one dollar and twenty five-cents (\$1.25) per hour towards the provision of health care benefits for employees and their dependents. Proof of the provision of such benefits must be submitted to the agency not later than thirty (30) days after execution of the contract to qualify for the wage rate in subsection (A) of this section for employees with health benefits.

(Ord. 12050 § 3, 1998)

#### **2.28.040 Duration of requirements.**

A. For CFARs, assistance given in an amount equal to or greater than one hundred thousand dollars (\$100,000.00) in any twelve (12) month period shall require compliance with this chapter for the life of the contract in the case of assistance given to fund a program or five years in the case of assistance given to purchase real property, tangible property or construct facilities, including but not limited to materials, equipment, fixtures, merchandise, machinery or the like.

B. A service contractor and subcontractor shall be required to comply with this chapter for the term of the contract.

(Ord. 12050 § 4, 1998)

#### **2.28.050 Notifying employees of their potential right to the federal earned income credit.**

Employers shall inform employees making less than twelve dollars (\$12.00) per hour of their possible right to the federal Earned Income Credit ("EIC") under Section 32 of the Internal Revenue Code of 1954, 26 U.S.C. Section 32, and shall make available to employees forms informing them about the EIC and forms required to secure advance EIC payments from the employer. These forms shall be provided to the eligible employees in English, Spanish and other languages spoken by a significant number of the employees within thirty (30) days of employment under the terms of this chapter and as required by the Internal Revenue Code.

(Ord. 12050 § 5, 1998)

#### **2.28.060 Contract review process and city reporting and record keeping.**

A. The City Manager shall promulgate rules and regulations for the preparation of bid specifications, contracts and preparation for contract negotiations.

B. The City Manager shall submit periodic reports to the City Council which shall include the following information at minimum:

1. A listing and the status of all RFPs and RFQs, service contracts and lease agreements executed and financial assistance awarded, to which this chapter applies including the term, dollar amount and the service performed or assistance provided;

2. A description of every instance where an exemption or waiver was granted by action of the City Council.

C. The City Manager shall develop an administrative procedure and appeal process for determining compliance with this chapter.

1. Regarding the appeal process, it shall be available to every bidder/proposer who has been

deemed noncompliant with this chapter, or who disputes the determination of applicability of this chapter to its business operation which will be involved in the proposed contract. A contract shall not be executed until there is resolution of the relevant appeal.

2. Appeals shall be filed with the City Manager within seven calendar days of the date of the notice of the city's written determination of non-compliance and reasons therefor, or written determination of the applicability of this chapter.

3. The City Manager shall maintain records pertaining to all complaints, hearings, determinations and findings, and shall submit a regular report on compliance with this chapter no less than annually to the City Council. Special reports and recommendations on significant issues of interest to the Council will be submitted as deemed appropriate.

(Ord. 12050 § 6, 1998)

#### **2.28.070 Noncompliance review and appeal.**

Contractors, subcontractors and CFARs who fail to submit documents, declarations or information required to demonstrate compliance with this chapter shall be deemed nonresponsive and subject to disqualification.

(Ord. 12050 § 7, 1998)

#### **2.28.080 Waivers.**

A. A CFAR who contends it is unable to pay all or part of the living wage must provide a detailed explanation in writing to the City Manager who may recommend a waiver to the City Council. The explanation must set forth the reasons for its inability to comply with the provisions of this chapter, including a complete cost accounting for the proposed work to be performed with the financial assistance sought, including wages and benefits to be paid all employees, as well as an itemization of the wage and benefits paid to the five highest paid individuals employed by the CFAR. The CFAR must also demonstrate that the waiver will further the interests of the city in creating training positions which will enable employees to

advance into permanent living wage jobs or better and will not be used to replace or displace existing positions or employees or to lower the wages of current employees.

B. The City Council will grant a waiver only upon a finding and determination that the CFAR has demonstrated economic hardship and that waiver will further the interests of the city in providing training positions which will enable employees to advance into permanent living wage jobs or better. However, no waiver will be granted if the effect of the waiver is to replace or displace existing positions or employees or to lower the wages of current employees.

C. Waivers from the chapter are disfavored, and will be granted only where the balance of competing interests weighs clearly in favor of granting the waiver. If waivers are to be granted, partial waivers are favored over blanket waivers. Moreover, any waiver shall be granted for no more than one year. At the end of the year the CFAR may reapply for a new waiver which may be granted subject to the same criteria for granting the initial waiver.

D. The City Council reserves the right to waive the requirements of this chapter upon a finding and determination of the City Council that waiver is in the best interests of the city, e.g. when the city has declared an emergency due to natural disasters and needs immediate services.

(Ord. 12050 § 8, 1998)

#### **2.28.090 Exemptions.**

A. A recipient shall be exempted from application of this article if (1) it employs fewer than five employees for each working day in each of twenty (20) or more calendar weeks in the current or preceding calendar year, or (2) it obtains a waiver as provided herein.

B. An employee who is a trainee in a job training program which meets the city job training standards shall be exempt for the period of training as specified under the city-approved training standards.

C. An employee who is under twenty-one (21) years of age, employed by a nonprofit corporation for after school or summer employment or as a trainee for a period not longer than ninety (90) days, shall be exempt.

(Ord. 12050 § 9, 1998)

#### **2.28.100 RFP, contract and financial assistance agreement language.**

All RFPs, city contracts and financial assistance agreements subject to this chapter shall contain the following two paragraphs or substantially equivalent language:

A. This contract is subject to the Living Wage Ordinance, of the Oakland Municipal Code. The Ordinance requires that, unless specific exemptions apply or a waiver is granted, all employers (as defined) under service contracts and recipients of City financial assistance, (as defined) shall provide payment of a minimum wage to employees (as defined) of \$8.00 per hour with health benefits of at least \$1.25 per hour or otherwise \$9.25 per hour. Such rate shall be adjusted annually pursuant to the terms of the Oakland Living Wage Ordinance, of the Oakland Municipal Code.

B. Under the provisions of the Living Wage Ordinance, the City shall have the authority, under appropriate circumstances, to terminate this contract and to seek other remedies as set forth therein, for violations of the Ordinance.

(Ord. 12050 § 10, 1998)

#### **2.28.110 Obligations of contractors and financial assistance recipients.**

A. All proposed contractors and CFARs subject to the provisions of this chapter shall submit a completed declaration of compliance form, signed by an authorized representative, along with each proposal. The completed declaration of compliance form shall be made a part of the executed contract.

B. Contractors and CFARs shall require their subcontractors and tenants/leaseholders to comply with the provisions of this chapter. Language indicating the subcontractor's or tenants/leaseholders agreement to comply shall be included in the contract between the contractor and subcontractor or any agreement between a CFAR and tenants/lease-holders. A copy of such subcontracts or other such agreements shall be submitted to the city.

C. Contractors, subcontractors and CFARs shall maintain a listing of the name, address, date of hire, occupation classification, rate of pay and benefits paid for each of its employees, if any, and submit a copy of the list to the city by March 31st, June 30th, September 30th, and December 31st of each year the contract is in effect. Failure to provide this list within five days of the due date will result in a penalty of five hundred dollars (\$500.00) per day. Contractors, subcontractors and CFARs shall maintain payrolls for all employees and basic records relating thereto and shall preserve them for a period of three years after termination of their contracts.

D. Contractors, subcontractors and CFARs shall give written notification to each current and new employee, at time of hire, of his or her rights to receive the benefits under the provisions of this chapter. The notification shall be provided in English, Spanish and other languages spoken by a significant number of the employees, and shall be posted prominently in communal areas at the work site. A copy of such notification shall be forwarded to the city which must include the following:

1. Minimum Compensation. The initial rates of eight dollars (\$8.00) with health benefits or nine dollars and twenty-five cents (\$9.25) without health benefits will be adjusted annually to correspond to adjustments, if any. The living wage shall be upwardly adjusted each year no later than April 1st in proportion to the increase at the immediately preceding December 31st over the year earlier level of the Bay Region Consumer Price Index

as published by the Bureau of Labor Statistics, U.S. Department of Labor, applied to nine dollars and twenty-five cents (\$9.25).

2. Health Benefits. Proof of the provision of such benefits shall be submitted to the city not later than thirty (30) days after execution of the contract to qualify for the wage rate in Section 2.28.030. Health benefits shall be provided to part-time employees as well as full-time employees.

3. Twelve compensated days off per year for sick leave, vacation or personal necessity at the employee's request, and ten uncompensated days off per year for sick leave which shall be made available to all covered employees as provided in this chapter. Employees shall accrue one compensated day off per month of full time employment. Part-time employees shall accrue compensated days off in increments proportional to that accrued by full-time employees. The employees shall be eligible to use accrued days off after the first six months of employment or consistent with company policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required twelve (12) compensated days off. Ten uncompensated days off shall be made available, as needed, for personal or immediate family illness after the employee has exhausted his or her accrued compensated days off for that year. This chapter does not mandate the accrual from year to year of uncompensated days off.

4. Federal Earned Income Credit (EIC). Forms to inform employees earning less than twelve dollars (\$12.00) per hour of their possible right to EIC and forms to secure advance EIC payments from the employer shall be provided to the eligible employees in English, Spanish and other languages spoken by a significant number of the employees within thirty (30) days of employment under the subject agreement.

5. Notice that the employers are required to file a declaration of compliance form as part of the contract with the city and that the city will make such declarations available for public inspection and copying during its regular business hours.

E. Contractors, CFARs and subcontractors shall permit access to work sites and relevant payroll records for authorized city representatives for the purpose of monitoring compliance with this chapter, investigating employee complaints of non-compliance and evaluating the operation and effects of this chapter, including the production for inspection and copying of its payroll records for any or all of its employees for the term of the contract or for five years whichever period of compliance is applicable.

(Ord. 12050 § 11, 1998)

## **2.28.120      Retaliation and discrimination barred.**

Contractors, subcontractors and CFARs shall not discharge, reduce the compensation of or otherwise discriminate against any employee for making a complaint to the city, participating in any of its proceedings, using any civil remedies to enforce his or her rights, or otherwise asserting his or her rights under this chapter. Contractors, subcontractors and CFARs shall also be in compliance with federal law proscribing retaliation for union organizing.

(Ord. 12050 § 12, 1998)

## **2.28.130      Monitoring, investigation and compliance.**

The provisions of this chapter will augment the city's normal and customary procedure for administering its contracts. The city shall administer the requirements of this chapter as follows:

A. The City Manager shall develop rules and regulations to review contract documents to insure that relevant language and information are included in city RFP's, agreements and other relevant documents.

B. The City Manager shall develop rules and regulations for the monitoring of the operations of the contractors, subcontractors and financial assistance recipients to insure compliance including the review, investigation and resolution of specific concerns or complaints about the employment practices of a contractor, subcontractor or

CFAR relative to this chapter. In such cases, the city will attempt to resolve the problem within thirty (30) days.

C. Where a violation of any provision of this chapter has been determined, the contractor will be given a written notice by the city per the rules and regulations promulgated by the City Manager. Should the violation continue and/or no resolution is imminent, the city shall pursue all available legal remedies, including but not limited to any or all of the following penalties and relief:

1. Suspension and/or termination of the contract, subcontract or financial assistance agreement for cause;
2. Payback of any or all of the contract or financial assistance awarded by the city;
3. Deem the contractor or CFAR ineligible for future city contracts and/or financial assistance until all penalties and restitution have been paid in full;
4. A fine payable to the city in the sum of five hundred dollars (\$500.00) for each week for each employee found not to have been paid in accordance with this chapter;
5. Wage restitution for each affected employee.

E. The City Attorney shall promulgate procedures for legal enforcement of the requirements of this chapter.

(Ord. 12050 § 13, 1998)

#### **2.28.140 Employee complaint process.**

An employee who alleges violation of any provision of this chapter may report such acts to the city and, at the employee's discretion, exhaust available employer internal remedies. The complaint to the city shall be handled as follows:

A. The employee shall submit to the city a completed complaint form and copies of all documents supporting the allegation. The city shall provide the complaint forms in English and Spanish.

B. The city shall notify the agency and the employer of the complaint and seek resolution within five days from receipt of the complaint

form. If resolution is not accomplished, the city shall initiate an investigation and seek legal remedies, if appropriate.

C. An employee claiming retaliation (such as, termination, reduction in wages or benefits or adverse changes in working conditions) for alleging noncompliance with this chapter may report the alleged retaliation in the same manner as the initial complaint.

D. The complainant's or witness' identity will not be divulged to the employer without the individual employee's written consent.

(Ord. 12050 § 14, 1998)

#### **2.28.150 Private right of action.**

A. An employee claiming violation of this article may bring an action in the Municipal Court or Superior Court of the State of California, as appropriate, against an employer and may be awarded:

1. For failure to pay the living wage, back pay for each day during which the violation continued;
2. For any violation of this chapter, including retaliation for exercising rights provided hereunder, the Court may award any appropriate remedy at law or equity, including but not limited to reinstatement, compensatory damages and punitive damages.

B. The Court shall award reasonable attorney's fees and costs to an employee who prevails in any such enforcement action.

C. Notwithstanding any provision of this code or any other ordinance to the contrary, no criminal penalties shall attach for any violation of this article.

D. No remedy set forth in this chapter is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights hereunder in a court of law. This chapter shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination.

(Ord. 12050 § 15, 1998)

**2.28.160      Collective bargaining agreement supersession.**

All of the provisions of this chapter, or any part hereof, may be waived in a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in such agreement in clear and unambiguous terms.

(Ord. 12050 § 16, 1998)

**2.28.170      Expenditures covered by this article.**

This chapter shall apply to the expenditure whether through aid to financial assistance recipients, service contracts let by its financial assistance recipients of funds entirely within the city's control and to other funds, such as federal or state grant funds, where the application of this chapter is consonant with the laws authorizing the city to expend such other funds.

(Ord. 12050 § 17, 1998)

**2.28.180      Ordinance applicable to new contracts and city financial assistance.**

The provisions of this chapter shall apply to (a) a contract entered into and financial assistance provided after the effective date of the ordinance codified in this chapter; (b) a contract amendment consummated after the effective date of the ordinance codified in this chapter which itself meets the financial threshold requirement of this chapter and (c) supplemental financial assistance provided for after the effective date of this chapter which itself meets the requirements of this chapter.

(Ord. 12050 § 18, 1998)

**2.28.190      Implementing regulations.**

All implementing rules, regulations, and procedures promulgated by the City Manager or his designee shall be presented to the City Council for approval within sixty (60) days of adoption of the ordinance codified in this chapter.

(Ord. 12050 § 19, 1998)

## **Chapter 2.29**

### **CITY AGENCIES, DEPARTMENTS AND OFFICES**

#### **Sections:**

- 2.29.010 Purpose.**
- 2.29.020 Police Services Agency.**
- 2.29.030 Fire Services Agency.**
- 2.29.040 Finance and Management Agency.**
- 2.29.050 Public Works Agency.**
- 2.29.070 Community and Economic Development Agency.**
- 2.29.080 Administrative departments.**
- 2.29.090 Office of the City Administrator.**
- 2.29.100 Preservation of City Charter Offices.**

#### **2.29.010 Purpose.**

The rendition of efficient and effective services in the City is best accomplished through the establishment of departments and agencies, each of which shall function under the leadership of a single Director and shall consist of divisions. Director of any agency, department or division shall serve as "department head" within the meaning of Article IX of the City Charter.

(Ord. No. 13077, § 3, 7-19-2011; Ord. No. 12947, § 3, 6-30-2009; Ord. 12815 § 3 (part), 2007: Ord. 12186 (part), 1999)

#### **2.29.020 Police Services Agency.**

There is established in the City government a Police Services Agency which shall be under the supervision and administrative control of the City Administrator. The powers, functions and duties of said agency shall be those assigned, authorized and directed by the City Administrator. The management and operation of the Police Services Agency shall be the responsibility of the Chief of the Police Services Agency who shall serve as Director of said agency, subject to the direction of the City Administrator. In the Police Services

Agency there shall be the following divisions: Field Operations, Investigations, Services and Administration.

(Ord. No. 13077, § 3, 7-19-2011; Ord. No. 12947, § 3, 6-30-2009; Ord. 12815 § 3 (part), 2007: Ord. 12186 (part), 1999)

#### **2.29.030 Fire Services Agency.**

There is established in the City government a Fire Services Agency which shall be under the supervision and administrative control of the City Administrator. The powers, functions and duties of said agency shall be those assigned, authorized and directed by the City Administrator. The management and operation of the Fire Services Agency shall be the responsibility of the Chief of the Fire Services Agency who shall serve as Director of said agency, subject to the direction of the City Administrator. In the Fire Services Agency there shall be the following divisions: Administration, Field Operations/Suppression, Fire Prevention and Communication, Special Operations, Budget and Planning, Personnel, Safety and Liability, Emergency Medical Services, Training, and Office of Emergency Services.

(Ord. No. 13077, § 3, 7-19-2011; Ord. 12815 § 3 (part), 2007: Ord. 12186 (part), 1999)

#### **2.29.040 Finance and Management Agency.**

There is established in the City government a Finance and Management Agency which shall be under the supervision and administrative control of the City Administrator. The powers, functions and duties of said agency shall be those assigned, authorized and directed by the City Administrator. The management and operation of the Finance and Management Agency shall be the responsibility of the Director of the Finance and Management Agency, subject to the direction of the City Administrator. In the Finance and Management Agency there are the following divisions: Administration, Treasury, Controller Risk Management and Revenue.

(Ord. No. 13077, § 3, 7-19-2011; Ord. No. 12947, § 3, 6-30-2009; Ord. 12815 § 3 (part), 2007: Ord. 12186 (part), 1999)

**2.29.050 Public Works Agency.**

There is established in the City government a Public Works Agency which shall be under the supervision and administrative control of the City Administrator. The powers, functions, and duties of said agency shall be those assigned, authorized and directed by the City Administrator. The management and operation of the Public Works Agency shall be the responsibility of the Director of the Public Works Agency, subject to the direction of the City Administrator. In the Public Works Agency there shall be the following divisions: Administration, Infrastructure and Operations, and Facilities and Environment.

(Ord. No. 13077, § 3, 7-19-2011; Ord. No. 13013, § 2, 5-18-2010; Ord. 12815 § 3 (part), 2007; Ord. 12186 (part), 1999)

**2.29.070 Community and Economic Development Agency.**

There is established in the City government a Community and Economic Development Agency which shall be under the supervision and administrative control of the City Administrator. The powers, functions and duties of said agency shall be those assigned, authorized and directed by the City Administrator. The management and operation of the Community and Economic Development Agency shall be the responsibility of the Director, subject to the direction of the City Administrator. In the Community and Economic Development Agency there shall be the following divisions: Administration, Planning and Zoning, Building Services, Economic Development, Redevelopment, Engineering, Planning and Design, Marketing and Housing and Community Development.

(Ord. No. 13077, § 3, 7-19-2011; Ord. No. 13013, § 2, 5-18-2010; Ord. No. 12947, § 3, 6-30-2009; Ord. 12815 § 3 (part), 2007; Ord. 12186 (part), 1999)

**2.29.080 Administrative departments.**

There is established in the City government several administrative departments which shall be

under the supervision and administrative control of the City Administrator. The powers, functions and duties of said departments shall be those assigned, authorized and directed by the City Administrator subject to Article IX of the City Charter. The management and operation of the departments shall be the responsibility of the directors of said departments, subject to the direction of the City Administrator. The administrative departments shall be the following: Department of Information Technology, Department of Personnel, Department of Parks and Recreation, Department of Library Services, and Department of Human Services.

(Ord. No. 13077, § 3, 7-19-2011; Ord. No. 12947, § 3, 6-30-2009; Ord. 12815 § 3 (part), 2007; Ord. 12186 (part), 1999)

**2.29.090 Office of the City Administrator.**

There is established in the City government an Office of the City Administrator to assist in the operation and execution of functions as described in the City Charter under Articles IV, V, VI, VIII and IX. There shall be in the Office of the City Administrator the following divisions: Administration, Budget, Research and Analysis, Contracts and Compliance, Americans with Disabilities Act Programs, Citizens' Police Review Board, Equal Access, Equal Opportunity Programs, and Public Ethics Commission.

(Ord. No. 13077, § 3, 7-19-2011; Ord. No. 12947, § 3, 6-30-2009; Ord. 12815 § 3 (part), 2007; Ord. 12186 (part), 1999)

**2.29.100 Preservation of City Charter Offices.**

Consistent with the Oakland City Charter and to assist in the operation and execution of functions described therein, there shall be an Office of the Mayor, Office of the City Council, Office of the City Attorney, Office of the City Auditor, and Office of the City Clerk.

(Ord. 12186 (part), 1999)

## Chapter 2.30

### EQUAL ACCESS TO SERVICES

**Sections:**

- 2.30.010 Title.**
- 2.30.020 Definitions.**
- 2.30.030 Equal access to services.**
- 2.30.040 Bilingual staffing.**
- 2.30.050 Translation of materials.**
- 2.30.060 Dissemination of translated materials from state and federal government.**
- 2.30.070 Public meetings and hearings.**
- 2.30.080 Recorded telephonic messages.**
- 2.30.090 Complaint procedures.**
- 2.30.100 Compliance plan.**
- 2.30.120 Recruitment.**
- 2.30.130 Monitoring and structure.**
- 2.30.140 Rules and regulations.**
- 2.30.150 Enforcement.**
- 2.30.160 Severability.**

**2.30.010 Title.**

This chapter shall be known as the Equal Access to Services Ordinance.  
 (Ord. 12324 § 2 (part), 2001)

**2.30.020 Definitions.**

As used in this chapter, the following terms shall have the following meanings:

"Agency" shall mean any of the following: Community and Economic Development Agency, Financial Services Agency, Fire Services Agency, Life Enrichment Agency, Police Services Agency, Public Works Agency, Office of Retirement and Risk Assessment, Office of Personnel Resource Management, Office of Information Technology, Office of Arts and Cultural Affairs, Office of the City Attorney, Office of the City Auditor, Office of the City Clerk, Office of the City Council,

Office of the City Manager, Office of the Mayor, Port of Oakland and such other agencies as the City Manager may designate.

"Bilingual employee" shall mean a city employee who is proficient in the English language and a language other than English that is spoken by not less than ten thousand (10,000) limited-English-speaking-persons who are Oakland residents.

"City" shall mean the city of Oakland.

"Departments" shall mean both Tier 1 departments and Tier 2 departments.

"Limited-English-speaking person" shall mean an individual who does not speak English well or is otherwise unable to communicate effectively in English because English is not the individual's primary language.

"Phase 1" shall mean during fiscal year 2001-2002.

"Phase 2" shall mean during fiscal year 2002-2003.

"Public contact position" shall mean a position, whether of a clerical, service, professional or sworn nature, that emphasizes greeting, meeting, contact, or provision of information and/or services to the public in the performance of the duties of that position.

"Substantial number of limited-English-speaking persons group" or "group" shall mean at least ten thousand (10,000) limited-English-speaking city residents who speak a shared language other than English. The city planning department shall determine annually whether at least ten thousand (10,000) limited-English-speaking city residents speak a shared language other than English by referring to the best available data from the United States Census Bureau or another reliable source and shall certify its determination to the City Manager no later than December 1st of each year.

"Sufficient bilingual employees" shall mean the number of employees required to provide the same level of services to limited-English-speaking persons as is available to English-speaking persons seeking any city services.

"Tier 1 departments" shall mean the following city departments, divisions, or agencies: Office of the City Attorney-Claims Division; Office of the City Clerk; City Council Reception Desk; Mayor's Office Reception Desk; Oaklanders Assistance Center; Office of Personnel Resources Management; Inspection Services/Code Enforcement (Blight Abatement); Building Permit Processing; Zoning Counter; One Stop Capital Shop; Residential Lending; Rent Arbitration; Neighborhood Commercial Revitalization; Parking Citation; Business License/Tax; Fire Services-Inspections Unit; Fire Services-911 Dispatch; Firehouses; Life Enrichment Agency-Administrative Office; Recreation Centers; Senior Centers; Head Start; Library Services; Police Services-Internal Affairs; Police Beats; Abandoned Car Removal; Neighborhood Services Coordinators; Community Policing; Police Services-911 Dispatch; Police Services-Records Division; Police Services-Patrol Desk; Police Services-Traffic Division; Animal Control; Public Works Agency-Administration; Illegal Dumping Hotline; Garbage Services; Street Lighting Repair; Street Sweeping; Traffic Engineering, and such other departments as the City Manager may designate.

"Tier 2 departments" shall mean all city agencies, departments, or divisions not specified as Tier 1 departments that furnish information or provide services to the public and consist of at least fifteen (15) full-time city employees.

(Ord. 12324 § 2 (part), 2001)

### **2.30.030 Equal access to services.**

A. Utilizing sufficient bilingual employees in public contact positions, departments shall provide information and services to the public in each language spoken by the substantial number of limited-English-speaking persons group(s). Departments comply with their obligations under this section if they provide the same level of service to members of the substantial number of limited-English-speaking persons group(s) as they provide English speakers.

B. Nothing in this section shall be construed to authorize or require the termination, demotion, or transfer of any city employee in order to carry out this chapter.

C. This article shall be interpreted and applied so as to be consistent with Title VII of the Civil Rights Act of 1964, California's Fair Employment and Housing Act, Americans with Disabilities Act, and any article of the city Charter and so as not to impede or impair the city's obligations to comply with any court order or consent decree.

(Ord. 12324 § 2 (part), 2001)

### **2.30.040 Bilingual staffing.**

A. During phase I, Tier 1 departments will hire a sufficient number of bilingual employees in public contact positions so as to adequately serve members of the substantial number of limited-English-speaking persons group(s) in the city. The City Manager will determine the adequacy of service to members of the group(s) upon review of each department's compliance plan.

B. Senior Centers, Recreation Centers and Neighborhood Services Coordinator positions located in areas with a significant concentration of a substantial number of limited-English-speaking persons group(s) shall be staffed by a sufficient number of bilingual employees. Firehouses and police beats located in areas with a significant concentration of a substantial number of limited-English-speaking persons group(s) shall be staffed by a sufficient number of bilingual officers and firefighters.

C. During phase II, Tier 2 departments will hire a sufficient number of bilingual employees in public contact positions so as to adequately serve members of the substantial number of limited-English-speaking persons group(s) in the city. The City Manager will determine the adequacy of service to members of the group(s) upon review of each department's compliance plan.

D. Upon passage of the ordinance codified in this chapter, all new hires for vacant public contact positions in Tier One or Tier Two shall be reviewed and approved by the City Manager until a compliance plan is submitted to and approved by the City Council. The plan will be presented to the Finance and Management Committee of the City

Council, or such other committee as the Council may hereafter designate, before it is forwarded to the full City Council for approval.

E. Notwithstanding any other provision hereof, in carrying out this chapter, sufficient bilingual employees will be hired in accordance with compliance plans and meet and confer obligations into current and future vacancies for public contact positions.

F. The city will comply with any meet and confer obligations with unions representing city employees.

(Ord. 12324 § 2 (part), 2001)

#### **2.30.050 Translation of materials.**

A. The City Manager shall establish an in-house translation service with court certified or American Translators Association accredited translators for the purpose of translating written materials for city departments and providing translations for public meetings as needed or professional services may be contracted out to an accredited translation contractor.

B. Tier 1 departments shall translate the following written materials that provide vital information to the public about the department's services or programs into the language(s) spoken by the substantial number of limited-English-speaking persons group(s):

1. Written materials disseminated to the public including, but not limited to, brochures, outreach materials and;

2. Applications or forms to participate in a department's program or activity or to receive its benefits or services;

3. Written notices of fines or rights to, determination of eligibility of, award of, denial of, loss of, or decrease in a benefit, city service or program, including the right to appeal any department's decision;

4. Written tests that do not assess English-language competency, but test competency for a particular license or skill for which knowledge of written English is not required;

5. Notices advising limited English-proficient persons of free language assistance;

6. Materials explaining a department's services or programs;

7. Complaint forms; or

8. Any other written documents that have the potential for determining eligibility for, or access to, services from, or participating in, a program of a city department.

C. Tier 2 departments shall translate all publicly posted documents that provide information (1) regarding department services or programs, or (2) affecting a person's rights to, determination of eligibility of, award of, denial of, loss of, or decreases in benefits or services into language(s) spoken by the substantial number of limited-English-speaking persons group(s).

D. Departments required to translate materials under the provisions of this section shall post notices in the public areas of their facilities in the languages of the substantial number of limited-English-speaking persons group(s) indicating that written materials in the languages, and staff who speak the languages, are available. The notices shall be posted prominently and shall be readily visible to the public.

E. Departments required to translate materials under the provisions of this section shall ensure that their translations are made by a certified translator and that materials are accurate and appropriate for the target audience. Translations should match literacy levels of the target audience. Departments are encouraged to solicit feedback on the accuracy and appropriateness of translations from bilingual staff at community groups whose clients receive services from the department.

F. Departments shall comply with the requirements of this section within one hundred eighty (180) days of the enactment of this chapter.

(Ord. 12324 § 2 (part), 2001)

#### **2.30.060 Dissemination of translated materials from state and federal government.**

If the state or federal government or any agency thereof makes available to a department written

materials in a language other than English, the department shall maintain an adequate stock of the translated materials and shall make them readily available to persons who use the department's services.

(Ord. 12324 § 2 (part), 2001)

### **2.30.070 Public meetings and hearings.**

A. City commissions and departments shall not be required to translate meeting notices, agendas, or minutes.

B. Oral interpretation of any public meeting or hearing held by a city commission or department shall be provided if requested at least forty-eight (48) hours in advance of the meeting or hearing in question.

(Ord. 12324 § 2 (part), 2001)

### **2.30.080 Recorded telephonic messages.**

All departments shall maintain recorded telephonic messages in each language spoken by the substantial number of limited-English-speaking persons group(s). The message shall contain basic information about the department's operation including, at a minimum, business hours, location(s), services offered and the means of accessing such services, and the availability of language assistance.

(Ord. 12324 § 2 (part), 2001)

### **2.30.090 Complaint procedures.**

A. Departments shall allow persons to make complaints alleging violation of this chapter to the department in each language spoken by the substantial number of limited-English-speaking persons group(s). The complaints may be made by telephone or by completing a complaint form.

B. Departments shall document actions taken to resolve each complaint and maintain copies of complaints and documentation of their resolution for a period of not less than two years. A copy of each complaint shall be forwarded to the City Manager within thirty (30) days of its receipt. The City Manager shall furnish a report to the City Council every six months regarding the number,

nature and status of complaints. The report shall be presented to the Finance and Management Committee of the Council or such other committee as the Council may designate before it is forwarded to the City Council.

(Ord. 12324 § 2 (part), 2001)

### **2.30.100 Compliance plan.**

A. By June 1st of each year, the City Manager shall submit to the City Council an annual compliance plan.

B. Each plan filed by the City Manager shall contain the following information:

1. The number and languages of the limited-English-speaking group;

2. The number of public contact positions in each department covered by this chapter, listed by job title;

3. The number of bilingual employees in public contact positions, their titles, office locations, and the language(s) other than English that the persons speak;

4. A numerical assessment of the additional bilingual employees in public contact positions needed to meet the requirements of Section 2.30.030 of this chapter;

5. If assessments indicate a need for additional bilingual employees in public contact positions to meet the requirements of Section 2.30.030 of this chapter, a description of each department's plan for filling the positions, including the number of estimated vacancies in public contact positions, and a brief narrative describing the methods or means employed to ensure a pool of qualified bilingual applicants, and a brief narrative describing the method of processing each qualified applicant, including the methods used to assess language skills;

6. A list of all public contact positions filled during the current fiscal year, a list of those public contact positions filled with bilingual employees, and a copy of each of the qualified applicants pool lists for each position filled, identifying whether each applicant had bilingual capabilities;

7. A narrative assessment of the procedures used to facilitate communication with members of the substantial number of limited-English-speaking persons group(s), which shall include an assessment of the adequacy of the procedures;

8. The name, address, telephone number, and contact person of each recruitment firm used to search for qualified applicants for city employment positions;

9. For each firm, the total number of city employees hired from the firm in the current year, including the employee's title and department of employment, and the number of bilingual employees hired from the firm to fill public contact positions, including their title and department of employment;

10. A narrative assessing the adequacy of each firm to recruit applicants for public contact positions in each of the concentrated number of limited-English-speaking persons group(s);

11. If the firm has been inadequate in recruiting applicants to fill public contact positions in each of the substantial number of limited-English-speaking persons group(s), a description of the actions to be taken to improve performance;

12. A list of each department's written materials required to be translated under this chapter, the languages into which they have been translated, and the persons who have reviewed the translated material for review of accuracy and appropriateness;

13. A description of each department's procedures for accepting and resolving complaints of an alleged violation of this chapter;

14. A description of the written policies on providing services to members of the substantial number of limited-English-speaking persons group(s);

15. A report regarding the adequacy of service to members of the limited-English-speaking persons group(s);

16. Any other information requested by the City Council necessary for the implementation of this chapter.

(Ord. 12324 § 2 (part), 2001)

### **2.30.120 Recruitment.**

A. It shall be the policy of the city to publicize job openings for departments' public contact positions as widely as possible, including, but not limited to, in non-English language media. For every public contact position for which bilingual capacity is necessary, the job shall be advertised as a bilingual position for which bilingual conversational proficiency will be a job requirement.

B. It shall be the policy of the city to contract with recruitment firms able to attract a pool of qualified bilingual applicants for job openings in order to increase the opportunities for finding qualified bilingual employees to fill public contact positions.

C. Each department's recruitment efforts shall be consistent with the city's selective bilingual certification process.

(Ord. 12324 § 2 (part), 2001)

### **2.30.130 Monitoring and structure.**

A. The City Manager shall be responsible for monitoring and facilitating compliance with this chapter. The City Manager will review complaints about alleged violations of this chapter and review compliance plans.

B. The City Manager will submit to the City Council, a strategy to conduct outreach to members of the substantial number of limited-English-speaking persons group(s) about their rights under this chapter; and procedures to accept and investigate complaints alleging violations of this chapter. The strategy will be presented to the Finance and Management Committee, or such other committee as the Council may designate before it is forwarded to the full City Council.

(Ord. 12324 § 2 (part), 2001)

### **2.30.140 Rules and regulations.**

In order to effectuate the terms of this chapter, the City Manager may propose rules and regulations consistent with this chapter. Such rules and regulations shall be reviewed by the Finance and

## **2.30.140**

Management Committee or such other committee as the Council may designate, before they are approved by the City Council.

(Ord. 12324 § 2 (part), 2001)

### **2.30.150 Enforcement.**

If City Manager determines that a department is not complying with this chapter, he/she shall take steps to enforce the provisions of the chapter and assure compliance. The City Manager's annual compliance plan will include information about the status of compliance with this chapter.

(Ord. 12324 § 2 (part), 2001)

### **2.30.160 Severability.**

If any of the provisions of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of this chapter, including the application of such part or provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this chapter are severable.

(Ord. 12324 § 2 (part), 2001)

## Chapter 2.32

### EQUAL BENEFITS ORDINANCE

#### **Sections:**

- 2.32.010 Title and purpose.**
- 2.32.020 Definitions.**
- 2.32.030 Contractors subject to requirements.**
- 2.32.040 Nondiscrimination in the provision of benefits.**
- 2.32.050 Required contract provisions.**
- 2.32.060 Waivers and exemptions.**
- 2.32.070 Retaliation and discrimination prohibited.**
- 2.32.080 Employee complaints to city.**
- 2.32.090 Enforcement.**
- 2.32.100 Severability.**
- 2.32.110 Effective date.**

#### **2.32.010 Title and purpose.**

This chapter shall be known as the "Equal Benefits Ordinance." The purpose of this chapter is to protect and further the public, health, safety, convenience, comfort, property and general welfare by requiring that public funds be expended in a manner so as to prohibit discrimination in the provision of employee benefits by city contractors between employees with spouses and employees with domestic partners, and/or between domestic partners and spouses of such employees.

(Ord. 12394 (part), 2001)

#### **2.32.020 Definitions.**

For the purposes of this chapter,

"Contract" means an agreement for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided, at the expense of the city or to be paid out of moneys deposited in the treasury or out of trust money under the control or collected by the city and does not include property contracts or con-

tracts for an aggregate amount less than twenty-five thousand dollars (twenty-five thousand dollars (\$25,000.00) per vendor in each fiscal year.

"Contractor" means any person or persons, firm, partnership, corporation, or combination thereof, who enters into a contract or property contract with the city.

"Domestic partner" means any person who has a currently registered domestic partnership with a governmental body pursuant to state or local law authorizing such registration.

"Property contract" means a written agreement for the exclusive use or occupancy of real property for a term exceeding twenty-nine days in any calendar year, whether by singular or cumulative instrument, (1) for the operation or use by others of real property owned or controlled by the city for the operation of a business, social, or other establishment or organization, including leases, concessions, franchises and easements, or (2) for the city's use or occupancy of real property owned by others, including leases, concessions, franchises and easements. For the purposes of this chapter, "exclusive use" means the right to use or occupy real property to the exclusion of others, other than the right reserved by the fee owner. "Property contract" shall not include a revocable at-will use or encroachment permit for the use of or encroachment on city property regardless of the ultimate duration of such permit, except that "property contract" shall include such permits granted to a private entity for the use of city property for the purpose of a for-profit activity. "Property contract" shall also not include street excavation, street construction or street use permits, agreements for the use of city right-of-way where a contracting utility has the power of eminent domain, or agreements governing the use of city property which constitutes a public forum for activities that are primarily for the purpose of espousing or advocating causes or ideas and that are generally recognized as protected by the First Amendment to the U.S. Constitution, or which are primarily recreational in nature.

"Employee benefits" means the provision of bereavement leave; disability, life, and other types of insurance; family medical leave; health benefits; membership or membership discounts; moving expenses; pension and retirement benefits; vacation; travel benefits; and any other benefits given to employees.

(Ord. 12394 (part), 2001)

### **2.32.030 Contractors subject to requirements.**

A. The following contractors are subject to this chapter:

1. Entities which enter into a "contract" with the city for an amount of twenty-five thousand dollars (\$25,000.00) or more for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided at the expense of the city or to be paid out of moneys deposited in the treasury or out of trust moneys under the control of or collected by the city; and

2. Entities which enter into a "property contract" pursuant to Section 2.32.020(D) with the city in an amount of twenty-five thousand dollars (\$25,000.00) or more for the exclusive use of or occupancy (1) of real property owned or controlled by the city or (2) of real property owned by others for the city's use or occupancy, for a term exceeding twenty-nine (29) days in any calendar year.

B. The requirements of the chapter shall only apply to those portions of a contractor's operations that occur (1) within the city; (2) on real property outside the city if the property is owned by the city or if the city has a right to occupy the property, and if the contract's presence at that location is connected to a contract with the city; and (3) elsewhere in the United States where work related to a city contract is being performed. The requirements of this chapter shall not apply to subcontracts or subcontractors of any contract or contractor.

(Ord. 12394 (part), 2001)

### **2.32.040 Nondiscrimination in the provision of benefits.**

A. The City Manager shall not execute or amend any contract or property contract with any

contractor that discriminates in the provision of bereavement leave; disability, life, and other types of insurance; family medical leave; health benefits; membership or membership discounts; moving expenses; pension and retirement benefits; vacation; travel benefits; and any other benefits given to employees between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to State or local law authorizing such registration, subject to the following conditions:

1. In the event the actual cost of providing a certain benefit for the domestic partner of an employee exceeds that of providing it for the spouse of an employee, or the contractor's actual cost of providing a certain benefit for the spouse of an employee exceeds that of providing it for the domestic partner of an employee, the contractor shall not be deemed to discriminate in the provision of benefits if the contractor conditions providing such benefit upon the employee agreeing to pay the excess costs;

2. In the event a contractor is unable to provide a certain benefit, despite taking reasonable measures to do so, the contractor shall not be deemed to discriminate in the provision of benefits if the contractor provides the employee with a cash equivalent;

3. The contractor shall not be deemed to be engaging in discrimination in the provision of employee benefits if the contractor provides benefits neither to employees' spouses nor to employees' domestic partners.

B. A contractor will not be deemed to be engaging in discrimination in the provision of benefits when the implementation of policies ending discrimination in benefits is delayed following the first award of a city contract to a contractor after the effective date of this chapter:

1. Until the first effective date after the first open enrollment process following the date the contract with the city is executed, provided that the contractor submits evidence that it is making

reasonable efforts to end discrimination in benefits. This delay may not exceed two (2) years from the date the contract with the city is executed and only applies to benefits for which an open enrollment process is applicable;

2. Until administrative steps can be taken to incorporate nondiscrimination in benefits in the contractor's infrastructure. The time allotted for these administrative steps shall apply only to those benefits for which administrative steps are necessary and may not exceed three (3) months. An extension of this time may be granted at the discretion of the city Manager upon the written request of a contractor, setting forth the reasons that additional time is required;

3. Until the expiration of a contractor's current collective bargaining agreement(s) where all of the following conditions have been met:

- a. The provision of benefits is governed by one or more collective bargaining agreement(s); and
- b. The contractor takes all reasonable measures to end discrimination in benefits by either requesting that the union(s) involved agree to reopen the agreement(s) in order for the contractor to take whatever steps are necessary to end discrimination in benefits or by ending discrimination in benefits without reopening the collective bargaining agreement(s); and

c. In the event that the contractor cannot end discrimination in benefits despite taking all reasonable measures to do so, the contractor provides a cash equivalent to eligible employees for whom benefits are not available. Unless otherwise authorized, in writing by the City Manager, this cash equivalent payment must begin at the time the union(s) refuse to allow the collective bargaining agreement(s) to be reopened, or in any case no longer than three (3) months from the date the contract with the city was executed. This cash equivalent payment shall not be required where it is prohibited by federal labor law.

C. Employers subject to this chapter pursuant to Section 2.32.030 shall give written notification to each current and new employee of his or her potential rights under this chapter in a form spec-

ified by the city. Such notice shall also be posted prominently in areas where it may be seen by all employees.

D. Contractors shall treat as confidential to the maximum extent allowed by law or the requirements of contractor's insurance provider any request by an employee for domestic partner or spousal benefits or any documentation of eligibility for domestic partner or spousal benefits submitted by an employee.

(Ord. 12394 (part), 2001)

### **2.32.050 Required contract provisions.**

Every contract subject to this chapter shall contain provisions requiring it to comply with the provisions of this chapter as they exist on the date when the contractor entered the contract with the city or when such contract is amended. Such contract provisions may include but need not be limited to the contractor's duty to promptly provide to the city documents and information verifying its compliance with the requirements of this chapter and sanctions for noncompliance.

(Ord. 12394 (part), 2001)

### **2.32.060 Waivers and exemptions.**

A. The City Manager may waive the requirements of this chapter under the following circumstances:

1. There is only one prospective contractor willing to enter into a property contract with the city for use of city property on the terms and conditions established by the city, or the needed goods, services, construction services for a public work or improvement, or interest in or right to use real property are available only from a sole source and the prospective contractor is not currently disqualified from doing business with the city, or from doing business with any governmental agency based on any contract compliance requirements;

2. The contract or property contract is necessary to respond to an imminent emergency which endangers the public health or safety;

3. The contract involves specialized litigation such that it would be in the best interests of the city to waive the requirement of this chapter;

B. This chapter shall not apply where the prospective contractor is a public entity and the City Manager finds that goods, services, construction services for a public work or improvement or interest in or right to use real property of comparable quality or accessibility as are available under the proposed contract or property contract are not available from another source, or that the proposed contract or property contract is necessary to serve a substantial public interest.

C. This chapter shall not apply where the requirements of this chapter will violate or are inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or agreement;

D. After taking all reasonable measures to find an entity that complies with the law the City Manager may waive any or all of the requirements of this chapter for any contract, property contract or bid package advertised and made available to the public, or any competitive or sealed bids received by the city as of the date of the enactment of this ordinance under the following circumstances:

1. Where there are no qualified responsive bidders or prospective contractors who could be certified as being in compliance with the requirements of this chapter and the contract or property contract is for goods, a service or a project that is essential to the city or city residents; or

2. Where the requirements of this chapter would result in the city's entering into a contract with an entity that was set up, or is being used, for the purpose of evading the intent of this chapter, which is to prohibit the city from entering into contracts with entities that discriminate based on the criteria set forth in this chapter; or

3. Where transactions entered into pursuant to bulk purchasing arrangements through federal, state or regional entities which actually reduce the city's purchasing costs would be in the best interest of the city.

E. This chapter shall not apply to (1) the investment of trust moneys or agreements relating to the management of trust assets, (2) city moneys invested in U.S. government securities or under pre-existing investment agreements, or (3) the investment of city moneys where the City Treasurer finds that:

1. No person, entity or financial institution doing business in the city and county which is in compliance with this chapter is capable of performing the desired transaction(s); or

2. The city will incur a financial loss which, in the opinion of the City Treasurer, would violate his or her fiduciary duties.

This subparagraph E shall be subject to the requirement that the city moneys shall be withdrawn or divested at the earliest possible maturity date if deposited or invested with a person, entity or financial institution other than the U.S. government which does not comply with this chapter.

F. Nothing in this section shall limit the right of the City Council to waive the provisions of this chapter.

G. The requirements of this chapter shall not be applicable to contracts executed or amended prior to the effective date of this chapter, or to bid packages advertised and made available to the public, or any competitive or sealed bids received by the city prior to the effective date of this chapter, unless and until such contracts are amended after the effective date of this chapter and would otherwise be subject to this chapter.

(Ord. 12394 (part), 2001)

## **2.32.070      Retaliation and discrimination prohibited.**

A. No employer shall retaliate or discriminate against its employee in his or her terms and conditions of employment by reason of the person's status as an employee protected by the requirements of this chapter.

B. No employer shall retaliate or discriminate against a person in his or her terms and conditions

of employment by reason of the person reporting a violation of this chapter or for prosecuting an action for enforcement of this chapter.

(Ord. 12394 (part), 2001)

#### **2.32.080 Employee complaints to city.**

A. An employee who alleges violation of any provision of the requirements of this chapter may report such acts to the city. The City Manager may establish a procedure for receiving and investigating such complaints and taking appropriate action.

B. The city shall have the power to examine a contractor's benefit programs covered by this chapter.

C. Any complaints received shall be treated as confidential matters to the extent permitted by law. Any complaints received and all investigation documents related thereto shall be deemed exempt from disclosure pursuant to California Government Code Sections 6354 and 6255.

(Ord. 12394 (part), 2001)

#### **2.32.090 Enforcement.**

A. The City Manager shall have the authority to adopt rules and regulations, in accordance with this chapter and the Administrative Code of the City of Oakland, establishing standards and procedures for effectively carrying out this chapter.

B. Upon a finding by the City Manager that a contractor has violated the requirements of this chapter, the city shall have the rights and remedies described in this section, in addition to any rights and remedies provided by law or in equity;

1. Suspension and/or termination of said contract, property contract or financial assistance agreement for cause;

2. Repayment of any or all of the contract amount or financial assistance disbursed by the city;

3. The City Manager may deem the entity ineligible for future city contacts and/or financial assistance until all penalties and restitution have been paid in full;

4. Impose a fine or liquidated damages payable to the city in the sum of fifty dollars (\$50) for each person for each calendar day during which such person was discriminated against in violation of the provisions of this chapter;

5. Seek recovery of reasonable attorney's fees and costs necessary for enforcement of this chapter.

C. An employee claiming violation of this chapter may bring an action in the appropriate division of the Superior Court of the State of California against an employer and obtain the following remedies:

1. Reinstatement, injunctive relief, compensatory damages and punitive damages;

2. Reasonable attorney's fees and costs.

D. Notwithstanding any provision of the chapter or any other chapter to the contrary, no criminal penalties shall attach for any violation of this chapter.

E. No remedy set forth in this chapter is intended to be exclusive or a prerequisite for asserting a cause of action to enforce any rights hereunder in a court of law. This chapter shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination.

F. Nothing in this chapter shall be interpreted to authorize a right of action against the city.

(Ord. 12394 (part), 2001)

#### **2.32.100 Severability.**

If any of the provisions of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of this chapter, including the application of such part or provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this chapter are severable.

(Ord. 12394 (part), 2001)

#### **2.32.110 Effective date.**

The provisions of this chapter shall apply to any contract awarded on or after July 1, 2002.

(Ord. 12394 (part), 2001)

## Chapter 2.34

### IDENTIFICATION CARDS

**Sections:**

- 2.34.010 Identification cards.**
- 2.34.020 Municipal identification cards—Definitions.**
- 2.34.030 Issuance and purpose of municipal identification cards.**
- 2.34.040 Applications.**
- 2.34.050 Implementation.**
- 2.34.060 Fees.**
- 2.34.070 Acceptance by City departments.**
- 2.34.080 City undertaking limited to promotion of general welfare.**
- 2.34.090 Counterfeit and fraudulent cards.**

**2.34.010 Identification cards.**

A. When requiring members of the public to provide identification, each city department shall accept as valid identification of the person a photo identification card issued by another country to its citizens or nationals, if the card meets the following requirements:

1. The issuing country authorizes the use of the card as an alternative to a passport for re-entry into the issuing country; and
2. The card has a photograph of the person and the person's date of birth; and
3. The card meets standards established by the City Manager to ensure that (1) the applicant was required to provide reliable identifying information in order to obtain the card and (2) the card has features reasonably designed to protect against fraud and counterfeit reproduction.

B. The City Manager shall compile and make readily available to city departments a list of the identification cards and the issuing countries that the City Manager has determined meet the requirements of this section. Any city department and any member of the public may request the City Manager to review an identification card for compliance with the requirements of this section.

C. The City Manager may issue a waiver from the requirements of this section based on security considerations.

D. The requirements of this Section do not apply under circumstances where (1) a federal or state statute, administrative regulation or directive, or court decision requires the city to obtain different identification, (2) a federal or state statute or administrative regulation or directive preempts local regulation of identification requirements, or (3) the city would be unable to comply with a condition imposed by a funding source, which would cause the city to lose funds from that source.

E. Nothing in this section is intended to prohibit city departments from asking for additional information from individuals in order to verify a current address or other facts that would enable the department to fulfill responsibilities.

F. No city department is required to accept the identification required by this section if it has reasonable grounds for determining that the identification card provided by an individual is counterfeit, altered, improperly issued to the cardholder, or otherwise not accurate identification.

G. The head of each department shall issue appropriate notification and instruction to members of the department of the requirements of this section.

H. Where there is a conflict between this section and any provision of a city ordinance or implementing regulation in effect at the time that this section is approved, the provisions of this section shall prevail.

I. In undertaking the adoption and enforcement of this ordinance, the city is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.  
(Ord. 12403 § 1, 2002)

**2.34.020 Municipal identification cards—Definitions.**

For purposes of Sections 2.34.020 through 2.34.090, the following definitions shall apply:

"City" shall mean the City of Oakland, or any department, board, commission or agency thereof.

"Municipal identification card" shall mean an identification card issued by the City that shall display, including but not limited to, the cardholder's name, photograph, address, date of birth, and an expiration date.

"Program Administrator" shall mean the City Clerk or such other City department or agency that the City Administrator may designate.

"Resident" shall mean a person who can demonstrate that he or she has been present in the City of Oakland for at least 15 continuous days and who presents "proof of residency" as specified in Subsection 2.34.040 A.2.

(Ord. No. 12937, § 2, 6-16-2009)

**2.34.030 Issuance and purpose of municipal identification cards.**

A. Upon request, the Program Administrator shall issue a municipal identification card to any resident who meets the application requirements set forth below in Section 2.34.040 and pays the applicable fee. The card shall bear the seal of the City, and the Program Administrator shall cause the card to be produced in a form intended to thwart replication or counterfeiting. Cards shall be valid for a maximum of two years from the date of issuance as long as residence in the City is maintained during that time. Card holders shall surrender their municipal identification card upon moving residence out of the City.

B. It is the City's intent that municipal identification cards will provide residents with a means of proving their residency in the City, for the purpose of accessing City programs, services and activities, and providing identification to law enforcement.

(Ord. No. 12937, § 2, 6-16-2009)

**2.34.040 Applications.**

A. To obtain a municipal identification card, a resident shall complete an application, under pen-

alty of perjury, requiring proof of identity and proof of residence within the City. Upon receipt of both the proof of identity and residency that this section specifies, and the applicable fee, the Program Administrator shall issue a card to the applicant.

1. Proof of Identity. In order to establish identity, each applicant must present either:

a. One of the following documents containing both the applicant's photograph and date of birth: a U.S. or foreign passport; a U.S. driver's license; a U.S. state identification card; a U.S. Permanent Resident Card (commonly known as a "green card"); a consular identification ("CID") card; or a photo identification card issued by another country to its citizens or nationals that meets the requirements of Subsection 2.34.010 A. Notwithstanding the above, if the applicant is 13 years of age or younger, he or she, as an alternative, may present a certified copy of a U.S. or foreign birth certificate to establish identity under this subsection; or

b. Two of the following documents, provided that at least one form of identification shall display the applicant's photograph and date of birth: a national identification card with photo, name, address, date of birth, and expiration date; a foreign driver's license; a U.S. or foreign military identification card; a current visa issued by a government agency; a U.S. Individual Taxpayer Identification Number (ITIN) authorization letter; an identification card issued by a California educational institution, including elementary, middle, secondary, and post-secondary schools; a certified copy of a U.S. or foreign birth certificate; a court order issued by a state or federal court to verify a person's identity; or a Social Security card. Notwithstanding the above, where the applicant is aged 13 or under, he or she may in the alternative present an official medical record and/or official school record to establish identity under this subsection, provided that at least one of the two forms of identification presented shall display the applicant's date of birth.

**2. Proof of Residency.**

a. In order to establish residency, each applicant must present one of the following items, provided that the item includes both the applicant's name and a residential address located within the City: a utility bill dated within the last 30 days; a written verification issued by a homeless shelter that receives City funding confirming at least 15 days residency within the last 30 days; written verification issued by a hospital health clinic, or social services agency that receives City funding, confirming at least 15 days residency within the last 30 days; a local property tax statement or mortgage payment receipt dated within the last 30 days; a bank account statement dated within the last 30 days; proof of a minor currently enrolled in a City school; an employment pay stub dated within the last 30 days; a written ruling, order or notice from the Oakland Rent Adjustment Board dated within the last 30 days; a jury summons or court order issued by a state or federal court dated within the last 30 days; a federal or state income tax or refund statement dated within the last 30 days; or an insurance bill (homeowner's, renter's, health, life or automobile insurance) dated within the last 30 days. If a certified copy of a marriage certificate is presented at the time of application, an applicant may prove residency using documents bearing the name of his or her spouse.

b. The Program Administrator may by regulation provide that if an applicant is 13 years of age or younger, cannot produce any of the items set forth in this subsection A.2. to prove residency, a parent or legal guardian may verify the applicant's residency, provided that the parent or guardian himself or herself would be eligible for a municipal identification card.

3. The Program Administrator may by regulation provide for acceptance of additional forms of proof of identity and/or proof of residency, provided that the Program Administrator determines that such forms of proof are:

- a. Issued by a governmental entity;
- b. Issued by an entity that takes reasonable steps to verify the identity and/or residency of the individual to whom the item is issued; or

c. Of a type that is normally accepted as proof of identity and/or proof of residency in the ordinary course of business.

B. An application submitted on behalf of a minor must be completed by such minor's parent or legal guardian.

C. The City shall keep confidential to the maximum extent permitted by applicable laws, the name and other identifying information of persons applying for and receiving municipal identification cards. The City shall cause the applications to be produced in a form that allows applicants to state their privacy preferences. The City shall not retain records of applicants' residential addresses.

(Ord. No. 12937, § 2, 6-16-2009)

**2.34.050 Implementation.**

The Program Administrator is authorized to adopt rules and regulations not inconsistent with this section, subject to approval as to form and legality by the City Attorney, in order to implement and administer the issuance of municipal identification cards. The City shall require applicants to declare the information provided in their applications under penalty of perjury.

(Ord. No. 12937, § 2, 6-16-2009)

**2.34.060 Fees.**

The City shall charge a fee for each application submitted. Such fees shall not exceed the costs reasonably associated with the production of the cards and administration of the program. The Program Administrator shall, by regulation, provide for reduced application fees, up to and including complete waiver of the fee, for low-income applicants who present proof of income status in a form to be determined by the Program Administrator. The fee will be set and published in the master fee schedule.

(Ord. No. 12937, § 2, 6-16-2009)

**2.34.070 Acceptance by City departments.**

A. When requiring members of the public to provide identification or proof of residency in the

City, each City department shall accept a municipal identification card as valid identification and as valid proof of residency in the City, unless such City department has reasonable grounds for determining that the card is counterfeit, altered, or improperly issued to the card holder, or that the individual presenting the card is not the individual to whom it was issued.

B. Other than requiring the City to accept the card as proof of identification and City residency, this section is not intended to replace any other existing requirements for issuance of other forms of identification in connection with the administration of City benefits and services. The requirements of this section do not apply under circumstances where:

1. A federal or state statute, administrative regulation or directive, or court decision requires the City to obtain different identification or proof of residence;
  2. A federal or state statute or administrative regulation or directive preempts local regulation of identification or residency requirements; or
  3. The City would be unable to comply with a condition imposed by a funding source, which would cause the City to lose funds from that source.
- (Ord. No. 12937, § 2, 6-16-2009)

#### **2.34.080      City undertaking limited to promotion of general welfare.**

In undertaking the adoption and enforcement of this chapter, the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

(Ord. No. 12937, § 2, 6-16-2009)

#### **2.34.090      Counterfeit and fraudulent cards.**

It is a misdemeanor violation of this Code, as specified in Chapter 1.28, for any person or entity to do any of the following acts:

A. To knowingly present false information to the City in the course of applying for a municipal identification card.

B. To alter, copy, or replicate a municipal identification card without the authority of the City.

C. To use the municipal identification card issued to another person, with the intent to cause a third person or entity to believe the holder of the card is the person to whom the card was issued.

(Ord. No. 12937, § 2, 6-16-2009)

## Chapter 2.36

### **WORKER RETENTION AT LARGE-SCALE HOSPITALITY BUSINESSES**

#### **Sections:**

- 2.36.010 Scope and definitions.**
- 2.36.020 Preventing unemployment.**
- 2.36.030 Retaliation and discrimination barred; no waiver of rights.**
- 2.36.040 Enforcement.**
- 2.36.050 Severability.**

#### **2.36.010 Scope and definitions.**

The following definitions shall apply throughout this Chapter:

A. "Hospitality Business" means any for-profit hotel or food service operation within the City which has employed more than one hundred and fifty (150) persons at a single site during any payroll period during the prior year. For these purposes "hotel" also includes any related facilities such as pools, restaurants, or spas which hotel guests may use.

B. For purposes of determining the number of employees under the preceding subsection, the number of employees of separately-incorporated businesses operating within the same facility shall be aggregated if such businesses share any ownership or control.

C. "Employee" does not include any person employed in a supervisory or managerial capacity.

D. "New Operator" includes, but is not limited to, any purchaser or new management company, contractor, subcontractor, lessee, sublessee, or other person or entity which will take over as an employer at the facility where a Hospitality Business has been located.

(Ord. 12602 § 1, 2004)

#### **2.36.020 Preventing unemployment.**

A. If a New Operator takes over any Hospitality Business or portion thereof, it shall offer employment to all Employees of the preceding operator and not discharge them without just cause

during the first one hundred and twenty (120) days of employment. If the New Operator determines that fewer Employees are needed to perform certain work, then the least senior Employee performing such work may be laid off.

B. The New Operator shall keep a hiring list of laid off employees for at least one year.  
(Ord. 12602 § 2, 2004)

#### **2.36.030 Retaliation and discrimination barred; no waiver of rights.**

A. No person shall discharge or otherwise discriminate against anyone for making a complaint, participating in any City proceeding, or using any civil remedy to enforce his or her rights, or for otherwise asserting his or her rights under this Chapter.

B. Any waiver by an individual of any of the provisions of this Chapter shall be deemed contrary to public policy and shall be void and unenforceable, except that Employees shall not be barred from entering into a written, valid collective bargaining agreement waiving any provision of this Chapter, if such waiver is set forth in clear and unambiguous terms.  
(Ord. 12602 § 3, 2004)

#### **2.36.040 Enforcement.**

A. The City assumes no obligation to enforce the terms of this Chapter, and nothing herein shall be construed as creating a cause of action against the City.

B. The City Manager may, in his or her discretion, develop regulations interpreting this Chapter and/or establishing complaint procedures within the City related to enforcement of this Chapter. Pursuit of any such complaint procedure shall not be a prerequisite for asserting a claim hereunder in a court of law.

C. Any person claiming a violation of this Chapter may bring an action in the Municipal Court or Superior Court of the State of California, as appropriate, to enforce the provisions of

this Chapter. Violations of this Chapter are declared to irreparably harm the public and covered employees generally.

D. The Court shall award reasonable attorney's fees, witness fees and costs to any plaintiff who prevails in an action to enforce this Chapter.

E. Section 2.36.020 of this Chapter shall apply, to the fullest extent permitted by law, to any discharge, layoff or hiring decision made by any person after receipt of notice of the pendency of this Chapter.

(Ord. 12602 § 4, 2004)

**2.36.050      Severability.**

If any provision or application of this Chapter is declared illegal, invalid or inoperative, in whole or in part, by any court of competent jurisdiction, the remaining provisions and portions thereof and applications not so declared shall remain in full force and effect.

(Ord. 12602 § 5, 2004)

## Chapter 2.38

### **OAKLAND WHISTLEBLOWER ORDINANCE**

#### **Sections:**

- 2.38.010 Title and purpose.**
- 2.38.020 "Whistleblower" defined.**
- 2.38.030 Whistleblower identity.**
- 2.38.040 Retaliation prohibited.**
- 2.38.050 Administrative complaint of retaliation.**
- 2.38.060 "Retaliation" defined.**
- 2.38.070 Adverse employment action defined.**
- 2.38.080 "City" defined.**
- 2.38.090 Burden of establishing retaliation.**
- 2.38.100 Discipline.**
- 2.38.110 Civil penalties.**

#### **2.38.010 Title and purpose.**

This Chapter shall be known as the Whistleblower Ordinance. The purpose of this Chapter is to protect all City government employees who act as whistleblowers from retaliation.

(Ord. 12890 § 1, 2008)

#### **2.38.020 "Whistleblower" defined.**

"Whistleblower" is defined as an officer or employee who reports or otherwise brings to the attention of the City Auditor any information which, if true, would constitute one of the following: a work-related violation by a City officer or employee of any law or regulation; fraud, waste or mismanagement of City assets or resources; gross abuse of authority; a specific and substantial danger to public health or safety due to an act or omission of a City official or employee; or use of a City office, position or resources for personal gain.

(Ord. 12890 § 2, 2008)

#### **2.38.030 Whistleblower identity.**

To the extent permitted by law, the identity of anyone reporting information to the City Auditor

about an improper governmental action shall be treated as confidential unless the employee waives his or her confidentiality in writing.

(Ord. 12890 § 3, 2008)

#### **2.38.040 Retaliation prohibited.**

No officer or employee of the City of Oakland shall use or threaten to use any official authority or influence to restrain or prevent any other person who is acting in good faith and upon reasonable belief as a whistleblower.

No officer or employee of the City of Oakland shall use or threaten to use any official authority or influence to cause any adverse employment action as a reprisal against a City officer or employee who acts as a whistleblower in good faith and with reasonable belief that improper conduct has occurred.

(Ord. 12890 § 4, 2008)

#### **2.38.050 Administrative complaint of retaliation.**

Any officer or employee who believes that he or she has been subject to an adverse employment action as a result of being a whistleblower may file a complaint of retaliation with the City Auditor within one hundred and eighty (180) days of the alleged misconduct. The City Auditor shall thereupon investigate the complaint. If the Office of the City Auditor is named in the complaint, the complaint shall be directed to the City Attorney for investigation. The investigation of a retaliation complaint should be completed in eight (8) weeks or less, absent extraordinary circumstances. Any reports regarding retaliation are confidential and not subject to disclosure.

(Ord. 12890 § 5, 2008)

#### **2.38.060 "Retaliation" defined.**

"Retaliation" is defined as any adverse employment action, including discharge, discipline or demotion.

(Ord. 12890 § 6, 2008)

**2.38.070 Adverse employment action defined.**

An adverse employment action requires a showing that the retaliatory action had a detrimental and substantial effect on the terms, conditions, or privileges of a complainant's employment or required the complainant to work in a discriminatorily hostile or abusive work environment. A change that is merely contrary to a complainant's interests or liking is insufficient.

(Ord. 12890 § 7, 2008)

tion must be filed no later than one year after the date the manager, supervisor or employee files a complaint of retaliation with the City.

(Ord. 12890 § 11, 2008)

**2.38.080 "City" defined.**

"City" is defined as the City of Oakland, its agencies, departments, boards and commissions.

(Ord. 12890 § 8, 2008)

**2.38.090 Burden of establishing retaliation.**

In order to establish retaliation, a complainant must demonstrate by a preponderance of the evidence that the complainant's engagement in activity protected in Section 2.38.020 was a substantial motivating factor for the adverse employment action. The supervisor or manager may rebut this claim if he or she demonstrates by a preponderance of the evidence that he or she would have taken the same employment action irrespective of the complainant's participation in protected activity.

(Ord. 12890 § 9, 2008)

**2.38.100 Discipline.**

Any manager, supervisor or employee of the City of Oakland who knowingly engages in conduct prohibited by this Chapter shall be disciplined, up to and including discharge.

(Ord. 12890 § 10, 2008)

**2.38.110 Civil penalties.**

Any manager, supervisor or employee of the City of Oakland who believes that he or she has been the subject of retaliation in violation of this Chapter may bring a civil action against the City officer or employee who committed the violation. The civil penalty for such a violation shall not exceed five thousand dollars (\$5,000.00). Such ac-

## Chapter 2.40

### **PROHIBITION ON NEPOTISM IN CITY EMPLOYMENT\***

#### **Sections:**

- 2.40.010 Definitions.**
- 2.40.020 Purpose.**
- 2.40.030 Disclosure of relationships.**
- 2.40.040 Prohibited supervisory relationships.**
- 2.40.050 Failure to report relationships, including cohabitant and romantic relationships involving supervision.**
- 2.40.060 Prohibition on participation or use of influence in hiring and in setting or changing terms and conditions of employment.**
- 2.40.070 Enforcement.**

#### **2.40.010 Definitions.**

The following definitions apply to this chapter:

"City," as used in this chapter, means the City of Oakland as a municipal organization, City officers, City managers and City employees, including all individuals who are employees of the City Council, Mayor's Office, City Administrator's Office, City Attorney and City Auditor's Office, as well as all employees of City agencies and departments.

"Cohabitar relationship" means any relationship where an individual shares a residence with a City official, manager or employee.

"Consensual romantic relationship" means any consensual sexual or romantic relationship with any City officials, managers and employees who may supervise them, directly or indirectly, or who may influence the terms and conditions of their employment.

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\*Editor's note—Ord. No. 12904, adopted November 18, 2008, enacted provisions intended for use as chapter 2.38. Inasmuch as there are already provisions so designated, and at the discretion of the editor, said provisions have been redesignated as chapter 2.40, §§ 2.40.010 – 2.40.070

"Cronyism" means participating in any employment decision that may be viewed as a conflict of interest, such as one involving a close friend, a business partner, and/or professional, political, or commercial relationship, that would lead to preferential treatment or compromise the appearance of fairness.

"Family relationship" includes relationship by blood, adoption, marriage, domestic partnership, foster care and cohabitation, and includes parents, grandparents, great-grandparents, grandchildren, great-grandchildren, children, foster children, uncles, aunts, nephews, nieces, first cousins, second cousins, siblings and the spouses or domestic partners of each of these relatives and cohabitants. This definition includes any relationship that exists by virtue of marriage or domestic partnership, such as in-law and step relationships, which are covered to the same extent as blood relationships.

"Official" means all elected officials including all individuals appointed to an elected office.

"Supervision" means authority, direction, control or influence, including being in the same chain of command and participation in decisions about terms and conditions of employment of one or more other employees.

"Supervisor" means any City employee who performs supervision.

"Terms and conditions of employment" includes but is not limited to hiring, setting and changing all forms of compensation or remuneration, benefits, payments, hours, shifts, transfers, assignments, working conditions, performance evaluations, promotions, training, retirement, classification, retention, evaluation, demotion, discipline and all other job-related qualifications, opportunities and privileges.

(Ord. No. 12908, 12-9-2008; Ord. No. 12904, 11-18-08)

#### **2.40.020 Purpose.**

The purpose of this anti-nepotism chapter is to eliminate actual or perceived conflicts of interest, partiality or favoritism in the City workplace due to nepotism and/or cronyism and to maintain

public confidence in the fairness of the City's hiring and employment practices as well as in the competence of City employees. This chapter achieves its goals in three ways:

- A. By requiring applicants for City employment to disclose all family relationships, consensual romantic and cohabitant relationships with existing City officials, managers and employees, after receiving an offer of employment;
- B. By requiring disclosure by officials and supervisors of all existing family and cohabitant relationships;
- C. By requiring disclosure by officials and supervisors of all existing consensual romantic relationships; and
- D. By prohibiting cronyism.

(Ord. No. 12908, 12-9-2008; Ord. No. 12904, 11-18-2008)

#### **2.40.030 Disclosure of relationships.**

A. All individuals who apply for employment with the City must disclose all known family relationships, consensual romantic and cohabitant relationships with existing City officials, managers and employees. Information concerning cohabitant and consensual romantic relationships will be treated as confidential and disclosed only on a need-to-know basis. The City's anti-nepotism policy will be communicated to all applicants for City employment at the time of application.

B. All current City officials and supervisors must disclose all known family relationships, consensual romantic relationships and cohabitant relationships with existing City employees, managers and officials no later than 60 days from the effective date of this chapter and thereafter, on an annual basis. Should new family relationships, consensual romantic relationships or cohabitant relationships arise, they must be disclosed within 60 days of their inception to the Director of Personnel. Information concerning cohabitant and romantic relationships will be treated as confidential and disclosed only on a need-to-know basis.

(Ord. No. 12904, 11-18-2008)

#### **2.40.040 Prohibited supervisory relationships.**

A. City officials, managers and employees may not supervise City employees with whom they have a known family relationship, consensual romantic relationship or cohabitant relationship.

B. Following receipt of information establishing that a prohibited family relationship, consensual romantic relationship or cohabitant relationship exists, alternate arrangements will be made by the Director of Personnel in consultation with the Office of the City Attorney, so that no City official, manager, or employee performs supervision for and/or influences in any manner the terms and conditions of employment of any individual with whom that individual has a family relationship, consensual romantic relationship, or cohabitant relationship.

(Ord. No. 12904, 11-18-2008)

#### **2.40.050 Failure to report relationships, including cohabitant and romantic relationships involving supervision.**

Any individual who willfully and deliberately fails to disclose her or his known, prohibited family relationship, consensual romantic relationship or cohabitant relationship with City officials, managers or employees, shall be eligible for penalties up to and including termination.

(Ord. No. 12904, 11-18-2008)

#### **2.40.060 Prohibition on participation or use of influence in hiring and in setting or changing terms and conditions of employment.**

No official, manager or employee may engage in cronyism and/or attempt to influence the City or any official, manager or employee, to hire, promote, or change the terms and conditions of employment of any individual with whom that person has a family relationship, consensual romantic relationship or cohabitant relationship. No official, manager or employee may delegate such authority to a subordinate in order to participate in such personnel decisions.

(Ord. No. 12908, 12-9-2008; Ord. No. 12904, 11-18-2008)

**2.40.070 Enforcement.**

A. The Director of Personnel shall be responsible for collection of information concerning family relationships, consensual romantic relationships and cohabitation relationships. Such information will be preserved for a minimum of five years.

B. The Director of Personnel, in consultation with the City Attorney, shall be responsible for identifying and implementing alternate arrangements should an official, manager or employee provide supervision to, directly or indirectly, an individual with whom she or he has a family relationship, consensual romantic relationship or co-habitar relationship. In the event that a prohibited relationship exists between the Director of Personnel and any other City official, manager or employee, the City Administrator, in consultation with the City Attorney, shall make such alternate arrangements.

C. Any City employee who becomes aware that an official, manager or employee has attempted to influence the City, its officials, managers or employees, or change the terms and conditions of employment of any individual with whom that person has a family relationship, consensual romantic relationship or cohabitant relationship, shall report that attempt to the Director of Personnel, the City Attorney or the City Auditor.

D. The Director of Personnel shall provide an annual report to the City Council describing the nature and number of prohibited relationships disclosed, and what actions were taken to make alternate arrangements.

(Ord. No. 12904, 11-18-2008)

## **Title 3**

### **MUNICIPAL ELECTIONS**

#### **Chapters:**

- 3.04 City Council Districts**
- 3.08 Elections**
- 3.12 The City of Oakland Campaign Reform Act**
- 3.13 Limited Public Financing Act**
- 3.14 Oakland False Endorsement in Campaign Literature**
- 3.16 Conflict of Interest Code**
- 3.20 The City of Oakland Lobbyist Registration Act**



## Chapter 3.04

### CITY COUNCIL DISTRICTS

**Sections:**

- 3.04.010      Division of city into seven districts.**
- 3.04.020      City Council/School District descriptions.**

**3.04.010      Division of city into seven districts.**

The city is divided into seven Council Districts, and the boundaries of the districts are more particularly depicted in Chapter 2.16 of this code and described in Section 3.04.020 of this chapter. (Ord. 11625 § 1, 1993)

**3.04.020      City Council/School District descriptions.**

Note: Council and School Board Districts are composed of census tracts and blocks. Street boundary descriptions (see below) and map (see Chapter 2.16) are for reference only.

A. District #1.

Whole Census Tracts 4001.00, 4002.00, 4003.00, 4004.00, 4005.00, 4006.00, 4007.00, 4008.00, 4009.00, 4010.00, 4040.00, 4041.00, 4042.00, 4043.00

Partial Census Tracts:

Tract 4011.00 Blocks 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 3000, 3001, 3002, 3006, 4000, 4001, 4002, 4003, 4004, 4005, 4006, 4007, 4008, 4009, 4010, 4011, 4012, 4013, 4014, 4015, 4016, 4017, 4018

Tract 4012.00 Blocks 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 3000, 3001, 3002, 3003, 3004, 3005, 3006

Tract 4044.00 Blocks 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 3000, 3001, 3002, 3003, 3004, 3005, 3006, 3008, 3009

Tract 4045.02 Blocks 1003, 1004

Beginning at the point of intersection of the Berkeley/Oakland City line and the Emeryville/Oakland City line, and proceeding along the Oakland City line to Sobrante Road, and proceeding westerly along Sobrante Road to Thornhill Drive, and proceeding southerly along Thornhill Drive to Aspinwall Road, and proceeding southerly along Aspinwall Road to Westwood Way, and proceeding northerly along Westwood Way to Westwood Court, and proceeding westerly along Westwood Court to Indian Way, and proceeding easterly along Indian Way to Woodhaven Way, and proceeding westerly along Woodhaven Way to Thornhill Drive, and proceeding southerly along Thornhill Drive to Beauforest Drive, and proceeding westerly along Beauforest Drive to Valley View Road, and proceeding easterly along Valley View Road to Pinehaven Road, and proceeding northerly along Pinehaven Road to Broadway Terrace, and proceeding westerly along Broadway Terrace to Warren Freeway, and proceeding southerly along Warren Freeway to Moraga Avenue, and proceeding westerly along Moraga Avenue to the Piedmont/Oakland City line, and proceeding westerly along the Piedmont/Oakland City line to Oakland Avenue, and proceeding westerly along Oakland Avenue to I-580, and proceeding westerly along I-580 to an unnamed special road (TLID: 138232), and proceeding northerly along unnamed special road to W. MacArthur Boulevard, and proceeding northerly along W. MacArthur Boulevard to State Highway 24, and proceeding southerly along State Highway 24 to I-980, and proceeding southerly along I-980 to I-580, and proceeding westerly along I-580 to San Pablo Avenue, and proceeding northerly along San Pablo Avenue to the Emeryville/Oakland City line, and proceeding easterly

along the Emeryville/Oakland City line to the point of beginning.

B. District #2.

Whole Census Tracts 4030.00, 4038.00, 4039.00, 4051.00, 4054.00, 4055.00, 4056.00, 4058.00, 4059.00

Partial Census Tracts:

Tract 4033.00 Blocks 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017

Tract 4034.00 Blocks 1009, 1010, 1011, 1012, 1013, 2001, 2002, 2003, 2004, 2005, 2006

Tract 4036.00 Block 1006

Tract 4050.00 Blocks 2003, 2004, 3000, 3001, 3009, 3010, 3011, 3012, 3013, 3014, 3019, 3020, 3021

Tract 4052.00 Blocks 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 2000, 2001, 2002, 2003, 2004, 2007, 2008, 3000, 3001, 3002, 3004, 3005, 3006, 3007, 3008, 3009, 3010, 3011, 3012, 3014, 4000

Tract 4053.00 Blocks 1005, 1006, 2002, 2003, 2004, 2005, 3000, 3001, 3002, 3003, 3004, 3005, 4000, 4001, 4007, 4008, 4009

Tract 4057.00 Blocks 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 3000, 3001, 3002

Tract 4060.00 Blocks 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1029, 1030, 1031, 1032, 1033, 1034, 1035, 1036, 1037, 1038, 1039, 1040, 1041, 1042, 1043,

1045, 1046, 1047, 1048, 1050, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 3000, 3001, 3002, 3003, 3004, 3005, 3006, 3007, 3008, 3009, 3010, 3011, 3012, 3013, 3014, 3015, 3016, 3017, 3018, 3019, 3020, 3021, 3022

Tract 4061.00 Block 4005

Beginning at the point of intersection of Broadway and I-880, and proceeding northerly along Broadway to 14th Street, and proceeding easterly along 14th Street to Lakeshore Avenue, and proceeding easterly along Lakeshore Avenue to 1st Avenue, and proceeding easterly along 1st Avenue to E. 15th Street, and proceeding southerly along E. 15th Street to 2nd Avenue, and proceeding northerly along 2nd Avenue to Foothill Boulevard, and proceeding northerly along Foothill Boulevard to Lakeshore Avenue, and proceeding northerly along Lakeshore Avenue to E. 18th Street, and proceeding easterly along E. 18th Street to Athol Avenue, and proceeding easterly along Athol Avenue to Wayne Place, and proceeding easterly along Wayne Place to Acton Place, and proceeding northerly along Acton Place to Lester Avenue, and proceeding easterly along Lester Avenue to Hanover Avenue, and proceeding northerly along Hanover Avenue to Brooklyn Avenue, and proceeding easterly along Brooklyn Avenue to Haddon Road, and proceeding northerly along Haddon Road to Cleveland Street, and proceeding westerly along Cleveland Street to Wesley Avenue, and proceeding easterly along Wesley Avenue to Hillgirt Circle, and proceeding easterly along Hillgirt Circle to Haddon Lane, and proceeding northerly along Haddon Lane to Macarthur Boulevard, and proceeding westerly along Macarthur Boulevard to I-580, and proceeding westerly along I-580 to Oakland Avenue, and proceeding easterly along Oakland Avenue to the Piedmont/Oakland City line, and proceeding southerly along the Piedmont/Oakland City line to Trestle Glen Road, and proceeding westerly along Trestle Glen Road to Creed Road, and proceeding southerly along

Creed Road to Holman Road, and proceeding westerly along Holman Road to Hampel Street, and proceeding southerly along Hampel Street to Greenwood Avenue, and proceeding westerly along Greenwood Avenue to Park Boulevard Way, and proceeding westerly along Park Boulevard Way to Park Boulevard, and proceeding westerly along Park Boulevard to I-580, and proceeding southerly along I-580 to Beaumont Avenue, and proceeding southerly along Beaumont Avenue to 14th Avenue, and proceeding southerly along 14th Avenue to 19th Avenue, and proceeding southerly along 19th Avenue to E. 27th Street, and proceeding easterly along E. 27th Street to 23rd Avenue, and proceeding southerly along 23rd Avenue to Bay Area Rapid Transit RR, and proceeding westerly along Bay Area Rapid Transit RR to E. 12th Street, and proceeding westerly along E. 12th Street to Bay Area Rapid Transit RR, and proceeding westerly along Bay Area Rapid Transit RR to 19th Avenue, and proceeding southerly along 19th Avenue to Union Pacific Railroad, and proceeding westerly along Union Pacific Railroad to 16th Avenue, and proceeding southerly along 16th Avenue to Embarcadero, and proceeding southerly along Embarcadero to Denison Street, and proceeding westerly along Denison Street to the Oakland City line, and proceeding westerly along the Oakland City line to Merritt Channel, and proceeding northerly along Merritt Channel to I-880, and proceeding northerly along I-880 to the point of beginning.

#### C. District #3.

Whole Census Tracts 4013.00, 4014.00, 4015.00, 4016.00, 4017.00, 4018.00, 4019.00, 4020.00, 4021.00, 4022.00, 4023.00, 4024.00, 4025.00, 4026.00, 4027.00, 4028.00, 4029.00, 4031.00, 4032.00, 4035.00, 4037.00

#### Partial Census Tracts:

Tract 4011.00 Blocks 3003, 3004, 3005, 3007, 3008

Tract 4012.00 Block 3007

Tract 4033.00 Blocks 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1029, 1030, 1031, 1032, 1033, 1034, 1035, 1036, 1037, 1038, 1039, 1040, 1999

Tract 4034.00 Blocks 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1999, 2000, 3000, 3001, 3002

Tract 4036.00 Blocks 1000, 1001, 1002, 1003, 1004, 1005, 1007, 1008, 2000, 2001, 2002, 2003, 2004, 2005, 2006

Tract 4052.00 Blocks 2005, 2006, 3003, 3013, 4001, 4002, 4003, 4004, 4005, 4006, 4007, 4008, 4009

Tract 4053.00 Blocks 1000, 1001, 1002, 1003, 1004, 2000, 2001, 4002, 4003, 4004, 4005, 4006

Beginning at the westernmost point of Oakland City line and proceeding easterly along the Oakland City line to San Pablo Avenue, and proceeding southerly along San Pablo Avenue to I-580, and proceeding easterly along I-580 to I-980, and proceeding northerly along I-980 to State Highway 24, and proceeding northerly along State Highway 24 to W. MacArthur Boulevard, and proceeding easterly along W. MacArthur Boulevard to an unnamed special road (TLID: 138232), and proceeding southerly along unnamed special road to I-580, and proceeding easterly along I-580 to MacArthur Boulevard, and proceeding easterly along MacArthur Boulevard to Haddon Lane, and proceeding southerly along Haddon Lane to Hillgirt Circle, and proceeding westerly along Hillgirt Circle to Wesley Avenue, and proceeding westerly along Wesley Avenue to Cleveland Street, and proceeding easterly along Cleveland Street to Haddon Road, and proceeding southerly along Haddon Road to Brooklyn Avenue, and proceeding westerly along Brooklyn Avenue to Hanover Avenue, and proceeding southerly along Hanover

Avenue to Lester Avenue, and proceeding southerly along Lester Avenue to Acton Place, and proceeding southerly along Acton Place to Wayne Place, and proceeding westerly along Wayne Place to Athol Avenue, and proceeding westerly along Athol Avenue to E. 18th Street, and proceeding westerly along E. 18th Street to Lakeshore Avenue, and proceeding southerly along Lakeshore Avenue to Foothill Boulevard, and proceeding southerly along Foothill Boulevard to 2nd Avenue, and proceeding southerly along 2nd Avenue to E. 15th Street, and proceeding northerly along E. 15th Street to 1st Avenue, and proceeding westerly along 1st Avenue to Lakeshore Avenue, and proceeding northerly along Lakeshore Avenue to 14th Street, and proceeding westerly along 14th Street to Broadway, and proceeding southerly along Broadway to I-880, and proceeding easterly along I-880 to Merritt Channel, and proceeding southerly along Merritt Channel to the Oakland City line, and proceeding westerly along the Oakland City line to the point of beginning.

#### D. District #4.

Whole Census Tracts 4045.01, 4046.00, 4047.00, 4048.00, 4067.00, 4068.00, 4069.00, 4070.00, 4080.00

#### Partial Census Tracts:

Tract 4044.00 Blocks 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 3000, 3001, 3002, 3003, 3004, 3007, 3010, 3011, 3012, 3013, 3014, 3015, 3016

Tract 4045.02 Blocks 1000, 1001, 1002, 1005, 1006, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 3000, 3001, 3002, 3003, 3004, 3005, 3006, 3007, 3008, 3009, 3010, 3011, 3012, 3013, 3014, 3015, 3016, 3017, 3018, 3019, 3020, 3021, 4000, 4001, 4002, 4003, 4004, 4005, 4006, 4007, 4008, 4009, 4010, 4011, 4012, 4013, 4014, 4015, 4016, 4017, 4018, 4019, 4020, 4021, 4022, 4023

Tract 4049.00 Blocks 2007, 2008, 2009, 2010, 2011, 2012, 2013 Partial Blocks 1002 (portion south of Wellington Street), 2000 (parcels facing Canon Avenue)

Tract 4065.00 Blocks 1000, 1001, 1002, 1005, 4000

Tract 4066.00 Blocks 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 3000, 5000, 5001, 5002, 5003, 5004, 5005, 5006, 5007, 5008, 5009, 5010, 5013, 5014, 5015, 5016, 5017, 5018, 5021, 6000, 6001, 6002, 6003, 6004, 6005, 6006, 6007, 6008, 6009, 6010, 6011, 6012, 6013, 6014

Tract 4071.00 Blocks 1000, 1001, 1002, 1003, 1004, 1005, 6000, 6003

Tract 4074.00 Blocks 1000, 1001, 2000, 2001, 2002, 2003, 2004, 2008, 2009

Tract 4075.00 Block 3003

Tract 4076.00 Blocks 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 3001, 3002, 3003, 3004, 3005, 3006, 3007, 3008, 3009, 3010, 4000, 4001, 4002, 4003, 4004, 4005, 4006, 4007, 4008, 4009, 4010, 4011, 4012, 4013, 4014, 4015, 4016, 4017, 4018, 4019, 4020, 4021, 4022, 4023

Tract 4077.00 Blocks 2002, 2003, 2008, 2010, 2011, 3003, 3004, 3005, 3006, 3007, 3008, 3009, 3010

Tract 4078.00 Blocks 3001, 3002, 3003, 3004

Tract 4079.00 Blocks 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1015, 1016, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 3000, 3001, 3002, 3003, 3004, 3005, 3006, 3007, 3008, 3009, 3010, 3011, 3012, 3013, 3014, 3015

## Tract 4081.00 Blocks 2009, 2037

Beginning at the point of intersection of Broadway Terrace and Warren Freeway, and proceeding easterly along Broadway Terrace to Pinehaven Road, and proceeding easterly along Pinehaven Road to Valley View Road, and proceeding westerly along Valley View Road to Beauforest Drive, and proceeding easterly along Beauforest Drive to Thornhill Drive, and proceeding northerly along Thornhill Drive to Woodhaven Way, and proceeding easterly along Woodhaven Way to Indian Way, and proceeding westerly along Indian Way to Westwood Court, and proceeding easterly along Westwood Court to Westwood Way, and proceeding southerly along Westwood Way to Aspinwall Road, and proceeding easterly along Aspinwall Road to Thornhill Drive, and proceeding easterly along Thornhill Drive to Sobrante Road, and proceeding easterly along Sobrante Road to the Oakland City line, and proceeding southerly along the Oakland City line to Redwood Road, and proceeding southerly along Redwood Road to Old Redwood Road, and proceeding westerly along Old Redwood Road to Redwood Road, and proceeding westerly along Redwood Road to Mountain Boulevard, and proceeding southerly along Mountain Boulevard to Warren Freeway, and proceeding southerly along Warren Freeway to State Highway 13, and proceeding southerly along State Highway 13 to I-580, and proceeding westerly along I-580 to High Street, and proceeding westerly along High Street to Redding Street, and proceeding easterly along Redding Street to Storer Avenue, and proceeding westerly along Storer Avenue to Meldon Avenue, and proceeding southerly along Meldon Avenue to Birdsall Avenue, and proceeding southerly along Birdsall Avenue to Monticello Avenue, and proceeding westerly along Monticello Avenue to Virginia Avenue, and proceeding southerly along Virginia Avenue to Kingsland Avenue, and proceeding southerly along Kingsland Avenue to Fleming Avenue, and proceeding southerly along Fleming Avenue to Kingsland Avenue, and proceeding southerly

along Kingsland Avenue to Ygnacio Avenue, and proceeding westerly along Ygnacio Avenue to Cole Street, and proceeding southerly along Cole Street to Bancroft Avenue, and proceeding westerly along Bancroft Avenue to 47th Avenue, and proceeding northerly along 47th Avenue to Congress Avenue, and proceeding northerly along Congress Avenue to High Street, and proceeding southerly along High Street to Santa Rita Street, and proceeding northerly along Santa Rita Street to Ransom Avenue, and proceeding easterly along Ransom Avenue to Lyon Avenue, and proceeding northerly along Lyon Avenue to Harrington Avenue, and proceeding westerly along Harrington Avenue to Meadow Street, and proceeding northerly along Meadow Street to 35th Avenue, and proceeding easterly along 35th Avenue to Lynde Street, and proceeding northerly along Lynde Street to Humboldt Avenue, and proceeding westerly along Humboldt Avenue to Henrietta Street, and proceeding northerly along Henrietta Street to Perlata Creek, and proceeding northerly along Perlata Creek to School Street, and proceeding westerly along School Street to Champion Street, and proceeding northerly along Champion Street to I-580, and proceeding westerly along I-580 to Sheffield Avenue, and proceeding northerly along Sheffield Avenue to Macarthur Boulevard, and proceeding easterly along Macarthur Boulevard to Canon Avenue, and proceeding northerly along the rear side of parcels facing the west side of Canon Avenue to Wellington Street, and proceeding easterly along Wellington Street to Sausal Creek, and proceeding northerly along Sausal Creek to Leimert Boulevard, and proceeding westerly along Leimert Boulevard to the Piedmont/Oakland City line, and proceeding northerly along the Piedmont/Oakland City line to Moraga Avenue, and proceeding easterly along Moraga Avenue to Warren Freeway, and proceeding northerly along Warren Freeway to the point of beginning.

## E. District #5.

Whole Census Tracts 4062.01, 4062.02, 4063.00, 4064.00, 4072.00

## Partial Census Tracts:

Tract 4049.00 Blocks 1000, 1001, 1003, 1004, 1005, 1006, 1007, 2001, 2002, 2003, 2004, 2005, 2006, 3000, 3001, 3002, 3003, 3004, 3005, 3006, 3007, 3008, 3009, 3010, 3011, 3012, 3013, 3014, 3015, 3016, 4000, 4001, 4002, 4003, 4004, 4005, 4006, 4007, 4008, 4009, 4010, 4011, 4012, 4013 Partial Blocks 1002 (portion north of Wellington Street), 2000 (excluding parcels facing Canon Avenue)

Tract 4050.00 Blocks 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 2000, 2001, 2002, 2005, 3002, 3003, 3004, 3005, 3006, 3007, 3008, 3015, 3016, 3017, 3018

Tract 4057.00 Blocks 1000, 1001, 1002, 1003, 1004, 1013, 1014, 1015, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 3003, 3004, 3005

Tract 4060.00 Blocks 1044, 1049, 1051, 1052, 1053, 1054, 1055, 1056, 1057, 1058, 1059, 1998

Tract 4061.00 Blocks 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1029, 1030, 1031, 1032, 1033, 1034, 1035, 1036, 1037, 1038, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2999, 3000, 3001, 3002, 3003, 3004, 3005, 3006, 3007, 3008, 3009, 3010, 3011, 3012, 3013, 3014, 3015, 3016, 3017, 3018, 3999, 4000, 4001, 4002, 4003, 4004, 4006, 4007, 4008, 4009, 4010, 4011, 4012, 4013, 4014, 4015, 4016, 4017, 4018, 4019, 4020, 4021, 4022, 4023, 4024, 4025

Tract 4065.00 Blocks 1003, 1004, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 3000, 3001, 3002, 3003, 3004, 3005, 3006,

4001, 4002, 4003, 4004, 4005, 4006, 4007, 4008, 4009, 4010

Tract 4066.00 Blocks 3001, 3002, 3003, 3004, 3005, 3006, 4000, 4001, 4002, 4003, 4004, 4005, 5011, 5012, 5019, 5020

Tract 4071.00 Blocks 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 3000, 3001, 3002, 3003, 3004, 3005, 3006, 4000, 4001, 4002, 4003, 4004, 4005, 5000, 5001, 5002, 5003, 5004, 5005, 5006, 6001, 6002, 6004, 6005, 6006

Tract 4073.00 Blocks 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2034, 2997, 2998

Tract 4074.00 Blocks 2005, 2006, 2007, 2010, 3000, 3001, 3002, 3003, 3004, 3005, 3006, 3007, 3008, 3009, 3010

Tract 4076.00 Blocks 5000, 5001, 5002, 5003, 5004, 5005, 5006, 5007, 5008, 5009, 5010

Beginning at the point of intersection of the Oakland City line and Dennison Street, and proceeding easterly along Dennison Street to Embarcadero, and proceeding northerly along Embarcadero to 16th Avenue, and proceeding northerly along 16th Avenue to Union Pacific Railroad, and proceeding easterly along Union Pacific Railroad to 19th Avenue, and proceeding northerly along 19th Avenue to Bay Area Rapid Transit RR, and proceeding easterly along Bay Area Rapid Transit RR to E. 12th Street, and proceeding easterly along E. 12th Street to Bay Area Rapid Transit RR, and proceeding easterly along Bay Area Rapid Transit RR to 23rd Avenue, and proceeding northerly along 23rd Avenue to E. 27th Street, and proceeding westerly along E. 27th Street to 19th Avenue, and proceeding northerly along 19th Avenue to 14th Avenue, and proceeding easterly along 14th Avenue to Beaumont Avenue, and proceeding

northerly along Beaumont Avenue to I-580, and proceeding westerly along I-580 to Park Boulevard, and proceeding easterly along Park Boulevard to Park Boulevard Way, and proceeding easterly along Park Boulevard Way to Greenwood Avenue, and proceeding northerly along Greenwood Avenue to Hampel Street, and proceeding northerly along Hampel Street to Holman Road, and proceeding easterly along Holman Road to Creed Road, and proceeding northerly along Creed Road to Trestle Glen Road, and proceeding easterly along Trestle Glen Road to the Piedmont/Oakland City line, and proceeding easterly along the Piedmont/Oakland City line to Leimert Boulevard, and proceeding easterly along Leimert Boulevard to Sausal Creek, and proceeding southerly along Sausal Creek to Wellington Street, and proceeding westerly along Wellington Street to Canon Avenue, and proceeding southerly along the rear side of parcels facing the west side of Canon Avenue to Macarthur Boulevard, and proceeding westerly along Macarthur Boulevard to Sheffield Avenue, and proceeding southerly along Sheffield Avenue to I-580, and proceeding easterly along I-580 to Champion Street, and proceeding southerly along Champion Street to School Street, and proceeding easterly along School Street to Perlata Creek, and proceeding westerly along Perlata Creek to Henrietta Street, and proceeding southerly along Henrietta Street to Humboldt Avenue, and proceeding easterly along Humboldt Avenue to Lynde Street, and proceeding southerly along Lynde Street to 35th Avenue, and proceeding westerly along 35th Avenue to Meadow Street, and proceeding southerly along Meadow Street to Harrington Avenue, and proceeding easterly along Harrington Avenue to Lyon Avenue, and proceeding southerly along Lyon Avenue to Ransom Avenue, and proceeding westerly along Ransom Avenue to Santa Rita Street, and proceeding southerly along Santa Rita Street to High Street, and proceeding northerly along High Street to Congress Avenue, and proceeding southerly along Congress Avenue to 47th Avenue, and proceeding southerly along 47th Avenue to

Bancroft Avenue, and proceeding easterly along Bancroft Avenue to 51st Avenue, and proceeding southerly along 51st Avenue to E. 8th Street, and proceeding northerly along E. 8th Street to 50th Avenue, and proceeding southerly along 50th Avenue to nonvisible boundary (TLID: 158864), and proceeding southerly along nonvisible boundary to I-880, and proceeding southerly along I-880 to nonvisible boundary (TLID: 158846), and proceeding westerly along nonvisible boundary to the Oakland City Line, and proceeding westerly along the Oakland City line to the point of beginning.

#### F. District #6.

Whole Census Tracts 4082.00, 4083.00, 4084.00, 4085.00, 4086.00, 4087.00, 4301.00

##### Partial Census Tracts:

Tract 4073.00 Blocks 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 2000, 2016, 2017, 2032, 2033, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2999

Tract 4074.00 Blocks 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 2011

Tract 4075.00 Blocks 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 3000, 3001, 3002, 3004, 3005, 3006, 3007, 3008, 3009, 3010

Tract 4076.00 Block 3000

Tract 4077.00 Blocks 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 2000, 2001, 2004, 2005, 2006, 2007, 2009, 3000, 3001, 3002, 4000, 4001, 4002, 4003, 4004, 4005, 4006, 4007, 4008, 4009, 4010, 4011

Tract 4078.00 Blocks 1000, 1001, 1002, 1003, 1004, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 3000

Tract 4079.00 Blocks 1000, 1008, 1009, 1010, 1011, 1012, 1013, 1014

Tract 4081.00 Blocks 1000, 1001, 1002, 1003, 1004, 1005, 1006, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2038

Tract 4088.00 Blocks 2005, 2006, 3000, 3001, 3002, 3003, 3004, 4000, 4001, 4002, 4003, 4004, 4005, 4006, 4007, 4008, 4009, 4010

Tract 4096.00 Blocks 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 5000, 5001, 5002, 5003, 5004, 5005, 5010, 5011

Tract 4097.00 Blocks 1001, 4000, 4001, 4002, 4003, 4004, 4005, 4008, 4009

Tract 4098.00 Blocks 1001, 1002

Beginning at the point of intersection of nonvisible boundary (TLID: 158864) and I-880, and proceeding northerly along nonvisible boundary to 50th Avenue, and proceeding northerly along 50th Avenue to E. 8th Street, and proceeding southerly along E. 8th Street to 51st Avenue, and proceeding northerly along 51st Avenue to Bancroft Avenue, and proceeding easterly along Bancroft Avenue to Cole Street, and proceeding northerly along Cole Street to Ygnacio Avenue, and proceeding easterly along Ygnacio Avenue to Kingsland Avenue, and proceeding northerly along Kingsland Avenue to Fleming Avenue, and proceeding northerly along Fleming Avenue to Kingstand Avenue, and proceeding easterly along Kingsland Avenue to Virginia Avenue, and proceeding northerly along Virginia Avenue to Monticello Avenue, and proceeding easterly along Monticello Avenue to Birdsall Avenue, and proceeding northerly along Birdsall Avenue to Meldon Avenue, and proceeding northerly along Meldon Avenue to Storer Avenue,

and proceeding easterly along Storer Avenue to Redding Street, and proceeding westerly along Redding Street to High Street, and proceeding easterly along High Street to I-580, and proceeding easterly along I-580 to State Highway 13, and proceeding northerly along State Highway 13 to Warren Freeway, and proceeding northerly along Warren Freeway to Mountain Boulevard, and proceeding northerly along Mountain Boulevard to Redwood Road, and proceeding southerly along Redwood Road to Old Redwood Road, and proceeding easterly along Old Redwood Road to Redwood Road, and proceeding northerly along Redwood Road to the Oakland City line, and proceeding easterly along the Oakland City line to nonvisible boundary (TLID: 250467), and proceeding westerly along nonvisible boundary to Keller Avenue, and proceeding westerly along Keller Avenue to Fontaine Street, and proceeding easterly along Fontaine Street to Holmes Avenue, and proceeding westerly along Holmes Avenue to Greenly Drive, and proceeding northerly along Greenly Drive to Shone Avenue, and proceeding southerly along Shone Avenue to Sterling Drive, and proceeding southerly along Sterling Drive to McCormick Avenue, and proceeding westerly along McCormick Avenue to Sunkist Drive, and proceeding easterly along Sunkist Drive to 82nd Avenue, and proceeding westerly along 82nd Avenue to Macarthur Boulevard, and proceeding southerly along Macarthur Boulevard to 83rd Avenue, and proceeding westerly along 83rd Avenue to Iris Street, and proceeding northerly along Iris Street to 82nd Avenue, and proceeding westerly along 82nd Avenue to Dowling Street, and proceeding southerly along Dowling Street to 86th Avenue, and proceeding westerly along 86th Avenue to E. 14th Street, and proceeding northerly along E. 14th Street to 69th Avenue, and proceeding westerly along 69th Avenue to Union Pacific Railroad, and proceeding northerly along Union Pacific Railroad to 66th Avenue, and proceeding southerly along 66th Avenue to I-880, and proceeding northerly along I-880 to the point of beginning.

G. District #7.

Whole Census Tracts 4089.00, 4090.00, 4091.00, 4092.00, 4093.00, 4094.00, 4095.00, 4099.00, 4100.00, 4101.00, 4102.00, 4103.00, 4104.00

Partial Census Tracts:

Tract 4073.00 Blocks 2043, 2044

Tract 4088.00 Blocks 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 2000, 2001, 2002, 2003, 2004, 2007, 2008, 2009, 2010, 2011, 2012, 2013

Tract 4096.00 Blocks 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 3000, 3001, 3002, 3003, 3004, 3005, 3006, 4000, 4001, 4002, 4003, 4004, 4005, 4006, 4007, 4008, 4009, 5006, 5007, 5008, 5009

Tract 4097.00 Blocks 1000, 1002, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 3000, 3001, 3002, 3003, 3004, 3005, 3006, 3007, 3008, 3009, 3010, 4006, 4007

Tract 4098.00 Blocks 1000, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 3000, 3001, 3002, 3003, 3004, 3005, 3006, 3007, 3008

Beginning at the point of intersection of the Alameda/Oakland City line and nonvisible boundary (TLID: 158129), and proceeding easterly along nonvisible boundary to I-880, and proceeding easterly along I-880 to 66th Avenue, and proceeding easterly along 66th Avenue to Union Pacific Railroad, and proceeding southwesterly along Union Pacific Railroad to 69th Avenue, and proceeding easterly along 69th Avenue to E. 14th Street, and proceeding easterly along E. 14th Street to 86th Avenue, and proceeding easterly along 86th Avenue to Dowling Street, and proceeding northerly along Dowling Street to 82nd Avenue, and proceeding easterly along 82nd Avenue to Iris Street, and proceeding southwesterly along Iris Street to 83rd Avenue, and proceeding easterly along 83rd Avenue to Macarthur

Boulevard, and proceeding northerly along Macarthur Boulevard to 82nd Avenue, and proceeding easterly along 82nd Avenue to Sunkist Drive, and proceeding westerly along Sunkist Drive to McCormick Avenue, and proceeding easterly along McCormick Avenue to Sterling Drive, and proceeding northerly along Sterling Drive to Shone Avenue, and proceeding northwesterly along Shone Avenue to Greenly Drive, and proceeding southerly along Greenly Drive to Holmes Avenue, and proceeding easterly along Holmes Avenue to Fontaine Street, and proceeding northerly along Fontaine Street to Keller Avenue, and proceeding northerly along Keller Avenue to nonvisible boundary (TLID: 250467), and proceeding easterly along nonvisible boundary to the Oakland City line, and proceeding southerly along the Oakland City line to the point of beginning.

(Ord. 12495 Exh. B, 2003; Ord. 11625 Exh. B, 1993)

<p><b>Chapter 3.08</b></p> <p><b>ELECTIONS</b></p> <p><b>Sections:</b></p> <p style="text-align: center;"><b>Article I.</b></p> <p><b>General Provisions</b></p> <p><b>3.08.010 State law applicable.</b></p> <p><b>3.08.015 2011 Special municipal election.</b></p> <p><b>3.08.020 General municipal election.</b></p> <p><b>3.08.030 Informalities in election.</b></p> <p style="text-align: center;"><b>Article II.</b></p> <p><b>Elections for Elective Office</b></p> <p><b>3.08.040 Nomination petitions.</b></p> <p><b>3.08.050 Affidavit of circulator.</b></p> <p><b>3.08.060 Filing fee.</b></p> <p><b>3.08.070 Candidate's affidavit of inability to pay filing fee.</b></p> <p><b>3.08.080 Qualifications statement.</b></p> <p><b>3.08.090 Write-in candidate's filing requirements.</b></p> <p><b>3.08.100 Delivery of qualifications statement and nomination petitions to the City Clerk.</b></p> <p><b>3.08.110 Nomination petitions—Form.</b></p> <p><b>3.08.120 Signers of nomination petitions—Requirements.</b></p> <p><b>3.08.130 Write-in candidate's filing fees.</b></p> <p><b>3.08.140 Reserved.</b></p> <p><b>3.08.150 Order of candidates' names.</b></p> <p><b>3.08.160 Election rosters.</b></p> <p><b>3.08.170 Order of elective offices.</b></p> <p style="text-align: center;"><b>Article III.</b></p> <p><b>Elections on City Measures</b></p> <p><b>3.08.180 Filing fees (initiative petitions).</b></p> <p><b>3.08.190 Advisory measures.</b></p> <p><b>3.08.200 Legal analysis of city measure.</b></p> <p><b>3.08.210 Cost analysis of city measure.</b></p>	<p><b>3.08.220 Notice of date fixed for submission of arguments.</b></p> <p><b>3.08.230 Rebuttal arguments—Filing and printing.</b></p> <p><b>3.08.240 Ballot title and summary of city measure.</b></p> <p><b>3.08.250 Presentation of text of city measure.</b></p> <p style="text-align: center;"><b>Article I.</b></p> <p><b>General Provisions</b></p> <p><b>3.08.010 State law applicable.</b></p> <p>Except as otherwise set forth in this chapter, all city elections and all procedures relating thereto shall be, where practicable, in accordance with the applicable provisions of state law relating to elections in general law cities. (Prior code § 11-1.01)</p> <p><b>3.08.015 2011 Special municipal election.</b></p> <p>The City Council shall have the power to call a special municipal election by resolution for November 15, 2011, provided that the election date must be at least 88 days after the date that the City Council calls the election and, notwithstanding any other provision of the State of California Elections Code. Further, for purposes of the special election, the City Council shall have the power and may exercise the option to utilize alternative voting procedures, including but not limited to mail ballot voting, electronic voting, and extended voting periods and/or traditional in-person voting at polling places. (Ord. No. 13081, § 3, 7-19-2011)</p> <p><b>3.08.020 General municipal election.</b></p> <p>"Municipal Nominating Elections" and "General Municipal Elections" as referred to in Sections 1100 and 1101 of the Charter adopted November 5, 1968, are and shall be deemed to be general municipal elections, within the meaning of Section 205 of said Charter. (Prior code § 11-1.02)</p>
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**3.08.030      Informalities in election.**

No informalities in conducting municipal elections shall invalidate the same if they have been conducted fairly and in substantial conformity to the requirements of law.

(Prior code § 11-1.03)

**Article II.****Elections for Elective Office****3.08.040      Nomination petitions.**

The City Clerk shall prepare and issue nomination petitions to all candidates for municipal office. Nomination petitions shall be obtained from and issued by the City Clerk or his or her authorized representative.



The period for the filing of nomination documents by candidates in municipal elections consolidated with the regularly scheduled state elections shall commence on the one hundred thirteenth day prior to the election. The nomination document for municipal elections consolidated with regularly scheduled state elections shall be filed in the Office of the City Clerk not later than five p.m. on the eighty-eighth day prior to the election.

The City Clerk shall issue forty (40) nomination petitions to each candidate containing adequate space for five signatures per page, for a total of two hundred (200) signatures and no additional nomination petitions will be issued to any candidate(s). The City Clerk shall accept up to forty (40) nomination petitions from each candidate for verification. Nomination petitions shall be issued to and returned by the candidate(s) only, in person, or by an authorized representative in possession of a written request of authorization to receive or return the nomination petitions, signed and dated by the candidate(s).

For district offices, nomination petitions shall bear the signatures of not less than fifty (50) nor more than one hundred (100) registered voters of the city who are residents of the district of the office for which the candidate seeks nomination.

For city-wide offices, nomination petitions shall bear the signatures of not less than fifty (50) nor more than one hundred (100) registered voters who are residents of the city.

Candidates must file original nomination petitions issued by the City Clerk, no copies will be accepted by the City Clerk.

(Prior code § 11-2.01)

#### **3.08.050 Affidavit of circulator.**

The circulators of nomination petitions for candidates for district office shall be registered voters who are residents of the district of the office for which the candidate seeks nomination. Circulators of nomination petitions for city-wide offices shall be registered voters of the city. The affidavit of circulator must be completed on the bottom of

each nomination petition indicating the circulator's name and residence address at which he or she is registered to vote.

(Prior code § 11-2.02)

#### **3.08.060 Filing fee.**

Every candidate shall at the time he or she receives nomination petitions from the Office of the City Clerk, pay a deposit of fifty dollars (\$50.00) toward the total filing fee of three hundred dollars (\$300.00) to be paid by each candidate. Each candidate may pay the total a filing fee of three hundred dollars (\$300.00) at the time his or her nomination petitions are issued. However, no portion of that filing fee is refundable. Every candidate shall at the time his or her nomination petitions are filed, pay to the City Clerk the balance, if any is due, with credit given for the deposit paid at the time the nomination petitions were issued. A refund is not available regardless of whether the nomination petitions are found sufficient or insufficient.

(Prior code § 11-2.03)

#### **3.08.070 Candidate's affidavit of inability to pay filing fee.**

The Clerk shall accept nomination petitions without payment from any candidate who certifies under penalty of perjury on a form provided by the Clerk that he or she is unable to pay the filing fee; but the obligation to pay the filing fee shall remain a debt owing to the city for a period of two years. Any person who files nomination petitions with an affidavit of inability to pay the filing fee, but who has at the time of filing the nomination petitions, or within two years thereafter, income, compensation, assets, or real property, including the income, compensation, assets or real property of a spouse, shall be liable for the unpaid fees, and interest, in an action by the City Clerk in the name of the city in any court of competent jurisdiction. If a candidate files an affidavit of inability to pay the filing fee, that affidavit applies to the deposit and any remaining balance. An action to collect these unpaid fees must be commenced within two

years of the date of filing of the nomination petitions, whether his or her nomination petitions are found sufficient or insufficient.

(Prior code § 11-2.04)

#### **3.08.080 Qualifications statement.**

At the time his or her nomination petitions are filed, every candidate shall file with the City Clerk a verified statement of his or her qualifications on a form provided by the City Clerk, setting forth her or his name, the office for which he or she is a candidate, his or her place of residency for the past five years, his or her occupation for the past five years, public offices he or she has held, if any, and a brief description not to exceed one hundred fifty (150) words describing his or her qualifications for the office, including, for example, education and experience. The City Clerk shall reject any statement which includes any of the matters prohibited by general law or which contains any reference whatsoever to any partisan political party or organization including membership or activity therein, or endorsement thereby. Such statement shall also contain the signatures and addresses of not less than ten nor more than twenty (20) residents of the city sponsoring such candidate, who need not have signed such candidate's nomination petition. Such candidate may also file with his or her qualifications statement a true and accurate portrait photograph of such candidate taken within two years prior thereto and suitable for newsprint. The photograph must be at least four by six inches in size. A copy of such qualifications statement and a reproduction of the photograph, if furnished, shall be mailed by the City Clerk to each qualified elector with the sample ballot for said election. The qualifications statement mailed by the City Clerk with the sample ballot shall be printed and distributed without the inclusion of the addresses of the candidate and his or her sponsors. No qualifications statement shall be filed by candidates at a second or general municipal election following the nominating municipal election or

shall any qualifications statement or photograph be distributed to the voters by the City Clerk prior to such second election.

(Prior code § 11-2.05)

#### **3.08.090 Write-in candidate's filing requirements.**

Every person who desires to be a write-in candidate and have his or her name as written on the ballot of a municipal election counted for a particular office shall file:

A. A statement of write-in candidacy which shall contain the following information:

1. Candidate's name,
2. Residence address,
3. A declaration stating that he or she is a write-in candidate,
4. The title of the office for which he or she is running, and
5. The date of the election;

B. The requisite number of signatures on the nomination petitions required pursuant to Section 3.08.040.

(Prior code § 11-2.06)

#### **3.08.100 Delivery of qualifications statement and nomination petitions to the City Clerk.**

The qualifications statement and nomination petitions of write-in candidates shall be filed with the City Clerk no later than the fourteenth day prior to the election.

(Prior code § 11-2.07)

#### **3.08.110 Nomination petitions—Form.**

The nomination petitions for a write-in candidate and the document in which circulators are appointed by the write-in candidates shall be in the same form as those petitions and documents used for candidates who are not write-in candidates.

(Prior code § 11-2.08)

#### **3.08.120 Signers of nomination petitions—Requirements.**

Signers of nomination petitions for district write-in candidates shall be registered voters who

are residents of the district of the office for which the candidate seeks nomination. Signers of nomination petitions for city-wide write-in candidates shall be registered voters of the city.

(Prior code § 11-2.09)

### **3.08.130 Write-in candidate's filing fees.**

Every write-in candidate shall at the time his or her nomination petitions are filed, pay to the City Clerk a filing fee of twenty-five dollars (\$25.00). The City Clerk shall accept nomination petitions without payment from any write-in candidate who certifies under penalty of perjury, on an affidavit of inability to pay the filing fee provided by the City Clerk, that he or she is unable to pay the filing fee; but the obligation to pay the filing fee shall remain a debt owing to the city, for a period of two years.

(Prior code § 11-2.10)

### **3.08.140 Reserved.**

**Editor's note**—Ord. No. 12998, § 1, adopted March 2, 2010, repealed the former section 3.08.140 in its entirety, which pertained to the election of candidates, and derived from the prior code, § 11-2.11

### **3.08.150 Order of candidates' names.**

A. Within ten days following the last day on which nominating petitions may be filed for an Oakland municipal election in which nominating petitions are accepted, the City Clerk shall hold a public drawing to determine the order in which the names of qualifying candidates for each office shall appear on the ballot.

The City Clerk shall write the name of each candidate for an office on a slip of paper, fold the slip so as to conceal the name and place the slip in a box. The City Clerk shall then draw the slips of paper from the box until all the slips are withdrawn. The names of candidates shall be printed on the ballot in the order in which the slips of paper containing the names of candidates are drawn.

B. Reserved.

C. At least five days prior to the date on which any drawing is conducted pursuant to this Section,

the City Clerk shall place a notice on the official bulletin board, City Hall, specifying the time, date, and location of the drawing.

(Ord. No. 12998, § 1, 3-2-2010; Prior code § 11-2.12)

### **3.08.160 Election rosters.**

A. At all municipal elections, the roster kept by each precinct shall be in the form of an index to the affidavits of registration for that precinct. The index shall provide space of sufficient size to allow each voter to sign his or her name and address.

B. At all precincts in the city, the roster referred to in subsection A of this section shall be used in place of, and shall be deemed the equivalent of, the original affidavits of registration on file with the Registrar of Voters.

(Prior code § 11-2.13)

### **3.08.170 Order of elective offices.**

A. For Oakland municipal election purposes, the city offices shall consist of Mayor, Councilmembers, City Auditor and School Directors.

B. At all Oakland municipal elections, the order of precedence for city offices on the ballot shall be as listed below for those offices which apply to the election for which this ballot is provided:

1. Mayor;
2. Councilmembers, by numerical order of districts;
3. City Auditor; and
4. School Directors, by numerical order of districts.

(Prior code § 11-2.14)

## **Articles III.**

### **Elections on City Measures**

### **3.08.180 Filing fees (initiative petitions).**

Any person(s) filing a notice of intent to circulate an initiative petition in the city shall pay a filing fee of two hundred dollars (\$200.00), to be

refunded to the filer if, within one year of the date of filing the notice of intent, the City Clerk certifies the sufficiency of the petition.

(Prior code § 11-3.01)

### **3.08.190      Advisory measures.**

At any municipal election, the City Council may submit an advisory measure to obtain information for or advice to the City Council. The majority vote on any such measure shall be advisory only, and not binding on the City Council.

(Prior code § 11-3.02)

### **3.08.200      Legal analysis of city measure.**

Whenever any city measure qualifies for a place on the ballot, the City Clerk shall transmit a copy of the measure to the City Attorney. The City Attorney shall prepare an impartial legal analysis of the measure showing the effect of the measure on the existing law and the operation of the measure. The analysis shall be printed preceding the arguments for and against the measure. The analysis shall not exceed five hundred (500) words in length.

(Prior code § 11-3.03)

### **3.08.210      Cost analysis of city measure.**

Whenever any city measure qualifies for a placement on the ballot, the City Clerk shall transmit a copy of the measure to the City Auditor. The City Auditor shall determine whether, in his or her opinion, the adoption of the measure will increase or decrease the cost of city government or the city tax rate, and the City Auditor shall prepare an impartial analysis of the measure covering its financial impact upon the city government. In preparing the financial analysis the City Auditor shall consult with the Director of Finance and the City Council Rules Committee. The financial analysis shall be printed preceding the arguments for and against the measure, and shall not exceed five hundred (500) words in length.

(Prior code § 11-3.04)

### **3.08.220      Notice of date fixed for submission of arguments.**

Notice of the date fixed for submission of arguments for or against any city measure shall be

published by the City Clerk pursuant to Section 6061 of the Government Code of the state of California.

(Prior code § 11-3.05)

### **3.08.230      Rebuttal arguments—Filing and printing.**

Immediately upon the selection by the City Clerk of direct arguments for and against a city measure, the City Clerk shall immediately send copies of the arguments in favor to the persons who filed arguments against. The City Clerk shall also send copies of the arguments against to the persons who filed argument in favor. Such persons shall thereupon be allowed to prepare and submit a rebuttal argument not exceeding two hundred fifty (250) words. The rebuttal arguments shall be filed with the City Clerk on a date established by resolution of the City Council. Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument which it seeks to rebut.

(Prior code § 11-3.06)

### **3.08.240      Ballot title and summary of city measure.**

A. Whenever any City Council originated measure qualifies for a place on the ballot, the City Clerk shall immediately transmit a copy of the measure to the City Attorney. The City Attorney shall prepare a ballot title and summary for the measure within fifteen (15) days. The ballot title and summary may differ from the legislative or other title of the measure and shall describe in five hundred (500) words or less the provisions of the measure. In furnishing the ballot title and summary, the City Attorney shall give a true and impartial description of the provisions in such language that the ballot title and summary shall not be an argument or likely to create prejudice either for or against the measure. The ballot title and summary shall be part of the official election materials available to voters.

B. When any registered voter believes that subsection A of this section has been violated, the voter may obtain a writ of mandate pursuant to applicable state law requiring the ballot title and summary prepared by the City Attorney to be amended.

(Prior code § 11-3.07)

**3.08.250      Presentation of text of city measure.**

Upon the qualification for the ballot of a measure which repeals or amends the City Charter or a city ordinance, the City Attorney shall prepare the text so that it contains the provisions of the proposed measure and the existing provisions of the Charter or ordinance repealed or amended by the measure. The provisions of the proposed measure differing from the existing provisions of the Charter or ordinance affected shall be distinguished in print, so as to facilitate comparison. The text shall be prepared within fifteen (15) days of receipt of the measure from the City Clerk, and it shall be part of the official election materials available to voters.

(Prior code § 11-3.08)

## **Chapter 3.12**

### **THE CITY OF OAKLAND CAMPAIGN REFORM ACT\***

Sections:

#### **Article I.**

##### **Findings and Purpose**

- 3.12.010 Title.**
- 3.12.020 Findings and declarations.**
- 3.12.030 Purpose of this Act.**

#### **Article II.**

##### **Definitions**

- 3.12.040 Interpretation of this Act.**

#### **Article III.**

##### **Contribution Limitations**

- 3.12.050 Limitations on contributions from persons.**
- 3.12.060 Limitations on contributions from broad-based political committees.**
- 3.12.070 Return of contributions.**
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## Article IX.

### Electronic Filing Requirements

#### **3.12.340 Electronic filing of campaign statements.**

\* Editor's Note: Per Ord. 11969, passed March 18, 1997, effective January 1, 1997, except to acts occurring on or before December 31, 1996, Chapter 3.12, the Oakland Campaign Reform Act, is suspended pending further legislative action by ordinance, by the Oakland City Council in response to pending legal challenges to Proposition 208, the California Political Reform Act of 1996. Chapter 3.12 will be automatically reinstated without legislative action by the Oakland City Council if Proposition 208 is enjoined in its entirety.

Prior ordinance history: Ords. 11612, 11874, 12043 and 12075.

## Article I.

### Findings and Purpose

#### **3.12.010 Title.**

This chapter shall be known as the city of Oakland Campaign Reform Act, hereinafter "the Act." (Ord. 12158 (part), 1999)

#### **3.12.020 Findings and declarations.**

The Oakland City Council finds and declares each of the following:

A. Monetary contributions to political campaigns are a legitimate form of participation in our political process, but the financial strength of certain individuals or organizations should not enable them to exercise a disproportionate or controlling influence on the election of candidates.

B. The rapidly increasing costs of political campaigns have forced many candidates to raise larger and larger percentages of money from interest groups with a specific financial stake in matters under consideration by city government. This has caused the public perception that votes are being improperly influenced by monetary contributions. This perception is undermining the credibility and integrity of the governmental process.

C. Candidates are raising less money in small contributions and more money in large individual and organizational contributions. This has cre-

ated the public impression that the small contributor has an insignificant role to play in political campaigns.

D. High campaign costs are forcing officeholders to spend more time on fundraising and less time on the public's business. The constant pressure to raise contributions is distracting officeholders from urgent governmental matters.

E. Officeholders are responding to high campaign costs by raising larger amounts of money. This fundraising distracts them from important public matters, encourages contributions, which may have a corrupting influence, and gives incumbents an overwhelming and patently unfair fundraising advantage over potential challengers.

F. The integrity of the governmental process, the competitiveness of campaigns and public confidence in local officials are all diminishing. (Ord. 12158 (part), 1999)

#### **3.12.030 Purpose of this Act.**

The purpose of this Act is to accomplish the following:

A. To ensure that all individuals and interest groups in our city have a fair and equal opportunity to participate in elective and governmental processes.

B. To reduce the influence of large contributors with a specific financial stake in matters under consideration by the city, and to counter the perception that decisions are influenced more by the size of contributions than by the best interests of the people of Oakland.

C. To limit overall expenditures in campaigns, thereby reducing the pressure on candidates to raise large campaign war chests for defensive purposes, beyond the amount necessary to communicate reasonably with voters.

D. To reduce the advantage of incumbents and thus encourage competition for elective office.

E. To allow candidates and officeholders to spend a smaller proportion of their time on fundraising and a greater proportion of their time dealing with issues of importance to their constituents and the community.

F. To ensure that serious candidates are able to raise enough money to communicate their views and positions adequately to the public, thereby promoting public discussion of the important issues involved in political campaigns.

G. To help restore public trust in governmental and electoral institutions.

(Ord. 12158 (part), 1999)

## **Article II.**

### **Definitions**

#### **3.12.040 Interpretation of this Act.**

Unless the term is specifically defined in this Act or the contrary is stated or clearly appears from the context, the definitions set forth in Government Code Sections 81000 et seq., as they appear in 1998 shall govern the interpretation of this Act.

"Broad-based political committee" means a committee of persons which has been in existence for more than six months, receives contributions from one hundred (100) or more persons, and acting in concert makes contributions to five or more candidates.

"City offices" for the purposes of this Act include: Mayor, City Attorney, City Auditor, City Councilmembers and School Board Directors.

"Election" means any election held in the City of Oakland for City office.

"Election cycle" means a four-year period preceding a term of office as defined by the Oakland City Charter, beginning on January 1st, and ending on December 31st of the fourth year thereafter.

"Local candidate" shall be defined as set forth in the California Political Reform Act, California Government Code Section 81000 et seq., but shall include only candidates for City office that receive contributions totaling more than \$1,000.00 or make expenditures totaling more than \$1,000.00 in a calendar year.

"Local committee" shall mean those committees that receive contributions totaling more than \$1,000.00 or make expenditures totaling more than \$1,000.00 in a calendar year that are:

1. A committee controlled by a candidate for City office;
2. A committee primarily formed to support or oppose a candidate's election for City office;
3. A committee primarily formed to support or oppose a local ballot measure; or
4. A general purpose committee as defined in the California Political Reform Act, California Government Code Section 81000 et seq. that is active only in Oakland.

"Person" means an individual, proprietorship, firm, partnership, joint venture, syndicate, business, trust, company, corporation, association, committee, and any other organization or group of persons acting in concert.

#### **Qualified Campaign Expenditure.**

1. "Qualified campaign expenditure" for candidates means and includes all of the following:

a. Any expenditure made by a candidate, officeholder or committee controlled by the candidate or officeholder, for the purpose of influencing or attempting to influence the actions of the voters for or against the election of any candidate for city office.

b. A nonmonetary contribution provided at the request of or with the approval of the candidate, officeholder or committee controlled by the candidate or officeholder.

2. "Qualified campaign expenditure" does not include any payment if it is clear from the surrounding circumstances that it was not made in any part for political purposes.

"Redevelopment Agency" means the Oakland Redevelopment Agency.

(Ord. No. 13156, § 3, 3-19-2013; Ord. No. 12998, § 1, 3-2-2010; Ord. 12158 (part), 1999)

### **Article III.**

#### **Contribution Limitations**

**3.12.050      Limitations on contributions from persons.**

A. No person shall make to any candidate for city office and the controlled committee of such a candidate, and no such candidate for city office and the candidate's controlled committee shall accept from any such person, a contribution or contributions totaling more than one hundred dollars (\$100.00) for each election except as stated in subsection B of this section.

B. For candidates who adopt the expenditure ceilings as defined in Article IV of this Act, no person shall make to a candidate for city office and the controlled committee of such candidate, and no such candidate for city office and the controlled committee of such candidate shall accept contributions totaling more than five hundred dollars (\$500.00) from any person for each election.

C. Any person who makes independent expenditures supporting or opposing a candidate for city office shall not accept any contribution for the purpose of influencing elections for city office in excess of the amounts stated in subsections A.

D. This section is not intended to prohibit or regulate contributions to persons or broad based political committees for the purpose of influencing elections for offices other than city offices.

E. Upon the effective date of the ordinance codified in this section, persons making independent expenditures supporting or opposing a candidate for city office shall separately account for contributions received and contributions or expenditures made for the purpose of influencing such elections for city office. Where a person has separately accounted for such contributions and expenditures for such elections for city office, contributors to that person may contribute more than the amount set forth in subsection A of this section, so long as no portion of the contribution in excess of the set forth amounts is used to influence elections for city office.

F. Candidates for city office shall not be held responsible for violations of this provision by any person.

G. Beginning January 1, 2001, the City Clerk shall once annually, on a calendar year basis, increase the contribution limitation amounts upon a finding that the cost of living in the immediate San Francisco Bay Area, as shown on the Consumer



Price Index (CPI) for all items in the San Francisco Bay Area as published by the U.S. Department of Labor, Bureau of Statistics, has increased. The increase of the contribution limitation amounts shall not exceed the CPI increase, using 1999 as the index year. The adjustment shall be rounded to the nearest one hundred (100). The City Clerk shall publish the contribution limitation amounts no later than February 1st of each year. (Ord. 12260 § 1 (part), 2000: Ord. 12207 § 2, 2000; Ord. 12197 (part), 1999: Ord. 12158 (part), 1999)

### **3.12.060 Limitations on contributions from broad-based political committees.**

A. No broad-based political committee shall make to any candidate for city office and the controlled committee of such a candidate, nor shall a candidate and the candidate's controlled committee accept from a broad-based political committee, a contribution or contributions totaling more than two hundred fifty dollars (\$250.00) for each election except as stated in subsection B of this section.

B. For candidates who adopt the expenditure ceilings as defined in Article IV of this Act, no broad-based political committee shall make to any candidate for city office and the controlled committee of such candidate, nor shall a candidate and the candidate's controlled committee accept from a broad-based political committee, a contribution or contributions totaling more than one thousand dollars (\$1,000.00) for each election.

C. Any broad-based political committee that makes independent expenditures supporting or opposing a candidate for city office shall not accept any contribution for the purpose of influencing elections for city office in excess of the amounts stated in subsection A of this section.

D. This section is not intended to prohibit or regulate contributions to persons or broad-based political committees for the purpose of influencing elections for offices other than city offices.

E. Upon the effective date of the ordinance codified in this section, a broad-based political committee making independent expenditures supporting or opposing a candidate for city office shall

separately account for contributions received and contributions or expenditures made for the purpose of influencing such elections for city office. Where a broad-based political committee has separately accounted for such contributions and expenditures for such elections for city office, contributors to that broad-based political committee may contribute more than the amounts set forth in subsection A of this section, so long as no portion of the contribution in excess of the set forth amounts is used to influence elections for city office.

F. Candidates for city office shall not be held responsible for violations of this provision by any broad-based political committee.

G. Beginning January 1, 2001, the City Clerk shall once annually, on a calendar year basis, increase the contribution limitation amounts upon a finding that the cost of living in the immediate San Francisco Bay Area, as shown on the Consumer Price Index (CPI) for all items in the San Francisco Bay Area as published by the U.S. Department of Labor, Bureau of Statistics, has increased. The increase of the contribution limitation amounts shall not exceed the CPI increase, using 1999 as the index year. The adjustment shall be rounded to the nearest one hundred (100). The City Clerk shall publish the contribution limitation amounts no later than February 1st of each year. (Ord. 12260 § 1 (part), 2000: Ord. 12207 § 2, 2000; Ord. 12197 (part), 1999: Ord. 12158 (part), 1999)

### **3.12.070 Return of contributions.**

A contribution shall not be considered received if it is not negotiated, deposited, or utilized, and in addition it is returned to the donor before the closing date of the campaign statement on which the contribution would otherwise be reported. In the case of a late contribution as defined in Government Code Section 82036, it shall not be deemed received if it is returned to the contributor within forty-eight (48) hours of receipt. (Ord. 12158 (part), 1999)

**3.12.080 Aggregation of payments.**

For purposes of the contribution limitations enumerated in this Act, the following shall apply:

A. All payments made by a person, committee or broad-based political committee whose contributions or expenditure activity is financed, maintained or controlled by any corporation, labor organization, association, political party or any other person, committee or broad based political committee, including any parent, subsidiary, branch, division, department or local unit of the corporation, labor organization, association, political party or any other person, or by any group of such persons shall be considered to be made by a single person, committee or broad based political committee.

B. Two or more entities shall be treated as one person when any of the following circumstances apply:

1. The entities share the majority of members of their boards of directors.
2. The entities share two or more officers.
3. The entities are owned or controlled by the same majority shareholder or shareholders.
4. The entities are in a parent-subsidiary relationship.

C. An individual and any general or limited partnership in which the individual has more than a fifty (50) percent share, or an individual and any corporation in which the individual owns a controlling interest (more than fifty (50) percent), shall be treated as one person.

D. No committee and no broad-based political committee which supports or opposes a candidate for office shall have as officers individuals who serve as officers on any other committee which supports or opposes the same candidate. No such committee or broad-based political committee shall act in concert with, or solicit or make contributions on behalf of, any other committee or broad-based political committee. This subdivision shall not apply to treasurers of committees if these treasurers do not participate in or control in any way a decision on which a candidate or candidates receive contributions. (Ord. 12158 (part), 1999)

**3.12.090 Loans.**

A. A loan shall be considered a contribution from the maker and the guarantor of the loan and shall be subject to the contribution limitations of this Act.

B. Every loan to a candidate or the candidate's controlled committee shall be by written agreement and shall be filed with the candidate's or committee campaign statement on which the loan is first reported.

C. The proceeds of a loan made to a candidate by a commercial lending institution in the regular course of business on the same terms available to members of the public and which is secured or guaranteed shall not be subject to the contribution limitations of this Act.

D. Other than loans pursuant to subsection C of this section, extensions of credit in excess of one thousand five hundred dollars (\$1,500.00) for a period of more than ninety (90) days are subject to the contribution limitations of this Act, unless the candidate can demonstrate good faith evidence of an intent to repay through a set payment schedule which is being adhered to through repayment of the extension of credit on a regular basis. (Ord. 12158 (part), 1999)

**3.12.100 Family contributions.**

A. Contributions by a husband and wife shall be treated as separate contributions and shall not be aggregated.

B. Contributions by children under eighteen (18) years of age shall be treated as contributions by their parents and attributed proportionately to each parent (one-half to each parent or the total amount to a single custodial parent). (Ord. 12158 (part), 1999)

**3.12.110 One campaign committee and one checking account per candidate for city office.**

A candidate for city office shall have no more than one campaign committee and one checking account for the city office being sought, out of which all expenditures for that office shall be made.

This section should not prohibit the establishment of savings accounts, but no qualified campaign expenditures shall be made out of these accounts. (Ord. 12158 (part), 1999)

**3.12.120 Money received by city officials and candidates treated as contributions, income or gifts.**

Any funds received by any elected city official or candidate running in the jurisdiction or any committee controlled by such an official or candidate shall be considered either a campaign contribution, income or a gift. All campaign contributions received by such persons shall be subject to the provisions of this Act unless such campaign contributions are used exclusively for elections held outside the jurisdiction. All income and gifts shall be subject to the disqualification provisions of the Political Reform Act, Government Code Sections 87100 et seq. (Ord. 12158 (part), 1999)

**3.12.130 Identification of contributor required.**

No contribution of one hundred dollars (\$100.00) or more shall be deposited into a campaign checking account of a candidate for city office unless the name, address, occupation, and employer of the contributor is on file in the records of the recipient of the contribution. (Ord. 12158 (part), 1999)

**3.12.140 Contractors doing business with the city of Oakland, the Oakland Redevelopment Agency or the Oakland Unified School District prohibited from making contributions.**

A. No person who contracts or proposes to contract with or who amends or proposes to amend such a contract with the city for the rendition of services, for the furnishing of any material, supplies, commodities or equipment to the city or for selling any land or building to the city or for purchasing any land or building from the city whenever the value of such transaction would require approval by the City Council shall make any contribution to the

Mayor, a candidate for Mayor, a City Council-member, a candidate for City Council, the City Attorney, a candidate for City Attorney, the City Auditor, a candidate for City Auditor, or committee controlled by such officeholder or candidate at any time between commencement of negotiations and either one hundred eighty (180) days after the completion of, or the termination of, negotiations for such contract.

B. No person who contracts or proposes to contract with or who amends or proposes to amend such a contract with the Redevelopment Agency for the rendition of services, for the furnishing of any material, supplies, commodities or equipment to the Redevelopment Agency or for selling any land or building to the Redevelopment Agency or for purchasing any land or building from the Redevelopment Agency, whenever the value of such transaction would require approval by the Redevelopment Agency, shall make any contribution to the Mayor, a candidate for Mayor, a City Councilmember, a candidate for City Council, the City Attorney, a candidate for City Attorney, the City Auditor, a candidate for City Auditor, or committee controlled by such officeholder or candidate at any time between commencement of negotiations and either one hundred eighty (180) days after the completion of, or the termination of, negotiations for such contract.

C. No person who contracts or proposes to contract with or who amends or proposes to amend



such a contract with the Oakland School District, for the rendition of services, for the furnishing of any material, supplies, commodities or equipment to the School District or for selling any land or building to the School District or for purchasing any land or building from the School District whenever the value of such transaction would require approval the School Board, shall make any contribution to a School Board member, candidate for School Board Directors or committee controlled by such office-holder or candidate at any time between commencement of negotiations and either one hundred eighty (180) days after the completion of, or the termination of, negotiations for such contract.

D. "Services" means and includes labor, professional services, consulting services, or a combination of services and materials, supplies, commodities and equipment which shall include public works projects.

E. For contributions to city officers other than School Board Directors, transactions that require approval by the City Council or Redevelopment Agency include but are not limited to:

1. Contracts for the procurement of services that are professional or consulting services exceeding fifteen thousand dollars (\$15,000.00).

2. Contracts for the procurement of services exceeding fifty thousand dollars (\$50,000.00), other than contracts for professional or consulting services.

3. Contracts for the furnishing of any materials, supplies, commodities or equipment exceeding fifty thousand dollars (\$50,000.00).

4. Contracts for the sale of any building or land to or from the city or the Redevelopment Agency.

5. Amendments to contracts described in subsections (E)(1), (2), (3), and (4) of this section.

F. For contributions to School Board Directors, transactions that require approval by the School Board include but are not limited to:

1. Professional services and consulting contracts exceeding twenty-five thousand dollars (\$25,000.00), including personal service agreements.

2. Contracts requiring School Board approval under Public Contract Code Section 20111.

3. Construction contracts exceeding twenty-five thousand dollars (\$25,000.00) whether or not they are subject to the provisions of the Public Contract Code.

4. Contracts for the sale of any building or land to or from the School District.

5. Amendments to contracts described in subsections (F)(1), (2), (3), and (4) of this section.

G. "Commencement of negotiations" for city contracts occurs when a contractor or contractor's agent formally submits a bid, proposal, qualifications or contract amendment to any elected or appointed city officer or employee or when any elected or appointed city officer or employee formally proposes submission of a bid, proposal, qualifications or contract amendment from a contractor or contractor's agent.

H. "Commencement of negotiations" for Redevelopment Agency contracts occurs when a contractor or contractor's agent formally submits a bid, proposal, qualifications or contract amendment to any elected or appointed Redevelopment Agency officer or employee or when any elected or appointed Redevelopment Agency officer or employee formally proposes submission of a bid, proposal, qualifications or contract amendment from a contractor or contractor's agent.

I. "Commencement of negotiations" for Oakland School District contracts occurs when a contractor or contractor's agent formally submits a bid, proposal, qualifications or contract amendment to any elected or appointed School District officer or employee or when any elected or appointed School District officer or employee formally proposes submission of a bid, proposal, qualifications or contract amendment from a contractor or contractor's agent.

J. "Commencement of negotiations" does not include unsolicited receipt of proposal or contract information or documents related to them, requests to be placed on mailing lists or routine inquiries for information about a particular contract, request for proposal or any information or documents relating to them or attendance at an informational meeting.

K. "Completion of negotiations" occurs when the city, the Redevelopment Agency or the School District executes the contract or amendment.

L. "Termination of negotiations" occurs when the contract or amendment is not awarded to the contractor or when the contractor files a written withdrawal from the negotiations, which is accepted by an appointed or elected City officer, Redevelopment Agency officer, City employee or Redevelopment Agency employee or an appointed or elected School District officer or employee.

M. The Oakland City Manager shall be responsible for implementing procedures for City of Oakland and Redevelopment Agency contracts to ensure contractor compliance with the Oakland Campaign Reform Act. A proposed or current contractor must sign and date the following statement at the time the contractor formally submits a bid, proposal, qualifications or contract amendment:

The Oakland Campaign Reform Act limits campaign contributions and prohibits contributions from contractors doing business with the City of Oakland, the Oakland Redevelopment Agency or the Oakland Unified School District during specified time periods. Violators are subject to civil and criminal penalties.

I have read Oakland Municipal Code Chapter 3.12, including section 3.12.140, the contractor provisions of the Oakland Campaign Reform Act, and certify that I/we have not knowingly, nor will I/we make contributions prohibited by the Act.

Business Name \_\_\_\_\_  
 Date \_\_\_\_\_  
 Signature \_\_\_\_\_

The signed and dated statement must be received and filed by the City Clerk at the same time the proposal is submitted. Contracts may not be awarded to any contractors who have not signed this certification. The City Clerk shall keep an updated list of current contractors available for inspection.

N. The Oakland Superintendent of Schools shall be responsible for implementing procedures for Oakland School District contracts to ensure contractor compliance with the Oakland Campaign Reform Act. A proposed or current contractor must sign and date the following statement at the time the contractor formally submits a bid, proposal, qualifications or contract amendment:

The Oakland Campaign Reform Act limits campaign contributions and prohibits contributions from contractors doing business with the City of Oakland, the Oakland Redevelopment Agency or the Oakland Unified School District during specified time periods. Violators are subject to civil and criminal penalties.

I have read Oakland Municipal Code Chapter 3.12, including section 3.12.140, the contractor provisions of the Oakland Campaign Reform Act, and certify that I/we have not knowingly, nor will I/we make contributions prohibited by the Act.

Business Name \_\_\_\_\_  
 Date \_\_\_\_\_  
 Signature \_\_\_\_\_

The signed and dated statement must be received and filed with the School District at the same time the proposal is submitted. Contracts may not be awarded to any contractors who have not signed this certification. The School District shall keep an updated list of current contractors available for inspection.

O. A person who contracts with the City, the Redevelopment Agency or the School District for the rendition of services, for the furnishing of any material, supplies, commodities or equipment to the City, the Redevelopment Agency or the School District, or for selling any land or building to the City, the Redevelopment Agency or the School District or for purchasing any land or building from the Redevelopment Agency or the School District, whenever the value of such transaction would require approval by the City Council, the Redevelop-

ment Agency or the School Board, and who violates subsection A of this section, shall be subject to the enforcement provisions of Article VII of this Act.

P. Elected city officeholders, candidates for city office and their controlled committees shall include a notice on all campaign fundraising materials equivalent to eight point roman boldface type, which shall be in a color or print which contrasts with the background so as to be easily legible, and in a printed or drawn box and set apart from any other printed matter. The notice shall consist of the following statement:

The Oakland Campaign Reform Act limits campaign contributions by all persons (OMC §§ 3.12.050 and 3.12.060) and prohibits contributions during specified time periods from contractors doing business with the City of Oakland, the Oakland Redevelopment Agency or the Oakland Unified School District (OMC § 3.12.140, paragraphs A., B., and C.).

(Ord. 12158 (part), 1999)

### **3.12.150 Officeholder fund.**

A. Every elected city officeholder shall be permitted to establish one officeholder expense fund. All contributions deposited into the officeholder expense fund shall be deemed to be held in trust for expenses associated with holding the office currently held by the elected city officer. Contributions to the officeholder fund must be made by a separate check or other separate written instrument. Single contributions may not be divided between the officeholder fund and any other candidate committee. For District Councilmembers, City Auditor and School Board Directors total contributions to an officeholder fund shall not exceed twenty-five thousand dollars (\$25,000.00) per year in office. For Councilmember-At-Large and City Attorney, total contributions to an officeholder fund shall not exceed thirty thousand dollars (\$30,000.00) per year in office. For the office of the Mayor, total contributions to an officeholder fund shall not exceed fifty thousand dollars (\$50,000.00) per year in office.

B. Expenditures from an officeholder fund may be made for any political, governmental or other lawful purpose, but may not be used for any of the purposes prohibited in subsection (C)(1) through (5) of this section. Such allowable expenditures shall include, but are not limited to the following categories:

1. Expenditures for fundraising (including solicitations by mail) for the officeholder expense fund;
2. Expenditures for office equipment, furnishings and office supplies;
3. Expenditures for office rent;
4. Expenditures for salaries of part-time or full-time staff employed by the officeholder for officeholder activities;
5. Expenditures for consulting, research, polling, photographic or similar services except for campaign expenditures for any city, county, regional, state or federal elective office;
6. Expenditures for conferences, meetings, receptions, and events attended in the performance of government duties by (1) the officeholder (2) a member of the officeholder's staff; or (3) such other person designated by the officeholder who is authorized to perform such government duties;
7. Expenditures for travel, including lodging, meals and other related disbursements, incurred in the performance of governmental duties by (1) the officeholder, (2) a member of the officeholder's staff, (3) such other person designated by the officeholder who is authorized to perform such government duties, or a member of such person's household accompanying the person on such travel;
8. Expenditures for meals and entertainment directly preceding, during or following a governmental or legislative activity;
9. Expenditures for donations to tax-exempt educational institutions or tax exempt charitable, civic or service organizations, including the purchase of tickets to charitable or civic events, where no substantial part of the proceeds will have a material financial effect on the elected officer, any member of his or her immediate family, or his or her committee treasurer;

10. Expenditures for memberships to civic, service or professional organizations, if such membership bears a reasonable relationship to a governmental, legislative or political purpose;
  11. Expenditures for an educational course or educational seminar if the course or seminar maintains or improves skills which are employed by the officeholder or a member of the officeholder's staff in the performance of his or her governmental responsibilities;
  12. Expenditures for advertisements in programs, books, testimonials, souvenir books, or other publications if the advertisement does not support or oppose the nominations or election of a candidate for city, county, regional, state or federal elective office;
  13. Expenditures for mailing to persons within the city which provide information related to city-sponsored events, school district-sponsored events, an official's governmental duties or an official's position on a particular matter pending before the Council, Mayor, or School Board;
  14. Expenditures for expressions of congratulations, appreciation or condolences sent to constituents, employees, governmental officials, or other persons with whom the officeholder communicates in his or her official capacity;
  15. Expenditures for payment of tax liabilities incurred as a result of authorized officeholder expense fund transactions;
  16. Expenditures for accounting, professional and administrative services provided to the officeholder fund;
  17. Expenditures for ballot measures.
- C. Officeholder expense funds shall not be used for the following:
1. Expenditures in connection with a future election for any city, county, regional, state or federal elective office;
  2. Expenditures for campaign consulting, research, polling, photographic or similar services for election to city, county, regional, state or federal elective office;
  3. Membership in any athletic, social, fraternal, veteran or religious organization;
4. Supplemental compensation for employees for performance of an act which would be required or expected of the person in the regular course or hours of his or her duties as a city official or employee;
  5. Any expenditure that would violate the provisions the California State Political Reform Act, including Government Code Sections 89506 and 89512 through 89519.
- D. No funds may be transferred from the officeholder fund of an elected city officeholder to any other candidate committee.
- E. Annual contributions received by or made to the officeholder fund shall be subject to the contribution limitations of Article III of this Act.
- F. Expenditures made from the officeholder fund shall not be subject to the voluntary expenditure ceilings of Article IV of this Act. (Ord. 12158 (part), 1999)

#### **3.12.160      Allowance for donation of office space.**

A. Donation of office space for use by city officeholders in furtherance of their duties and responsibilities by a person or broad based political committee shall not be considered a campaign contribution subject to the provisions of this Act, provided that:

1. The donation is made to the City and accepted pursuant to Oakland City Charter Section 1203 for use by the Mayor, City Councilmembers, City Attorney or City Auditor or in the case of School Board Directors, the donation is made to the Oakland Unified School District; and

2. The name, address, employer, and occupation of the donor, and the current market value of the donated office space, are provided to the City Clerk.

B. Use of office space donated pursuant to this section by a city officeholder shall not be considered a "qualified campaign expenditure" pursuant to Section 3.12.040 of this Act. (Ord. 12158 (part), 1999)

#### **3.12.170      Legal expense funds.**

A. An elected city officeholder or candidate for city office may receive contributions for a separate legal expense fund, for deposit into a separate ac-

count, to be used solely to defray attorney's fees and other legal costs incurred in the candidate's or officeholder's legal defense to any civil, criminal, or administrative action or actions arising directly out of the conduct of the campaign or election process, or the performance of the candidate's or officeholder's governmental activities and duties. Contributions to the legal expense fund must be earmarked by the contributor for contribution to the fund at the time the contribution is made. All funds contributed to an officeholder or candidate for legal expense fund must be deposited into the officeholder's appropriate campaign bank account prior to being deposited into the legal expense fund. The legal expense fund may be in the form of a certificate of deposit, interest-bearing savings account, money market account, or similar account, which shall be established only for the legal expense fund.

B. Contributions received by or made to the legal expense fund shall not be subject to the contribution limitations of Article III of this Act.

C. Expenditures made from the legal expense fund shall not be subject to the voluntary expenditure ceilings of Article IV of this Act.

(Ord. 12158 (part), 1999)

### **3.12.180      Volunteer services exemption.**

Volunteer personal services, and payments made by an individual for his or her own travel expenses if such payments are made voluntarily without any understanding or agreement that they shall be directly or indirectly repaid to him or her, are not contributions or expenditures subject to this Act.

(Ord. 12158 (part), 1999)

## **Article IV.**

### **Expenditure Ceilings**

#### **3.12.190      Expenditure ceilings.**

All candidates for city office who adopt campaign expenditure ceilings as defined below are permitted the higher contribution limit as defined in Sections 3.12.050C and 3.12.060C of this Act. Before accepting any contributions at the higher

contribution limit, candidates who adopt voluntary expenditure ceilings must first file a statement with the City Clerk on a form approved for such purpose indicating acceptance of the expenditure ceiling. Said statement shall be filed no later than the time for filing for candidacy with the City Clerk. This statement will be made public.

(Ord. 12158 (part), 1999)

#### **3.12.200      Amount of expenditure ceilings.**

A candidate for office of Mayor who voluntarily agrees to expenditure ceilings shall not make qualified expenditures exceeding seventy cents (\$.70) per resident for each election in which the candidate is seeking elective office. A candidate for other citywide offices who voluntarily agrees to expenditure ceilings shall not make qualified expenditures exceeding fifty cents (\$.50) per resident for each election in which the candidate is seeking office. A candidate for District City Councilmember who voluntarily agrees to expenditure ceilings shall not make qualified expenditures exceeding one dollar and fifty cents (\$1.50) per resident in the electoral district for each election in which the candidate is seeking elective office. A candidate for School Board Director who voluntarily agrees to expenditure ceilings shall not make qualified campaign expenditures exceeding one dollar (\$1.00) per resident for each election in the electoral district for each election for which the candidate is seeking office. Residency of each electoral district shall be determined by the latest decennial census population figures available for that district.

Beginning in 1999, the City Clerk shall once annually on a calendar year basis increase the expenditure ceiling amounts upon a finding that the cost of living in the immediate San Francisco Bay Area, as shown on the Consumer Price Index (CPI) for all items in the San Francisco Bay Area as published by the U.S. Department of Labor, Bureau of Statistics, has increased. The increase of the expenditure ceiling amounts shall not exceed the CPI increase, using 1998 as the index year. The increase shall be rounded to the nearest thousand.

The City Clerk shall publish the expenditure ceiling amounts no later than February 1st of each year.

(Ord. 12197 (part), 1999; Ord. 12158 (part), 1999)

### **3.12.210 Reserved.**

**Editor's note**—Ord. No. 12998, § 1, adopted March 2, 2010, repealed the former section 3.12.210 in its entirety, which pertained to time periods for expenditures, and derived from Ord. No. 12158, adopted 1999.

### **3.12.220 Expenditure ceilings lifted.**

If a candidate declines to accept expenditure ceilings and receives contributions or make qualified campaign expenditures equal to fifty (50) percent or more of the expenditure ceiling, or if an independent expenditure committee in the aggregate spends more than fifteen thousand dollars (\$15,000.00) on a District City Council or School Board election or seventy thousand dollars (\$70,000.00) in a City Attorney, Auditor, Councilmember-at-Large or Mayoral election, the applicable expenditure ceiling shall no longer be binding on any candidate running for the same office, and any candidate running for the same office who accepted expenditure ceilings shall be permitted to continue receiving contributions at the amounts set for such candidates in Sections 3.12.050C and 3.12.060C of this Act. The independent expenditure committee amounts of fifteen thousand dollars (\$15,000.00) and seventy thousand dollars (\$70,000.00) respectively, shall be increased in proportion to any increase of the voluntary expenditure ceiling amounts resulting from an increase in the CPI as provided by Section 3.12.180 of this chapter.

(Ord. 12158 (part), 1999)

## **Article V.**

### **Independent Expenditures**

#### **3.12.230 Independent expenditures for mass mailings, state mailings or other campaign materials.**

Any person who makes independent expenditures for a mass mailing, slate mailing or other

campaign materials which support or oppose any candidate for city office shall place the following statement on the mailing in typeface of no smaller than fourteen points:

#### **Notice to Voters**

***(Required by the City of Oakland)***

**This mailing is not authorized or approved by any  
City candidate or election official.**

**It is paid for**

by (name) \_\_\_\_\_  
\_\_\_\_\_  
(address, city, state)

**Total cost of this mailing is: (amount)**

(Ord. 12158 (part), 1999)

## **Article VI.**

### **Agency Responsibility**

#### **3.12.240 Duties of the Public Ethics Commission.**

The Public Ethics Commission shall:

- A. Oversee compliance with the Act.
- B. Propose necessary regulations in furtherance of this Act subject to City Council approval.

(Ord. 12158 (part), 1999)

#### **3.12.250 Duties of the City Clerk.**

The City Clerk shall:

- A. Prescribe the necessary forms and manuals for filing the appropriate statements;
- B. Determine whether required documents have been filed and, if so, whether they conform on their face with the requirements of this title;
- C. Notify promptly all persons and known committees who have failed to file a report or statement in the form and at the time required by this title;
- D. Ensure that any electronic filing system will operate securely and effectively and will not unduly burden filers;

E. Ensure that any electronic filing system shall only accept a filing in the standardized record format that is developed by the Secretary of State and that is compatible with the Secretary of State's system for receiving an online or electronic filing;

F. Report violations of this title to the appropriate agencies, including the Public Ethics Commission, the City Attorney, and/or the District Attorney;

G. Compile and maintain a current record of all reports and statements filed with the City Clerk;

H. At a minimum, offer trainings, at no cost, on the electronic filing system prescribed by the City during the first semi-annual and first pre-election reporting periods during election years; and

I. Provide with nomination packets given to candidates an advisory sheet on locations of computers with internet access made available by the City for free public use.

(Ord. No. 13156, § 4, 3-19-2013; Ord. 12158 (part), 1999)

## **Article VII.**

### **Enforcement**

#### **3.12.260      Public Ethics Commission as enforcing body.**

The Public Ethics Commission is the sole body for civil enforcement of this Act. In the event criminal violations of the Act come to the attention of the Public Ethics Commission, the commission shall promptly advise in writing the City Attorney and the appropriate prosecuting enforcement agency.

(Ord. 12158 (part), 1999)

#### **3.12.270      Criminal misdemeanor actions.**

Any person who knowingly or willfully violates Articles III, IV, V, or IX of this Act is guilty of a misdemeanor. Any person who knowingly or willfully causes any other person to violate any provision of the Act, or who knowingly or wilfully aids and abets any other person in violation of any provision of this Act, shall be liable under the

provisions of this section. Prosecution for violation of any provision of this Act shall be commenced within four years after the date on which the violation occurred.

(Ord. No. 13156, § 5, 3-19-2013; Ord. 12158 (part), 1999)

#### **3.12.280      Enforcement actions.**

A. Any person who intentionally or negligently violates Articles III, IV, V or IX of this Act is subject to enforcement proceedings before the Public Ethics Commission pursuant to the Public Ethics Commission General Rules of Procedure.

B. If two or more persons are responsible for any violation, they shall be jointly and severally liable.

C. Any person alleging a violation of Articles III, IV, V or IX of this Act shall first file with the Public Ethics Commission a written complaint on a form approved for such purpose. The complaint shall contain a statement of the grounds for believing a violation has occurred. The Commission shall respond within ninety (90) days after receipt of the complaint indicating whether there is probable cause to conduct a hearing and whether mediation will be undertaken.

D. If mediation is not undertaken, if any party refuses mediation, or if mediation is unsuccessful in resolving the issues raised in the complaint, the Commission may within ninety (90) days thereafter convene a hearing. The Commission has full authority to settle any action filed by or on behalf of the Commission in the interest of justice.

E. If the Commission determines a violation has occurred, the Commission is hereby authorized to administer appropriate penalties and fines not to exceed three times the amount of the unlawful contribution or expenditure.

1. For any violation of Article IX the Commission is authorized to administer penalties and fines not to exceed three times the amount the person failed to report properly or \$2,000.00, whichever is greater.

F. No complaint alleging a violation of any provision of this Act shall be filed more than two years after the date the violation occurred.

(Ord. No. 13156, § 5, 3-19-2013; Ord. 12158 (part), 1999)

### **3.12.290      Injunctive relief.**

The Public Ethics Commission may sue for injunctive relief to enjoin violations or to compel compliance with the provisions of this Act.

(Ord. 12158 (part), 1999)

### **3.12.300      Cost of litigation.**

The court may award to a complainant or respondent who prevails in any action for injunctive relief, his or her costs of litigation, including reasonable attorney's fees.

(Ord. 12158 (part), 1999)

### **3.12.310      Disqualification.**

In addition to any other penalties prescribed by law, if an official receives a contribution in violation of Sections 3.12.050 and 3.12.060, the official shall not be permitted to make, participate in making or in any way attempt to use his or her official position to influence a governmental decision in which the contributor has a financial interest. The provisions of Government Code Sections 87100 et seq. and the regulations of the Fair Political Practices Commission shall apply to interpretations of this section.

(Ord. 12158 (part), 1999)

## **Article VIII.**

### **Miscellaneous Provisions**

#### **3.12.320      Applicability of other laws.**

Nothing in this Act shall exempt any person from applicable provisions of any other laws of this state or jurisdiction.

(Ord. 12158 (part), 1999)

#### **3.12.330      Severability.**

If any provision of this Act, or the application of any such provision to any person or circum-

stances, shall be held invalid, the remainder of this Act to the extent it can be given effect, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby, and to this extent the provisions of this Act are severable.

(Ord. 12158 (part), 1999)

## **Article IX.**

### **Electronic Filing Requirements**

#### **3.12.340      Electronic filing of campaign statements.**

A. **Electronic Filing of Campaign Statements.** Whenever any local candidate or local committee is required by state or local law to file a campaign statement with the City Clerk, that candidate or committee shall file the statement or report in an electronic format with the City Clerk's office provided that the City Clerk has prescribed the format at least 60 days before the statement or report is due to be filed.

B. **Continuous Filing of Electronic Statements.** Once a committee, including a candidate's committee, is subject to the electronic filing requirements imposed by this section, the committee shall remain subject to the electronic filing requirements, regardless of the amount of contributions received or expenditures made during each reporting period, until the committee terminates pursuant to this chapter and the California Political Reform Act (California Government Code Section 8100 et seq.).

C. **Late Filing Fees.** If any person files an original statement or report after the deadline imposed by state or local law, he or she shall, in addition to any other penalties or remedies established by this title or state law, be liable in the amount of \$10.00 per day after the deadline until the statement or report is filed, to the City Clerk. No liability under this subsection C. shall exceed the cumulative amount stated in the late statement or report, or \$100.00, whichever is greater. The City Clerk shall deposit any funds received under this section into the general fund.

D. Adoption of General Law. Except as otherwise provided in, or inconsistent with, this chapter or other provisions of local law, the provisions of the Government Code of the State of California (commencing at Section 81000), relating to local elections including any subsequent amendments, are hereby incorporated as part of this article.

(Ord. No. 13156, § 3, 3-19-2013)



**Chapter 3.13**  
**LIMITED PUBLIC FINANCING ACT\***

**Sections:**

<p><b>Article I.</b>  <b>Findings and Purpose</b></p> <p><b>3.13.010 Title.</b>  <b>3.13.020 Findings and declarations.</b>  <b>3.13.030 Purpose of this Act.</b></p> <p><b>Article II.</b>  <b>Definitions</b></p> <p><b>3.13.040 Interpretation of this Act.</b></p> <p><b>Article III.</b>  <b>Election Campaign Fund</b></p> <p><b>3.13.050 Election campaign fund.</b>  <b>3.13.060 Appropriation of funds.</b>  <b>3.13.065 Allocation of election campaign fund.</b></p> <p><b>Article IV.</b>  <b>Eligibility for Public Financing</b></p> <p><b>3.13.070 Application and withdrawal procedures.</b>  <b>3.13.080 Qualification procedures.</b>  <b>3.13.090 Use of personal funds.</b></p> <p><b>Article V.</b>  <b>Disbursement of Public Financing</b></p> <p><b>3.13.100 Duties of the public ethics commission and office of the city auditor.</b></p>	<p><b>3.13.110 Requests for public financing.</b>  <b>3.13.120 Disbursement and deposit of public financing.</b>  <b>3.13.150 Return of surplus funds.</b>  <b>3.13.170 Public debates.</b>  <b>3.13.180 Enforcement.</b>  <b>3.13.190 Criminal misdemeanor actions.</b>  <b>3.13.200 Enforcement actions.</b>  <b>3.13.220 Construction.</b>  <b>3.13.240 Applicability of other laws.</b>  <b>3.13.260 Severability.</b></p> <p><b>Article I.</b>  <b>Findings and Purpose</b></p> <p><b>3.13.010 Title.</b></p> <p>This chapter shall be known as the "Limited Public Financing Act of the City of Oakland."  (Ord. No. 13031, 7-27-2010)</p> <p><b>3.13.020 Findings and declarations.</b></p> <p>The findings of this Act are as follows:</p> <p>A. The financial strength of certain individuals or organizations should not enable them to exercise a disproportionate or controlling influence on the election of candidates.</p> <p>B. The rapidly increasing costs of political campaigns have forced many candidates to raise larger and larger percentages of money from interest groups with a specific financial stake in matters under consideration by city government. This has caused the public perception that votes are being improperly influenced by monetary contributions.</p> <p>C. High campaign costs are forcing officeholders to spend more time on fundraising and less time on the public's business. The constant pressure to raise contributions is distracting officeholders from urgent governmental matters.  (Ord. No. 13031, 7-27-2010)</p>
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\*Editor's note—Ord. No. 13031, adopted July 27, 2010, amended Chapter 3.13 in its entirety to read as herein set out. Formerly, Chapter 3.13, §§ 3.13.010 - 3.13.290, pertained to similar subject matter and derived from Ord. No. 12308, adopted 2001; Ord. No. 12375, adopted 2001; Ord. No. 12519, § 1, adopted 2003; Ord. No. 12648, § 3, adopted 2005; Ord. No. 12669, §§ 3—10, adopted 2005; Ord. No. 12905, § 2, adopted November 18, 2009, and Ord. No. 13012, § 2, adopted May 4, 2010.

**3.13.030 Purpose of this Act.**

The purpose of this Act is to accomplish the objectives stated in Oakland's Campaign Reform Act as follows:

A. To ensure that all individuals and interest groups in our city have a fair and equal opportunity to participate in elective and governmental processes.

B. To reduce the influence of large contributors with a specific financial stake in matters under consideration by the city, and to counter the perception that decisions are influenced more by the size of contributions than by the best interests of the people of Oakland.

C. To reduce the pressure on candidates to raise large campaign war chests for defensive purposes, beyond the amount necessary to communicate reasonably with voters.

D. To encourage competition for elective office.

E. To allow candidates and office holders to spend a smaller proportion of their time on fundraising and a greater proportion of their time dealing with issues of importance to their constituents and the community.

F. To ensure that serious candidates are able to raise enough money to communicate their views and positions adequately to the public, thereby promoting public discussion of important issues involved in political campaigns.

G. To help preserve public trust in governmental and electoral institutions.

(Ord. No. 13031, 7-27-2010)

**Article II.****Definitions****3.13.040 Interpretation of this Act.**

Unless the term is specifically defined in this Act or the contrary is stated or clearly appears from the text, the definitions set forth in Chapter 3.12 of this Code and in Government Code Sections 81000 et seq. as amended govern the interpretation of this Act.

For purposes of this Act, "principal residence" shall mean the place in which a person's habitation is fixed, wherein the person has the intention of remaining, and to which, whenever he or she is absent, the person has the intention of returning.

For purposes of this Act, "primary place of doing business" shall mean the street address of a corporation's or association's principal executive office as filed with the California Secretary of State or the street address of an unincorporated association's principal office as filed with the California Secretary of State.

(Ord. No. 13031, 7-27-2010)

**Article III.****Election Campaign Fund****3.13.050 Election campaign fund.**

There is hereby established an account within a special revenue fund of the city to be known as the "Election Campaign Fund."

(Ord. No. 13031, 7-27-2010)

**3.13.060 Appropriation of funds.**

A. The city council shall appropriate to the election campaign fund, under the city's current two-year budget cycle, an amount sufficient to fund all candidates eligible to receive public financing for the office of district city councilmember.

B. The city public ethics commission shall provide in the form and at the time directed by the mayor and city administrator a written estimate of the amount necessary to be appropriated for any two-year budget cycle according to the provisions of this Act for all eligible candidates. The amount of funds to be allocated to the election campaign fund shall be based on a consideration of anticipated campaign activity, anticipated administrative costs, and existing unspent funds within the account. The amount of funds to be allocated to the election campaign fund shall not exceed \$500,000.00 for any two-year budget cycle.

C. The election campaign fund shall be established as an interest bearing account. Unspent funds in the election campaign fund at the end of a

two-year budget cycle shall remain in the fund and accrue for disbursement to candidates eligible for public financing in future elections and for administrative costs.

D. Up to seven and one-half percent of the amount allocated to the election campaign fund pursuant to Subsections 3.13.060(a) and (b) may be utilized by the public ethics commission to cover the anticipated cost of administering the provisions of this Act.

(Ord. No. 13031, 7-27-2010)

### **3.13.065 Allocation of election campaign fund.**

No later than seven days after the city clerk has certified the names of all candidates to appear on the ballot, the public ethics commission shall determine at a publicly noticed meeting whether, based on the number of potentially eligible candidates, the amount of money in the election campaign fund is adequate to provide the maximum amount to potentially eligible candidates. If the commission determines that the election campaign fund will not be adequate to provide the maximum amount of funds to potentially eligible candidates, the commission shall order the disbursement of available funds on a pro rata or other equitable basis. The commission may at any time revise the disbursement plan consistent with these rules and prevailing law.

(Ord. No. 13031, 7-27-2010)

## **Article IV.**

### **Eligibility for Public Financing**

#### **3.13.070 Application and withdrawal procedures.**

A. Each candidate for district city council shall file a statement with the city clerk on a form approved for such purpose indicating acceptance or rejection of the voluntary spending ceilings pursuant to Section 3.12.190.

B. Each candidate for district city council shall file with the public ethics commission a statement of acceptance or rejection of public financing on a

form approved by the public ethics commission no later than 14 calendar days after the date the city clerk has certified the names of candidates to appear on the ballot for the election in which public financing will be sought. The statement of acceptance or rejection of public financing shall advise and require that the candidate's decision to reject public financing is irrevocable for the election in which his or her name appears on the ballot. The failure to timely file a statement of acceptance or rejection of public financing shall constitute a rejection of public financing.

C. If a candidate declines to accept the voluntary expenditure ceilings prescribed in Section 3.12.200, the candidate shall be subject to the contribution limits of Subsections 3.12.050(a) and 3.12.060(a) and shall not be eligible for public financing.

D. If a candidate agrees to accept the voluntary expenditure ceilings prescribed in Section 3.12.200, the candidate shall be subject to the contribution limits of Subsections 3.12.050(b) and 3.12.060(b) as adjusted pursuant to Subsections 3.12.050(g) and 3.12.060(g), and shall be eligible for public financing upon meeting the qualification requirements as provided in this Act.

E. In the event expenditure ceilings are lifted pursuant to Section 3.12.200, a candidate who accepted expenditure ceilings shall be permitted to receive public financing but shall no longer be subject to expenditure ceilings.

(Ord. No. 13031, 7-27-2010)

### **3.13.080 Qualification procedures.**

A candidate shall be approved to receive public financing if the candidate meets all of the following requirements:

A. The candidate has filed a timely statement of acceptance of the voluntary spending ceilings and acceptance of public financing.

B. The candidate is certified to appear on the ballot for the election for which public financing is sought.

C. The candidate has (1) received contributions in an aggregate amount of at least five per-

### **3.13.080**

cent of the expenditure ceiling for the office being sought from contributors whose principal residence or whose primary place of doing business is located within the city and which residence or business address appears on the written instrument used to make the contribution, and (2) made qualified campaign expenditures in an aggregate amount of at least five percent of the expenditure ceiling for the office being sought. Contributions from the candidate's own funds shall not be counted towards meeting this five percent requirement. The candidate shall provide copies of the contribution checks received and records of payments made to meet the five percent eligibility requirements.

D. The candidate is opposed by another candidate for the same office.

E. The candidate agrees to all conditions and requirements of this Act and to submit to any reasonable audit deemed appropriate by the public ethics commission or other civil authorities.

F. The candidate or his or her campaign treasurer or designee attends a training program conducted or sponsored by the public ethics commission.

G. The candidate has filed, and completely and accurately executed, all pre-election campaign statements that are due at the time public financing is payable. All candidates receiving public financing shall timely file, and completely and accurately execute, all post-election campaign statements for each election in which they received public financing.

(Ord. No. 13031, 7-27-2010)

### **3.13.090      Use of personal funds.**

A candidate who accepts public financing shall not receive contributions or loans from the candidate's own funds which aggregate total exceeds ten percent of the voluntary expenditure ceiling for the office being sought. If the voluntary expenditure ceilings for the office being sought are lifted, this provision shall not apply.

(Ord. No. 13031, 7-27-2010)

## **Article V.**

### **Disbursement of Public Financing**

#### **3.13.100      Duties of the public ethics commission and office of the city auditor.**

A. The public ethics commission shall develop any and all forms necessary to carry out the provisions of the Act. The public ethics commission may, in its discretion, require any document or form to be filed in an electronic format that is provided by the public ethics commission to the candidates free of charge.

B. The public ethics commission shall review records submitted to determine a candidate's eligibility to receive public financing and requests for reimbursement promptly. For any candidate determined not to be eligible for public financing, the commission or its designee shall inform the candidate of the reasons why the candidate is not eligible and what actions, if any, the candidate may take to correct any insufficiencies.

C. The city auditor shall conduct mandatory post-election audits of all candidates accepting public financing. The city auditor may chose to limit the scope of any audit to the items submitted for reimbursement. The audit report shall be a public record and provided to the public ethics commission. The city auditor shall conduct all audits in accordance with generally accepted government auditing standards.

(Ord. No. 13031, 7-27-2010)

#### **3.13.110      Requests for public financing.**

A. Public financing pursuant to this Act shall be provided solely by reimbursing eligible candidates for certain qualified campaign expenditures lawfully made by the candidate and his or her campaign committee.

B. The qualified campaign expenditures eligible for reimbursement are:

1. Candidate filing and ballot fees;
2. Printed campaign literature and production costs;

- 3. Postage;
- 4. Print advertisements;
- 5. Radio airtime and production costs;
- 6. Television or cable airtime and production costs; and
- 7. Website design and maintenance costs.

C. The following conditions and restrictions shall apply to any request for reimbursement:

1. All requests for reimbursement shall be made on a form authorized by the public ethics commission and shall include: (a) a copy of the billing invoice for which reimbursement is sought; (b) a copy of the check(s) by which the candidate's campaign committee made payment on the billing invoice; and (c) a copy, when applicable, of the campaign literature, advertisement, radio or television script, or website configuration.
2. All requests for reimbursement shall include a sworn declaration by the candidate and his or her campaign treasurer that (a) the check(s) used to make payment on the billing invoice represents payment in full of the billing invoice submitted for reimbursement and that sufficient funds exist in the campaign account to provide payment, and (b) any money received from the election campaign fund has not been previously earmarked or specifically encumbered to pay or to secure payment of any loan, return of contribution or of any expenditure other than the one for which reimbursement was sought.

D. Any decision made by the executive director to deny a request for reimbursement may be appealed to the commission whose decision shall be final. A request to agendize an appeal of the executive director's decision shall be made in writing and delivered to the office of the public ethics commission no more than ten calendar days after receiving written notice of the executive director's decision.

E. The total amount of public financing allocated to each candidate shall not exceed 30 percent of the voluntary expenditure ceiling per election for the office being sought.

(Ord. No. 13031, 7-27-2010)

### **3.13.120 Disbursement and deposit of public financing.**

A. A candidate or candidate's controlled committee, certified as eligible to receive public financing, shall submit requests for reimbursement to the public ethics commission in minimum increments of \$1,000.00 or more.

B. A candidate or candidate's controlled committee, certified as eligible to receive public financing, shall submit requests for reimbursement in minimum increments of \$500.00 or more ten calendar days before the election.

C. The public ethics commission or its designee shall have ten calendar days to cause the review and approval or denial of the request for reimbursement and disburse funds from the election campaign fund to the candidate or candidate's controlled committee.

D. All funds disbursed from the election campaign fund shall be made payable to the candidate's controlled committee and shall be deposited directly into the candidate's campaign checking account within three business days of receipt.

(Ord. No. 13031, 7-27-2010)

### **3.13.150 Return of surplus funds.**

A. Surplus campaign funds remaining at the end of the post-election reporting period following the election for which public financing was received shall be returned to the election campaign fund no later than 31 calendar days from the last day of the semi-annual reporting period following the election in an amount specified by this section. A candidate shall not be required to return any surplus funds in an amount greater than the amount of public financing received. The amount of surplus campaign funds to be returned to the election campaign fund shall be calculated by multiplying the amount of surplus campaign funds by the percentage that total public financing received represents of total monetary contributions received for the election period.

B. For purposes of this Act, campaign funds shall be considered "surplus" campaign funds to the extent that the total amount of contributions

### **3.13.150**

(excluding the receipt of public financing) exceed the total financial obligations of the candidate's campaign committee (excluding unlawful or non-qualified campaign expenditures) as of the last day of the semi-annual reporting period following the election. A financial obligation includes (1) accounts payable billed, or (2) accounts payable for which bills may be expected, for goods or services received during the election.

C. Public financing shall not be disbursed to the certified candidate from the election campaign fund following the day of the election or the candidate's withdrawal from the election, whichever occurs first, except that public financing may be disbursed to a certified candidate after the date of the election or withdrawal provided that the candidate submitted a properly documented request for reimbursement before the date of the election or the date of withdrawal from the election.

(Ord. No. 13031, 7-27-2010)

### **3.13.170      Public debates.**

While not a condition for receiving public financing, candidates receiving public financing are strongly encouraged to participate in one or more nonpartisan candidate debates for each election.

(Ord. No. 13031, 7-27-2010)

### **3.13.180      Enforcement.**

The public ethics commission is the sole body for civil enforcement of this Act. In the event criminal violations of the Act come to the attention of the public ethics commission, the commission shall promptly advise in writing the city attorney and the appropriate prosecuting enforcement agency.

(Ord. No. 13031, 7-27-2010)

### **3.13.190      Criminal misdemeanor actions.**

Any person who knowingly or willfully (1) misrepresents his or her eligibility for public financing, (2) makes a material misrepresentation in connection with a request for reimbursement, or (3) causes, aids or abets any other person to violate the provisions of this Act, is guilty of a misde-

meanor. Prosecution shall be commenced within four years after the date on which the violation occurred.

(Ord. No. 13031, 7-27-2010)

### **3.13.200      Enforcement actions.**

A. Any person who intentionally or negligently (1) misrepresents his or her eligibility for public financing, (2) makes a material misrepresentation in connection with a request for reimbursement, or (3) causes, aids or abets any other person to violate the provisions of this Act, is subject to enforcement proceedings before the public ethics commission pursuant to the public ethics commission general rules of procedure.

B. If two or more persons are responsible for any violation, they shall be jointly and severally liable.

C. Any person alleging a violation of this Act shall first file with the public ethics commission a written complaint on a form approved for such purpose. The complaint shall contain a statement of the grounds for believing a violation has occurred. The public ethics commission shall review, investigate and make determinations regarding any alleged violation consistent with the public ethics commission's general complaint procedures.

D. The commission has full authority to settle any action involving public financing in the interest of justice.

E. If the commission determines a violation has occurred, the commission is hereby authorized to administer appropriate penalties and fines not to exceed \$1,000.00 per violation and to order the repayment of public financing received or expended in violation of law.

F. The public ethics commission may sue for injunctive relief to enjoin violations or to compel compliance with the provisions of this Act.

G. No complaint alleging a violation of any provision of this Act shall be filed more than four years after the date the violation occurred.

(Ord. No. 13031, 7-27-2010)

**3.13.220 Construction.**

The Act shall be liberally construed to accomplish its purposes.

(Ord. No. 13031, 7-27-2010)

**3.13.240 Applicability of other laws.**

Nothing in this Act shall exempt any person from applicable provisions of any other laws of the city, state or other appropriate jurisdiction.

(Ord. No. 13031, 7-27-2010)

**3.13.260 Severability.**

If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act to the extent it can be given effect, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby, and to this extent the provisions of this Act are severable.

(Ord. No. 13031, 7-27-2010)



## Chapter 3.14

### **OAKLAND FALSE ENDORSEMENT IN CAMPAIGN LITERATURE**

#### **Sections:**

#### **Article I. In General**

**3.14.010 Findings and purpose.**

**3.14.020 Citation.**

#### **Article II. Definitions**

**3.14.030 Definitions.**

#### **Article III.**

#### **Prohibition on False Endorsements**

**3.14.040 False Endorsement in Campaign  
Literature Prohibited.**

**3.14.050 Exemptions.**

#### **Article IV. Enforcement**

**3.14.060 Enforcement and Penalties.**

#### **Article V. Miscellaneous**

**3.14.070 Statute of Limitations.**

**3.14.080 Severability.**

#### **Article I. In General**

**3.14.010 Findings and Purpose.**

The Oakland City Council finds and declares:

(A) Campaign literature that falsely represented the position of persons was distributed in a recent municipal election.

(B) Such false representations confuse voters and do not materially advance the public's interest

in an uninhibited, robust and wide-open debate on public issues or election of candidates for public office.

(C) False representations made and distributed during a period near the election unduly burden persons whose positions are misrepresented by precluding them from effectively addressing the falsehood through the production of more speech in order to bring forth a more truthful campaign.

(D) Prohibiting falsehoods that are knowingly or recklessly made in campaign literature during the period set forth in this chapter will serve the city of Oakland's compelling interest in ensuring the integrity of the electoral process.

(Ord. 12536 § 1, 2003)

**3.14.020 Citation.**

This chapter may be cited as the Oakland False Endorsement In Campaign Literature.

(Ord. 12536 § 1, 2003)

#### **Article II.**

#### **Definitions**

**3.14.030 Definitions.**

For the purposes of this chapter, the following definitions shall be applicable:

A. "Campaign literature" includes but is not limited to any advertisements on radio or television or in a newspaper or periodical, sample ballots, press releases, flyers, door hangers, pamphlets, brochures, cards, or billboards distributed with the intent of influencing the outcome of an election.

B. "Candidate" means any individual who seeks election to any city elective office.

C. "False endorsement" means the use of any statement, signature, name, photograph or image which represents as a fact that a person supports or opposes a candidate or measure when the person does not.

D. "Measure" means any city referendum, recall, initiative or ballot proposition, which is submitted or intended to be submitted to the voters of the city of Oakland.

E. "Person" means any individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee, and any other organization or group of persons acting in concert.

(Ord. 12536 § 1, 2003)

### **Article III.**

#### **Prohibition on False Endorsements**

**3.14.040      False Endorsement in Campaign Literature Prohibited.**

No person, within forty-five (45) days before any primary or general election held in the city of Oakland, shall knowingly pay for, direct, supervise or authorize the distribution of any campaign literature that contains a false endorsement if such person acts either with knowledge of the falsity of the endorsement or with reckless disregard for the truth or falsity of the endorsement.

(Ord. 12536 § 1, 2003)

**3.14.050      Exemptions.**

A. This chapter shall not apply to any person whose only action in connection with the false endorsement is to make a lawful contribution to any candidate or committee.

(Ord. 12536 § 1, 2003)

### **Article IV.**

#### **Enforcement**

**3.14.060      Enforcement and Penalties.**

A. Criminal Violation. Any person who violates the provisions of this chapter is guilty of a misdemeanor.

B. Complaints Filed With The Public Ethics Commission. The Oakland Public Ethics Commission, pursuant to its General Complaint Procedures, may receive complaints alleging a violation of this chapter for the purpose of determining whether to request the District Attorney to prosecute an alleged misdemeanor violation. No complaint alleging a violation of this Act may be filed

with the Public Ethics Commission until after the election in which the alleged false endorsement was distributed. Nothing in this section is intended to create a mandatory duty for the Public Ethics Commission to request prosecution of an alleged misdemeanor violation.

(Ord. 12536 § 1, 2003)

### **Article V.**

#### **Miscellaneous**

**3.14.070      Statute of Limitations.**

No criminal action alleging a violation of this chapter shall be filed more than four years after the date the violation occurred.

(Ord. 12536 § 1, 2003)

**3.14.080      Severability.**

The provisions of this chapter are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this chapter, or the invalidity of the application thereof to any person or circumstances, shall not affect the validity of the remainder of this chapter, or the validity of its application to other persons or circumstances.

(Ord. 12536 § 1, 2003)

**Chapter 3.16****CONFLICT OF INTEREST CODE****Sections:**

- 3.16.010      Conflict of interest code.**
- 3.16.020      Place of filing.**
- 3.16.030      Effective date—Filing of disclosure statements.**

**3.16.010      Conflict of interest code.**

The Political Reform Act, Government Code Section 81000, et seq. requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation, 2 California Code of Regulations Section 18730, which contains the terms of a standard conflict of interest code. It can be incorporated by reference and may be amended by the Fair Political Practices Commission after public notice and hearings to conform to amendments in the Political Reform Act. Therefore, the terms of 2 California Code of Regulations Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are incorporated by reference and, along with Appendix A, set out at the end of this chapter, in which employees, members and consultants are designated, and Appendix B, set out at the end of this chapter, in which disclosure categories are set forth, constitute the conflict of interest code of the city.

This conflict of interest code of the city so adopted replaces any conflict of interest code the city previously had in effect. (Ord. 11562 § 1, 1993)

**3.16.020      Place of filing.**

Designated employees, members and consultants shall file statements of economic interests with the Oakland City Clerk, who shall be and perform the duties of filing officer for the city. (Ord. 11562 § 2, 1993)

**3.16.030      Effective date—Filing of disclosure statements.**

The effective date of this conflict of interest code and the appendices attached hereto shall be April 1, 1993. The initial disclosure statements to be filed under this code shall be filed by April 30, 1993, and thereafter, the annual statements shall be due for filing by April 1st of each year. (Ord. 11562 § 3, 1993)



## Appendix A for Chapter 3.16\*

### City of Oakland Conflict of Interest Code

#### LIST OF DESIGNATED POSITIONS

	<b>Disclosure Category</b>
All Citywide Agency, Department, Division Directors	1
Consultants*	1

\* Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitations:

The City Administrator or his or her designee may determine, in writing, that a particular consultant, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written documentation shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The City Administrator or his or her designee's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

(Ord. No. 13142, § 1, 1-22-2013)

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**\*Editor's Note**—Ord. No. 13142, § 1, adopted January 22, 2013, repealed and reenacted Appendix A in its entirety to read as herein set out. Formerly, Appendix A pertained to similar subject matter, and derived from Ord. No. 11562, Appx. A (part), adopted 1993; Ord. No. 11951, Appx. A (part), adopted 1997; Ord. No. 11979, Appx. A (part), adopted 1997; Ord. No. 12014, § 1, adopted 1997; Ord. No. 12028, § 1, adopted 1998; Ord. No. 12105, §§ 1, 2, adopted 1998; Ord. No. 12127, Appx. A (part), adopted 1999; Ord. No. 12165, Appx. A (part), adopted 1999; Ord. No. 12228, Appx. A (part), adopted 2000; Ord. No. 12305, §§ 1, 2, adopted 2001; Ord. No. 12458, §§ 1, 2, adopted 2002; Ord. No. 12549, § 1, adopted 2003; Ord. No. 12650, § 1 (part), adopted 2005; Ord. No. 12783, § 1 (part), adopted 2007; Ord. No. 12845, § 1, adopted 2007; Ord. No. 12990, § 1, adopted February 2, 2010, and Ord. No. 13075, § 1, adopted July 5, 2011.

**City of Oakland**  
**Conflict of Interest Code**

**LIST OF DESIGNATED POSITIONS**

**City Administrator's Office/Administration**

Job Title	Disclosure Category
Administrative Services Manager II	1
Administrative Assistant to the City Administrator	13
Agency Director, Administrative Services	1
Agency Director, Finance & Management	1
Assistant to the City Administrator	1
Assistant City Administrator	1
City Administrator	1
City Administrator Analyst	1
Deputy City Administrator	1
Executive Assistant to Agency Director	13
Executive Assistant to Assistant City Administrator	13
Executive Assistant to City Administrator	13
Manager, Agency Administrative	1
Mayor's PSE 14	13
Program Analyst III	13
Public Information Officer II	13
Consultants*	1

\* Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitations:

The City Administrator or his or her designee may determine, in writing, that a particular consultant, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written documentation shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The City Administrator or his or her designee's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

(Ord. No. 13142, § 1, 1-22-2013)

**City of Oakland  
Conflict of Interest Code**

**LIST OF DESIGNATED POSITIONS**

**City Administrator's Office/Budget and Revenue Division**

Job Title	Disclosure Category
Accountant III	13
Assistant to the City Administrator	13
Budget Director	1
City Administrator Analyst	13
Collections Officer	13
Financial Analyst, Principal	1
Office Manager	1
Parking Meter Collector Supervisor	13
Revenue & Tax Administrator	1
Revenue Analyst	13
Revenue Audit Supervisor	13
Revenue Collections Supervisor	13
Revenue Operations Supervisor	13
Tax Auditor II	13
Tax Auditor III	13
Tax Enforcement Officer II	13
Tax Representative II	13
Consultants*	1

\* Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitations:

The City Administrator or his or her designee may determine, in writing, that a particular consultant, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written documentation shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The City Administrator or his or her designee's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

(Ord. No. 13142, § 1, 1-22-2013)

**City of Oakland  
Conflict of Interest Code**

**LIST OF DESIGNATED POSITIONS**

**City Administrator's Office/Office of the Controller**

Job Title	Disclosure Category
Accountant III	13
Assistant Budget Analyst	13
Budget & Operations Analyst III	13
Buyer	1
City Administrator Analyst	13
Controller	1
Controller, Assistant	1
Financial Analyst	13
Purchasing Supervisor	1
Systems Accountant III	13
Consultants*	1

\* Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitations:

The City Administrator or his or her designee may determine, in writing, that a particular consultant, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written documentation shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The City Administrator or his or her designee's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

(Ord. No. 13142, § 1, 1-22-2013)

**City of Oakland  
Conflict of Interest Code**

**LIST OF DESIGNATED POSITIONS**

**City Administrator's Office/Treasury and Payroll**

Job Title	Disclosure Category
Accountant III	13
Financial Analyst	13
Financial Analyst, Principal	1
Manager, Human Resources	1
Manager, Treasury	1
Retirement Systems Accountant	13
Treasury Analyst III	13
Consultants*	1

\* Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitations:

The City Administrator or his or her designee may determine, in writing, that a particular consultant, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written documentation shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The City Administrator or his or her designee's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

(Ord. No. 13142, § 1, 1-22-2013)

**City of Oakland  
Conflict of Interest Code**

**LIST OF DESIGNATED POSITIONS**

**City Administrator's Office/Department of Information Technology**

<b>Job Title</b>	<b>Disclosure Category</b>
Administrative Analyst II	13
Database Administrator	13
Information Systems Administrator	13
Information Systems Supervisor	13
Manager, Information Systems	1
Network Architect	13
Project Manager II	1
Project Manager III	1
Reprographic Shop Supervisor	13
Spatial Data Analyst III	13
Telecommunication Systems Engineer	13
Telecommunications Electrician, Sr.	13
Consultants*	1

\* Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitations:

The City Administrator or his or her designee may determine, in writing, that a particular consultant, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written documentation shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The City Administrator or his or her designee's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

(Ord. No. 13142, § 1, 1-22-2013)

**City of Oakland  
Conflict of Interest Code**

**LIST OF DESIGNATED POSITIONS**

**City Administrator's Office/Citizen's Police Review Board (CPRB)**

Job Title	Disclosure Category
Complaint Investigator II	2
Policy Analyst	2
Consultants*	1

\* Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitations:

The City Administrator or his or her designee may determine, in writing, that a particular consultant, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written documentation shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The City Administrator or his or her designee's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

(Ord. No. 13142, § 1, 1-22-2013)

**City of Oakland  
Conflict of Interest Code**

**LIST OF DESIGNATED POSITIONS**

**City Administrator's Office/Employee Relations**

<b>Job Title</b>	<b>Disclosure Category</b>
Agency Director, Admin Services	1
Equal Opportunity Specialist	2
Human Resource Analyst, Principal	1
Human Resource Analyst, Senior	2
Consultants*	1

\* Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitations:

The City Administrator or his or her designee may determine, in writing, that a particular consultant, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written documentation shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The City Administrator or his or her designee's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

(Ord. No. 13142, § 1, 1-22-2013)

**City of Oakland  
Conflict of Interest Code**

**LIST OF DESIGNATED POSITIONS**

**City Administrator's Office/Neighborhood Services Division**

Job Title	Disclosure Category
PSE 51	3, 4, 10
Program Analyst III	3, 4, 10
Consultants*	1

\* Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitations:

The City Administrator or his or her designee may determine, in writing, that a particular consultant, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written documentation shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The City Administrator or his or her designee's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

(Ord. No. 13142, § 1, 1-22-2013)

**City of Oakland  
Conflict of Interest Code**

**LIST OF DESIGNATED POSITIONS**

**City Administrator's Office/Public Ethics**

<b>Job Title</b>	<b>Disclosure Category</b>
Executive Director to Public Ethics Commission	1
Consultants*	1

\* Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitations:

The City Administrator or his or her designee may determine, in writing, that a particular consultant, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written documentation shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The City Administrator or his or her designee's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

(Ord. No. 13142, § 1, 1-22-2013)

**City of Oakland  
Conflict of Interest Code**

**LIST OF DESIGNATED POSITIONS**

**City Administrator's Office/Communications-KTOP Operations**

Job Title	Disclosure Category
Cable TV Operations Chief Engineer	1
Consultants*	1

\* Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitations:

The City Administrator or his or her designee may determine, in writing, that a particular consultant, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written documentation shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The City Administrator or his or her designee's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

(Ord. No. 13142, § 1, 1-22-2013)

**City of Oakland  
Conflict of Interest Code**

**LIST OF DESIGNATED POSITIONS**

**City Administrator's Office/Contracts and Compliance**

<b>Job Title</b>	<b>Disclosure Category</b>
Administrative Analyst II	1
Administrative Services Manager I	1
Assistant Contract Compliance Officer	4,5,6,7,8,10,12,14,15
Employment Services Supervisor	4,5,6,7,8,10,12,14,15
Contract Compliance Officer	4,5,6,7,8,10,12,14,15
Contract Compliance Officer, Senior	4,5,6,7,8,10,12,14,15
Job Developer	4,5,6,7,8,10,12,14,15
Manager, Contract and Compliance	1
Consultants*	1

\* Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitations:

The City Administrator or his designee may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written documentation shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The City Administrator or his designee's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

(Ord. No. 13142, § 1, 1-22-2013)

**City of Oakland  
Conflict of Interest Code**

**LIST OF DESIGNATED POSITIONS**

**City Administrator's Office/Marketing and Public Art**

Job Title	Disclosure Category
Administrative Services Manager II	2
Special Events Coordinator	2
Graphic Design Specialist	2
Program Analyst II	2
Program Analyst II, PPT	2
Program Analyst III	2
Program Analyst III, PPT	2
Consultants*	1

\* Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitations:

The City Administrator or his designee may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written documentation shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The City Administrator or his designee's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

(Ord. No. 13142, § 1, 1-22-2013)

**City of Oakland  
Conflict of Interest Code**

**LIST OF DESIGNATED POSITIONS**

**City Administrator's Office/Economic Development**

Job Title	Disclosure Category
Employment Services Supervisor	2
Urban Economic Analyst I	2
Urban Economic Analyst II	2
Urban Economic Analyst III	2
Urban Economic Analyst IV	2
Urban Economic Coordinator	1
Consultants*	1

\* Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitations:

The City Administrator or his designee may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written documentation shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The City Administrator or his designee's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

(Ord. No. 13142, § 1, 1-22-2013)

**City of Oakland  
Conflict of Interest Code**

**LIST OF DESIGNATED POSITIONS**

**City Administrator's Office/Neighborhood Investment**

Job Title	Disclosure Category
Project Manager III	1
Administrative Services Manager II	1
Administrative Analyst II	1
Development/Redevelopment Area Manager	1
Manager, Real Estate Services	1
Project Manager III	1
Real Estate Agent	1
Urban Economic Coordinator	1
Urban Economic Analyst I	1
Urban Economic Analyst II	1
Urban Economic Analyst III	1
Urban Economic Analyst IV	1
Consultants*	1

\* Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitations:

The City Administrator or his designee may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written documentation shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The City Administrator or his designee's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

(Ord. No. 13142, § 1, 1-22-2013)

**City of Oakland  
Conflict of Interest Code**

**LIST OF DESIGNATED POSITIONS**

**City Administrator's Office/Workforce**

<b>Job Title</b>	<b>Disclosure Category</b>
Accountant II	2
Accountant III	2
Administrative Analyst II	2
Development/Redevelopment Area Manager	1
Program Analyst II	2
Program Analyst III	2
Project Manager III	1
Consultants*	1

\* Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitations:

The City Administrator or his or her designee may determine, in writing, that a particular consultant, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written documentation shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The City Administrator or his or her designee's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

(Ord. No. 13142, § 1, 1-22-2013)

**City of Oakland  
Conflict of Interest Code**

**LIST OF DESIGNATED POSITIONS**

**Department of Housing and Community Development**

Job Title	Disclosure Category
Deputy Director	1
Administrative Services Manager I	1
Administrative Analyst I	1
Administrative Analyst II	1
Community Development Program Coordinator	1
Development/Redevelopment Program Manager	1
Hearing Officer	1
Hearing Officer—TCSE	1
Home Management Counselor III	1
Housing Development Coordinator III	1
Housing Development Coordinator IV	1
Loan Servicing Administrator	1
Loan Servicing Specialist	1
Management Assistant	1
Mortgage Advisor	1
Program Analyst II—TCSE	1
Program Analyst I	1
Program Analyst II	1
Program Analyst III	1
Project Manager II	1
Project Manager III	1
Rehabilitation Advisor III	1
Consultants*	1

\* Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitations:

The City Administrator or his designee may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written documentation shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The City Administrator or his designee's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

(Ord. No. 13142, § 1, 1-22-2013)

**City of Oakland  
Conflict of Interest Code**

**LIST OF DESIGNATED POSITIONS**

**Department of Planning and Building**

Job Title	Disclosure Category
Administrative Services Manager I	1
Deputy Director, Community and Economic Development	1
Deputy Director, Building Official	1
Engineer, Civil (Office)	1
Engineer, Civil Principal	1
Engineer, Civil, Supervising (Office)	1
Manager, Zoning	1
Planner II	1
Planner II, Design Review	1
Planner III	1
Planner III, Historical Preservation	1
Planner III, PPT	1
Planner IV	1
Planner V	1
Principal Inspection Supervisor	1
Process Coordinator III	1
Senior Construction Inspector (Office)	1
Specialty Combination Inspector	1
Specialty Combination Inspector, Senior	1
Consultants*	1

\* Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitations:

The City Council or its designee may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written documentation shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The City Council or its designee's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

\* During FY 2011-2012, functions/positions of the Community and Economic Development Agency were moved to the new Department of Planning and Building, Department of Housing and Community Development, Neighborhood Investment and to the Economic & Workforce Development.

(Ord. No. 13142, § 1, 1-22-2013)

**City of Oakland  
Conflict of Interest Code**

**LIST OF DESIGNATED POSITIONS**

**Department of Human Resources Management**

Job Title	Disclosure Category
Administrative Analyst II	12
Administrative Services Manager II	1
Benefits Analyst	15
Budget & Operations Analyst III	12, 15
City Administrator Analyst	13, 14
Director of Human Resources Management	1
Disability Benefits Coordinator	15
Employee Assistance Services Coordinator	13,14
Employee Fleet & Safety Coordinator	15
Executive Assistant	12
Human Resource Analyst (CONF)	13, 14
Human Resource Analyst, Principal	1
Human Resource Analyst, Senior	13, 14
Human Resource Operations Supervisor	13, 14
Manager, Claims & Risk	1
Safety & Loss Control Specialist	15

\* Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitations:

The City Administrator or his designee may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written documentation shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The City Administrator or his designee's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

(Ord. No. 13142, § 1, 1-22-2013)

**City of Oakland  
Conflict of Interest Code**

**LIST OF DESIGNATED POSITIONS**

**Department of Human Services**

<b>Job Title</b>	<b>Disclosure Category</b>
Administrative Services Manager II	1
Assistant to the Director	1
Case Manager II	4,11
Children and Youth Services Manager	1
Community Housing Services Manager	1
Early Childhood and Family Services Manager	1
Head Start Program Coordinator	4, 5, 10, 11
Head Start Program Supervisor	1
Housing Development Coordinator III	4,13
Management Assistant	1
Manager, Aging and Adult Services	1
Manager, Senior Services	4, 13, 14
Nurse Case Manager	4,11
Senior Services Supervisor	4, 11, 13, 14
Supervising Case Manager	4, 11
Consultants*	1

\* Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitations:

The City Administrator or his or her designee may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written documentation shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The City Administrator or his or her designee's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

(Ord. No. 13142, § 1, 1-22-2013)

**City of Oakland  
Conflict of Interest Code**

**LIST OF DESIGNATED POSITIONS**

**Office of Parks and Recreation**

Job Title	Disclosure Category
Administrative Services Manager II	1
Assistant to the Director	1
Recreation General Supervisor	1
Consultants*	1

\* Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitations:

The City Administrator or his designee may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written documentation shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The City Administrator or his designee's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

(Ord. No. 13142, § 1, 1-22-2013)

**City of Oakland  
Conflict of Interest Code**

**LIST OF DESIGNATED POSITIONS**

**City Attorney**

Job Title	Disclosure Category
Accountant II	4
Assistant City Attorney	1
Claims Investigator III	1
Deputy City Attorney I	1
Deputy City Attorney II	1
Deputy City Attorney III	1
Deputy City Attorney IV	1
Deputy City Attorney V	1
Executive Assistant to City Attorney	1
Executive Assistant to Assistant City Attorney	1
Information Systems Administrator	1
Manager, Agency Administrative	1
Manager, Legal Administrative Services	1
Neighborhood Law Corps Attorney (Exempt Limited Duration)	1
Open Government Coordinator	1
Special Counsel	1
Consultants*	1

\* Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitations:

The City Attorney or his or her designee may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written documentation shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The City Attorney or his or her designee's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

(Ord. No. 13142, § 1, 1-22-2013)

**City of Oakland  
Conflict of Interest Code**

**LIST OF DESIGNATED POSITIONS**

**City Auditor**

Job Title	Disclosure Category
City Auditor, Assistant	1
City Auditor	1
Executive Assistant to the City Auditor	1
Performance Audit Manager	1
Performance Auditor	1
Performance Auditor, Contract	1
Performance Auditor, Senior	1
Receptionist to the City Auditor	1
Consultants*	1

\* Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitations:

The City Auditor or his or her designee may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written documentation shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The City Auditor or his or her designee's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

(Ord. No. 13142, § 1, 1-22-2013)

**City of Oakland  
Conflict of Interest Code**

**LIST OF DESIGNATED POSITIONS**

**Office of the City Clerk**

Job Title	Disclosure Category
Assistant City Clerk	1
City Clerk	1
City Wide Records Manager	1
Legislative Recorder	1
Management Assistant	1
Consultants*	1

\* Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitations:

The City Administrator or his or her designee may determine in writing that a particular consultant although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written documentation shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The City Administrator or his or her designee's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

(Ord. No. 13142, § 1, 1-22-2013)

**City of Oakland  
Conflict of Interest Code**

**LIST OF DESIGNATED POSITIONS**

**City Council**

Job Title	Disclosure Category
City Council Constituent Liaison	1
City Council Policy Analyst	1
City Council PSE 14	1
City Council PSE 51	1
Executive Assistant to City Council	1
Legislative Analyst	1
Consultants*	1

\* Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitations:

The City Council or its designee may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written documentation shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The City Council or its designee's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

(Ord. No. 13142, § 1, 1-22-2013)

**City of Oakland**  
**Conflict of Interest Code**

**LIST OF DESIGNATED POSITIONS**

**Oakland Fire Department**

<b>Job Title</b>	<b>Disclosure Category</b>
Accountant II	1
Accountant III	1
Administrative Services Manager I	1
Arson Investigator	1
Assistant Chief of Fire	1
Assistant Fire Marshal (Civilian)	1
Assistant Fire Marshal (Sworn)	1
Assistant to the Director	1
Assistant to the Director (Administration Manager)	16
Battalion Chief	2
Captain of Fire (Support Services Officers)	1
Captain-Fire Communication Officer	2
Captain-Safety Officer	2
Chief Financial Officer	1
Deputy Fire Chief	1
Division Manager/Chief	1
Emergency Planning Coordinator	2
Emergency Planning Coordinator, Senior	1
Emergency Services Coordinator (Medical)	1
Emergency Services Manager (OES)	1
Emergency Services Manager, Assistant	1
Executive Assistant to Agency Director	1
Fire Marshal (Deputy)	1
Fire Personnel Operations Specialist	1
Fire Prevention Inspector (Civilian)	1
Fire Protection Engineer/Plan Check Engineer	1
Fire Suppression District Inspector	1
Hazardous Materials Inspector II	1
Hazardous Materials Program Supervisor	1
Management Assistant	1
Lieutenant of Fire Department	1
Office Manager	1

<b>Job Title</b>	<b>Disclosure Category</b>
Payroll Personnel Clerk III	1
Support Services Officer	1
Vegetation Management Supervisor	1
Consultants*	1

\* Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitations:

The City Administrator or his designee may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written documentation shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The City Administrator or his designee's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

(Ord. No. 13142, § 1, 1-22-2013)

**City of Oakland  
Conflict of Interest Code**

**LIST OF DESIGNATED POSITIONS**

**Library Services**

<b>Job Title</b>	<b>Disclosure Category</b>
Administrative Librarian	1
Administrative Services Manager II	1
Archivist	1
Associate Director, Library Services	1
Curator of History, Chief	1
Development Specialist III	1
Director, Library Services	1
Executive Assistant to the Director	1
Library Automation Supervisor	1
Management Assistant	1
Museum Project Coordinator	1
Office Manager	1
Supervising Librarian	1
Consultants*	1

\* Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitations:

The City Administrator or his designee may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written documentation shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The City Administrator or his designee's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

(Ord. No. 13142, § 1, 1-22-2013)

**City of Oakland  
Conflict of Interest Code**

**LIST OF DESIGNATED POSITIONS**

**Office of the Mayor**

Job Title	Disclosure Category
Administrative Assistant to the Mayor	1
Assistant to the Mayor	1
Chief of Staff	1
Community Services Director	1
Deputy Mayor for Community and Governmental Relations	1
Deputy Mayor for Policy and Program	1
Mayor's Communications Director	1
Senior Policy Advisor for Economic Development	1
Senior Policy Advisor for Intergovernmental Relations	1
Senior Policy Advisor for Public Safety	1
Special Assistant	1
Special Assistant to the Mayor	1
Consultants*	1

\* Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitations:

The Mayor or his designee may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written documentation shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The Mayor or his designee's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

(Ord. No. 13142, § 1, 1-22-2013)

**City of Oakland**  
**Conflict of Interest Code**

**LIST OF DESIGNATED POSITIONS**

**Police Services Agency**

<b>Job Title</b>	<b>Disclosure Category</b>
Administrative Analyst II (False Alarm Program)	1
Administrative Assistant to Chief of Police	1
Administrative Assistant to the Director of Police Services	1
Alcohol Beverage Action Team Regulators	1
Assistant Chief of Police	1
Captain, Office of Chief of Police	1
Captain of Police (BF01)	1
Captain of Police (BF02)	1
Captain, Criminal Investigations Division	1
Captain, Office of the Inspector General	1
Captain, Special Operations Division	1
Captain, Special Operations Section	1
Captain, Traffic Division	1
Captain, Training Division	1
Captain, Youth and Family Services Division	1
Chief of Police	1
Chief of Staff	1
Commercial Vehicle Enforcement Officer(s)	1
Commercial Vehicle Enforcement Supervisor	1
Commander, Vice Narcotics Section	1
Deputy Chief, Bureau of Field Operations	1
Deputy Chief, Bureau of Investigations	1
Deputy Chief, Bureau of Services	1
Deputy Director of Police	1
Director, Animal Services Section	1
Director, Police Services Agency (Chief of Police)	1
Executive Assistant to Agency Director	1
Fleet and Tow Coordinator	1
Management Assistant	1
Manager, Crime Laboratory	1
Manager, Fiscal Services Division	1
Police Communications Supervisor	1

<b>Job Title</b>	<b>Disclosure Category</b>
Police Program and Performance Auditor	1
Police Property Specialist	1
Police Services Manager I	1
Sergeant of Police, Special Assistant to the Chief	1
Sergeant of Police, Special Events	1
Special Events Coordinator(s) (SAC)	1
Special Events Coordinator, Bureau of Field Operations	1
Consultants*	1

\* Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitations:

The City Administrator or his designee may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written documentation shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The City Administrator or his designee's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

(Ord. No. 13142, § 1, 1-22-2013)

**City of Oakland**  
**Conflict of Interest Code**

**LIST OF DESIGNATED POSITIONS**

**Public Works Agency**

<b>Job Title</b>	<b>Disclosure Category</b>
Administrative Service Manager I	1
Administrative Services Manager II	1
Agency Administrative Manager	1
Architectural Associate	1
Assistant Director of Public Works	1
Budget and Operations Analyst III	1
Building Services Manager	1
Capital Improvement Project Coordinator	1
Capital Improvement Project Manager	1
Capital Improvement Program Manager	1
City Land Surveyor	1
Clean Community Supervisor	1
Construction and Maintenance Supervisor I	6
Construction Inspector Supervisor	1
Construction Inspector Supervisor II	1
Electrical Engineer II	1
Electrical Engineer III	1
Electrical Services Manager	1
Energy Engineer III	1
Engineer, Civil (Field)	1
Engineer, Civil (Office)	1
Environmental Program Specialist	1
Environmental Programs Supervisor	1
Environmental Services Manager	1
Equipment Services Manager	1
Equipment Services Superintendent	1
Equipment Supervisor	1
Executive Assistant	1
Facilities Complex Manager	6
Fleet Specialist	1
Management Assistant	1
Park Supervisor II	1

<b>Job Title</b>	<b>Disclosure Category</b>
Principal Civil Engineer	1
Program Analyst II	1
Program Analyst III	1
Project Manager II	1
Project Manager III	1
Public Works Operations Manager	1
Public Works Supervisor I	1
Public Works Supervisor II	1
Recycling Specialist, Senior	1
Supervising Civil Engineer	1
Transportation Engineer	1
Supervising Transportation Engineer	1
Solid Waste Recycling Program Supervisor	1
Support Services Supervisor	1
Training and Public Service Administrator	1
Transportation Planner, Senior	1
Tree Supervisor II	1
Watershed Program Supervisor	1
Consultants*	1

\* Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitations:

The City Administrator or his designee may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written documentation shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The City Administrator or his designee's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

(Ord. No. 13142, § 1, 1-22-2013)

**City of Oakland**  
**Conflict of Interest Code**

**LIST OF DESIGNATED POSITIONS**

**Boards and Commissions**

<b>Job Title</b>	<b>Disclosure Category</b>
Budget Advisory Committee	1
Business Tax Board of Review	1
Central East Oakland Community Development District Board	1
Central Oakland Community Development District Board	1
Children's Fairyland Board of Trustees	1
Children's Fund Planning and Oversight Committee	1
Citizen's Police Review Board	1
Civil Service Board	1
Commission on Aging	1
Commission on Persons with Disabilities	1
Community Action Partnership Board	1
Community Policing Advisory Board	1
Cultural Affairs Commission	1
Downtown Oakland Senior Center Advisory Council	1
East Oakland Senior Center Advisory Council	1
Eastlake/San Antonio/Chinatown Community Development District Board	1
Elmhurst Community Development District Board	1
Fruitvale/San Antonio Community Development District Board	1
Head Start Advisory Panel	1
Housing and Residential Rent and Relocation Board	1
Landmarks Preservation Advisory Board	1
Library Advisory Commission	5
Measure Z Community Oversight Committee	2
North Oakland Community Development District Board	1
North Oakland Senior Center Advisory Council	1
Oakland Fund for Children and Youth Planning and Oversight Committee	1
Oakland Housing Authority Board of Commissioners	1
Oakland Municipal Employees Retirement System	1
Oakland Oversight Board	1

<b>Job Title</b>	<b>Disclosure Category</b>
Parks and Recreation Advisory Commission	1
Police and Fire Retirement System Board	1
Public Art Advisory Committee	1
Public Ethics Commission	1
Senior Center Advisory Board	4
Violence Prevention and Oversight Committee (Measure Y)	1
West Oakland Senior Center Advisory Council	1
Western Oakland Community Development District Board	1
Wildfire Prevention Assessment	3
Workforce Investment Board	1
Consultants*	1

Please note that only a business entity or any parent, subsidiary or otherwise related business entity that has an interest in real property in the City of Oakland, or does business or plans to do business in the jurisdiction, or has done business within the jurisdiction at any time during the two years prior to the filing of any statement is to be reported. Also only real property located in the jurisdiction is to be reported. Finally, income, including a gift, does not include income received from any source outside the jurisdiction and not doing business within the jurisdiction, not planning to do business within the jurisdiction, or not having done business within the jurisdiction during the two years prior to the filing of any statement is to be reported.

\* Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the code subject to the following limitations:

The City Administrator or his designee may determine, in writing, that a particular consultant, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written documentation shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The City Administrator or his designee's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

(Ord. No. 13142, § 1, 1-22-2013)

## **Appendix B for Chapter 3.16**

### **MASTER LIST OF DISCLOSURE CATEGORIES SPECIFICATION SHEET REPORTABLE INVESTMENTS, INTERESTS IN REAL PROPERTY AND INCOME**

#### **CONFLICT OF INTEREST CODE CITY OF OAKLAND**

"Unit" as used in this text means the particular department, board, commission, office or other entity using the disclosure category.

"Used by" for a board or commission under Disclosure Category 4, refers to investments and business positions in business entities, and sources of income from entities providing supplies, services, equipment or machinery of the type used by the unit(s) to whom the board or commission provides advice.

Please note that only a business entity or any parent, subsidiary or otherwise related business entity that has an interest in real property in the City of Oakland, or does business or plans to do business in the jurisdiction, or has done business within the jurisdiction at any time during the two years prior to the filing of any statement is to be reported. Also only real property located in the jurisdiction is to be reported. Finally, income, including a gift, does not include income received from any source outside the jurisdiction and not doing business within the jurisdiction, not planning to do business within the jurisdiction, or not having done business within the jurisdiction during the two years prior to the filing of any statement is to be reported.

#### **Disclosure Category**

1. All investments and business positions in business entities, sources of income and interests in real property.
2. Investments and business positions in business entities, and all sources of income.
3. Interests in real property.
4. Investments and business positions in business entities, and sources of income from entities providing supplies, services, equipment or machinery of the type used by the designated employee's unit, the designated employee's board or commission or panel, or the City department that the designated employee's board or commission advises.
5. Investments and business positions in and income from entities, which are book outlets, vendors or providers of business services.
6. Investment and business positions in business entities, and income from sources engaged in construction supplies, building supplies or material supplies.
7. Investments and business positions in business entities, and income from sources engaged in construction or development.
8. Investments and business positions in business entities, and income from sources engaged in the construction of public works projects.
9. Investments and business positions in business entities, and income from business entities of the type to provide bids, supplies, vehicles and equipment.

10. Investments and business positions in business entities, and source of income, which provide services and supplies of the type used in training activities.
11. Investments and business positions in, and income from business entities engaged in providing medical service or facilities of the type used by the City.
12. Investments and business positions in, and income from business entities supplying or manufacturing electronic equipment, supplies or services of the type utilized by the designee's unit.
13. Investments and business positions in, and income from business entities providing supplies, services equipment or machinery of the type used by the City.
14. Investments and business positions in, and income from employment agencies or entities, which provide employment or pre-employment services. Services include, but are not limited to, provision of temporary employees, testing, training, consulting, job classification studies and salary surveys.
15. Investments and business positions in, and income from business entities, which are of the type to provide any of the various types of employee insurance coverage or actuarial services.
16. Investments and business positions in business entities, and income from sources, which supply or manufacture fire fighting equipment or supplies.
17. Investments and business positions in, and income from business entities which within the last twelve months have contracted, or in the future foreseeably may contract with the Oakland Housing Authority to provide services, supplies, materials, machinery or equipment to the Oakland Housing Authority.
18. Income from any source which within the last twelve months has contracted, or in the future may foreseeably contract with the Oakland Housing Authority to provide services, supplies, materials, machinery or equipment to the Oakland Housing Authority.

(Ord. No. 13142, § 1, 1-22-2013; Ord. No. 12990, § 2, 2-2-2010; Ord. 12845 Appx. B, 2007; Ord. 12783 § 1(part), 2007; Ord. 11562 Appx. B, 1993)

**Appendix C for Chapter 3.16**

**CITY OF OAKLAND DEFERRED COMPENSATION PLAN POSITIONS THAT MANAGE PUBLIC INVESTMENTS FOR PURPOSES OF SECTION 87200 OF THE GOVERNMENT CODE (GOVERNMENT CODE SECTION 87314)**

	<b>Disclosure Category</b>
Deferred Compensation Plan Committee Members	1

(Ord. No. 13142, § 1, 1-22-2013)

**Chapter 3.20****THE CITY OF OAKLAND LOBBYIST  
REGISTRATION ACT****Sections:****Article I. Findings and Purpose****3.20.010 Title.****Article II. Definitions and Interpretation of****This Act****3.20.020 Words and phrases.****3.20.030 Definitions****Article III. Registration of Lobbyists****3.20.040 Registration with the public ethics commission.****3.20.050 Cessation of employment.****3.20.060 Exceptions.****3.20.070 Noncompliance—Order to show cause.****3.20.080 Availability of information.****3.20.090 Filing under penalty of perjury****3.20.100 Records.****Article IV. Disclosure of Lobbying Activities****3.20.110 Quarterly disclosure.****Article V. Prohibitions****3.20.120 No unregistered employment or activity.****3.20.130 Personal obligation of city officials prohibited.****3.20.140 Deception prohibited.****3.20.150 Improper influence prohibited.****3.20.160 False appearances prohibited.****3.20.170 Prohibited representations.****3.20.180 Restrictions on payments and expenses benefiting local public officials, candidates for local office, designated employees and immediate families.****3.20.190 Restriction on former elected city officers from acting as a local governmental lobbyist.****Article VI. Enforcement****3.20.200 Procedures and action.****3.20.210 Civil penalties.****3.20.220 Criminal violation.****3.20.230 Effective date.****3.20.240 Severability.****Article I. Findings and Purpose****3.20.010 Title.**

This chapter shall be known as the City of Oakland Lobbyist Registration Act, hereafter “the Act.” (Ord. 12782 § 3 (part), 2007; Ord. 12431 (part), 2002)

**Article II. Definitions and Interpretation of This Act****3.20.020 Words and phrases.**

Words and phrases used in this Act shall have the same meanings and be interpreted in the same manner as words and phrases used in the Political Reform Act of 1974 as amended and the regulations issued pursuant thereto, unless otherwise expressly provided or unless the context otherwise requires. (Ord. 12782 § 3 (part), 2007; Ord. 12431 (part), 2002)

**3.20.030 Definitions.**

For the purposes of this chapter, the following definitions shall be applicable:

A. “Client” means the real party in interest for whose benefit the services of a local governmental lobbyist are actually performed. An individual member of an organization shall not be deemed to be a “client” solely by reason of the fact that such member is individually represented by an employee or agent of the organization as a regular part of such employee’s or agent’s duties with the organization as long as such member does not pay an amount of money or other consideration in addition to the usual membership fees for such representation.

B. “Contractor” means any party to an agreement in which the value of the consideration exceeds one thousand dollars (\$1,000), and, (1) The city is a party, or (2) the redevelopment agency is a party, or

(3) the agreement or its effectiveness is in any way dependent or conditioned upon approval by the city council or redevelopment agency board or any board or commission, officer or employee of the city or the agency.

C. “Designated employees” mean city and redevelopment agency employees who are designated employees within the meaning of the Political Reform Act of 1974, as amended, and who are required by the Political Reform Act or a city or redevelopment agency conflict of interest code to file financial interest disclosure statements.

D. “Local governmental lobbyist” means any individual who: (1) receives or is entitled to receive one thousand dollars (\$1,000) or more in economic consideration in a calendar month, other than reimbursement for reasonable travel expenses; or (2) whose duties as a salaried employee, officer or director of any corporation, organization or association include communication directly or through agents with any public official, officer or designated employee, for the purpose of influencing any proposed or pending governmental action of the city or the redevelopment agency. No person is a local governmental lobbyist by reason of activities described in Section 3.20.030(A). In case of any ambiguity, the definition of “local governmental lobbyist” shall be interpreted broadly.

E. “Governmental action” means any administrative or legislative action of the city and the redevelopment agency other than an action which is ministerial in nature.

F. “Payment” means a payment, distribution transfer, loan advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible.

G. “Person doing business with the city” means any person whose financial interests are materially affected by governmental action as defined by Section 3.20.030(E). It includes persons currently doing business with the city or the redevelopment agency, planning to do business with the city or agency, or having done business with the city or agency within two years. For purposes of this Act a person’s financial interests shall not be found to be materially af-

fected by the issuance of any license or permit which does not require the exercise of discretion by city or agency officers or employees.

H. “Public official” means an elected or appointed officer or employee or officially designated representative, whether compensated or not, of the United States or any of its agencies, the State of California, any political subdivision of the state, including cities, counties, districts, or any public corporation, agency or commission. (Ord. 12803 § 4, 2007; Ord. 12782 § 3 (part), 2007; Ord. 12431 (part), 2002)

### **Article III. Registration of Lobbyists**

#### **3.20.040 Registration with the public ethics commission.**

A. No person shall act as local governmental lobbyist before registering as a local governmental lobbyist with the City Clerk.

B. At the time of registering, the local governmental lobbyist shall file with the City Clerk, in writing, his or her name, business and residence addresses.

C. The lobbyist shall reregister annually during the month of January and at that time shall resubmit the required information. (Ord. 12782 § 3 (part), 2007; Ord. 12431 (part), 2002)

#### **3.20.050 Cessation of employment.**

A local governmental lobbyist who has terminated all activities requiring registration shall notify the City Clerk of that fact and thereupon shall be relieved of any further obligations under this Act until such time as he or she commences activity requiring registration. (Ord. 12782 § 3 (part), 2007; Ord. 12431 (part), 2002)

#### **3.20.060 Exceptions.**

The provisions of this Act shall not apply:

A. To a public official acting in his or her official capacity.

B. To the publication or broadcasting of news items, editorials, or other comments, or paid advertisements, which directly or indirectly urge governmental action.

C. To a person specifically invited by the city council or redevelopment agency or any committee thereof, or by any board or commission, or any committee of a board or commission, or by any officer or employee of the city or agency charged by law with the duty of conducting a hearing or making a decision, for the purpose of giving testimony or information in aid of the body or person extending the invitation.

D. To a person who, without extra compensation and not as part of, or in the ordinary course of, his or her regular employment, presents the position of his or her organization when that organization has one or more of its officers, directors, employees or representatives already registered under the provisions of this Act.

E. Any attorney, architect or civil engineer whose attempts to influence governmental action are limited to: (1) Publicly appearing at a public meeting, public hearing, or other official proceeding open to the public; (2) Preparing or submitting documents or writings in connection with the governmental action for use at a public meeting, public hearing, or other official proceeding open to the public; and (3) Contacting city or redevelopment agency employees or agents working under the direction of the city manager or executive director directly relating to (1) and (2) above.

F. To designated representatives of a recognized employee organization whose activities are limited to communicating with city officials or their representatives regarding (1) wages, hours and other terms and conditions of employment pursuant to the procedures set forth in Government Code Sections 3500—3510, or (2) the administration, implementation or interpretation of an existing employment agreement.

G. To persons whose only activity is to (1) submit a bid on a competitively bid contract, (2) respond to a request for proposal or qualifications, or (3) negotiate the terms of a written contract if selected pursuant to such bid or request for proposal or qualifications. This exception shall not apply to persons who attempt to influence the award or terms of a contract with any elected official or member of any City

board or commission. (Ord. 12782 § 3 (part), 2007; Ord. 12431 (part), 2002)

### **3.20.070 Noncompliance—Order to show cause.**

A. Upon the request of the council, the mayor, or any board or commission or member thereof, or any officer or designated employee of the city or redevelopment agency, the Public Ethics Commission shall issue an order to show cause to any unregistered person.

B. Such order shall specify a time and place where such person shall appear to provide evidence satisfactory to the Public Ethics Commission that he or she has complied with the registration requirement or is exempt from registration.

C. If the Public Ethics Commission determines that such person is subject to registration and he or she fails to register within seven days of that determination, he or she shall be barred from acting as a local governmental lobbyist except when appearing before the city council, redevelopment agency or other board or commission at a noticed public meeting or upon oral petition on his or her own behalf. Such debarment shall be in effect for three months from the date of such determination or until registration, whichever is later. (Ord. 12782 § 3 (part), 2007; Ord. 12431 (part), 2002)

### **3.20.080 Availability of information.**

All registration information shall be retained by the City Clerk for a period of five years from the date of filing, shall constitute part of the public records of the city, and shall be open to public inspection. (Ord. 12782 § 3 (part), 2007; Ord. 12431 (part), 2002)

### **3.20.090 Filing under penalty of perjury.**

All information required by this Act shall be filed with the City Clerk on forms prescribed by the Public Ethics Commission, and accompanied by a declaration by the local governmental lobbyist that the contents thereof are true and correct under penalty of perjury. (Ord. 12782 § 3 (part), 2007; Ord. 12431 (part), 2002)

**3.20.100 Records.**

A local governmental lobbyist shall retain, for a period of five years, all books, papers and documents necessary to substantiate the registration required to be made under this chapter. (Ord. 12782 § 3 (part), 2007; Ord. 12431 (part), 2002)

**Article IV. Disclosure of Lobbying Activities****3.20.110 Quarterly disclosure.**

For each calendar quarter in which a local governmental lobbyist was required to be registered, he or she shall file a quarterly report with the City Clerk. The reports shall be due no later than thirty (30) days after the end of the calendar quarter. The report shall contain the following information:

A. The item(s) of governmental action and the name and address of the client(s) on whose behalf the local governmental lobbyist sought to influence.

B. For each item of governmental action sought to be influenced, (1) the name of each city officer with whom the lobbyist communicated, (2) the name and title of any city board member or commissioner with whom the lobbyist communicated, and (3) the identity of any city employee with whom the lobbyist communicated identified only by the office or department in which the employee works and his or her job title.

C. A brief narrative description (no longer than three sentences) of the position advocated by the local governmental lobbyist on behalf of the identified client.

D. If any lobbyist, or a registered client at the behest of a lobbyist, employs or hires an elected city officeholder, candidate for elected city office, a designated employee, or a member of the immediate family of one of these individuals, the lobbyist shall disclose (1) the name of the person employed or hired, (2) a description of the services actually performed, and (3) the total payments made during the reporting period identified only by the following categories: less than \$250; between \$250 and \$1,000; greater than \$1,000 but less than \$10,000; greater than \$10,000.

E. If any elected city officeholder or candidate for elected city office employs or hires a lobbyist to provide compensated services to the officeholder or candidate, the lobbyist shall disclose (1) the name of the person who employed or hired the lobbyist, (2) a description of the services actually performed, and (3) the total payments made during the reporting period identified only by the following categories: less than \$250; between \$250 and \$1,000; greater than \$1,000 but less than \$10,000; greater than \$10,000.

F. If a lobbyist solicits any person to make a contribution to an elected city officeholder, candidate for city office or to any committee or fund controlled by such officeholder or candidate, the lobbyist shall disclose the names of the persons whom the lobbyist solicited, and the officeholder or candidate for whose benefit each solicitation was made. A solicitation does not include a request for a contribution made (1) in a mass mailing sent to members of the public, (2) in response to a specific request for a recommendation, (3) to a gathering which members of the public may attend, or (4) in a newspaper, on radio or television, or in any other mass media. A lobbyist does not "solicit" solely because his or her name is printed with other names on stationary or a letterhead used to request contributions. If a lobbyist makes a solicitation to more than fifty individual members or employees of a corporation, union or other association that is a registered client of the lobbyist, or if the lobbyist makes a solicitation to all members or employees of a corporation, union or association that is a registered client of the lobbyist, the lobbyist may choose to disclose the name of the registered client instead of the names of the persons whom the lobbyist actually solicited. (Ord. 12803 § 3, 2007; Ord. 12782 § 3 (part), 2007; Ord. 12431 (part), 2002)

**Article V. Prohibitions****3.20.120 No unregistered employment or activity.**

A. A local governmental lobbyist shall not engage in any activity on behalf of a client as a local governmental lobbyist unless such lobbyist is registered and has listed such client with the City Clerk.

B. No person shall accept compensation for acting as a local government lobbyist except upon condition that he or she forthwith register as required by this Act. (Ord. 12782 § 3 (part), 2007; Ord. 12431 (part), 2002)

**3.20.130      Personal obligation of city officials prohibited.**

Local governmental lobbyists, clients, contractors, and persons doing business with the city or the redevelopment agency shall abstain from doing any act with the express purpose and intent of placing any city or agency officer or designated employee under personal obligation to such lobbyist, client, contractor or person. (Ord. 12782 § 3 (part), 2007; Ord. 12431 (part), 2002)

**3.20.140      Deception prohibited.**

No local governmental lobbyist, client, contractor or person doing business with the city or the redevelopment agency shall deceive or attempt to deceive a city or agency officer or designated employee as to any material fact pertinent to any pending or pro-



posed governmental action. (Ord. 12782 § 3 (part), 2007; Ord. 12431 (part), 2002)

#### **3.20.150 Improper influence prohibited.**

No local governmental lobbyist shall cause or influence the introduction of any ordinance, resolution, appeal, application, petition, nomination or amendment thereto for the purpose of thereafter being employed as a lobbyist to secure its granting, denial, confirmation, rejection, passage or defeat. (Ord. 12431 (part), 2002)

#### **3.20.160 False appearances prohibited.**

No local governmental lobbyist, client, contractor, or person doing business with the city or the redevelopment agency shall attempt in any way to create a fictitious appearance of public favor or disfavor of any governmental action or to cause any communication to be sent to a city or agency officer or designated employee in the name of any fictitious person or in the name of any real person, except with the consent of such real person. (Ord. 12431 (part), 2002)

#### **3.20.170 Prohibited representations.**

No local governmental lobbyist, client, contractor, or person doing business with the city or the redevelopment agency shall represent, either directly or indirectly, orally or in writing that such person can control or obtain the vote or action of any city or agency officer or designated employee. (Ord. 12431 (part), 2002)

#### **3.20.180 Restrictions on payments and expenses benefiting local public officials, candidates for local office, designated employees and immediate families.**

A. No lobbyist or a lobbyist's registered client shall make any payment or incur any expense that directly benefits an elected city officeholder, candidate for elected city office, a designated employee, or a member of the immediate family of one of these individuals, in which the cumulative value of such

payments or expenses exceeds \$240 during any calendar year.

B. The payments and expenses specified in subsection (A) include gifts, honoraria and any other form of compensation but do not include (1) campaign contributions; (2) payments or expenses that, within thirty (30) days after receipt, are returned unused or are reimbursed; (3) food, beverages or occasional lodging provided in the home of an individual lobbyist or individual lobbyist's registered client when the individual or member of the individual's family is present; (4) a pass or ticket to a fundraising event for a campaign committee or candidate, or for an organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code; (5) a pass or ticket given to a public agency and which meets the provisions of 2 Cal. Code of Regs. No. 18944.1 (a) through (e), inclusive; (6) informational material; and (7) salaries, consulting fees or other payments for services rendered or bargained for. No other exception to, or exclusion from, the definition of gift or honoraria contained in the Political Reform Act of 1974 as amended, and the regulations issued pursuant thereto, shall apply to this section. (Ord. 12782 § 3 (part), 2007)

#### **3.20.190 Restriction on former elected city officers from acting as a local governmental lobbyist.**

No officer of the city or person who has held the position of department head or budget director shall be permitted to act as a local governmental lobbyist for a period of one year after leaving office. Ord. 12782 § 3 (part), 2007)

### **Article VI. Enforcement**

#### **3.20.200 Procedures and action.**

A. Any person who violates this Act is subject to civil enforcement proceedings before the Public Ethics Commission pursuant to the Commission's General Complaint Procedures. No complaint alleging a violation of any provision of this Act shall be filed with the Public Ethics Commission more than four years after the date the violation occurred.

B. If the Public Ethics Commission finds a violation of this Act, the Commission may: (1) Find mitigating circumstances and take no further action; (2) issue a public statement or reprimand, or (3) impose a civil penalty in accordance with this Act. (Ord. 12782 § 3 (part), 2007; Ord. 12431 (part), 2002)

the validity of its application to other persons or circumstances. (Ord. 12782 § 3 (part), 2007)

**3.20.210 Civil penalties.**

A. Civil penalties shall be imposed by resolution of the Public Ethics Commission.

B. Except as otherwise specified in this Act, the Commission may impose penalties of up to one thousand dollars (\$1,000) for each complaint sustained.

C. If any civil penalty imposed by the Public Ethics Commission is not timely paid, the Commission shall refer the debt to the appropriate city agency or department for collection. (Ord. 12782 § 3 (part), 2007; Ord. 12431 (part), 2002)

**3.20.220 Criminal violation.**

A. Any person who knowingly or willfully violates the provisions of this Act is guilty of a misdemeanor.

B. The prosecution of any misdemeanor violation of this Act shall commence within four years after the date on which the alleged violation occurred.

C. No person convicted of a misdemeanor violation of this Act may act as a lobbyist, render consultation or advice to any registered client, or otherwise attempt to influence a governmental action for compensation for one year after such conviction. (Ord. 12782 § 3 (part), 2007)

**3.20.230 Effective date.**

The effective date of this Act shall be September 1, 2002. (Ord. 12782 § 3 (part), 2007)

**3.20.240 Severability.**

The provisions of this Chapter are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this Chapter, or the invalidity of the application thereof to any person or circumstances, shall not affect the validity of the remainder of this Chapter, or

## Title 4

### REVENUE AND FINANCE

#### Chapters:

- 4.04      Fiscal Provisions Generally**
- 4.08      Bedroom Tax**
- 4.12      Cigarette Tax**
- 4.16      Parking Tax**
- 4.20      Real Property Transfer Tax**
- 4.24      Transient Occupancy Tax**
- 4.28      Utility Users Tax**
- 4.32      City Residential Mortgage Revenue  
Bond Law**
- 4.36      City Health Facility Revenue Bond Law**
- 4.40      City Economic Revenue Development  
Revenue Bond Law**
- 4.44      PFRS Pension Obligation Bond Law**
- 4.48      Business Improvement Management  
Districts**
- 4.50      Sewer Revenue Bond Law**



**Chapter 4.04****FISCAL PROVISIONS GENERALLY****Sections:**

**4.04.010      Designation of City Treasurer.**

**4.04.010      Designation of City Treasurer.**

The Director of Finance, or his or her designated representative, is appointed City Treasurer. This position is ex-officio and does not include extra or additional compensation for the performance of the duties required thereof. (Prior code § 5-16.07)

## Chapter 4.08

### BEDROOM TAX

**Sections:**

- 4.08.010      Title.**
- 4.08.020      Definitions.**
- 4.08.030      Bedroom tax imposed.**
- 4.08.040      Payment of tax.**
- 4.08.050      Exemptions.**
- 4.08.060      Rules and regulations.**

**4.08.010      Title.**

This chapter shall be known as the bedroom tax ordinance of the city. (Prior code § 5-26.01)

**4.08.020      Definitions.**

Except where the context otherwise requires, the definitions given in this section govern the construction of this chapter:

“City” means the city of Oakland.

“Dwelling unit” means a single-family dwelling and each separate habitation unit of a duplex, apartment building, or other multiple dwelling structure designated as a separate habitation for one or more persons although a part of the same building or structure.

“Person” means any domestic or foreign corporation, firm, association, syndicate, joint-stock company, partnership of any kind, joint venture, club, Massachusetts business or common-law trust, society, or individual.

“Tax Administrator” means the Treasurer of the city of Oakland. (Prior code § 5-26.02)

**4.08.030      Bedroom tax imposed.**

There is imposed a tax upon every person who, for himself or another, constructs one or more bedrooms in any new dwelling unit in the city, or alters or adds to an existing dwelling unit in the city to create one or more bedrooms. The tax imposed by this section shall be at the rate of one hundred dollars (\$100.00) for each finished or unfinished bedroom in each new dwelling unit, and one hundred dollars (\$100.00) for each finished or unfinished

bedroom created by the alteration of or addition to an existing dwelling unit. (Prior code § 5-26.03)

**4.08.040      Payment of tax.**

The tax imposed by this chapter shall be due and payable upon application to the city for a building permit for the construction of a new dwelling unit, or the alteration of or addition to an existing dwelling unit, resulting in the creation of a bedroom; provided, however, that the city shall refund the tax paid in the event the building permit is not approved, or is not used for such construction, alteration or addition. No building permit application shall be accepted until the tax imposed by this chapter has been paid. (Prior code § 5-26.04)

**4.08.050      Exemptions.**

Nothing in this chapter shall be construed as imposing a tax upon any person if imposition of such tax upon that person would be in violation of the Constitution of the United States or the Constitution of the state of California. (Prior code § 5-26.05)

**4.08.060      Rules and regulations.**

The Tax Administrator shall have power to adopt rules and regulations not inconsistent with the provisions of this chapter for the purpose of carrying out and enforcing the payment, collection and remittance of the tax herein imposed; and a copy of such rules and regulations shall be on file and available for public examination in the Bureau of Permits and Licenses. (Prior code § 5-26.06)

## Chapter 4.12

### CIGARETTE TAX

**Sections:**

- 4.12.010      Title.**
- 4.12.020      Definitions.**
- 4.12.030      Tax imposed.**
- 4.12.040      Registration.**
- 4.12.050      Records and statements required.**
- 4.12.060      Reporting and remitting.**
- 4.12.070      Penalties and interest.**
- 4.12.080      Failure to collect and report tax—Determination of tax by Tax Administrator.**
- 4.12.090      Appeal.**
- 4.12.100      Refund.**
- 4.12.110      Actions to collect.**
- 4.12.120      Violations—Infraction.**

**4.12.010      Title.**

This chapter shall be known as the cigarette tax ordinance of the city. (Prior code § 5-22.01)

**4.12.020      Definitions.**

Except where the context otherwise requires, the following definitions govern the construction of this chapter:

“Cigarette” means any roll for smoking, made wholly or in part of tobacco, irrespective of size or shape and irrespective of whether the tobacco is flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper of any other material, except where such wrapper is wholly or in the greater part made of tobacco, and such roll weighs over three pounds per thousand.

“City” means the city of Oakland.

“Distribute” or “distributing” means the act, by a distributor, of transporting cigarettes to which he has title, or causing or allowing such cigarettes to be transported, to a retail outlet in the city.

“Distributor” means a person who, having title to cigarettes, transports them, or causes or allows them to be transported, to a retail outlet in the city.

“Person” means any domestic or foreign corporation, firm, association, syndicate, joint-stock company, partnership of any kind, joint venture, club, Massachusetts business or common-law trust, society, or individual.

“Retail outlet” means any place or premises in the city (including, without limiting the generality of the foregoing, every kind of store, business establishment, and club in the city) where cigarettes are transferred to the possession of the ultimate consumer thereof, irrespective of how such transfer is consummated, whether through a natural person, by means of a vending machine or other mechanical device, or otherwise.

“Tax Administrator” means the Treasurer of the city of Oakland.

“Ultimate consumer” means and includes any person who acquires possession of cigarettes for his or her own use or consumption.

“Untaxed cigarette” means any cigarette which has not yet been distributed in such manner as to result in tax liability under this chapter.

“Use or consumption” means and includes the exercise of any right or power over cigarettes incident to the ownership thereof, other than the sale of the cigarettes or the receiving, handling, or holding thereof for the purpose of sale. (Prior code § 5-22.02— 5-22.12)

**4.12.030      Tax imposed.**

An excise tax, at the rate of one mill (\$0.001) per cigarette, is imposed upon the privilege of distributing cigarettes to retail outlets in the city. Any cigarette with respect to which a tax has once been imposed under this chapter shall not be subject upon a subsequent distribution to the tax imposed by this chapter. Unless the contrary is established it shall be presumed that all cigarettes distributed in the city are untaxed cigarettes. It is unlawful knowingly to sell, transfer, distribute, or give away untaxed cigarettes in the city. Sample packets of five or less

#### **4.12.030**

cigarettes each, given free of charge, are exempt from this tax. (Prior code § 5-22.13)

#### **4.12.040 Registration.**

Within thirty (30) days after the effective date of the ordinance codified in this chapter, within thirty (30) days after commencing business, or within thirty (30) days after a change in ownership of a business registered under this chapter, whichever is later, each distributor of cigarettes shall register with the Tax Administrator on a form provided by him or her. (Prior code § 5-22.14)

#### **4.12.050 Records and statements required.**

Every distributor shall keep a complete and accurate record of all cigarettes distributed by him or her in the city. Such records shall, with respect to each separate distribution, include a written statement containing the name and address of the retail outlet to which distribution is made and to whom title or possession of the distributed cigarettes is transferred, the date of delivery, the quantity of cigarettes, the amount of tax imposed under this chapter, and such other information as the Tax Administrator may reasonably require. All statements and records required by this section shall be in a form satisfactory to the Tax Administrator. They shall be preserved for a period of three years and shall be offered for inspection at any time upon oral or written demand by the Tax Administrator or his authorized agent.

The Tax Administrator is authorized and directed to offset and deduct from the total amount of tax moneys which may become owing and payable by a distributor to the city under the provisions of this chapter an amount of money equal to two percent of such total amount of tax moneys owing and payable by such distribution to the city for such month, if such distributor has complied with and done all things required of him by the provisions of this section to the satisfaction of the Tax Administrator. Such offset and deduction shall be deemed reimbursement to the distributor for costs and expenses incurred by him or her in complying with and doing all things required of him or her by this section. (Prior code § 5-22.15)

#### **4.12.060 Reporting and remitting.**

The tax imposed under this chapter shall be due and payable monthly on or before the last day of the calendar month following the calendar month in which the distribution of cigarettes occurs.

Each distributor shall make a return to the Tax Administrator on forms provided by said Administrator, of the total number of cigarettes distributed to retail outlets in the city by the distributor during each calendar month and the amount of tax due thereon. Each such return shall be filed with the Tax Administrator on or before the last day of the calendar month following the close of the calendar month for which the return is made.

At the time the return is filed, the full amount of the tax imposed by this chapter shall be remitted to the Tax Administrator. The Tax Administrator may establish a shorter reporting period for any distributor if he or she deems it necessary in order to insure collection of the tax. Returns and payments are due immediately upon cessation of business for any reason. All returns and payments submitted by each distributor shall be treated as confidential by the Tax Administrator and shall not be released by him or her except by order of a court of competent jurisdiction or to an official or agent of the United States, the state of California, the county of Alameda, or the city of Oakland for official use only. (Prior code § 5-22.16)

#### **4.12.070 Penalties and interest.**

A. Original Delinquency Period. Any distributor who fails to remit any tax imposed by this chapter within the time required shall pay a penalty of ten percent of the amount of the tax in addition to the amount of the tax.

B. Continued Delinquency. Any distributor who fails to remit any delinquent remittance within one month following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten percent of the amount of the tax in addition to the amount of the tax and the ten percent penalty first imposed.

C. Fraud. If the Tax Administrator determines that the nonpayment of any remittance due under

this chapter is due to fraud, a payment of twenty-five (25) percent of the amount of the tax shall be added thereto in addition to the penalties stated in subsections A and B of this section.

D. Interest. In addition to the penalties imposed, any distributor who fails to remit any tax imposed by this chapter shall pay interest at the rate of one-half of one (0.5) percent per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

E. Penalties Merged with Tax. Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the tax herein required to be paid.

F. Penalties during Pendency of Hearing or Appeal. No penalty provided under the terms of this chapter shall be imposed during the pendency of any hearing which is provided for in Section 4.12.080, nor during the pendency of any appeal to the City Council which is provided for in Section 4.12.090. (Prior code § 5-22.17)

**4.12.080 Failure to collect and report tax—Determination of tax by Tax Administrator.**

If any distributor shall fail or refuse, within the time provided for in this chapter, to make any report and remittance of said tax or any portion thereof required by this chapter, the Tax Administrator shall proceed to obtain facts and information on which to base his or her estimate of the tax due. As soon as the Tax Administrator shall procure such facts and information as he or she is able to obtain upon which to base the assessment of any tax imposed by this chapter and payable by any distributor who has failed or refused to make such report and remittance, he or she shall proceed to determine and assess against such distributor the tax, interest, and penalties provided for by this chapter. In case such determination is made, the Tax Administrator shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the distributor so assessed, at his or her last-known place of ad-

dress. Such distributor may within ten days after the service or mailing of such notice make application in writing to the Tax Administrator for a hearing on such amount assessed. If application by the distributor for a hearing is not made within the time prescribed, the tax, interest, and penalties, if any, determined by the Tax Administrator shall become final and conclusive and immediately due and payable. If such application is made, the Tax Administrator shall give not less than five days' written notice in the manner prescribed herein to the distributor to show cause at a time and place fixed in said notice why said amount specified therein should not be fixed for such tax, interest, and penalties. At such hearing, the distributor may appear and offer evidence why such specified tax, interest, and penalties should not be so fixed. After such hearing, the Tax Administrator shall determine the proper tax to be remitted and shall thereafter give written notice to the distributor in the manner prescribed herein of such determination and the amount of such tax, interest, and penalties. The amount determined to be due shall be payable after fifteen (15) days, unless an appeal is taken as provided in Section 4.12.090. (Prior code § 5-22.18)

**4.12.090 Appeal.**

Any distributor aggrieved by any decision of the Tax Administrator with respect to the amount of such tax, interest, and penalties, if any, may appeal to the Council by filing a notice of appeal with the City Clerk within fifteen (15) days of the serving or mailing of the determination of tax due. The Council shall fix a time and place for hearing such appeal, and the City Clerk shall give notice in writing to such distributor at his or her last-known place of address. The findings of the Council shall be final and conclusive and shall be served upon the appellant in the manner prescribed above in the service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice. (Prior code § 5-22.19)

**4.12.100 Refund.**

A. Whenever the amount of any tax, interest, or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the city under this chapter, it may be refunded as provided in subsection B of this section, provided a claim in writing therefor, stating under penalty of perjury the specific ground upon which the claim is founded, is filed with the Tax Administrator within three years of the date of payment. The claim shall be on forms furnished by the Tax Administrator.

B. A distributor may claim a refund or take as credit against taxes due but never remitted the amount overpaid, paid more than once, or erroneously or illegally collected or received when it is established in a manner prescribed by the Tax Administrator that the amount claimed has been overpaid or paid more than once or has been erroneously or illegally collected or received by the city.

C. No refund shall be paid under the provisions of this section unless the claimant establishes by written records entitlement thereto. (Prior code § 5-22.20)

make, render, sign, or verify any report or claim who makes a false or fraudulent report or claim with intent to defeat or evade the determination is guilty of an infraction. (Prior code § 5-22.22)

**4.12.110 Actions to collect.**

Any tax required to be paid by a distributor under the provisions of this chapter shall be deemed a debt owed to the city. Any person owing taxes under the provisions of this chapter shall be liable to an action brought in the name of the city for the recovery of such amount. (Prior code § 5-22.21)

**4.12.120 Violations—Infraction.**

Any person violating any provision of this chapter shall be guilty of an infraction.

Any distributor who fails or refuses to register as required herein, or to furnish any return required to be made, or who fails to furnish or refuses to furnish other data required by the Tax Administrator, or who renders a false or fraudulent return or claim, is guilty of an infraction. Any person required to

## Chapter 4.16

### PARKING TAX

**Sections:**

- 4.16.010      Title.**
- 4.16.020      Definitions.**
- 4.16.030      Imposition and rate of tax.**
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- 4.16.040      Charges subject to tax.**
- 4.16.050      Occupant to pay tax to operator.**
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- 4.16.090      Exemptions.**
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- 4.16.160      Collection of tax.**
- 4.16.170      Administration.**
- 4.16.180      Saving clause.**
- 4.16.190      Violations, infraction, misdemeanor.**

**4.16.010      Title.**

This chapter shall be known as the parking tax ordinance. (Prior code § 5-31.00)

**4.16.020      Definitions.**

When used in this chapter, the following terms shall have the following meanings:

“City” means the city of Oakland.

“Motor vehicle” means and includes, but is not limited to, any truck, automobile, trailer, motorcycle, boat or transportable structure.

“Occupancy” means the use or possession or the right to the use or possession of any space for the parking of a motor vehicle in any parking station.

“Occupant” means a person who, for a consideration, uses, possesses or has the right to use or possess any space for the parking of a motor vehicle in a parking station under any lease, concession, permit, right of access, license to use or other agreement.

“Operator” means any person operating a parking station in the city of Oakland, including but not limited to, the owner or proprietor of such premises, lessee, sub-lessee, mortgagee in possession, licensee or any other person otherwise operating such parking station. When the operator performs his or her functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for purposes of this chapter and shall have the same duties and liabilities as his or her principal. When the managing agent collects parking fees and tax on behalf of his principal and deposits the same into the principal’s account in a financial institution, such principal shall be responsible for report and remitting the tax to the city. It shall be the duty of the managing agent to provide the Tax Administrator with the name and address of each principal who will be responsible for reporting and remitting the tax to the city. Compliance with the provisions of this chapter by either the principal or the managing agent shall be considered to be compliance by both. A person who qualifies as an operator shall not, by reason of being exempt from the tax imposed in this chapter, be exempt from the duties and liabilities of an operator imposed under this chapter.

“Parking meter” means any device which, when the recording device thereof is set in motion, or immediately following the deposit of any coin, shall register the period of time that any motor vehicle may be parked adjacent thereto.

“Parking Station” means and includes, but is not limited to:

1. Any outdoor space or uncovered plot, place, lot, parcel, yard or enclosure, or any portion thereof, where motor vehicles may be parked, stored, housed or kept, for which any charge is made;

2. Any building or structure, or any portion thereof, in which motor vehicles may be parked, stored, housed or kept, for which any charge is made.

“Person” means a natural person, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, partnership, joint venture, club, company, joint stock company, business trust, municipal corporation, the state of California, any political subdivision of the state of California, the United States, any instrumentality of the United States, domestic or foreign corporation, association, syndicate, society, or any group nonprofit or otherwise. Whenever the term “person” is used in any clause prescribing and imposing a penalty, the term as applied to corporations and business entities shall include the officers thereof.

“Rent” means the consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature and also the amount for which credit is allowed by the operator to the occupant without any deduction therefrom whatsoever.

“Return” means any declaration of income, filed or required to be filed as herein provided.

“Tax” means the tax imposed by this chapter.

“Tax Administrator” means the Director of Finance of the city of Oakland. (Prior code § 5-31.01)

#### **4.16.030      Imposition and rate of tax.**

Subject to the provision of this chapter, there is imposed a tax at the rate of ten percent of the rental of every parking space in a parking station in the city.

The tax imposed by this chapter shall be paid upon any occupancy on and after July 1, 1992, although such occupancy is had pursuant to a contract, leasing or other arrangements made prior to such date. Where the rent is paid, or charged or billed, or falls due on either an hourly, daily, weekly, monthly or other term basis, the rent so paid, charged, billed or fallen due shall be subject to the tax herein imposed

to the extent that it covers any portion of the period from July 1, 1992, and such payment, bill, charge or rent due shall be apportioned on the basis of the ratio of number of days covered thereby. Where any tax has been paid hereunder upon any rent without any right of occupancy therefor, the Tax Administrator may, by regulation, provide for credit or refund of the amount of such tax upon application therefor as provided in Section 4.16.160. (Prior code § 5-31.02)

#### **4.16.031      Imposition of surcharge.**

Subject to the provisions for the collection of taxes and definitions in this chapter, there shall be an additional tax of eight and one-half percent imposed on the rental of every parking space in a parking station in the city.

By adopting this ordinance the People of the City of Oakland do not intend to limit or in anyway curtail any powers the City Council may exercise as to the subject matter of this ordinance, including, but not limited to, raising the rate of taxation or surcharge, lowering the rate of taxation or surcharge, eliminating the tax or surcharge, or creating or defining new categories of taxpayers under this ordinance. (Added by: Stats November 2004)

#### **4.16.040      Charges subject to tax.**

The term “rent” as defined in Section 4.16.020, shall be deemed to include the total charges required to be paid by an occupant (including but not limited to, any valet or service labor charge) in connection with the use of occupancy of parking space; provided that nothing herein shall require the payment of parking tax on the sale of petroleum products, automobile parts, or the like, or the rendering of services (including car wash services) totally unconnected with the use or occupancy of parking space. (Prior code § 5-31.03)

#### **4.16.050      Occupant to pay tax to operator.**

Unless prohibited by the laws of the United States, the state of California, or exempted by the provisions of this chapter, every occupant occupying parking space in a parking station in this city shall be required to pay the tax imposed herein to the operator

along with the rent for occupancy. This obligation is not satisfied until the tax has been paid to the city, except that a receipt indicating payment of the rent from an operator maintaining a place of business in this city or from an operator who is authorized by the Tax Administrator to collect the tax shall be sufficient to relieve the occupant from further liability for the tax to which the receipt refers. (Prior code § 5-31.04)



**4.16.060      Collection of tax by operator—Receipt to occupant—Rules for collection schedule.**

Every operator maintaining a place of business in this city as provided herein, and renting parking space in a parking station in this city to an occupant who is not exempted under Section 4.16.090, shall at the time of collecting the rent from the occupant, collect the tax from the occupant and on demand shall give to the occupant a receipt therefor. In all cases in which the tax is not collected by the operator, as aforesaid, the operator shall be liable to the city for the amount of tax due on the amount of taxable rent collected from the occupant under the provisions of this chapter the same as though the tax were paid by the occupant in all cases of transactions upon credit or deferred payment, the payment of tax to the Tax Administrator may be deferred in accordance therewith, and the operator shall be liable therefor at the time and to the extent that such credits are paid or deferred payments are made in accordance with the rate of tax owing on the amount thereof at the time of actual payment.

The Tax Administrator shall have the power to adopt rules and regulations prescribing methods and schedules for the collection and payment of the tax and such methods and schedules shall provide that the fractional part of one cent shall be disregarded unless it amounts to one-half of one cent or more, in which case the amount (determined without regard to the fractional part of one cent) shall be increased by one cent. (Prior code § 5-31.05)

**4.16.070      Penalties and interest for failure to pay tax.**

Any person who fails to pay the tax to the city or any amount of tax required to be collected and paid to the city within the time required shall pay a penalty of twenty-five (25) percent of the tax or amount of the tax, in addition to the tax or amount of delinquent tax, plus interest, computed on the amount of delinquent tax, inclusive of penalties, at the rate of one percent per month, or fraction thereof, from the date on which the tax or the amount of tax required to be collected became due and payable

to the city and until the date of payment. (Prior code § 5-31.06)

**4.16.080      Unlawful advertising regarding tax.**

It is unlawful for any operator to advertise or hold out or state to the public or to any occupant, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator or that it will not be added to the rental of the parking space, or that, if added, it or any part thereof will be refunded. (Prior code § 5-31.07)

**4.16.090      Exemptions.**

No tax shall be imposed hereunder on the rent for any occupancy or parking space in parking stations wherein the rent for such occupancy is paid by the deposit of a coin or coins in a parking meter owned or operated by the city and located adjacent to said parking space. (Prior code § 5-31.08)

**4.16.100      Registration of operator—Form and contents—Execution—Certification of authority.**

Every person engaged in or about to engage in business as an operator of a parking station in this city shall immediately register with the Customer Service Section of the city on a form provided by the Tax Administrator. Persons engaged in such business must be registered no later than thirty (30) days after the date the tax imposed by this chapter becomes effective, July 1, 1992, but such privilege of such registration after the date of imposition of such tax shall not relieve any person from the obligation or payment or collection of tax on and after the date of imposition thereof, regardless of registration. Such registration shall set forth the name under which such person transacts or intends to transact business, the location of his or her place or places of business and such other information to facilitate the collection of the tax as the Tax Administrator may require. The registration shall be signed by the owner if a natural person; in the case of an association or partnership, by a member or partner; in the case of a corporation, by an executive officer or

some person specifically authorized by the corporation to sign the registration. The Tax Administrator shall within thirty (30) days after such registration issue without charge a certificate of authority to each registrant to collect the tax from the occupant, together with a duplicate certificate and the duplicate shall state the place of business to which it is applicable. Such certificates shall be nonassignable and nontransferable and shall be surrendered immediately to the Tax Administrator upon the cessation of business at the location named or upon its sale or transfer.

If the Tax Administrator deems it necessary in order to facilitate initial registration hereunder of persons engaged in business on or prior to the date of imposition of the tax as set forth in this chapter, he or she may prescribe provisions therefor other than those provided in this Section. Such provisions shall be made to effect the purpose hereof. For such purposes, such provisions shall be in lieu of or in addition to those provided. Such registration and the certificate thereof shall have the same effect as that provided herein. (Amended during 1997 codification; prior code § 5-31.09)

#### **4.16.110 Determinations, returns and payments.**

A. Due Date of Taxes. All amounts of taxes imposed by this chapter and collected by any operator or required to be collected by any operator are due and payable to the Tax Administrator for each taxable month on or before the twentieth day of the month immediately following each respective monthly period.

B. Return—Time for Filing—Person Required to File—Execution. On or before the twentieth day of the month immediately following each monthly period, a return for the preceding monthly period shall be filed with the Tax Administrator, in such form as the Tax Administrator may prescribe.

C. Contents of Return. Returns shall show the amount of tax collected or otherwise due for the related period and such other information as required by the Tax Administrator. The Tax Administrator may require returns to show the total rentals

upon which tax was collected or otherwise due, the gross receipts of a registered operator for such period and the explanation in detail of any discrepancy between such amounts.

D. Delivery of Return and Remittance. The person required to file the return shall transmit the return, together with the remittance of the amount of the tax due, to the Tax Administrator at the Customer Service Section on or before the date provided in this chapter.

E. Extension of Time for Filing a Return and Paying Tax. For good cause, the Tax Administrator may extend, for a period not to exceed thirty (30) days, the deadline for making any return or payment of tax. No further extension shall be granted except by the Oakland Taxation and Assessment Board of Review. Any person to whom an extension is granted, whether by the Tax Administrator under this section or by the Oakland Taxation and Assessment Board of Review under Section 4.16.170, any person who makes return and pays the tax within the period of such extension shall pay, in addition to the tax, interest on the amount thereof at the rate of one percent per month, or fraction thereof, for the period of such extension to the time of return and payment. If the monthly parking tax is not paid within the extension period or periods, a penalty will be assessed as if no extension was granted, as provided in Section 4.16.070. (Prior code § 5-31.10)

#### **4.16.120 Deficiency determinations.**

A. Recomputation of Tax—Authority to Make—Basis of Recomputation. If the Tax Administrator is not satisfied with the return or returns of the tax or the amount of the tax required to be paid to the city by a given person, he or she may compute and determine the amount required to be paid based upon the facts contained in the return or returns or upon any information within the Tax Administrator's possession or that may come into his or her possession. One or more deficiency determinations may be made of the amount due for one or more periods.

B. Interest on Deficiency. The amount of the determination, inclusive of penalties, shall bear

interest at the rate of one percent per month, or fraction thereof, from the twenty-first day of the month following the close of the monthly period for which the amount or any portion thereof should have been paid until the date of payment.

C. Offsetting of Overpayments. In making a determination, the Tax Administrator may offset overpayments for a period or periods against underpayments for another period or periods, against penalties and interest on the underpayments. The interest on underpayments shall be computed in the manner as set forth in Sections 4.16.070 and 4.16.160.

D. Penalty—Negligence or Disregard of Rules and Regulations. If any part of the deficiency for which a deficiency determination is made is due to negligence or intentional disregard of this chapter or authorized rules or regulations, a penalty of twenty-five (25) percent of the amount required to be paid by the person, inclusive of interest shall be added thereto in addition to the twenty-five (25) percent penalty as provided in Section 4.16.070.

E. Penalty for Fraud or Intent to Evade. If any part of this deficiency for which a deficiency determination is made is due to fraud or an intent to evade this chapter or authorized rules and regulations, a penalty of fifty (50) percent of the amount required to be paid by the person, inclusive of interest shall be added thereto in addition to the twenty-five (25) percent penalty as provided in Section 4.16.070.

F. Notice of Tax Administrator's Determination—Service of. The Tax Administrator shall give to the operator written notice of the determination. The notice may be served personally or by mail; if by mail, notice shall be addressed to the operator or occupant at his or her address as it appears in the records of the Tax Administrator. In case of service by mail or any notice required by this chapter, the service is complete at the time of deposit in the United States Post Office.

G. Time Within Which Notice of Deficiency Determination Is To Be Mailed. Except in the case of fraud, intent to evade this chapter or authorized rules and regulations, or failure to make a return,

every notice of a deficiency determination shall be mailed within three years after the twentieth day of the calendar month following the monthly period for which the proposed amount is determined or within three years after the return is filed, whichever period expires the later. (Prior code § 5-31.11)

#### **4.16.130 Determination if no return made.**

A. Estimate of Gross Receipts—Computation of Tax Penalty. If any person fails to make a return, the Tax Administrator shall make an estimate of the amount of the gross receipts of the person, or, as the case may be, of the amount of the total rentals in the city that are subject to the tax. The estimate shall be made for the period or periods in respect to which the person failed to make a return and shall be based upon any information that is in the Tax Administrator's possession or may come into his or her possession. Upon the basis of this estimate, the Tax Administrator shall compute and determine the amount required to be paid to the City, adding to the sum computed a penalty equal to twenty-five (25) percent thereof. One or more determinations may be made for one or for more than one period.

B. Manner of Computation—Offsets—Interest. In making a determination, the Tax Administrator may offset overpayments for a period or periods against underpayments for another period or periods, against penalties and interest on the underpayments. The interest on underpayments shall be computed in the manner as set forth in Sections 4.16.070 and 4.16.160.

C. Interest on Amount Found Due. The amount of the determinations, inclusive of penalties, shall bear interest at the rate of one percent per month, or fraction thereof, from the twenty-first day of the month following the close of the monthly period for which the amount or any portion thereof should have been returned until the date of payment.

D. Penalty for Fraud or Intent to Evade. If the failure of any person to file a return is due to fraud or an intent to evade this chapter or rules and regulations, a penalty of fifty (50) percent of the amount required to be paid by the person, inclusive of interest shall be added thereto in addition to the twenty-

five (25) percent penalty provided in Section 4.16.070.

E. Giving Notice—Manner of Service. After making the determination, the Tax Administrator shall give to the person written notice of the estimate, determination, penalty and interest. The notice shall be served personally or by mail in the manner prescribed for service of notice of a deficiency determination. (Prior code § 5-31.12)

#### **4.16.140 Jeopardy determinations.**

A. Duty of Tax Administrator to Make—Due Date. If the Tax Administrator believes that the collection of any tax or any amount of tax required to be collected and paid to the city or of any determination will be jeopardized by delay, he or she shall thereupon make a determination of the tax or amount of tax required to be collected, noting that fact upon the determination. The amount determined is immediately due and payable.

B. Effect of Nonpayment—Finality of Determination. If the amount specified in the determination is not paid within twenty (20) days after service of notice thereof upon the person against whom the determination is made, the amount becomes final at the expiration of the twenty (20) days, unless a petition for redetermination is filed within the twenty (20) days. The delinquency penalty and the interest provided in Section 4.16.070 shall attach to the amount of the tax required to be collected.

C. Petition for Redetermination—Time for Filing—Deposit of Security. Any person against whom a jeopardy determination is made may petition for the redetermination thereof pursuant to Section subsections A, B, C, D, E and F of Section 4.16.150. He or she shall, however, file the petition for redetermination with the Tax Administrator within twenty (20) days after the service upon him or her of notice of determination. The person shall also within the twenty (20) day period deposit with the Tax Administrator such security as he or she may deem necessary to insure compliance with this chapter. The security may be sold by the Tax Administrator in the manner prescribed by Section 4.16.160A. (Prior code § 5-31.13)

#### **4.16.150 Redeterminations.**

A. Right to Petition for—Time to File Petition. Any person against whom a determination is made under this chapter or any person directly interested may petition for a redetermination within twenty (20) days after service upon the person of notice thereof. If a petition for redetermination is not filed within the twenty (20) day period, the determination becomes final at the expiration of the period.

B. Grant of Oral Hearing—Notice, Continuances. If a petition for redetermination is filed within the twenty (20) day period, the Tax Administrator shall reconsider the determination and, if the person has so requested in his or her petition, shall grant the person an oral hearing and shall give him or her ten days' notice of the time and place of the hearing. The Tax Administrator may continue the hearing from time to time as may be necessary.

C. Alteration of Determination—Limitation on Right to Increase Amount. The Tax Administrator may decrease or increase the amount of the determination before it becomes final but the amount may be increased only if a claim for the increase is asserted by the Tax Administrator at or before the hearing.

D. Finality of Order on Petition. The order or decision of the Tax Administrator upon a petition for redetermination becomes final twenty (20) days after service upon the petitioner of notice thereof, unless appeal of such order or decision is filed with the Oakland Taxation and Assessment Board of Review within twenty (20) days after service of such notice.

E. Time for Payment of Amounts Found Due—Penalty for Delinquency. All determinations made by the Tax Administrator under Section 4.16.130A or 4.16.140A are due and payable at the time they become final. If they are not paid when due and payable, a penalty of twenty-five (25) percent of the amount of the determination, inclusive of penalties and interest, shall be added thereto.

F. Manner of Serving Notices. Any notice relating to redetermination proceedings shall be served personally or by mail in the manner prescribed for

service of notice of a deficiency determination.  
(Prior code § 5-31.14)

#### **4.16.160 Collection of tax.**

**A. Security—Tax Administrator May Exact—Amount—Sale of—Notice of Sale—Return of Surplus.** The Tax Administrator, whenever he or she deems it necessary to insure compliance with this chapter, may require any person subject thereto to deposit with the Tax Administrator such security as the Tax Administrator may determine. The amount of the security shall be fixed by the Tax Administrator but shall not be greater than twice the person's estimated average liability for the period for which said person files returns, determined in such manner as the Tax Administrator deems proper, or ten thousand dollars (\$10,000), whichever amount is the lesser. The amount of the security may be increased or decreased by the Tax Administrator subject to the limitations herein provided. The Tax Administrator may sell the security at public auction if it becomes necessary so to do in order to recover any tax or any amount required to be collected, penalty, or interest due. Notice of the sale may be served upon the person who deposited the security personally or by mail; if by mail, service shall be made in the manner prescribed for service of a notice of a deficiency determination and shall be addressed to the person at such person's address as it appears in the records of the Tax Administrator. Upon any sale, any surplus above the amounts due shall be returned to the person who deposited the security.

**B. Action for Tax—Time for.** At any time within three years after any tax or any amount of tax required to be collected becomes due and payable and at any time within three years after the delinquency of any tax or any amount of tax required to be collected, the Tax Administrator may bring an action in the courts of this state, of any other state, or the United States in the name of the city of Oakland to collect the amount delinquent together with penalties and interest.

**C. Duty of Successors or Assignees of Operator to Withhold Tax from Purchase Money.** If any operator liable for any amount under this chapter

sells out his or her business or quits the business, his or her successors or assignees shall withhold sufficient of the purchase price to cover such amount until the former owner produces a receipt from the Tax Administrator showing that the Tax Administrator has been paid or a certificate stating that no amount is due.

**D. Liability for Failure to Withhold—Certificate of Notice of Amount Due—Time to Enforce Successor's Liability.** If the purchaser of a business fails to withhold from the purchase price as required, he or she becomes personally liable for the payment of the amount required to be withheld by him or her to the extent of the purchase price, valued in money. Within thirty (30) days after receiving a written request from the purchaser for a certificate, the Tax Administrator shall either issue the certificate or mail notice to the purchaser at his or her address as it appears on the records of the Tax Administrator of the amount that must be paid as a condition of issuing the certificate. Failure of the Tax Administrator to mail the notice will release the purchaser from any further obligation to withhold purchase price as above provided. The time within which the obligation of a successor may be enforced shall start to run at the time the operator sells out his business or at the time that the determination against the operator becomes final, whichever event occurs the later.

**E. Refund to Tax, Penalty or Interest Paid More than Once or Erroneously or Illegally Collected.** Whenever the amount of any tax, penalty or interest has been paid more than once or has been erroneously or illegally collected or received by the city under this chapter, it may be refunded provided a verified claim in writing therefor, stating the specific ground upon which the claim is founded, is filed with the Tax Administrator within one year from the date of payment. The claim shall be filed on forms provided by the Tax Administrator and such claim shall be audited in accordance with procedures prescribed by the Tax Administrator. The excess amount collected or paid may be either refunded or may be credited against any amounts then due and payable, from the person from whom it was collect-

ed or by whom paid and the balance may be refunded to such person, his or her administrators or executors.

If the claim for refund is denied, the Tax Administrator shall serve notice of such denial upon the taxpayer personally or by mail. The denial of such claim becomes final thirty (30) days after service of notice thereof, unless a petition for refund is filed with the Oakland Taxation and Assessment Board of Review prior to expiration of such thirty (30) day period. Petitions for refund, after having been filed with the Oakland Taxation and Assessment Board of Review, shall be treated in the same manner as petitions for redetermination. (Prior code § 5-31.15)

#### **4.16.170 Administration.**

A. Authority of Tax Administrator Generally. The Tax Administrator shall enforce the provisions of this chapter and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this chapter. The Tax Administrator may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect.

B. Oakland Taxation and Assessment Board of Review—Appeals, Rules, Procedure.

1. Composition. The Oakland Taxation and Assessment Board of Review consisting of the City Manager, City Auditor, the City Attorney and two community members nominated by the Mayor and appointed by the Council for a term of four years is created. The Board shall select from its members a chairperson who shall serve at its pleasure. The City Manager, the City Auditor and City Attorney may deputize in writing filed with the Board any member of their staff to serve in the place on such Board for such period or in such hearings as may be desired. A majority of members of the Board shall constitute a quorum. The Board shall be deemed to be in the Office of the City Manager, shall meet and keep its files in such office and all filings with the Board relating to appeals or otherwise shall be mailed to Chairperson, Oakland Taxation and Assessment Board of Review in care of City Manager's Office, One City Hall Plaza, Oakland, CA 94612. Neither

the members of the Board nor the members of their offices deputized to serve in their places at any time shall receive any compensation as such member or acting members for their services on the Board.

2. Appeals. Any person whose rights or interests have been directly and adversely affected by a Parking Tax Ruling or finding of fact made by the Tax Administrator under the authority of this chapter may appeal therefrom in writing to the Oakland Taxation and Assessment Board of Review within twenty (20) days from the date of notification, in the manner provided Section 4.16.150D, of such ruling or finding. The Oakland Taxation and Assessment Board of Review in individual cases may, in its exercise of reasonable discretion in administering the provisions of this chapter, enlarge the twenty (20) day period in which to file an appeal. The Board shall make findings of fact in support of its decisions on appeal. The Board shall exercise its reasonable discretion in administering the provisions of this chapter in rendering a decision on appealed rulings and findings. The Board's decision on appeal becomes final upon giving notice thereof to the appellant in the manner provided in Section 4.16.120F.

Any tax penalty, or interest found to be owing is due and payable at the time the Board's decision thereon becomes final.

3. Extension of Time for Filing and Payment. On written application showing good cause, the Board or its chairperson may, with or without hearing, by written order filed with the Tax Administrator, extend for not more than thirty (30) days the time provided in this chapter for the filing of any return or making any payment. For the period of such extension the penalty in regard thereto shall be waived.

4. Exhaustion of Remedies. Any person whose case may be resolved by employing the administrative remedies provided by this section must exhaust those remedies before filing suit for refund, rebate, exemptions, cancellation, amendment, adjustments, or modification of tax, interest or penalty.

5. Review of Parking Tax Rulings. The Oakland Taxation and Assessment Board of Review shall, on

motion of any one of its members, hold a hearing to ascertain its position regarding any parking tax ruling. The Board may affirm, modify, or reverse such ruling as necessary or advisable to effectuate the purposes of this chapter. The Oakland Taxation and Assessment Board of Review's decision on such ruling shall have only prospective effect.

C. Records Required from Operators, Etc., Form. Every operator renting parking space in this city shall keep and preserve for a period of five years such records as may be necessary to determine the amount of tax for which the person is liable.

D. Examination of Records—Investigations. The Tax Administrator or any authorized employee is authorized to examine the books, papers, tax returns and records of any person subject to the chapter for the purpose of verifying the accuracy of any return made, or if no return was made, to ascertain the parking tax due.

Every person subject to the provisions of this chapter is directed and required to furnish to the Tax Administrator or duly authorized agent or employee, the means, facilities and opportunity for making such examinations and investigations. The Tax Administrator is authorized to examine a person under oath, for the purpose of verifying the accuracy of any return made, or if no return was made, to ascertain the business tax or registration fees due under this chapter. In order to ascertain the parking tax due under this chapter, the Tax Administrator may compel, by administrative subpoena, the production of relevant books, papers and records and the attendance of person as parties or witnesses.

The refusal to submit to such examination or production by any employer or person subject to the provisions of this chapter shall be deemed a violation of this chapter, and administrative subpoenas shall be enforced pursuant to applicable state law.

E. Authority to Require Reports—Contents. In administration of the tax the Tax Administrator may require the filing of reports by any person or class of persons having in his or her possession or custody information relating to rentals of parking spaces that are subject to the tax. The reports shall be filed when the Tax Administrator requires and shall set

forth the rental charged for each occupancy, the date or dates of occupancy, and such other information as the Tax Administrator may require.

F. Disclosure of Business of Operators, etc.—Limitation on Rule. It is unlawful for the Tax Administrator or any person having an administrative duty under this chapter to make known in any manner whatsoever the business affairs, operators, or information obtained by an investigation or records and equipment of any operator or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any return, or to permit any return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person. Notwithstanding the foregoing, successors, receivers, trustees, executors, administrators, assignees and guarantors, if directly interested, may be given information as to the items included in the measure and amount of any unpaid tax or amounts of tax required to be collected interest and penalties.

Any officer or employee who shall wilfully violate any provision of this section shall be deemed guilty of an infraction, and such violation shall be cause for dismissal from the city's service. (Prior code § 5-31.16)

#### **4.16.180 Saving clause.**

Nothing in this chapter shall be construed as requiring the payment of any tax by the United States of America, or by the state of California, or by any municipal corporation, or by any of their subdivisions; nor shall this chapter be construed as requiring the payment of any tax prohibited by the Constitution of the United States or by the Constitution of the state of California.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this chapter or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter or any part thereof. The City Council declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespec-

**4.16.180**

tive of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional. (Prior code § 5-31.17)

**4.16.190      Violations, infraction,  
misdemeanor.**

In the exercise of the duties imposed upon the Tax Administrator hereunder, and acting through deputies or duly authorized representatives, the Tax Administrator shall examine or cause to be examined all parking stations in the city to ascertain whether the provisions of this chapter have been complied with.

Any operator or other person who fails or refuses to register as herein required, or to furnish any return required to be made, or who fails or refuses to furnish a supplemental return or other data required by the Tax Administrator, or who renders a false or fraudulent return, shall be guilty of a misdemeanor, and is punishable by a fine of not more than five hundred dollars (\$500.00) or imprisonment in the county jail for a period of not more than six months or by both fine and imprisonment.

Any person required to make, render, sign or verify any report, who makes any false or fraudulent report, with intent to defeat or evade the determination of an amount due required by this chapter to be made, is guilty of a misdemeanor and is punishable as aforesaid. (Prior code § 5-31.18)

**Chapter 4.20****REAL PROPERTY TRANSFER TAX****Sections:**

- 4.20.010 Title and purpose.**
- 4.20.020 Imposition of tax.**
- 4.20.030 Definitions.**
- 4.20.040 Person on whom tax imposed.**
- 4.20.050 Exceptions.**
- 4.20.060 Administration of tax.**
- 4.20.070 Due dates, delinquencies, penalties, interest, administrative charges and lien release recordation fees.**
- 4.20.080 Exemption for low and moderate income first-time homebuyers.**
- 4.20.090 Declaration may be required.**
- 4.20.100 Determination of deficiency.**
- 4.20.110 Notice of determination.**
- 4.20.120 Manner of giving notice.**
- 4.20.130 Petition for redetermination.**
- 4.20.140 Consideration of petition—Hearing.**
- 4.20.150 Determination of petition.**
- 4.20.160 Finality of determination.**
- 4.20.170 Tax a debt.**
- 4.20.180 Refunds.**
- 4.20.190 Tax a lien.**
- 4.20.200 Notice of hearing on lien.**
- 4.20.210 Collection of delinquent taxes by special tax roll assessment.**

**4.20.010 Title and purpose.**

This chapter may be cited as the real property transfer tax ordinance of the city.

The tax imposed under this chapter is solely for the purpose of raising income and revenue which is necessary to pay the usual and current expenses of conducting the municipal government of the city.

(Prior code § 5-27.01)

**4.20.020 Imposition of tax.**

There is imposed a tax on all transfers by deeds, instruments, writings, or any other document, or changes in control and ownership of legal entities, by which any lands, tenements or other interests in real property located in the City, are or is granted, assigned, transferred, or otherwise conveyed to or invested in a transferee, or transferees thereof, which shall be levied at the rate of one and one-half percent of the value of consideration.

(Res. No. 81926, § 2, 4-21-2009; Ord. 12264 § 1, 2000: prior code § 5-27.02)

**4.20.030 Definitions.**

As used in this chapter:

"Changes in control and ownership of legal entities" means any direct or indirect acquisition or transfer of ownership interest or control in a legal entity that constitutes a change in ownership or transfer of the real property of the entity under California Revenue and Taxation Code section 64, as such statute reads and is interpreted by the California Board of Equalization on June 3, 2009.

"Person" and "persons" mean any natural person, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, company, joint stock company, business trust, limited liability company, municipal corporation, political subdivision of the State of California, domestic or foreign corporation, association, syndicate, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise, and the United States or any instrumentality thereof, and any natural person, who as an individual or with a spouse, owns 51 percent or more of the capital stock of a corporation obligated to file a declaration and pay tax pursuant to this Chapter; and in addition, is a person with the power to control the fiscal decision-making process by which the corporation allocates funds to creditors in preference to its tax obligations under the provisions of this Chapter. A person as defined herein, who is also an officer or director of a corporation obligated to file declarations and pay

tax pursuant to this Chapter, shall be presumed to be a person with the power to control the fiscal decision-making process. Whenever the term "person" is used in any clause prescribing and imposing a penalty, the term as applied to association shall mean the owners or part owners thereof, and as applied to corporation, the officers thereof.

"Real property" and "realty" mean real property as defined by and under the laws of the state of California.

"Value of consideration" means the total consideration, valued in money of the United States, paid or delivered, or contracted to be paid or delivered in return for the transfer of real property, including the amount of any indebtedness existing immediately prior to the transfer which is secured by a lien, deed of trust or other encumbrance on the property conveyed and which continues to be secured by such lien, deed of trust or encumbrances after such transfer, and also including the amount of any indebtedness which is secured by a lien, deed of trust or encumbrance given or placed upon the property in connection with the transfer to secure the payment of the purchase price or any part thereof which remains unpaid at the time of transfer.

"Value of the consideration" also includes the amount of any special assessment levied or imposed upon the property by a public body, district or agency, where such special assessment is a lien or encumbrance on the property and the purchaser or transferee agrees to pay such special assessment or takes the property subject to the lien of such special assessment. The value of any lien or encumbrance of a type other than those which are hereinabove specifically included, existing immediately prior to the transfer and remaining after such transfer, shall not be included in determining the value of the consideration. If the "value of the consideration" cannot be definitely determined, or is left open to be fixed by future contingencies, "value of the consideration" shall be deemed to mean the fair market value of the property at the time of transfer, after deducting the amount of any lien or encumbrance, if any, of a type which

would be excluded in determining the "value of the consideration" pursuant to the above provisions of this section.

Unless a transfer is a "gift", i.e., "free and clear" of liens or encumbrances, it is presumed that the value of consideration of a given property being transferred is the fair market value of that property, unless circumstances supporting a departure therefrom can be furnished to the sole satisfaction of the Director or his or her designee(s).

(Res. No. 81926, § 3, 4-21-2009; Ord. 12264 § 3, 2000; prior code § 5-27.03)

#### **4.20.040 Person on whom tax imposed.**

Any persons who make a transfer which is subject to the tax imposed under Section 4.20.020, and any persons to whom such a transfer is made, shall be jointly and severally liable for payment of the tax imposed under said Section 4.20.020; provided, however, that the United States, state of California, any city, county, city and county, district or any other political subdivision of the state of California shall be exempt from any liability for the tax imposed herein.

(Prior code § 5-27.04)

#### **4.20.050 Exceptions.**

The tax imposed by Section 4.20.020 shall not apply to:

A. Any transfer made solely to secure a debt. There is an exemption for transfers of partial interests in property to a co-signor or from a co-owner as required pursuant to a verifiable demand by a lender in order to secure the debt for such transfer. Specifically, the subsequent removal or reinstatement of such co-owner or co-signing party(s) must be effected within seven years of the close of escrow pertaining to such loan in order to qualify for the exemption herein. Nothing herein contained shall be deemed to exclude the amount of any such indebtedness from being included in the "value of consideration" pursuant to Section 4.20.030 in connection with transfers which are not made solely to secure a debt;

B. Transfers to make effective any plan of corporate reorganization or adjustment:

1. Confirmed under the Bankruptcy Act, as amended,

2. Approved in an equity receivership proceeding in a court involving a railroad corporation as defined in Section 77(m) of the Bankruptcy Act, as amended,

3. Approved in an equity receivership proceeding in a court involving a corporation, as defined in Section 106(3) of the Bankruptcy Act, as amended;

C. Any transfer of property from one spouse to the other in accordance with the terms of a decree of dissolution, legal separation or in fulfillment of a property settlement incident thereto; provided, however, that such property was acquired by the husband and wife or husband or wife prior to the final decree of dissolution. Furthermore, any transfer, if made during the term of the marriage or domestic partnership, between husband and wife or duly registered domestic partners, shall be tax-exempt interspousal transfers. However, no transfer of property to a third party shall be exempt from this tax, despite the existence of a valid court order or settlement agreement.

Notwithstanding the foregoing, a transfer to the other former spouse or partner, after dissolution, of the owner-occupied, single-family residential property that was the primary domicile of the parties shall be eligible for this real property transfer tax exemption, despite the absence of a court-ordered settlement agreement.

1. For domestic partners, the two parties to the transfer must have on file a valid domestic partnership registration: (a) as administered by the Office of the City Clerk of Oakland, or (b) under existing law and procedures for the state of California domestic partnership registry, or (c) with the City Clerk or appropriate governmental agency of a jurisdiction that recognizes domestic partnership registration and the City Clerk of the City of Oakland concludes that the registration requirements of that jurisdiction are minimally similar to those currently in effect in Oakland.

2. If the parties do not own, as joint tenants, the property that is the subject of their dissolution agreement, they must demonstrate that they were living together at the location of the real property in question either at least six months prior to the dissolution of the domestic partners relationship or the entire period of ownership of the transferring partner, whichever is more. This requirement is not subject to waiver notwithstanding the language of subsection (C)(1) of this section regarding registration.

3. The parties must provide that portion of their dissolution and property settlement agreement between the domestic partners pertaining to the division or transfer of property, which shall be filed with the Office of the City Clerk. Such copy of such settlement agreement shall be accompanied by an affidavit with verifiable signatures or proof of identity, that the copy is an accurate and authentic reproduction of the final settlement agreement between the parties;

D. Transfer or transfers, conveyance, lease or sublease without consideration that confirm or correct a deed, provided that such correction is recorded no later than ninety (90) days after the recordation of the transfer to be corrected;

E. Transfer to or between the United States, state of California, any city, county, city and county, district or any other political subdivision of the state of California and transfer executed pursuant to eminent domain proceedings by the United States, state of California, any city, county, city and county, district or other political subdivision of the state of California;

Any deed, instrument, or other writing by which the state of California, any political subdivision thereof, or agency or instrumentality of either thereof, conveys to a nonprofit corporation realty the acquisition, construction, or improvement of which was financed or refinanced by obligations issued by the nonprofit corporation on behalf of a governmental unit, within the meaning of Section 1.103-1(b) of Title 26 of the Code of Federal Regulations;

F. Transfers made pursuant to any order by the court in any note and deed of trust or lien

foreclosure proceeding or upon execution of a judgment, or a transfer in lieu of foreclosure. In cases of transfers in lieu of foreclosure or foreclosure by junior lien holders to protect their position with respect to that property, a transfer tax shall be set by the amount of any senior liens or notes and deeds of trust on that property that are paid or assumed by the junior note holder;

G. Transfers recorded prior to the effective date of the ordinance codified in this chapter;

H. 1. In the case of real property held by a partnership or other entity treated as a partnership for federal income tax purposes, the tax imposed shall not apply by reason of any transfer of any interest in a partnership or other entity or otherwise, if both of the following occur:

a. Such partnership or other entity treated as a partnership is considered as a continuing partnership within the meaning of Section 708 of the Internal Revenue Code of 1986,

b. Such continuing partnership continues to hold the real property concerned.

2. If there is a termination of any partnership or other entity treated as a partnership within the meaning of Section 708 of the Internal Revenue Code of 1986, for purposes of this chapter, such partnership or other entity shall be treated as having executed an instrument whereby there was transferred, for fair market value (exclusive of the value of any lien or encumbrance remaining thereon), all realty held by such partnership or other entity at the time of such termination;

3. Not more than one tax shall be imposed pursuant to this chapter by termination described in subsection (H)(2) of this section, and any transfer pursuant thereto, with respect to the real property held by such partnership or other entity treated as a partnership at the time of such termination.

a. The making or delivery of conveyances to make effective any order of the Securities and Exchange Commission, as defined in subdivision (a) of Section 1083 of the Internal Revenue Code of 1986, but only if:

i. The order of the Securities and Exchange Commission, in obedience to which such convey-

ance is made, recites that such conveyance is necessary or appropriate to effectuate the provisions of Section 79K of Title 15 of the United States Code, relating to the Public Utility Holding Company Act of 1935,

ii. Such order specifies the property that is ordered to be conveyed,

iii. Such conveyance is made in obedience to such order;

I. Any real property that is inherited from a deceased transferor, without consideration, upon the death of such individual, or from that deceased's estate or trust. Transfers from a decedent's estate into a trust for the benefit of the transferee shall likewise be exempt. Upon request of the Agency Director, an affidavit of death certificate, trust documents, or other documents deemed necessary, shall be provided;

J. Any transfer of real property between an individual or individuals and a legal entity or between legal entities that results solely in a change in the method of holding title to the realty and in which proportional ownership interests in the realty, whether represented by stock, membership interest, partnership interest, cotenancy interest, or otherwise, directly or indirectly, that remains the same for a minimum of one hundred eighty (180) days after the transfer. Transfers from a parent corporation to a wholly owned subsidiary corporation shall likewise be exempt; provided, the beneficial ownership of the property remains the same;

K. Transfers, without consideration; provided, the transferee neither conveys an interest therein to a third party nor effects a refinancing for a period of one hundred eighty (180) days after the gift transfer; however, refinancings for the purposes of rehabilitation of the gifted property are not subject to this limitation upon submission of documentation required by the Director or his or her designee(s)

Notwithstanding the foregoing paragraph, transfers, without consideration, of commercial real property, including residential rental property, other than the principal residence of the transferor will

be subject to this tax to the extent that the fair market value thereof exceeds one million dollars (\$1,000,000.00). In such case, only the amount of the fair market value that exceeds one million dollars (\$1,000,000.00) will be taxed.

(Ord. 12466 § 1, 2003; Ord. 12264 §§ 5—24, 2000; Ord. 11835 § 1, 1995; Ord. 11664 § 1, 1993; prior code § 5-27.05)

#### **4.20.060      Administration of tax.**

The Director of Finance of the city (hereinafter in this chapter referred to as "Director") shall collect the tax imposed under this chapter and shall otherwise administer this chapter. He or she may make such rules and regulations not inconsistent with the chapter as he or she may deem reasonably necessary or desirable to administer this chapter, as well as necessary forms and receipts.

(Prior code § 5-27.06)

#### **4.20.070      Due dates, delinquencies, penalties, interest, administrative charges and lien release recordation fees.**

The tax imposed under this chapter is due and payable at the time the deed instrument or writing effecting a transfer subject to the tax is delivered, and is delinquent if unpaid at the time of recordation thereof. In cases where a transfer is effected but not recorded with the County Recorder within ninety (90) days of acceptance, all statutes of limitations regarding liability for this tax will be tolled until the city has actual knowledge of the transfer or recordation, at which time the tax on the unrecorded transfer will relate back to the actual transfer date of such unrecorded transfer. Accordingly penalties and interest will accrue back to such date of actual unrecorded transfer and will be the joint and several liability of both the former transferor and current recording transferring party. In the event that the tax is not paid prior to becoming delinquent, a delinquency penalty of ten percent of the amount of the tax due shall accrue. In the event a portion of the tax is unpaid prior to becoming delinquent, the penalty shall only accrue as to the portion remaining unpaid. An additional

penalty of fifteen (15) percent shall accrue if the tax remains unpaid on the ninetieth day following the date of the original delinquency. Interest shall accrue at the rate of one percent a month or fraction thereof, on the amount of tax, inclusive of penalties, from the date the tax becomes delinquent to the date of payment. Interest and penalty shall become part of the tax. An administrative charge and a release of lien filing fee in an amount equal to the amount charged by the Alameda County Recorder's Office as set forth in the master fee schedule of the city shall be added to the amount owed for each property approved for a tax lien by the City Council.

(Ord. 12569 § 3, 2004; Ord. 12264 § 25, 2000; prior code § 5-27.07)

#### **4.20.080      Exemption for low and moderate income first-time homebuyers.**

Section 4.20.020 notwithstanding, the tax on all transfers of real property located in the city made on or after August 10, 1993 in which the buyers are low and moderate income first-time homebuyers shall be levied at the rate of one and one-quarter (1.25) percent of the value of consideration. For the purpose of this section, "low and moderate income first-time homebuyers" are defined as buyers who:

- A. Earn a maximum of one hundred (100) percent of the median family income for the Oakland Primary Metropolitan Statistical Area, as defined by the U.S. Department of Housing and Urban Development; and
- B. Will occupy the property as their principal residence; and
- C. Are not purchasing the property to be held as tenants in common; and
- D. Have not owned a home in three years prior to the date of purchasing the property; or
- E. Are displaced homemakers. "Displaced homemaker" is defined as an adult individual who has not worked full-time, full-year in the labor force for a number of years but has, during such years, worked primarily without pay to care for

the home and family, is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

(Ord. 12264 § 27, 2000: prior code § 5-27.07(a))

#### **4.20.090 Declaration may be required.**

The tax imposed by this chapter shall be paid to the Director by the persons referred to in Section 4.20.040. The Director shall have the authority as part of any rules and regulations promulgated by him or her as provided for herein to require that the payment shall be accompanied by a declaration of the amount of tax due signed by the person paying the tax or by his agent. The declaration shall include a statement that the value of the consideration on which the tax due was computed includes all indebtedness secured by liens, deeds of trust, or other encumbrances remaining or placed on the property transferred at the time of transfer, and also includes all special assessments on the property which a purchaser or transferee agrees to pay or which remains a lien on the property at the time of transfer. The declaration shall identify the deed, instrument or writing effecting the transfer for which the tax is being paid. The Director may require delivery to him or her of a copy of such deed, instrument or writing whenever he or she deems such to be reasonably necessary to adequately identify such writing or to administer the provisions of this chapter. The Director may rely on the declaration as to the amount of the tax due; provided, he or she has no reason to believe that the full amount of the tax due is not shown on the declaration.

Whenever the Director has reason to believe that the full amount of tax due is not shown on the declaration or has not been paid, he or she may, by notice served upon any person liable for the tax, require him or her to furnish a true copy of his or her records relevant to the value of the consideration or fair market value of the property transferred. Such notice may be served at any time within three years after recordation of the deed, instrument or writing which transfers such property.

(Ord. 12264 § 29, 2000: prior code § 5-27.08)

#### **4.20.100 Determination of deficiency.**

If on the basis of such information as the Director receives pursuant to the last paragraph of Section 4.20.190 and/or on the basis of such other relevant information that comes into his or her possession, he or she determines that the amount of tax due as set forth in the declaration, or as paid, is insufficient, he or she may recompute the tax due on the basis of such information.

If the declaration required by Section 4.20.090 is not submitted, the Director may make an estimate of the value of the consideration for the property conveyed and determine the amount of tax to be paid on the basis of any information in his or her possession or that may come into his or her possession.

One or more deficiency determinations may be made of the amount due with respect to any transfer.

(Ord. 12264 § 31, 2000: prior code § 5-27.09)

#### **4.20.110 Notice of determination.**

The Director shall give written notice to a person liable for payment of the tax imposed under this chapter of his or her determination made under Section 4.20.100. Such notice shall be given within three years after the recordation of the deed, instrument or writing effecting the transfer on which the tax deficiency determination was made.

(Prior code § 5-27.10)

#### **4.20.120 Manner of giving notice.**

Any notice required to be given by the Director under this chapter may be served personally or by mail; if by mail, service shall be made by depositing the notice in the United States mail, in a sealed envelope with postage paid, addressed to the person on whom it is to be served at his or her address as it appears in the records of the city or as ascertained by the Director. The service is complete at the time of the deposit of the notice in the United States mail, without extension of time for any reason.

(Prior code § 5-27.11)

**4.20.130 Petition for redetermination.**

Any person against whom a determination is made under this chapter or any person directly interested may petition the Director for a redetermination within sixty (60) days after service upon the person of notice thereof. If a petition for redetermination is not filed in writing with the Director, City Hall, Oakland, California 94612, within the sixty (60) day period, the determination becomes final at the expiration of the period.

(Prior code § 5-27.12)

**4.20.140 Consideration of petition—Hearing.**

If a petition for redetermination is filed within the sixty (60) day period, the Director shall reconsider the determination and, if the person has so requested in his petition, shall grant the person an oral hearing, and shall give him ten days' notice of the time and place of hearing. The Director may designate one or more deputies for the purpose of conducting hearings and may continue a hearing from time to time as may be necessary.

(Prior code § 5.27.13).

**4.20.150 Determination of petition.**

The Director may decrease or increase the amount of the determination before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the Director at or before the hearing.

(Prior code § 5-27.14)

**4.20.160 Finality of determination.**

The order or decision of the Director upon a petition for redetermination becomes final thirty (30) days after service of notice thereof upon the petitioner or at the time of hearing of redetermination. There is no appeal of the Director's decision (or his/her deputies designated for a redetermination) to the City Council; writs challenging the Director's decision conveyed by his/her deputies at an administrative hearing must be filed with the appropriate court within ninety (90) days of the final date of such redetermination. (California Code of Civil Procedure § 1094.6.)

(Ord. 12264 § 33, 2000: prior code § 5-27.15)

**4.20.170 Tax a debt.**

The amount of any tax, penalty, and interest imposed under the provisions of this chapter shall be deemed a debit to the city. Any person owing money to the city under the provisions of this chapter shall be liable to an action brought in the name of the city for the recovery of such amount. (Prior code § 5-27.16)

**4.20.180 Refunds.**

Whenever the amount of any tax, penalty or interest has been overpaid, or paid more than once, or has been erroneously collected or received by the city under this chapter, it may be refunded as hereinafter provided in this section, provided a written claim therefore stating under penalty of perjury the specific grounds under which the claim is founded is filed with the Director within three years of the date of payment. The claims shall be on forms furnished by the Director. The Director may make such refund if he or she is satisfied that the claimant is entitled to the refund under the provisions of this section. No refund shall be paid under the provisions of this section unless the claimant establishes his or her right thereto by written records showing entitlement thereto.

(Prior code § 5-27.17)

**4.20.190 Tax a lien.**

The amount of tax, penalty and interest imposed under the provisions of this chapter is assessed against the property upon the transfer of which the tax imposed, and if not paid when due, such tax shall constitute an assessment against such property and shall be a lien on the property for the amount thereof, which lien shall continue until the amount thereof including all penalties and interest are paid, or until it is discharged of record. Any person owing money to the city under the provisions of this chapter shall be liable to an action brought in the name of the city for the recovery of such amount.

(Prior code § 5-27.19)

**4.20.200 Notice of hearing on lien.**

The Director of Finance shall file with the City Manager a written notice of those persons on

whom the city will file liens. Upon the receipt of such notice the City Manager shall present same to the City Council, and the City Council shall forthwith, by resolution, fix a time and place for a public hearing on such notice.

The Director of Finance shall cause a copy of such resolution and notice to be served upon the transferor or transferee of property not less than five days prior to the time fixed for such hearing. Such service shall be by mailing a copy of such resolution and notice to the transferor or transferee of property at his or her last known address. Service shall be deemed complete at the time of deposit in the United States mail.

(Prior code § 5-27.20)

taxes applicable to the levy, collection and enforcement of municipal taxes shall be applicable to said special assessments.

(Prior code § 5-27.21)

**4.20.210      Collection of delinquent taxes by special tax roll assessment.**

With the confirmation of the report by the City Council, the delinquent tax charges contained therein which remain unpaid by the transferor or transferee shall constitute a special assessment against said property, and shall be collected at such time as is established by the County Assessor for inclusion in the next property tax assessment.

The Director of Finance shall turn over to the County Assessor for inclusion in the next property tax assessment the total sum of unpaid delinquent charges consisting of the delinquent transfer taxes, penalties and interest at the rate of twelve (12) percent per annum from the date of recordation to the date of lien.

Thereafter, said assessment may be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure of sale as provided for delinquent, ordinary, municipal taxes. The assessment lien previously imposed upon the property are paramount to all other liens except for those of state, county, and municipal taxes with which it shall be upon parity. The lien shall continue until the assessment and all interest and charges due and payable thereon are paid. All

## Chapter 4.24

### TRANSIENT OCCUPANCY TAX

#### Sections:

- 4.24.010 Title.**
- 4.24.020 Definitions.**
- 4.24.030 Tax imposed.**
- 4.24.031 Imposition of surcharge.**
- 4.24.040 Exemptions.**
- 4.24.050 Operator's duties.**
- 4.24.060 Registrations.**
- 4.24.070 Reporting and remitting.**
- 4.24.080 Penalties and interest.**
- 4.24.090 Failure to collect and report tax.**
- 4.24.100 Appeals Board of Review.**
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#### **4.24.010 Title.**

This chapter shall be known as the uniform transient occupancy tax ordinance of the city.  
(Prior code § 5-20.01)

#### **4.24.020 Definitions.**

Except where the context otherwise requires, the definitions given in this section govern the construction of this chapter:

"Hotel" means any public or private space or structure for living therein, including but not limited to any: inn, hostelry, tourist home or house, motel rooming house, mobile home or other living place within the city, offering the right to use such space for sleeping or overnight accommodations

wherein the owner or operator thereof as defined in subsection (C) of this section, for compensation, furnishes such right of occupancy to any transient as defined in subsection (D) of this section.

"Occupancy" means the compensated use of, or the unexercised right to use, space in a hotel, as defined in subsection (A) of this section.

"Operator" means the person who is proprietor of a hotel whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other possessory agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall however, be considered to be compliance by both.

"Permanent resident" means any person who, as of a given date, has occupied or has had the right to occupy a room or rooms in a particular hotel, as defined in subsection (A) of this section, for more than thirty consecutive days immediately preceding such date.

"Person" means any non-exempt individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

"Room rental" means the total charge made by a hotel as defined in subsection (A) of this section, for sleeping or overnight accommodations space furnished to a transient, as defined in subsection (C) of this section. If the charge made by such hotel to any transient includes a charge in addition to that for such occupancy or right to the use of such space for sleeping or overnight accommodations, then that portion of the total charge that represents only the sleeping or overnight accommodations shall be distinctly set out and billed to the transient as a separate item.

"Transient" means any person who, for any period of not more than thirty (30) consecutive days,

either at his own expense or at the expense of another, obtains the right to use space for sleeping or overnight accommodations in any hotel as defined in subsection (A) of this section, for which a charge is made therefor.

(Ord. 12061 2, 1998: prior code § 5-20.02)

#### **4.24.030 Tax imposed.**

For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of eleven (11) percent of the rent charged by the operator. Said tax constitutes a debt owed by the transient to the city which is extinguished only by payment to the operator of the hotel at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be due upon the transient's ceasing to occupy space in the hotel. If for any reason the tax due is not paid to the operator of the hotel, the Tax Administrator may require that such a tax shall be paid directly to the Tax Administrator.

(Ord. 11629 1, 1993: prior code § 5-20.03)

#### **4.24.031 Imposition of surcharge.**

A. There shall be a tax of three percent of the rent charged by the operator of a hotel, in addition to the 11 percent tax specified in Section 4.24.030, for the privilege of occupancy in any hotel in the City (the "surcharge"). Subject to subsection E., below, the surcharge so collected shall be appropriated to the Oakland Convention and Visitors Bureau (OCVB), the Oakland Zoo, the Oakland Museum of California, the Chabot Space and Science Center and the Cultural Arts Programs and Festivals as follows: 50 percent to OCVB, 12.5 percent to the Oakland Zoo, 12.5 percent to the Oakland Museum of California, 12.5 percent to Chabot Space and Science Center and 12.5 percent for Cultural Arts Programs and Festivals. The surcharge shall be not be appropriated for any purpose other than specifically set forth in this Subsection. Appropriations will be subject to applicable City policies.

B. Said surcharge constitutes a debt owed by the transient to the City which is extinguished only

by payment to the operator of the hotel at the time the rent is paid. If the rent is paid in installments, a proportionate share of the surcharge shall be due upon the transient's ceasing to occupy space in the hotel. If for any reason the surcharge due is not paid to the operator of the hotel, the Tax Administrator may require that such a surcharge shall be paid directly to the Tax Administrator.

C. All funds collected by the City from the surcharge imposed by this Section shall be immediately segregated from all other funds collected and shall be deposited into a special fund in the City treasury (the "surcharge fund"). All monies in the surcharge fund shall be distributed pursuant to Subsection A. herein on a monthly basis, following the month in which they were collected by the City.

D. Pursuant to Section 4.24.050, on the receipt provided to the transient, the operator may state the current 11 percent tax specified in Section 4.24.030 and the three percent surcharge as a single transient occupancy tax of 14 percent.

E. Annual Audit. An independent audit or review shall be performed annually as provided by Government Code sections 50075.1 and 50075.3 to assure accountability and the proper disbursement of the proceeds of this surcharge in accordance with the purposes stated herein. Surcharge proceeds may be used to pay for the audit or review.

(Res. No. 81855, § 1, 3-17-2009)

#### **4.24.040 Exemptions.**

No tax shall be imposed upon:

A. Any transient as to whom, or any occupancy as to which, it is beyond the power of the city to impose the tax herein provided; or

B. Any officer or employee of a foreign or domestic government or domestic corporation who is exempt by reason of express provision of federal law or international treaty, provided billing is made directly to and payment is received from the governmental agency qualifying for this exemption.

No exemption shall be granted except upon a claim therefor made at the time rent is collected and under penalty of perjury upon a form prescribed by Tax Administrator.

C. Whenever an operator charges a transient rent, and such charges prove to be uncollectible, those amounts are not subject to the tax. However, if these amounts are subsequently collected, the amount of tax shall be included in the amount paid to the city when filing the next return.

(Prior code § 5-20.04)

#### **4.24.050      Operator's duties.**

Each operator shall collect the tax imposed by this chapter to the same extent and at the same time as the rent is collected from every transient. The amount of tax shall be separately stated from the amount of the rent charged, and each transient shall receive a receipt for payment from the operator. No operator of a hotel shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator, or that it will not be added to the rent, or that, if added, any part will be refunded except in the manner hereinafter provided.

(Prior code § 5-20.05)

#### **4.24.060      Registrations.**

Within thirty (30) days after the effective date of this chapter, as to the hotel operators then doing business, and before commencing business, as to hotel operators commencing business after the effective date of this chapter, each operator of any hotel renting occupancy to transients shall register said hotel with the Tax Administrator and obtain from him a "Transient Occupancy Registration Certificate" to be at all times posted in a conspicuous place on the premises. Said certificate shall, among other things, state the following:

- A. The name of the operator;
- B. The address of the hotel;
- C. The date upon which the certificate was issued;

D. "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Uniform Transient Occupancy Tax Ordinance by registering with the Tax Administrator for the purpose of collecting from transients the Transient Occupancy Tax and remitting said tax to the Tax Administrator. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, nor to operate a hotel without strictly complying with all local applicable laws, including but not limited to those requiring a permit from any board, commission, department or office of this City. This certificate does not constitute a permit."

(Prior code § 5-20.06)

#### **4.24.070      Reporting and remitting.**

A. Each operator who received over one hundred thousand dollars (\$100,000.00) in gross receipts during the previous calendar year shall on or before the tenth day following each month make a return to the Business Tax Division on forms provided of the total rents charged and submit the amount of tax collected for transient occupancies.

B. Each operator who received between five thousand dollars (\$5,000.00) and ninety-nine thousand nine hundred ninety-nine dollars (\$99,999.00) in gross receipts during the previous calendar year shall on or before the last day of the month following the close of each calendar quarter make a return to the Business Tax Division on the forms provided of the total rents charged and submit the amount of tax collected for transient occupancies.

C. Each operator who received under five thousand dollars (\$5,000.00) in gross receipts during the previous calendar year shall, on or before January 31st of each year, make a return to the Business Tax Division on forms provided of the total rents collected and its amount of tax collected for transient occupancies for the preceding year.

(Prior code § 5-20.07)

**4.24.080      Penalties and interest.**

A. Original Delinquency. Any operator who fails to remit any tax imposed by this chapter within the time required shall pay a penalty of twenty-five (25) percent of the amount of the tax in addition to the amount of the tax.

B. Fraud. If the Tax Administrator determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of fifty (50) percent of the amount of the tax shall be added thereto in addition to the penalties stated in subsection A of this section.

C. Interest. In addition to the penalties imposed, any operator who fails to remit any tax imposed by this chapter shall pay interest at the rate of one percent per month or fraction thereof on the amount of the tax, inclusive of penalties, from the date on which the remittance first became delinquent until paid.

D. Penalties Merged With Tax. Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the tax herein required to be paid.

(Prior code § 5-20.08)

serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his or her last known place of address. Such operator may, within twenty (20) days after the serving or mailing of such notice, make application in writing to the Tax Administrator for a hearing on the amount assessed. If application by the operator for a hearing is not made within the time prescribed, the tax, interest and penalties, if any, determined by the Tax Administrator shall become final and conclusive and immediately due and payable. If such application is made the Tax Administrator shall give not less than ten days' written notice in the manner prescribed herein to the operator to show cause at the time and place fixed in said notice why said amount specified

**4.24.090      Failure to collect and report tax.**

A. Determination of Tax by Tax Administrator. If any operator shall fail or refuse to collect said tax and to make, within the time provided in this chapter, any report and remittance of said tax or any portion thereof required by this chapter, the Tax Administrator shall proceed in such manner as he or she may deem best to obtain facts and information on which to base his or her estimate of the tax due. As soon as the Tax Administrator has procured such facts and information as he or she is able to obtain upon which to base the assessment of any tax imposed by this chapter and payable by any operator who has failed or refused to collect the same and to make such report and remittance, he or she shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this chapter. In case such determination is made, the Tax Administrator shall give a notice of the amount so assessed by

therein should not be fixed for such tax, interest and penalties. At such hearing the operator may appear and offer evidence why such specified tax, interest and penalties should not be so fixed.

After such hearing the Tax Administrator shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed herein of such determination and the amount of such tax, interest and penalties. The amount determined to be due shall be payable after fifteen (15) days unless an appeal is taken as provided in Section 4.24.100.

B. Security for Collection of Tax. Whenever any operator has failed to report or remit the transient occupancy tax as required by Section 4.24.070, and such failure results in a continued delinquency as defined under Section 4.24.080B, the Tax Administrator may require such operator to deposit with him or her forthwith such security in the form of cash, bond, or other security as the Tax Administrator may determine. The amount of the security shall be fixed by the Tax Administrator, but for the reporting period applicable to the operator. The estimated average liability shall be determined in the same manner as required under subsection A of this section.

The Tax Administrator shall receive the security required by him or her and shall cause the same to be placed in the City Treasury in a special trust fund to be known as the "Transient Occupancy Tax Security Deposit Fund," which fund is established.

C. Withdrawals From Security Deposit. Whenever any operator fails to remit any delinquent remittance due under this chapter on or before the period designated in subsection A of this section, the Tax Administrator may notify the operator that the amount due and owing to the city from said operator for the tax, interest and penalty as imposed by this chapter, or any portion of them, shall be transferred for use as provided under this chapter.

The Tax Administrator may notify the operator that he or she is required to redeposit forthwith the amount deducted from the deposit. (Amended during 1997 codification; prior code § 5-20.09)

#### **4.24.100 Appeals Board of Review.**

Any operator aggrieved by any decision of the Tax Administrator with respect to the amount of such tax, interest and penalties, if any, may appeal to the Oakland Taxation and Assessment Board of Review ("Board of Review") by filing a notice of appeal with the Secretary of the Board of Review within fifteen (15) days of the serving or mailing of the determination of tax due. The Board of Review shall fix a time and place for hearing such appeal, and the Secretary to the Board of Review shall give notice in writing to such operator at his or her last known place of address. The findings of the Board of Review shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

A. Composition. A Board of Review consisting of the City Manager, the City Auditor, the City Attorney or their designees and two community members nominated by the Mayor and appointed by the Council shall hear and determine appeals of order or decisions of the Tax Administrator.

B. Appeals. Any person whose rights or interests have been directly and adversely affected by a transient occupancy tax ruling or finding of fact made by the Tax Administrator under the authority of this chapter may appeal therefrom in writing to the Board of Review within twenty (20) calendar days from the date of notification of such ruling or finding. The Board of Review in individual cases may, in its exercise of reasonable discretion in administering the provisions of this chapter, enlarge the twenty (20) calendar day period in which to file an appeal.

The Board shall make findings of fact in support of its decision on appeal. The Board shall exercise its reasonable discretion in administering the provisions of this chapter in rendering a decision on appealed rulings and findings.

Any tax, penalty, or interest found to be owing is due and payable at the time the Board of Review decision thereon becomes final.

**C. Extension of Time for Filing and Payment.** On written application showing good cause, the Board of Review or its chairperson may, with or without hearing, by written order filed with the Tax Administrator, extend for more than twenty (20) calendar days the time period in this chapter for filing of any transient occupancy tax return or making any payment. For the period of such extension the penalty in regard thereto shall be waived.

**D. Exhaustion of Remedies.** Any person whose case may be resolved by employing the administrative remedies provided by this section must exhaust those remedies before filing suit for refund, rebate, exemption, cancellation, amendment, adjustment, or modification of tax, interest or penalty.

**E. Review of Transient Occupancy Tax Ruling.** The Board of Review may, on motion of any one of its members, hold a hearing to ascertain its position regarding any transient occupancy tax ruling. The Board may affirm, modify, or reverse such ruling as necessary or advisable to effectuate the purposes of this chapter. The Board of Review's decision on such ruling shall have only prospective effect. (Prior code § 5-20.10)

#### **4.24.110 Records.**

It shall be the duty of every operator liable for the collection and payment to the city of any tax imposed by this chapter to keep and preserve, for a period of four years, all records as may be necessary to determine the amount of such tax as he or she may have been liable for the collection of and payment to the city, which records the Tax Administrator shall have the right to inspect upon issuance of a subpoena therefor pursuant to Oakland Municipal Code Section 5.34.050. (Ord. 12061 § 3, 1998: prior code § 5-20.11)

#### **4.24.120 Refunds.**

**A.** Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the city under this chapter, it may be refunded as provided in subsections B and C of this section, provided a claim in writing therefor, stating

under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Tax Administrator within three years of the date of payment. The claim shall be on forms furnished by the Tax Administrator.

**B.** An operator may claim a refund or take as credit against taxes collected and remitted the amount overpaid, or erroneously or illegally collected or received; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the transient or credited to rent subsequently payable by the transient to the operator.

**C.** A transient may obtain a refund of taxes overpaid or erroneously or illegally collected or received by the city by filing a claim in the manner provided in subsection A of this section, but only when the tax was paid by the transient directly to the Tax Administrator, or when the transient, having paid the tax to the operator, establishes to the satisfaction of the Tax Administrator that the transient cannot obtain a refund from the operator who collected the tax and remitted it to the city.

**D.** No refund shall be paid under the provisions of this section unless the claimant establishes to the satisfaction of the Tax Administrator his or her right thereto by written records showing entitlement thereto. (Prior code § 5-20.12)

#### **4.24.130 Actions to collect transient occupancy tax a debt.**

Any tax required to be paid by any transient under the provisions of this chapter shall be deemed a debt owed by the transient to the city. Any such tax collected by an operator which has not been paid to the city shall be deemed a debt owed by the operator to the city. Any person owing money to the city under provisions of this chapter shall be liable to an action brought in the name of the city for the recovery of such amount.

An action to collect the transient occupancy tax must be commenced within three years of the date

the transient occupancy tax becomes delinquent. An action to collect the penalty for nonpayment of the transient occupancy tax must be commenced within three years of the date the penalty accrues.

The amount of transient occupancy tax, penalty and interest imposed under the provisions of this chapter is assessed against the business property on which the tax is imposed in those instances where the owner/operator of the business property are one and the same. If the taxes are not paid when due, such tax, penalty and interest shall constitute a special assessment against such business property and shall be a lien on the property for the amount thereof, which lien shall continue until the amount thereof including all penalties and interest are paid, or until it is discharged of record. (Prior code § 5-20.13)

#### **4.24.140 Notice of hearing on lien.**

The Tax Administrator shall file with the City Manager a written notice of those persons against whose property the city will file liens. Upon receipt of such notice the City Manager shall present same to the City Council, and the City Council shall forthwith, by resolution, fix a time and place for a public hearing on such notice.

The Tax Administrator shall cause a copy of such notice to be served upon the owner of the business/business property not less than ten days prior to the time fixed for such hearing. Mailing a copy of such notice to the owner of the business/business property at the address listed in the most recent property ownership records provided to the City by the County Assessor as of the date that the Tax Administrator causes notice to be mailed shall comprise proper service. Service shall be deemed complete at the time of deposit in the United States mail. (Prior code § 5-20.13(a))

#### **4.24.150 Collection of delinquent taxes by special tax roll assessment.**

With the confirmation of the report by the City Council, the delinquent transient tax charges contained therein which remain unpaid by the owner/

operator of the business/business property shall constitute a special assessment against said business property and shall be collected at such time as is established by the County Assessor for inclusion in the next property tax assessment.

The Tax Administrator shall turn over to the County Assessor for inclusion in the next property tax assessment the total sum of unpaid delinquent transient occupancy tax charges consisting of the delinquent occupancy taxes, penalties, interest at the rate of twelve (12) percent per annum from the date of recordation to the date of lien, an administrative charge of fifty dollars (\$50.00) and a release of lien filing fee in amount equal to the amount charged by the Alameda County Recorder's Office.

Thereafter, said assessment may be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure of sale as provided for delinquent ordinary municipal taxes. The assessment liens shall be subordinate to liens except for those of state, county and municipal taxes with which it shall be upon parity. The lien shall continue until the assessment and all interest and charges due and payable thereon are paid. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to said special assessments. (Prior code § 5-20.13(b))

#### **4.24.160 Recordation of lien for delinquent charges.**

Upon confirmation of the report of delinquent transient occupancy tax charges by the City Council, a lien on the real property for delinquent transient occupancy tax charges which were assessed will be recorded with the Recorder of the county of Alameda. (Prior code § 5-20.13(c))

#### **4.24.170 Violations, infraction.**

Any owner, operator or other person who fails or refuses to register as required herein, or to furnish any return required to be made or who fails or refuses to furnish a supplemental return or other data required by the Tax Administrator, or who renders a false or fraudulent return or claim, or who fails to

meet the substantive requirements of any other provision of this chapter may be charged with a civil penalty or an infraction, and the use of the property may be encumbered, as authorized by the Oakland Municipal Code, Chapters 1.08, 1.12 and 1.16.

Enforcement action specifically authorized by this chapter may be utilized in conjunction with, or in addition to, any other provision of this chapter, and any other statutory, code, administrative or regulatory procedure applicable to the regulation of buildings, structures, or property. In addition, nothing in this chapter shall be interpreted to preclude or limit the city from seeking injunctive or other judicial relief. (Ord. 12019 § 2, 1997; prior code § 5-20.15)

## Chapter 4.28

### UTILITY USERS TAX

**Sections:**

- 4.28.010      Title.**
- 4.28.020      Definitions.**
- 4.28.030      Telephone users tax imposed.**
- 4.28.040      Electricity users tax imposed.**
- 4.28.050      Gas users tax imposed.**
- 4.28.060      Cable television users tax imposed.**
- 4.28.070      Alternate fuel users tax imposed.**
- 4.28.080      Exemptions.**
- 4.28.090      Collection of tax.**
- 4.28.100      Apportionment and tax credit.**
- 4.28.110      Maximum tax for commercial or industrial plants.**
- 4.28.120      Reporting and remitting—  
Examination of books, records, witnesses.**
- 4.28.130      Penalties and interest, failure to collect and report tax—  
Determination of tax by tax administrator, appeal, records, refunds, actions to collect, violations, infraction.**
- 4.28.140      Failure to pay tax—  
Administrative remedy.**
- 4.28.150      Rules and regulations.**
- 4.28.160      Conflicts.**
- 4.28.170      Bad debts.**
- 4.28.180      Refund to the service user of taxes, penalties and/or interest erroneously or illegally collected.**

**4.28.010      Title.**

This chapter shall be known as the utility users tax ordinance of the city. (Prior code § 5-23.01)

**4.28.020      Definitions.**

Except where the context otherwise requires, the definitions given in this section govern the construction of this chapter.

“City” means the city of Oakland.

“Commercial or industrial plant location” means one or more contiguous sites for which the service user receives one or more utility billings.

“Month” means a calendar month.

“Person” means any domestic or foreign corporation, firm, association, syndicate, joint-stock company, partnership of any kind, joint venture, club, Massachusetts business or common-law trust, society, or individual, whether engaged in First Amendment or non-First Amendment enterprises.

“Primary place of use” of a telephone communications service shall be the address to which the service supplier sends invoices for that service unless the service user provides evidence to the reasonable satisfaction of the Tax Administrator that the billing address is not the primary place of use.

“Service address” means the address or location where the user has its equipment (e.g., cellular phone, telephone, pager, facsimile machine) receiving utility services.

“Service supplier” means a person required to collect and remit a tax imposed by this chapter.

“Service user” means a person required to pay a tax imposed by this chapter.

“Tax Administrator” means the Director of Finance and Management Agency of the city of Oakland or his or her designee.

“Telephone corporation,” “electrical corporation,” “gas corporation,” and “cable corporation” shall have the same meanings as defined in Section 234, 218 222, and 215.5, respectively, of the Public Utilities Code of the state of California, as said sections existed on January 1, 1975. “Electrical corporation” shall also be construed to include any municipality, district or franchised agency engaged in selling or supplying electrical power.

“Telephone communication services” includes any telephonic quality communication for the purpose of transmitting messages or information (including but

not limited to voice, telegraph, teletypewriter, data, facsimile, video, or text) by electronic, radio or similar means through "interconnected service" with the "public switched network" (as these terms are commonly used in the Federal Communications Act and the regulations of the Federal Communications Commission — see 47 USCA Section 332(d)), whether such transmission occurs by wire, cable, fiber-optic, light wave, laser, microwave, broadband, computer processing applications such as voice over internet protocol service and services classified by the Federal Communications Commission as "enhanced" or "value added," radio wave (including, but not limited to, cellular service, wireless broadband, commercial mobile service, personal communications service (PCS), specialized mobile radio (SMR), and other types of personal wireless service — see 47 USCA Section 332(c)(7)(C)(i) — regardless of radio spectrum used), switching facilities, satellite, any other similar facilities, or any other technology now existing or developed after the adoption of this ordinance. Telephone communication services does not include charges for internet access or digital downloads, such as downloads of books, music, ringtones, games and similar digital products.

"Utility" means any person, whether or not regulated by the Public Utilities Commission that distributes or provides services regarding tangibles or intangibles via the public rights-of-way including but not limited to furnishing services such as telephone, gas, alternate fuels, electrical, cable television, pay television, satellite dish reception, teletype writer, facsimile exchange and other electronic and telecommunication transmissions. (Res. 81107 § 2, 2008; Ord. 12844 § 3, 2008; prior code § 5-23.02)

#### **4.28.030 Telephone users tax imposed.**

A. There is imposed a tax upon every person, other than a telephone corporation, using telephone communication services including, but not limited to, cellular telephones and facsimile transmissions, whose place of primary use is within the city of Oakland. The tax imposed by this section shall be at the rate of seven and one-half (7.5%) percent of all charges made for such services and shall be paid by

the person using such services, and collected by the provider of such services.

B. The following shall be exempt from the tax imposed by this section:

1. Charges paid for by inserting coins in coin-operated telephones available to the public with respect to local telephone service, or with respect to long distance telephone service if the charge for such long distance telephone service is less than twenty-five (25) cents; except that where such coin-operated telephone service is furnished for a guaranteed amount, the amounts paid under such guarantee plus any fixed monthly or other periodic charge shall be subject to the tax.

2. Except with respect to local telephone service, any charges for services used in the collection of news for the public press, or a news ticker service furnishing a general news service similar to that of the public press, or radio broadcasting, or in the dissemination of news through the public press, or a news ticker service furnishing a general news service similar to that of the public press, or by means of radio broadcasting, if the charge for such service is billed in writing to a person engaged in such activity.

3. Charges for services furnished to an international organization or to the American National Red Cross.

4. Charges for any long distance telephone service which originates within a combat zone, as defined in section 112 of the Internal Revenue Code, from a member of the Armed Forces of the United States performing service in such combat zone, as determined under such section, provided a certificate setting forth such facts as the Secretary of the U.S. Treasury may by regulations prescribe is furnished to the person receiving such payment.

5. Charges for any long distance telephone service to the extent that the amount so paid is for use by a common carrier, telephone or telegraph company, or radio broadcasting station or network in the conduct of its business as such.

6. Amounts paid by a nonprofit hospital for services furnished to such organization. For purposes of this subsection, the term "nonprofit hospital" means a hospital referred to in Internal Revenue

Code section 170(b)(1)(A)(iii) which is exempt from income tax under Internal Revenue Code section 501 (a).

7. Charges for services or facilities furnished to the government of any State, or any political subdivision thereof, or the District of Columbia.

8. Charges paid by a nonprofit educational organization for services or facilities furnished to such organization. For purposes of this subsection, the term "nonprofit educational organization" means an educational organization described in Internal Revenue Code section 170(b)(1)(A)(ii) which is exempt from income tax under Internal Revenue Code section 501 (a). The term also includes a school operated as an activity of an organization described in Internal Revenue Code section 501(c)(3) which is exempt from income tax under Internal Revenue Code section 501(a), if such school normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. (Res. 81107 § 3, 2008; Ord. 12844 § 2, 2008; amended by: Stats. March 2004; prior code § 5-23.03)

#### **4.28.040 Electricity users tax imposed.**

There is imposed a tax upon every person, other than an electrical corporation (as defined by and licensed by the California Public Utilities Commission), who receives electrical energy within the limits of the city from an electrical corporation. The tax imposed by this Section shall be at the rate of seven and one-half (7.50) percent of all charges made for such energy, including minimum charges for service but excluding charges for energy supplied to street-lights, and shall be paid by the person paying for such energy. Excepted from this tax increase are persons qualifying for the low-income rate assistance program (LIRA) offered by the Pacific Gas & Electric Corporation ("PG&E"). (Prior code § 5-23.04)

#### **4.28.050 Gas users tax imposed.**

A. There is imposed a tax upon every person, other than a gas corporation (as defined by and licensed by California Public Utilities Commission)

who receives gas (including but not limited to propane, butane, and any other gas used for fuel) within the limits of the city which is delivered through mains or pipes by a gas corporation or delivered by any means of transportation. The tax imposed by this section shall be at the rate of seven and one-half (7.50) percent of all charges made for such gas, including but not limited to minimum charges for service, or pipeline usage and shall be paid either by the persons paying for such gas, or collected by the service supplier. Excepted from this tax increase are persons qualifying for the low income rate assistance program (LIRA) offered by the Pacific Gas & Electric Corporation ("PG&E").

B. Charges made for gas to be used in the generation of electrical energy by an electrical corporation shall be excluded from the charges on which the tax imposed by this section is computed. (Prior code § 5-23.05)

#### **4.28.060 Cable television users tax imposed.**

There is imposed a tax upon every person, other than a cable television corporation, who receives cable television services whether paid periodically or charged per program, event or specific transmission whether delivered by cable, microwave, or any other method within the city. The tax imposed by this section shall be at the rate of seven and one-half (7.50) percent of all charges made for such services and shall be collected by the service supplier. (Prior code 5-23.051)



**4.28.070 Alternate fuel users tax imposed.**

There is imposed a tax upon every person who receives alternate sources of fuel energy including but not limited to coal, charcoal or any other combustible material within the limits of the city which is delivered by any means of transportation. The tax imposed by this section shall be at the rate of seven and one-half (7.50) percent of all charges made for such fuel, and shall be paid either by the persons receiving such fuel, or collected by the service supplier. (Prior code § 5-23.052)

**4.28.080 Exemptions.**

Nothing in this chapter shall be construed as imposing a tax upon any person if imposition of such tax upon that person would be in violation of the Constitution of the United States or the Constitution of the state of California. (Prior code § 5-23.06)

**4.28.090 Collection of tax.**

A. Every person receiving payment of charges from a service user shall collect the amount of tax imposed by this chapter from the service user.

B. The tax shall be collected insofar as practicable at the same time as and along with the collection of charges made in accordance with the regular billing practice of the service supplier. If the amount paid by a service user is less than the full amount of the charge and tax which has accrued for the billing period, a proportionate share of both the charge and the tax shall be deemed to have been paid.

C. The duty to collect tax from a service user shall commence with the beginning of the first regular billing period applicable to that person which starts on or after the operative date of this chapter. Where a person receives more than one billing, one or more being for different periods than another, the duty to collect shall arise separately for each billing period. (Prior code § 5-23.07)

**4.28.100 Apportionment and tax credit.**

In the event a service user subject to the tax under this chapter is properly taxed by another state or local government for a utility users tax substantially simi-

lar to Oakland's utility users tax, the service user may request and receive a tax credit.

The tax credit must be requested in writing within one year of payment of the tax period. Such request must be accompanied by written proof acceptable to the Office of Finance that the other jurisdiction's utility users tax: (A) was substantially similar to Oakland's utility users tax; (B) was properly and legally levied by that jurisdiction; and (C) was actually paid to and not refunded by that jurisdiction.

No credit for penalties or interest associated with the tax for such other jurisdiction will be given by the city. The credit herein may be requested only by the service user unless specifically agreed to in writing by the Office of Finance. (Prior code § 5-23.071)

**4.28.110 Maximum tax for commercial or industrial plants.**

A. The total utility users tax imposed by this chapter for gas, alternate fuels, and electricity services upon any service user for any one commercial or industrial plant location shall not exceed the amount of three hundred fifty thousand dollars (\$350,000.00) for a calendar year.

B. Commencing on January 1, 1993, and annually thereafter, said taxes payable pursuant hereto shall be adjusted in relation to the Consumer Price Index issued by the Bureau of Labor Statistics of the United States Department of Labor for All Urban Consumers of the Greater San Francisco, Oakland, San Jose (Standard Metropolitan Statistical Area) as follows:

1. For said taxes set forth in subsection A of this section; and
2. For the most recent month for which such price index figure is available on the date such taxes are due and annually thereafter.

The adjustment in said taxes for any such one-year period shall be determined as follows:

The price index figure for subsection (B)(1), the price index figure for subsection (B)(2) and the annual maximum tax set forth in said subsection A of this section shall be the basis upon which such adjustment shall be computed. The difference, if any, between the price index figure for subsection (B)(1)

and the price index for subsection (B)(2) shall be ascertained by subtracting the lesser from the greater of such figures. Thereafter, such differences shall be divided by the price index figure for subsection (B)(1) which will provide the percentages of changes, if any, in the price index figure. If such percentage of change represents an increase, then the taxes shall be the said taxes as set forth in subsection A of this section plus the sum derived by multiplying said taxes by such percentage of change. In no event, however, shall any taxes be less than those amounts set forth in said subsection A of this section.

C. Those service users whose total amount of utility users taxes imposed by this chapter for gas services, alternate fuels, and electricity services for any one commercial or industrial plant location during a calendar year exceeds three hundred fifty thousand dollars (\$350,000.00) may pay such annual maximum amount directly to the Director of Finance in twelve (12) equal installments of twenty-nine thousand one hundred sixty seven dollars (\$29,167.00) each. Each such installment shall be due and payable to the city on or before the fifth day of each month. Upon receipt of the first installment in January of each year, the Director of Finance shall notify each service supplier not to impose the utility users tax required by this chapter for the ensuing calendar year. (Prior code § 5-23.072)

**4.28.120 Reporting and remitting—  
Examination of books, records,  
witnesses.**

A. On or before the forty-fifth day after close of the billing cycle that ends on the last business day of any given month, every service supplier must make a return to the Tax Administrator, on forms provided by him or her, stating the amount of taxes collected by service supplier during the preceding month billing cycle and setting forth the applicable factor or factors that constitute the service supplier's measure of the tax, together with such other information as shall be required by the Tax Administrator to enable it to administer the provisions of this chapter and shall pay at such time the amount of the tax computed thereon. At the time the return is filed, the ser-

vice supplier must remit the full amount of the tax collected to the Tax Administrator. The Tax Administrator may establish shorter reporting periods for any service supplier if he or she deems it necessary in order to insure collection of the tax and he or she may require further information in the return. Returns and remittances are due immediately upon cessation of business for any reason.

B. The Tax Administrator, or any duly authorized employee, is authorized to examine the books, papers, tax returns and records of any service supplier or service user subject to this chapter for the purpose of verifying the accuracy of any declaration made, or if no declaration was made, to ascertain the tax due or collected under this chapter. Every person subject to the provisions of this chapter is directed and required to furnish to the Tax Administrator or duly authorized agent or employee, the means, facilities and opportunity for making such examination and investigations. The Tax Administrator is authorized to examine a person under oath, for the purpose of verifying the accuracy of any declaration made, or if no declaration was made, to ascertain the tax due under this chapter. In order to ascertain the tax due under this chapter, the Tax Administrator may compel, by administrative subpoena, the production of relevant books, papers and records and the attendance of all persons as parties or witnesses. The refusal to submit to such examination or production by any employer or person subject to the provisions of this chapter shall be deemed a violation of this chapter, and administrative subpoenas shall be enforced pursuant to applicable state law. (Ord. 12805 § 4, 2007; prior code § 5-23.08)

**4.28.130 Penalties and interest, failure to  
collect and report tax—  
Determination of tax by tax  
administrator, appeal, records,  
refunds, actions to collect,  
violations, infraction.**

A. Any service supplier or service user who fails to remit any tax imposed by this chapter within the time required shall pay a penalty of twenty-five (25) percent of the amount of the tax in addition to

the amount of the tax. In addition to the penalties imposed, any service supplier or service user who fails to remit the tax imposed by this chapter shall pay interest at the rate of twelve (12) percent per annum compounded daily on the amount of the tax and penalties, from the date on which the remittance first became delinquent until paid.

B. Whenever any service user is entitled to receive from the service supplier any credit or refund based upon the supplier's erroneous billing or the supplier's overcharge for services, or upon any reduction in the service charge, the supplier may include in its credit or refund to the user the amount of the service tax erroneously or illegally collected. The service supplier may be permitted by the Tax Administrator to credit such refunds or credits of the service tax made to the service supplier and owing to the city. The service supplier shall provide the Tax Administrator with such documentation of the refunds or credits as the Tax Administrator shall require.

C. The tax to be paid by a service user under the provisions of this chapter shall be deemed a debt owed by the service user to the city. Any such tax collected from the service user that has not been remitted to the city shall be deemed a debt owed to the city by the person required to collect and remit it. Any person owing moneys hereunder shall be liable in an action brought in the name of the city for recovery of such tax, penalty, interest and administrative fees associated therewith. (Prior code § 5-23.09)

#### **4.28.140 Failure to pay tax— Administrative remedy.**

A. Whenever the Tax Administrator determines that a service user has failed to pay the amount of the tax owed by him or her from the amounts remitted to a service supplier for a period of two or more billing periods, or whenever the Tax Administrator deems it in the best interest of the city, he or she may relieve the service supplier of the objection to collect taxes, penalties and interest due under this chapter from certain named service users for specified billing periods. The Tax Administrator shall notify the service user that he or she has assumed responsibility to collect the taxes due for the stated periods and demand

payment of such taxes. The notice shall be served on the service user by handing it to him or her personally or by deposit of the notice in the United States mail, postage prepaid thereon, addressed to the service user at the address to which billing was made by the service supplier, or, should the service user have changed his or her address, to his or her last known address. If a service user fails to remit the tax to the Tax Administrator within fifteen (15) days from the date of the service of the notice upon him or her, which shall be the date of mailing if service is not accomplished in person, a penalty of twenty-five (25) percent of the amount of the tax set forth in the notice shall be imposed, but not less than five dollars (\$5.00). The penalty shall become part of the tax herein required to be paid.

B. Appeals. Any person whose rights or interests have been directly and adversely affected by a ruling or finding of fact made by the Tax Administrator under the authority of this chapter may appeal therefrom in writing to the Board of Review (Board) within twenty (20) days from the date of notification of such ruling or finding in the manner provided in subsection D of this section. The Board, in individual cases and, in its exercise of reasonable discretion in administering the provisions of this chapter, may extend the twenty (20) day period in which to file an appeal. The Board shall make findings of fact in support of its decision. The Board shall exercise its reasonable discretion in administering the provisions of this chapter in rendering a decision on appealed rulings or findings. The Board's decision becomes final upon giving notice thereof to the appellant in the manner provided in subsection D of this section.

Any tax, penalty, or interest found to be owing is due and payable at the time the Board's decision thereon becomes final.

C. Exhaustion of Remedies. Any person with a dispute pertaining to this chapter must exhaust the administrative remedies provided herein before filing suit for refund, rebate, exemption, cancellation, amendment, adjustment, or modification of tax, penalty or interest.

D. Written Notice. Whenever a person appeals a ruling or finding of fact by the Tax Administrator or

whenever the Board of Review notifies a person regarding its findings (including liability for tax, penalty, and interest due), a written notice shall be served personally or mailed; if mailed, such notice shall be by United States mail, postage prepaid therein, to the last known address of the person appealing. (Prior code § 5-23.10)

#### **4.28.150 Rules and regulations.**

The Tax Administrator shall have power to adopt rules and regulations not inconsistent with the provisions of this chapter for the purpose of carrying out and enforcing the payment, collection and remittance of the tax herein imposed; and a copy of such rules and regulations shall be on file and available for public examination in the Tax Administrator's Office. Failure or refusal to comply with any rules and regulations promulgated under this section shall be deemed a violation of this chapter. (Prior code § 5-23.11)

#### **4.28.160 Conflicts.**

Nothing contained in this chapter is intended to conflict with applicable rules, regulations and tariffs of any service supplier subject to the jurisdiction of the California Public Utilities Commission. In the event of a conflict, the provisions of said rules, regulations and tariffs shall control. (Prior code § 5-23.13)

#### **4.28.170 Bad debts.**

When a person advances taxes to the city based on services supplied but not paid for and such amount prove uncollectible in a subsequent year, the tax applicable to those charges may be excluded from the total tax remitted to the city; or a credit towards future tax collections may be requested by the service supplier provided however, if the whole or a portion of such amounts excluded is subsequently collected, such amount shall be included in the total tax remitted for the period in which they are received. (Prior code § 5-23.14)

#### **4.28.180 Refund to the service user of taxes, penalties and/or interest erroneously or illegally collected.**

Whenever the city or utility service supplier erroneously or illegally collected or received an overpayment of tax, penalties or interest under this chapter, the city may refund to the service user the amount of the tax that was overpaid if the service user or his or her guardian, conservator, executor or administrator files a written claim with the Tax Administrator within one year from the date the tax was paid. All claims must specify the specific grounds for the claim, and shall be made and verified by the service user. No other agent, including the taxpayer's attorney, may sign a refund claim. No claim may be filed on behalf of a class of persons unless each class member verifies the claim in accordance with the requirements of this section. (Ord. 12805 § 3, 2007)

## Chapter 4.32

### **CITY RESIDENTIAL MORTGAGE REVENUE BOND LAW**

**Sections:**

- |                 |  |
|-----------------|--|
| <b>4.32.010</b> | <b>General provisions and definitions.</b> |
| <b>4.32.020</b> | <b>Program loans.</b>                      |
| <b>4.32.030</b> | <b>Bonds.</b>                              |
| <b>4.32.040</b> | <b>Supplemental provisions.</b>            |

**4.32.010      General provisions and definitions.**

A. This chapter may be cited as the city residential mortgage revenue bond law.

B. The Council finds and declares that it is necessary, essential, a public purpose and a municipal affair for the city to be authorized to make, purchase and contract for the making of below-market-interest-rate loans to finance residences in depressed residential areas within the city in order to encourage the rehabilitation of property in such areas and to encourage residents of all social and economic positions to reinhabit such areas, rendering them more socially balanced and economically self-sufficient. Unless the city intervenes to provide such assistance, many such depressed residential areas will deteriorate at an ever-accelerated pace because property owners cannot obtain such assistance from private sources.

C. The Council finds and declares that it is necessary, essential, a public purpose and a municipal affair for the city to make, purchase and contract for the making of below-market-interest-rate loans to encourage the availability of adequate housing and home finance for persons and families of low or moderate income, and to develop viable communities by providing decent housing, enhanced living environment, and increased economic opportunities for persons and families of low or moderate income.

D. Unless the context otherwise requires, the terms defined in this chapter shall have the following meanings:

“Bonds” means any bonds, notes, certificates, debentures or other obligations issued by the city pursuant to this chapter and payable exclusively from revenues as in this chapter defined and from any other funds specified in this chapter upon which such obligations may be made a charge and from which they are payable.

“City” means the city of Oakland.

“Council” means the City Council of the city of Oakland.

“Participating party” means any person, company, corporation, partnership, firm, local agency, political subdivision of the state or other entity or group of entities eligible to receive a loan pursuant to the terms of this chapter. No elective officer of the city shall be eligible to be a participating party.

“Persons and families of low or moderate income” means persons and families whose income does not exceed one hundred twenty (120) percent of area median income, or any higher percentage of area median income upon a determination by the Council that such amount of income is too low to qualify a substantial number of persons and families who can afford the rental or purchase of residences financed pursuant to this chapter. As used in this definition, “area median income” means the median household income within the city, as adjusted for family size, as determined by the city. Nothing in this definition shall prevent the city from adopting federal or state estimates of area median income for the standard metropolitan statistical area which includes the city, or federal or state formulas for the adjustment of area median income for family size.

“Program loan” means any loan made pursuant to this chapter for any purpose specified in Section 4.32.020A.

“Qualified mortgage lender” means any mortgage lender authorized by the city to aid the city pursuant to this chapter. A qualified mortgage lender may be a state or national bank, federal- or state-chartered savings and loan association, trust company, mortgage banker or other financial institution.

“Redevelopment project area” means any area within the city for which a final redevelopment plan has been adopted by the Council pursuant to the

Community Redevelopment Law (Part 1 of Division 24 of the Health and Safety Code of the state of California).

“Rehabilitation” means the reconstruction, renovation, replacement, extension, repair, betterment, equipping, developing, embellishing or otherwise improving of existing residences consistent with standards of strength, effectiveness, fire-resistance, durability and safety so that such structures are satisfactory and safe to occupy for residential purposes and are not conducive to ill health, transmission of disease, infant mortality, juvenile delinquency and crime because of any one or more of the following factors:

- a. Defective design and character of physical construction;
- b. Faulty interior arrangement and exterior spacing;
- c. Inadequate provision for ventilation, lighting and sanitation; or
- d. Obsolescence, deterioration and dilapidation.

“Rehabilitation area” means any area so designated by the city pursuant to Section 4.32.020I or any area designated by the city as a residential rehabilitation area pursuant to a comprehensive residential rehabilitation financing program adopted pursuant to the provisions of the Marks-Foran Residential Rehabilitation Act of 1973 (Part 13 of Division 24 of the Health and Safety Code of the state of California).

“Rehabilitation standards” means the applicable local or state standards for the rehabilitation of residences located in residential rehabilitation areas, including any higher standards adopted by the city.

“Residence” means real property improved with a residential structure and, in redevelopment project areas and rehabilitation areas only, also includes real property improved with a commercial or mixed residential and commercial structure which, in the judgment of the city, is an integral part of a residential neighborhood. “Residence” includes condominium and cooperative dwelling units, real property improved with single-family residential structures, and real property improved with multifamily residential structures.

“Revenues” means amounts received as repayment of principal, interest, and all other charges received by the city with respect to program loans, any proceeds received by the city from mortgage, hazard or other insurance on or with respect to loans, all other income and receipts derived by the city from the making or purchasing of program loans, any amounts received by the city as investment earnings on moneys deposited in a reserve fund or any similar fund-securing bonds, and such other moneys as the Council may, in its discretion, make available therefor. (Prior code § 12-1.01—12-1.04)

#### **4.32.020 Program loans.**

A. The city may make, purchase from qualified mortgage lenders, or otherwise contract with qualified mortgage lenders for the making of, loans to participating parties for any of the following purposes:

1. To finance the rehabilitation of residences, or the acquisition of newly rehabilitated residences, located within a rehabilitation area or a redevelopment project area, subject to the following limitations:

a. No more than twenty (20) percent of any such loan may be used for rehabilitation which is not required under the rehabilitation standards, except that in the case of owner-occupied one- to four-dwelling-unit properties, up to forty (40) percent of any such loan may be used for rehabilitation not required under the rehabilitation standards, and

b. Loans may not be made for the purpose of refinancing outstanding indebtedness with respect to a residence which has been or will be subject to rehabilitation, or for the purpose of financing the cost of acquisition of a residence which has been or will be subject to rehabilitation, unless the cost, including in such costs any amounts previously expended for rehabilitation of such residence within a rehabilitation area or redevelopment project area established at the time of such expenditure, of meeting the rehabilitation standards is at least twenty (20) percent of the principal amount of the loan;

2. To finance the acquisition of residences not newly rehabilitated, located within rehabilitation area or a redevelopment project area, provided, however, that for purposes of this subsection "residence" shall not include any residential structure, the average sales price of dwelling units in which exceeds area median sales price as determined by the city;

3. To finance the acquisition, construction or rehabilitation by a person or family of low or moderate income of a residence located within the city, for occupancy by such person or family; or

4. To finance the acquisition, construction or rehabilitation by any participating party of a residence, the occupancy of at least thirty (30) percent of the dwelling units in which will be limited to persons and families of low or moderate income.

B. The city may fix fees, charges, and interest rates for program loans and may from time to time revise such fees, charges, and interest rates to reflect changes in interest rates on the city's bonds, losses due to defaults, changes in program loan servicing charges, or changes in other expenses related to the program loans, including city administrative expenses. Any change in interest rate on a program loan shall conform to the provisions of Section 1916.5 of the Civil Code.

C. The city may fix the character, terms and conditions upon which program loans may be made. Program loans made to participating parties by qualified mortgage lenders shall be of such character and on such terms and conditions as previously established by the city.

D. The city may fix fees for servicing of program loans, or may itself undertake, or may contract to pay any person, partnership, association, corporation, or public agency for such servicing.

E. The city may hold deeds of trust or mortgages as security for program loans and may pledge or assign the same as security for repayment of bonds. Such deeds of trust or mortgages may be assigned to, and held on behalf of the city by, any bank or trust company appointed to act as trustee by the city in any resolution or indenture providing for issuance of bonds.

F. The city may employ such engineering, architectural, financial, accounting, legal or other services as may be necessary in the judgment of the city for the purposes of this chapter.

G. The city may acquire by deed, purchase, lease, contract, gift, devise or otherwise any real or personal property, structures, rights, rights-of-way, franchises, easements, and other interest in lands necessary or convenient for the purposes of this chapter, upon such terms and conditions as it deems advisable, and may lease, sell, or dispose of the same in such manner as may be necessary or desirable to carry out the purposes of this chapter, upon such terms and conditions as may be established by the city.

H. In addition to all other powers specifically granted by this chapter, the city may do all things necessary or convenient to carry out the purposes of this chapter.

I. The Council may by resolution designate an area within the city as a rehabilitation area upon making the following findings:

1. There are a substantial number of deteriorating structures in the area which do not conform to community standards for decent, safe and sanitary housing;

2. Financial assistance from the city for rehabilitation is necessary to arrest the deterioration of the area; and

3. Financing of residential rehabilitation in the area is economically feasible. (Prior code § 12-2.01—12-2.09)

#### **4.32.030 Bonds.**

A. 1. The city may, from time to time, issue bonds for any of the purposes specified in Section 4.32.020A. Bonds shall be negotiable instruments for all purposes, subject only to the provisions of such bonds for registration.

2. Every issue of bonds shall be a limited obligation of the city payable from all or any specified part of the revenues and the moneys and assets authorized in this chapter to be pledged or assigned to secure payment of bonds. Such revenues, moneys or assets shall be the sole source of repayment of

such issue of bonds. Bonds issued under the provisions of this chapter shall not be deemed to constitute a debt or liability of the city or a pledge of the faith and credit of the city but shall be payable solely from specified revenues, moneys and assets. The issuance of bonds shall not directly, indirectly, or contingently obligate the city to levy or pledge any form of taxation or to make any appropriation for their payments.

All bonds shall contain on the face thereof a statement to the following effect:

Neither the faith and credit nor the taxing power of the city is pledged to the payment of the principal of, or premium or interest on this bond.

B. In determining the amount of bonds to be issued, the city may include all costs of the issuance of such bonds, reserve funds, and capitalized bond interest.

C. Bonds may be issued as serial bonds, term bonds, installment bonds or pass-through certificates, or any combination thereof. Bonds shall be authorized by resolution of the Council and shall bear such date or dates, mature at such time or times, bear interest at such fixed or variable rate or rates, be payable at such time or times, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in lawful money of the United States of America at such place or places, be subject to such terms of redemption and have such other terms and conditions as such resolution or any indenture authorized by such resolution to be entered into by the city may provide. Bonds may be sold at either a public or private sale and for such prices as the city shall determine. Pending preparation of definitive bonds, the city may issue temporary bonds, which shall be exchanged for such definitive bonds when prepared.

D. Any resolution authorizing any bonds or any issue of bonds, or any indenture authorized by such resolution to be entered into by the city, may contain provisions respecting any of the following terms

and conditions which shall be a part of the contract with the holders of such bonds:

1. The terms, conditions and form of such bonds and the interest and principal to be paid thereon;
  2. Limitations on the uses and purposes to which the proceeds of sale of such bonds may be applied, and the pledge or assignment of such proceeds to secure the payment of such bonds;
  3. Limitations on the issuance of additional parity bonds, the terms upon which additional parity bonds may be issued and secured, and the refunding of outstanding bonds;
  4. The setting aside of reserves and sinking funds and the regulation and disposition thereof;
  5. The pledge or assignment of all or any part of the revenues and the use and disposition thereof, subject to such agreements with the holders of bonds as may then be outstanding;
  6. Limitation on the use of revenues for expenditures for operating, administration or other expenses of the city;
  7. Specification of the acts or omissions to act which shall constitute a default in the duties of the city to holders of such bonds, and providing the rights and remedies of such holders in the event of default, including any limitations on the right of action by individual bondholders;
  8. The appointment of a corporate trustee to act on behalf of the city and the holders of its bonds, the pledge or assignment of program loans, deeds of trust, mortgages and any other contracts to such trustee, and the rights of such trustee;
  9. The mortgaging of any residence and the site thereof for the purpose of securing the bondholders;
  10. The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of such bonds the holders of which must consent thereto, and the manner in which such consent may be given; and
  11. Any other provisions which the Council may deem reasonable and proper for the purposes of this chapter and the security of the bondholders.
- E. Any pledge of revenues or other moneys or assets pursuant to the provisions of this chapter shall be valid and binding from the time such pledge is

made. Revenues, moneys and assets so pledged and thereafter received by the city shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the city, irrespective of whether such parties have notice thereof. Neither the resolution nor any indenture by which a pledge is created need be filed or recorded except in the records of the city.

F. Neither the members of the Council, the officers or employees of the city, nor any person executing any bonds shall be liable personally on the bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

G. The city shall have the power out of any funds available therefor to purchase its bonds. The city may hold, pledge, cancel, or resell such bonds, subject to and in accordance with agreements with the bondholders.

H. Any holder of bonds issued under the provisions of this chapter or any of the coupons appertaining thereto, and any trustee appointed pursuant to any resolution authorizing the issuance of bonds, except to the extent the rights thereof may be restricted by such resolution or any indenture authorized thereby to be entered into by the city, may, either at law or in equity, by suit, action, mandamus, or other proceedings, protect or enforce any and all rights specified in law or in such resolution or indenture, and may enforce and compel the performance of all duties required by this chapter or by such resolution or indenture to be performed by the city or by any officer, employee, or agent thereof, including the fixing, charging, and collecting of rates, fees, interest, and charges authorized and required by the provisions of such resolution or indenture to be fixed, charged, and collected.

I. 1. The city may issue bonds for the purpose of refunding any bonds then outstanding including the payment of any redemption premiums thereof and any interest accrued or to accrue to the earliest or any subsequent date or dates of redemption, purchase, or maturity of such bonds, and, if deemed

advisable by the city, for the additional purposes specified in Section 4.32.020A.

2. The proceeds of bonds issued for the purpose of refunding any outstanding bonds may, in the discretion of the city, be applied to the purchase or retirement at maturity or redemption of such outstanding bonds, either at their earliest or any subsequent redemption date or dates or upon the purchase or retirement at the maturity thereof and may, pending such application, be placed in escrow, to be applied to such purchase or retirement at maturity or redemption on such date or dates as may be determined by the city.

3. Pending use for purchase, retirement at maturity or redemption of outstanding bonds, any proceeds held in escrow pursuant to subsection (I)(2) of this section may be invested and reinvested as provided in the resolution or indenture. Any interest or other increment earned or realized on any such investment may be applied to the payment of the outstanding bonds to be refunded or to the payment of interest on the refunding bonds. After the terms of the escrow have been fully satisfied and carried out, any balance of such proceeds and any interest or increment earned or realized from the investment thereof may be returned to the city to be used by it for any lawful purpose.

4. All bonds issued pursuant to this section shall be subject to the provisions of this chapter in the same manner and to the same extent as other bonds issued pursuant to this chapter.

J. The validity of the authorization and issuance of any bonds is not dependent on and shall not be affected in any way by any proceedings taken by the city for the making of any program loan, or by the failure to make any program loan, for which bonds are authorized to be issued under this chapter. (Prior code § 12-3.01—12-3.10)

#### **4.32.040 Supplemental provisions.**

A. This chapter, being necessary for the welfare of the city and its inhabitants, shall be liberally construed to effect its purposes.

B. If the jurisdiction of the Council to order the proposed act is not affected, any omission of any

officer of the city in proceedings under this chapter or any other defect in the proceedings shall not invalidate such proceedings or the bonds issued pursuant to this chapter.

C. This chapter is full authority for the issuance of bonds by the city for the purposes specified herein.

D. This chapter shall be deemed to provide a complete, additional, and alternative method for doing the things authorized thereby, and shall be regarded as supplemental and additional to the powers conferred by other laws. The issuance of bonds under the provisions of this chapter need not comply with the requirements of any other law applicable to the issuance of bonds. The purposes authorized by this chapter may be effectuated and bonds may be issued for any such purposes under this chapter notwithstanding that any other law may provide for such purposes or for the issuance of bonds for like purposes and without regard to the requirements, restrictions, limitations, or other provisions contained in any other law.

E. To the extent that the provisions of this chapter are inconsistent with the provisions of any general statute or special act or parts thereof, the provisions of this chapter shall be deemed controlling.

F. It shall be a misdemeanor, punishable by a fine not to exceed one thousand dollars (\$1,000.00) and/or imprisonment not to exceed one year, to make any false statement or certification on any mortgage loan application or other mortgage loan documentation submitted in connection with the city multilender mortgage purchase program. (Prior code § 12-4.01—12-4.05, 12-4.07)

## Chapter 4.36

### **CITY HEALTH FACILITY REVENUE BOND LAW**

**Sections:**

- |                 |  |
|-----------------|--|
| <b>4.36.010</b> | <b>General provisions and definitions.</b> |
| <b>4.36.020</b> | <b>Financing health facilities.</b>        |
| <b>4.36.030</b> | <b>Bonds.</b>                              |
| <b>4.36.040</b> | <b>Supplemental provisions.</b>            |

**4.36.010      General provisions and definitions.**

A. This chapter may be cited as the city health facility revenue bond law.

B. The Council finds and declares that it is necessary, essential, a public purpose and a municipal affair for the city to be authorized to provide financing to health institutions within the city that provide essential services to residents of the city in order to aid such health institutions in containing costs and thereby to enable such health institutions to establish lower rates and charges than would otherwise prevail and to provide better service at such rates and charges. Unless the city intervenes to provide such financing, such rates and charges may increase at an ever-accelerated pace because such health institutions cannot obtain financing at equivalent cost from private sources.

C. Unless the context otherwise requires, the terms defined in this chapter shall have the following meanings:

“Bonds” means any bonds, notes, certificates, debentures or other obligations issued by the city pursuant to this chapter and payable exclusively from revenues as in this chapter defined and from any other funds specified in this chapter upon which such obligations may be made a charge and from which they are payable.

“City” means the city of Oakland.

“Cost” means the total of all costs incurred by or on behalf of a participating health institution as are approved by the city as reasonable and necessary for carrying out all works and undertakings necessary

or incident to acquire and construct a health facility. “Cost” shall include all such costs, including costs for construction undertaken by a participating health facility as its own contractor, which under generally accepted accounting principles are not properly chargeable as an expense of operation and maintenance.

“Council” means the City Council of the city of Oakland.

**Health Facility.**

1. “Health Facility” means any facility, place or building within the city which is maintained and operated for the diagnosis, care, prevention and treatment of human illness, physical or mental, including convalescence, rehabilitation, care during and after pregnancy and the provision of blood, plasma or other tissues or organs to assist in such care, prevention and treatment, or for any one or more of these services, and which provides and will continue providing to residents of the city essential health care services designated as such in an agreement between the city and the participating health institution providing or operating such facility, place or building.

2. Health facility includes the following facilities if operated in conjunction with one of the above types of facilities: a laboratory, a laundry, a nurses’ or interns’ residence, a housing facility for patients, staff or employees and the families of any of them, an administration building, a research, maintenance, storage, utility or parking facility and all structures or facilities related to any of the foregoing or required or useful for the operation of a health facility.

3. Health facility shall not include any facility, place or building used or to be used primarily for sectarian instruction or study or as a place for devotional activities or religious worship.

“Participating health institution” means a private nonprofit corporation or association authorized by the laws of the state to provide or operate a health facility as defined in this chapter and which, pursuant to the provisions of this chapter, undertakes the financing of the acquisition and construction of a health facility or undertakes the refunding or refi-

nancing of obligations incurred to finance the acquisition and construction of a health facility.

"Revenues" means amounts received by the city as repayment of principal, interest, and all other charges with respect to a loan under this chapter, any proceeds received by the city from mortgage, hazard or other insurance on or with respect to such a loan, all other rents, charges, fees, income and receipts derived by the city from the financing of a health facility under this chapter, any amounts received by the city as investment earnings on moneys deposited in a reserve fund or any similar fund securing bonds, and such other moneys as the Council may, in its discretion, lawfully designate as revenues. (Prior code § 13-1.01—13-1.03)

#### **4.36.020      Financing health facilities.**

A. The city may make, purchase, or otherwise contract for the making of a mortgage or other secured or unsecured loan, upon such terms and conditions as the city shall deem proper, to any participating health institution for the cost of acquiring or constructing a health facility; provided, however, that no such loan shall exceed the total cost of such health facility as determined by the participating health institution and approved by the city.

B. The city may make, purchase, or otherwise contract for the making of a mortgage or other secured or unsecured loan, upon such terms and conditions as the city shall deem proper, to any participating health institution to refund or refinance outstanding obligations of such participating health institution incurred to finance the cost of acquiring or constructing a health facility, whether such obligations were incurred prior to or after the enactment of this chapter, if the city finds that such refunding or refinancing is in the public interest and either alleviates a financial or operating hardship of such participating health institution, is in connection with other financing by the city for such participating health institution or may be expected to result in lower costs of health care than would otherwise prevail and a saving to third parties, including government, and to others who must pay for care, or any combination thereof.

C. The city may acquire, construct, enlarge, remodel, renovate, alter, improve, furnish, equip, own, and lease as lessee a health facility for the purpose of selling or leasing such health facility to a participating health institution, and may designate such participating health institution as its agent to undertake to construct, enlarge, remodel, renovate, alter, improve, furnish, and equip such health facility.

The city may sell or lease, upon such terms and conditions as the city shall deem proper, to a participating health institution any health facility owned by the city under this chapter, including a health facility conveyed to the city in connection with a financing under this chapter but not being financed or refinanced hereunder.

D. The city may charge participating health institutions application, commitment, financing and other fees, in order to recover all administrative and other costs and expenses incurred in the exercise of the powers and duties conferred by this chapter.

E. The city may obtain, or aid in obtaining, from any department or agency of the United States or of the state of California or any private company, any insurance or guarantee as to, or of, or for the payment or repayment of, interest or principal, or both, or any part thereof, on any loan, lease or sale obligation or any instrument evidencing or securing the same, made or entered into pursuant to the provisions of this chapter; and may accept payment in such manner and form as provided therein in the event of default by a participating health institution, and may assign any such insurance or guarantee as security for bonds.

F. The city may fix rents, payments, fees, charges and interest rates for financing under this chapter and may agree to revise from time to time such rents, payments, fees, charges and interest rates to reflect changes in interest rates on bonds, losses due to defaults or changes in other expenses related to this chapter, including city administrative expenses.

G. The city may hold deeds of trust or mortgages as security for loans under this chapter and may pledge or assign the same as security for repayment of bonds. Such deeds of trust or mortgages may be

assigned to, and held on behalf of the city by, any bank or trust company appointed to act as trustee by the city in any resolution or indenture providing for issuance of bonds.

H. The city may employ such engineering, architectural, financial, accounting, legal or other services as may be necessary in the judgment of the city for the purposes of this chapter.

I. The city shall require that services provided by health facilities financed under this chapter shall be available to all regardless of race, sex, marital status, color, religion, national origin or ancestry, and that contractors and subcontractors engaged in the construction of health facilities financed under this chapter shall provide equal opportunity for employment, without discrimination as to race, marital status, sex, color, religion, national origin or ancestry. The city shall also require that participating health institutions and contractors and subcontractors engaged in the construction of health facilities financed under this chapter shall submit and receive approval from the city of an affirmative action program prior to the issuance of bonds for such health facility.

J. In addition to all other powers specifically granted by this chapter, the city may do all things necessary or convenient to carry out the purposes of this chapter. (Prior code § 13-2.01—13-2.10)

#### **4.36.030 Bonds.**

A. 1. The city may, from time to time, issue bonds for any of the purposes specified in subsections A, B and C of Section 4.36.020. Bonds shall be negotiable instruments for all purposes, subject only to the provisions of such bonds for registration.

2. Every issue of bonds shall be a limited obligation of the city payable from all or any specified part of the revenues and the moneys and assets authorized in this chapter to be pledged or assigned to secure payment of bonds. Such revenues, moneys or assets shall be the sole source of repayment of such issue of bonds. Bonds issued under the provisions of this chapter shall not be deemed to constitute a debt or liability of the city or a pledge of the faith and credit of the city but shall be payable

solely from specified revenues, moneys and assets. The issuance of bonds shall not directly, indirectly, or contingently obligate the city to levy or pledge any form of taxation or to make any appropriation for their payment.

All bonds shall contain on the face thereof a statement to the following effect:

Neither the faith and credit nor the taxing power of the City is pledged to the payment of the principal of, or premium or interest on this bond.

B. In determining the amount of bonds to be issued, the city may include all costs of the issuance of such bonds, reserve funds, and capitalized bond interest.

C. Bonds may be issued as serial bonds, term bonds, installment bonds or pass-through certificates or any combination thereof. Bonds shall be authorized by resolution of the Council and shall bear such date or dates, mature at such time or times, bear interest at such fixed or variable rate or rates, be payable at such time or times, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in lawful money of the United States of America at such place or places, be subject to such terms of redemption and have such other terms and conditions as such resolution or any indenture authorized by such resolution to be entered into by the city may provide. Bonds may be sold at either a public or private sale and for such prices as the city shall determine. Pending preparation of definitive bonds, the city may issue temporary bonds, which shall be exchanged for such definitive bonds when prepared.

D. Any resolution authorizing any bonds or any issue of bonds, or any indenture authorized by such resolution to be entered into by the city, may contain provisions respecting any of the following terms and conditions, which shall be a part of the contract with the holders of such bonds:

1. The terms, conditions and form of such bonds and the interest and principal to be paid thereon;

2. Limitations on the uses and purposes to which the proceeds of sale of such bonds may be applied, and the pledge or assignment of such proceeds to secure the payment of such bonds;

3. Limitations on the issuance of additional parity bonds, the terms upon which additional parity bonds may be issued and secured, and the refunding of outstanding bonds;

4. The setting aside of reserves and sinking funds and the regulation and disposition thereof;

5. The pledge or assignment of all or any part of the revenues and the use and disposition thereof, subject to such agreements with the holders of bonds as may then be outstanding;

6. Limitation on the use of revenues for expenditures for operating, administration or other expenses of the city;

7. Specification of the acts or omissions to act which shall constitute a default in the duties of the city to holders of such bonds, and providing the rights and remedies of such holders in the event of default, including any limitations on the right of action by individual bondholders;

8. The appointment of a corporate trustee to act on behalf of the city and the holders of its bonds, the pledge or assignment of loans, deeds of trust, mortgages and any other contracts to such trustee, and the rights of such trustee;

9. The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of such bonds the holders of which must consent thereto, and the manner in which such consent may be given; and

10. Any other provisions which the Council may deem reasonable and proper for the purposes of this chapter and the security of the bondholders.

E. Any pledge of revenues or other moneys or assets pursuant to the provisions of this chapter shall be valid and binding from the time such pledge is made. Revenues, moneys and assets so pledged and thereafter received by the city shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort,

contract, or otherwise against the city, irrespective of whether such parties have notice thereof. Neither the resolution nor any indenture by which a pledge is created need be filed or recorded except in the records of the city.

F. Neither the members of the Council, the officers or employees of the city, nor any persons executing any bonds shall be liable personally on the bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

G. The city shall have the power out of any funds available therefor to purchase its bonds. The city may hold, pledge, cancel, or resell such bonds, subject to and in accordance with agreements with the bondholders.

H. Any holder of bonds issued under the provisions of this chapter or any of the coupons appertaining thereto, and any trustee appointed pursuant to any resolution authorizing the issuance of bonds, except to the extent the rights thereof may be restricted by such resolution or any indenture authorized thereby to be entered into by the city, may, either at law or in equity, by suit, action, mandamus, or other proceedings, protect or enforce any and all rights specified in law or in such resolution or indenture, and may enforce and compel the performance of all duties required by this chapter or by such resolution or indenture to be performed by the city or by any officer, employee, or agent thereof, including the fixing, charging, and collecting of rates, fees, interest, and charges authorized and required by the provisions of such resolution or indenture to be fixed, charged, and collected.

I. 1. The city may issue bonds for the purpose of refunding any bonds then outstanding including the payment of any redemption premiums thereof and any interest accrued or to accrue to the earliest or any subsequent date or dates of redemption, purchase, or maturity of such bonds.

2. The proceeds of bonds issued for the purpose of refunding any outstanding bonds may, in the discretion of the city, be applied to the purchase or retirement at maturity or redemption of such outstanding bonds, either at their earliest or any subsequent redemption date or dates or upon the purchase

or retirement at the maturity thereof and may, pending such application, be placed in escrow, to be applied to such purchase or retirement at maturity or redemption on such date or dates as may be determined by the city.

3. Pending use for purchase, retirement at maturity or redemption of outstanding bonds, any proceeds held in escrow pursuant to subsection (I)(2) of this section may be invested and reinvested as provided in the resolution or indenture. Any interest or other increment earned or realized on any such investment may be applied to the payment of the outstanding bonds to be refunded or to the payment of interest on the refunding bonds. After the terms of the escrow have been fully satisfied and carried out, any balance of such proceeds and any interest or increment realized from the investment thereof may be returned to the city to be used by it for any lawful purpose.

4. All bonds issued pursuant to this section shall be subject to the provisions of this chapter in the same manner and to the same extent as other bonds issued pursuant to this chapter.

J. The validity of the authorization and issuance of any bonds is not dependent on and shall not be affected in any way by any proceedings taken by the city for the making of any loan or the entering into of any agreement, or by the failure to make any loan or enter into any agreement, for which bonds are authorized to be issued under this chapter. (Prior code § 13-3.01—13-3.10)

#### **4.36.040 Supplemental provisions.**

A. This chapter, being necessary for the welfare of the city and its inhabitants, shall be liberally construed to effect its purposes.

B. If the jurisdiction of the Council to order the proposed act is not affected, any omission of any officer of the city in proceedings under this chapter or any other defect in the proceedings shall not invalidate such proceedings or the bonds issued pursuant to this chapter.

C. This chapter is full authority for the issuance of bonds by the city for the purposes specified herein.

D. This chapter shall be deemed to provide a complete, additional, and alternative method for doing the things authorized thereby, and shall be regarded as supplemental and additional to the powers conferred by other laws. The issuance of bonds under the provisions of this chapter need not comply with the requirements of any other law applicable to the issuance of bonds. The purposes authorized by this chapter may be effectuated and bonds may be issued for any such purposes under this chapter notwithstanding that any other law may provide for such purposes or for the issuance of bonds for like purposes and without regard to the requirements, restrictions, limitations, or other provisions contained in any other law.

E. To the extent that the provisions of this chapter are inconsistent with the provisions of any general statute or special act or parts thereof, the provisions of this chapter shall be deemed controlling.

(Prior code § 13-4.01—13-4.05)

## Chapter 4.40

### **CITY ECONOMIC DEVELOPMENT REVENUE BOND LAW**

**Sections:**

- 4.40.010      General provisions and definitions.**
- 4.40.020      Financing facilities.**
- 4.40.030      Bonds.**
- 4.40.040      Supplemental provisions.**

**4.40.010      General provisions and definitions.**

A. This chapter may be cited as the city economic development revenue bond law.

B. The Council finds and declares that it is necessary and essential to the well-being of the city that it provide financial assistance to promote the economic development of the city. Such economic development will serve the following public purposes and municipal affairs of the city:

1. The full and gainful employment of residents of the city;
2. The full and efficient utilization and modernization of existing industrial, commercial, and business facilities;
3. The development of new industrial, commercial and business facilities;
4. The development of health care and child care facilities;
5. The creation of educational and research facilities to enhance learning and training opportunities within the city;
6. The development or enhancement of community facilities designed to provide social, cultural and recreational programs and services to the residents of the city;
7. The growth of the city's tax base through increased property values and consumer purchasing;
8. The reduction of the need for and costs of welfare and other remedial programs;
9. The reduction of urban ills, such as crime, attributable in part to inadequate economic opportunities;

10. The stability and diversification of the city's economy;

11. The lowering of the cost to city consumers of necessary goods and services;

12. The environmentally optimum disposition of waste materials of the city; and

13. The enhancement of the general economic prosperity, health, safety and welfare of the residents of the city.

The availability of the financial assistance authorized by this chapter will serve those public purposes set forth above and the general plan of the city by providing private enterprises and nonprofit organizations with new methods of financing capital outlays in the city and by ensuring that economic development within the city will reflect the local community's needs and objectives and will be environmentally optimum with respect to both the physical and social environment of the city. The city shall promote such public interests pursuant to this chapter without adversely affecting areas outside the city and without conflicting with efforts by the state of California to solve problems of statewide-concern.

C. Unless the context otherwise requires, the terms defined in this chapter shall have the following meanings:

“Bonds” means the bonds, notes, certificates, debentures and other obligations authorized to be issued by the city pursuant to this chapter and payable as provided in this chapter.

“City” means the city of Oakland, California.

“Cost” means the total of all costs incurred by or on behalf of a participating party to carry out all works and undertakings and to obtain all rights and powers necessary or incident to the acquisition, construction, installation, reconstruction, rehabilitation or improvement of a facility. “Cost” may include all costs of issuance of bonds for such purposes, costs for construction undertaken by a participating party as its own contractor, capitalized bond interest, reserves for debt service and for repairs, replacements, additions and improvements to a facility, and other working capital incident to the operation of a facility.

“Council” means the City Council of the city of Oakland.

“Facility” means any of the facilities, places or buildings within the city which are, or will be, maintained and operated for industrial, commercial or business purposes or such other public purposes authorized by this chapter, conform to the general plan of the city and are approved by the city for the financing authorized by this chapter, such approval being given only when the city finds and determines that such financing (1) will substantially promote one or more of the public purposes listed in subsection B of this section; and (2) will not have the proximate effect of the relocation of any substantial operations of the participating party from one area of the state to another or the abandonment of any substantial operations of such participating party within other areas of the state, or, if such financing will have either of such effects, then such financing is reasonably necessary to prevent the relocation of any substantial operations of the participating party from an area within the state to an area outside the state.

A “facility” may be an activity which may otherwise be financed pursuant to the California Industrial Development Financing Act (Government Code Section 91500 et seq.) to the extent said Act permits the financing of such activity under alternative authority. “Facility” includes, without limitation, real and personal property, land, buildings, structures, fixtures, machinery and/or equipment and all such property related to or required or useful for the operation of a facility. Facility does not include any facility, place or building used or to be used primarily for sectarian instruction or study or as a place for devotional activities or religious worship, or any facility which could be financed under Chapter 4.32 or Chapter 4.36 of this code.

“Participating party” means any individual, association, corporation, partnership, nonprofit organization exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, or other entity which is approved by the city to undertake the financing of the costs of a facility

for which this chapter authorizes the issuance of the bonds.

“Revenues” means amounts received by the city as payments of principal, interest, and all other charges with respect to a loan authorized by this chapter, as payments under a lease, sublease or sale agreement with respect to a facility, as proceeds received by the city from mortgage, hazard or other insurance on or with respect to such a loan (or any property securing such loan), lease, sublease or sale agreement, all other rents, charges, fees, income and receipts derived by the city from the financing of a facility authorized by this chapter, any amounts received by the city as investment earnings on moneys deposited in any fund securing the bonds, and such other legally available moneys as the Council may, in its discretion, lawfully designate as revenues.

D. Revenues, as defined by this chapter, and the expenditure of such revenues shall not be taken into account in any manner in determining the city’s compliance with Article XIIIIB of the California Constitution. (Ord. 11950 § 3 (part), 1996: prior code §§ 14-1.01—14-1.04)

#### 4.40.020      **Financing facilities.**

A. The city is authorized to make, purchase, or otherwise contract for the making of, a mortgage or other secured or unsecured loan, with the proceeds of bonds and upon such terms and conditions as the city shall deem proper, to any participating party for the costs of a facility.

B. The city is authorized to acquire, construct, enlarge, remodel, renovate, alter, improve, furnish, equip and lease as lessee, with the proceeds of bonds, a facility solely for the purpose of selling or leasing as lessor such facility to such participating party, and is further authorized to make any contracts for such purposes. The city is also authorized to contract with such participating party to undertake on behalf of the city to construct, enlarge, remodel, renovate, alter, improve, furnish and equip such facility.

The city is authorized to sell or lease upon such terms and conditions as the city shall deem proper, to a participating party any facility owned by the city under this chapter, including a facility conveyed to the city in connection with a financing authorized by this chapter but not being financed hereunder.

C. Any person may apply to the city for approval as a participating party and for approval of a facility for financing under this chapter. Applications shall set forth such information as the city may require in order to enable the city to evaluate the applicant, the facility and its proposed costs.

D. The city is authorized to charge participating parties application, commitment, financing and other fees, in order to recover all administrative and other costs and expenses incurred in the exercise of the powers and duties conferred by this chapter. The Council shall direct the City Clerk to transmit a letter agreement or contract to a participating party which will obligate such party to pay such fees and expenses as the Council may charge or incur hereunder.

E. The city is authorized to obtain, or aid in obtaining, from any department or agency of the United States or of the state of California or any private company, any insurance or guarantee as to, or of, or for the payment or repayment of, interest or principal, or both, rents, fees or other charges, or any part thereof, on any loan, lease or sale obligation or any instrument evidencing or securing the same, made or entered into as authorized by this chapter; and is authorized to accept payment in such manner and form as provided therein in the event of default by a participating party, and to assign any such insurance or guarantee as security for bonds.

F. The city is authorized to fix rents, payments, fees, charges and interest rates for a financing authorized by this chapter and to agree to revise from time to time such rents, payments, fees, charges and interest rates to reflect changes in interest rates on bonds, losses due to defaults or changes in other expenses related to this chapter, including city administrative expenses.

G. The city is authorized to hold deeds of trust or mortgages or security interests in personal property as security for loans and other obligations authorized by this chapter and to pledge or assign the same as security for repayment of bonds. Such deeds of trust, mortgages or security interests, or any other interest of the city in any facility, may be assigned to, and held on behalf of the city by, any bank or trust company appointed to act as trustee by the city in any resolution or indenture providing for issuance of the bonds.

H. The city is authorized to contract for such engineering, architectural, financial, accounting, legal or other services as may be necessary in the judgment of the city for the purposes of this chapter.

I. The city requires that contractors and subcontractors engaged in the construction of facilities financed under this part shall provide equal opportunity for employment, without discrimination as to race, marital status, sex, color; religion, national origin or ancestry. The city also requires that participating parties engaged in the acquisition, construction, installation, reconstruction, rehabilitation or improvement of facilities financed under this part shall submit and receive approval from the city of an affirmative action program prior to the issuance of bonds for such facility.

J. Except as specifically provided in this chapter, the acquisition, construction, installation, reconstruction, rehabilitation or improvement of a facility financed under this chapter shall not be subject to any requirements relating to buildings, works or improvements owned or operated by the city, and any requirement of public competitive bidding or other procedural restriction imposed on the award of contracts for acquisition or construction of a city building, work or improvement or to the lease, sublease, sale or other disposition of city property shall not be applicable to any action taken under this chapter.

K. In addition to all other powers specifically granted by this chapter, the city is authorized to contract for and do all things necessary or conve-

nient to carry out the purposes of this chapter, provided, however, that the city shall not have the power to operate a facility financed under this chapter as a business, except temporarily in the case of a default by a participating party. (Ord. 11950 § 3 (part), 1996: prior code §§ 14-2.01—14-2.11)

#### **4.40.030 Bonds.**

A. The city is authorized to issue bonds in an aggregate principal amount not to exceed five hundred million dollars (\$500,000,000.00) and to issue such bonds, from time to time, in such series and amounts as are determined by the Council to be necessary or appropriate to provide for the costs of facilities approved by the Council. Bonds shall be negotiable instruments for all purposes, subject only to the provisions of such bonds for registration.

B. All of the bonds authorized to be issued shall be limited obligations of the city payable from all or any specified part of the revenues and the moneys and assets authorized in this chapter to be pledged or assigned to secure payment of bonds. Such revenues, moneys or assets shall be the sole source of repayment of such issue of bonds. Bonds issued as authorized by this chapter shall not be deemed to constitute a debt or liability of the city or a pledge of the faith and credit of the city but shall be payable solely from specified revenues, moneys and assets. The issuance of bonds shall not directly, indirectly, or contingently obligate the city to levy or pledge any form of taxation or to make any appropriation for their payment.

All bonds shall contain on the face thereof a statement to the following effect:

Neither the faith and credit nor the taxing power of the City of Oakland is pledged to the payment of the principal of or premium, if any, or interest on this bond.

C. Bonds shall be issued as serial bonds, term bonds, installment bonds or pass-through certificates or any combination thereof. The Mayor or City Manager shall determine the terms and timing of the issuance of particular bonds in accord with the

resolution of the Council approving the particular facility to be financed thereby. Bonds shall bear such date or dates, mature at such time or times not to exceed forty (40) years, bear interest at such fixed or variable rate or rates approved by the participating party whose facility is being financed but not to exceed the maximum rate permitted by law, be payable at such time or times, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in lawful money of the United States of America at such place or places, be subject to such terms of redemption and have such other terms and conditions as such resolution, or any indenture to be entered into by the city pursuant to such resolution, shall provide. Bonds shall be sold at either public or private sale and for such prices as the city shall determine.

D. Any resolution relating to the issuance of any bonds, or any indenture to be entered into by the city pursuant to such resolution, may contain provisions respecting any of the following terms and conditions, which shall be a part of the contract with the holders of such bonds:

1. The terms, conditions and form of such bonds and the interest and principal to be paid thereon;

2. Limitations on the uses and purposes to which the proceeds of sale of such bonds may be applied, and the pledge or assignment of such proceeds to secure the payment of such bonds;

3. Limitations on the issuance of additional parity bonds, the terms upon which additional parity bonds may be issued and secured, and the refunding of outstanding bonds;

4. The setting aside of reserves, sinking funds and other funds and the regulation and disposition thereof;

5. The pledge or assignment of all or any part of the revenues and of any other moneys or assets legally available therefor (including loans, deeds of trust, mortgages, leases, subleases, sales agreements

and other contracts and security interests) and the use and disposition of such revenues, moneys and assets, subject to such agreements with the holders of bonds as may then be outstanding;

6. Limitation on the use of revenues for operating, administration or other expenses of the city;

7. Specification of the acts or omissions to act which shall constitute a default in the duties of the city to holders of such bonds, and providing the rights and remedies of such holders in the event of default, including any limitations on the right of action by individual bondholders;

8. The appointment of a corporate trustee to act on behalf of the city and the holders of its bonds, the pledge or assignment of loans, deeds of trust, mortgages, leases, subleases, sales contracts and any other contracts to such trustee, and the rights of such trustee;

9. The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of such bonds the holders of which must consent thereto, and the manner in which such consent may be given; and

10. Any other provisions which the Council may deem reasonable and proper for the purposes of this chapter and the security of the bondholders.

E. Any pledge of revenues or other moneys or assets as authorized by this chapter shall be valid and binding from the time such pledge is made. Revenues, moneys and assets so pledged and thereafter received by the city shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the city, irrespective of whether such parties have notice thereof. Neither the resolution nor any indenture by which a pledge is created need be filed or recorded except in the records of the city.

F. Neither the members of the Council, the officers or employees of the city, nor any person executing any bonds shall be liable personally on the bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

G. The city shall have the power to purchase its bonds from any funds available therefor. The city may hold, pledge, cancel, or resell such bonds, subject to and in accordance with agreements with the bondholders.

H. Any holder of bonds issued under the provisions of this chapter, or any of the coupons appertaining thereto, and any trustee appointed pursuant to any resolution relating to the issuance of bonds, except to the extent the rights thereof may be restricted by such resolution or any indenture authorized thereby to be entered into by the city, may, either at law or in equity, by suit, action, mandamus or other proceedings, protect or enforce any and all rights specified in law or in such resolution or indenture, and may enforce and compel the performance of all duties required by this chapter or by such resolution or indenture to be performed by the city or by any officer, employee, or agent thereof, including the fixing, charging, and collecting of rates, fees, interest, and charges authorized and required by the provisions of such resolution or indenture to be fixed, charged, and collected.

I. The city is authorized to issue bonds for the purpose of refunding any bonds then outstanding.

J. In anticipation of the sale of bonds authorized by this chapter, the city is authorized to issue bond anticipation notes, and to renew the same from time to time, in such series and amounts as are determined by the Council to be necessary or appropriate for the costs of facilities approved by the Council. Such notes shall be payable from revenues or other moneys or assets authorized by this chapter to be pledged to secure payment of bonds, and which are not otherwise pledged, or from the proceeds of sale of the particular bonds in anticipation of which they are issued. Such notes shall be issued in the same manner as bonds. The Mayor or City Manager shall determine the terms and timing of the issuance of particular bond anticipation notes in accord with the provisions of subsection C of this section and the resolution of the Council approving the particular facility to be financed thereby. Such notes, any

resolution relating to the issuance of such notes and any indenture to be entered into by the city pursuant to such resolution may contain any provisions, conditions or limitations permitted under subsection D of this section.

K. The validity of the authorization and issuance of any bonds is not dependent on and shall not be affected in any way by any proceedings taken by the city for the approval of any financing or the entering into of any agreement, or by the failure to provide financing or enter into any agreement, for which bonds are authorized to be issued under this chapter. (Ord. 11950 § 3 (part), 1996: prior code §§ 14-3.01—14-3.11)

#### **4.40.040 Supplemental provisions.**

A. This chapter, being necessary for the welfare of the city and its inhabitants, shall be liberally construed to effect its purposes.

B. Any omission of any officer or the city in proceedings under this chapter or any other defect in the proceedings shall not invalidate such proceedings or the bonds issued pursuant to this chapter.

C. This chapter is full authority for the issuance of bonds by the city for any of the purposes specified herein.

D. This chapter shall be deemed to provide a complete, additional, and alternative method for doing the things authorized thereby, and shall be regarded as supplemental and additional to the powers conferred by other laws. The issuance of bonds under the provisions of this chapter need not comply with the requirements of any other law applicable to the issuance of bonds. The purposes authorized hereby may be effectuated and bonds are authorized to be issued for any such purposes under this chapter notwithstanding that any other law may provide for such purposes or for the issuance of bonds for like purposes and without regard to the requirements, restrictions, limitations or other provisions contained in any other law.

E. To the extent that the provisions of this chapter are inconsistent with the provisions of any general statute or special act or parts thereof the provisions of this chapter shall be deemed controlling.

(Ord. 11950 § 3 (part), 1996: prior code §§ 14-4.01—14-4.05)



## Chapter 4.44

### **PFRS PENSION OBLIGATION BOND LAW**

#### **Sections:**

- 4.44.010      General provisions and definitions.**
- 4.44.020      Issuance of bonds to finance the program.**
- 4.44.030      Miscellaneous provisions.**

#### **4.44.010      General provisions and definitions.**

**A. Title.** This chapter may be cited as the PFRS pension obligation bond law.

**B. Purpose.** The Council finds and declares that it is necessary, essential, a public purpose and a municipal affair for the city to be authorized to finance all or a portion of the obligations of the city to the police and fire retirement system under the retirement law, from time to time as determined by the city, in the interests of the public health, safety and welfare.

**C. Definitions.** Unless the context otherwise requires, the following definitions shall govern the construction of this chapter:

“Bonds” means any bonds, notes, interim certificates, or other obligations and evidences of indebtedness issued by the city pursuant to this chapter.

“Chapter” means this Chapter 4.44 of the Oakland Municipal Code, as amended from time to time.

“Charter” means the Charter of the city, as amended from time to time.

“City” means the city of Oakland, California, a charter city in the state existing under and exercising powers pursuant to the Charter and the Constitution of the state.

“Costs” means all costs representing or relating to the obligations of the city to the system under Article XXVI of the Charter, and shall include, but not be limited to, the following: (1) the costs of services provided to implement the program, including costs of consultants, advisors, actuaries, accountants, planners, attorneys, financial and feasibility

consultants, in each case, whether an employee of the city or an independent consultant; (2) costs of the city properly allocated to the program and with respect to costs of its employees or other labor costs, including the cost of medical, pension, retirement and other benefits as well as salary and wages and the allocable costs of administrative, supervisory and managerial personnel and the properly allocable cost of benefits provided for such personnel; (3) costs of amortizing any unfunded accrued actuarial liability of the system; (4) financing expenses, including costs related to issuance of and securing of bonds, costs of credit facilities, liquidity facilities, municipal bond insurance or any other kind of credit enhancement relating to the bonds, any amount to be deposited in any debt service reserve fund, the cost of any reserve fund surety policy, trustee’s and paying agent’s fees and expenses; (5) any interest rate swap termination payments due under a swap relating to any series of bonds or the failure to issue bonds, or any payments due upon initiation of any swap arrangement; and (6) such other costs and expenses that can be capitalized under generally accepted accounting principles in effect at the time the cost is incurred by the city.

“Council” means the Council of the city.

“Debentures” means any one or more of the obligations or evidences of indebtedness issued by the city in favor of the system, which may be denominated “Pension Obligation Debentures” or by such other appellation selected by the city in the proceedings relating thereto, which evidence all or a portion of the obligations of the city imposed by the retirement law.

“Program” means the program of the city established pursuant to the provisions hereof, to finance the obligations of the city pursuant to the retirement law;

“Retirement law” means Article XXVI of the City Charter and, as such may be amended from time to time.

“State” means the state of California.

“System” means the police and fire retirement system of the city established and operating pursuant to Article XXVI of the City Charter.

"Tax override" means the proceeds of the tax levied by the city pursuant to Measure R adopted by the voters of the city on June 8, 1976, as amended, for the purpose of amortizing the obligations of the city to the system by the year 2026. (Ord. 11851 § 1 (part), 1996: prior code § 20-1.01—20-1.03)

#### **4.44.020      Issuance of bonds to finance the program.**

**A. General Procedures Authorized Herein.** The city is authorized, by adoption of one or more authorizing resolutions or by any other official action permitted by the Charter, to implement the following procedures pursuant to the powers granted by the Charter so as to cause debentures and bonds to be issued pursuant to the program:

1. To cause one or more debentures to be issued, from time to time as determined by the city, to evidence all or any portion of the obligation of the city to the system under the retirement law;

2. To issue bonds pursuant to the procedures set forth in this chapter for the purpose of funding or refunding the debentures and otherwise assisting the program authorized by this chapter and for the purpose of refunding any outstanding bonds;

3. To establish the terms and conditions for the program undertaken pursuant to this chapter;

4. To employ or contract for such legal, consultant, financial advisory, underwriting, actuarial, economic feasibility, or other services in connection with the program, as may be necessary in the judgment of the Council for the successful implementation of the program, the issuance of the debentures and the issuance and sale of bonds, and to pay the costs of the program;

5. In addition to all other procedures specifically authorized in this chapter, to do all things necessary or convenient and consistent with the Charter to carry out the purposes of this chapter.

**B. Authorization of Debentures and Bonds.** The city may issue debentures from time to time and in such amounts as determined by the city in connection with the program to evidence all or any portion of the then-existing obligation of the city to the system under the retirement law and to pay the costs

relating thereto. The city may issue its bonds for the purpose of implementing the program as authorized by this chapter. Any debentures and any issue of bonds may be payable from such sources as the city may determine, including the tax override and any funds pledged to any issue of bonds in connection with the proceedings relating thereto.

#### **C. Proceedings Authorizing Issuance of Debentures and Bonds—Public or Private Sales.**

1. The proceedings of the city authorizing the issuance of the debentures and bonds may provide all of the following for the debentures and bonds:

- a. The form of the debentures, the costs evidenced thereby, and the terms and conditions set forth therein, which shall be consistent with the retirement law, the other provisions of the charter and this chapter;

- b. The form of the bonds, which may be issued as serial bonds, term bonds, capital appreciation bonds, zero-coupon bonds, limited interest bonds, installment bonds, notes or other forms of obligations and evidences of indebtedness, or any combination thereof, and which may be issued in one or more series having like or different terms and may be issued at one time or in multiple issuances as determined by the city;

- c. The costs to be financed by the issuance of the bonds;

- d. The date or dates of the bonds;

- e. The time or times of maturity of the bonds;

- f. The interest, fixed or variable, to be borne by the bonds and whether or not any interest or other income on the bonds is intended to be subject to taxation under state and federal tax laws;

- g. The time or times that interest on the bonds shall accrue and be payable and the time or times that principal may be payable;

- h. The denominations, and the registration privileges of the bonds and the currency in which the bonds shall be paid;

- i. The manner of execution of the bonds;

- j. The place or places the bonds are payable;

- k. The terms of redemption, if any, of the bonds;

1. Any other terms and conditions deemed necessary or advisable by the city.

2. The bonds may be sold at either public or private sale and for such prices as the city shall determine.

D. Application of Proceeds of Bonds. Proceeds of any issue of bonds may be applied, subject to such arrangements and procedures as are approved by the city in connection with such proceedings, including any agreement between the city and the system relating to the repayment of one or more debentures and the refunding of outstanding bonds, together with all costs relating to the issuance of bonds and debentures or any refunding bonds, including any bond reserve funds which the city determines to be reasonably required, the costs of any insurance or other credit enhancement authorized by subsection F of this section, and any related investment or other contracts and for such other purposes as the city shall determine.

E. Trust Agreements. In the discretion of the city, any bonds issued under the provisions of this chapter may be secured by a trust agreement or indenture, including any master trust agreement or indenture and any supplemental trust agreements or supplemental indentures pursuant thereto, by and between the city and a corporate trustee or trustees, which may be any trust company or bank approved by the city and having the powers of a trust company within or without the state. Such trust agreement or indenture (and any supplemental trust agreements or indentures) may contain such provisions for protecting and enforcing the rights and remedies of the bond owners as may be reasonable and proper and not in violation of law. Any such trust agreement or indenture (and any supplemental trust agreements or indentures) may set forth the rights and remedies of the bond owners and of the trustee or trustees, and may restrict the individual rights of action by bond owners. In addition to the foregoing, any such trust agreement or indenture (and any supplemental trust agreements or indentures) may contain such other provisions as the city may deem reasonable and proper for the security of the bond owners, including covenants of the city relating to the bonds.

F. Insurance, Credit Enhancement and Liquidity Support. The city may obtain insurance or other credit enhancement or liquidity support for the bonds or the program and may enter into any credit, reimbursement agreement or other agreement with any person or entity in connection therewith. The agreement or agreements shall contain such terms as the city deems necessary or appropriate.

G. Bonds and Investments—Contracts to Place on Interest Rate, Cash Flow, or Other Basis—Other Program Agreements. In connection with, or incidental to, the issuance of the debentures and the bonds and the implementation of the program, the city may enter into any contracts which the city determines to be necessary or appropriate to place the bonds, in whole or in part, on the interest rate, cash flow, or other basis desired by the city, including, without limitation, contracts commonly known as interest rate swap agreements, forward payment conversion agreements, futures, or contracts providing for payments based on levels of, or changes in, interest rates, stock or other indices, or contracts to exchange cash flows or a series of payments, or contracts, including, without limitation, interest rate floors, caps or collars, options, puts or calls to hedge payment, rate, spread, valuation of currency or similar exposure. These contracts and arrangements shall be entered into with the parties, selected by the means, and contain the payment, security, default, remedy, and other terms and conditions, determined by the city, after giving due consideration for the creditworthiness of the counterparties, where applicable, including any rating by a nationally recognized rating agency or any other criteria as may be determined to be appropriate by the city. The city may enter into any other agreements necessary or appropriate in connection with the issuance of debentures or bonds.

H. Delegation to City Officers—No Personal Liability. In any proceedings undertaken by the city to implement the program, the city may delegate to such of its officers as it shall determine the authority to execute and deliver any debenture, bond, certificate, contract, agreement or arrangement to be executed and delivered in connection with the program,

within such parameters and subject to the terms and conditions determined by the city in such proceedings. Neither the members of the council nor any person executing the debentures or the bonds shall be liable personally on the debentures or the bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

I. Refunding Bonds. The city may provide for the issuance of bonds any portion of which is to be used for the purpose of refunding outstanding bonds, including the payment of the principal thereof and interest and redemption premiums, if any, thereon. The proceeds of bonds issued to refund any outstanding bonds may, in the discretion of the city, be applied to the defeasance and retirement of such outstanding bonds at maturity, or the redemption (on any redemption date) or purchase of such outstanding bonds prior to maturity, upon such terms and subject to such conditions as the city shall deem advisable.

J. Repayment of Bonds. The principal and any premium, and interest on the bonds may be payable from any source of funds determined by the city and such other funds, if any, pledged to or made available for the payment of such bonds as determined by the city in connection with the proceedings relating to any issue of bonds.

K. Agreements with the System. In connection with any proceedings for the issuance of debentures or bonds, the city and the system may enter into such agreements pertaining thereto as the city deems necessary or appropriate. The city may require the delivery of such certifications and opinions of the system, its actuary or other consultants or experts acting for or on behalf of the system as the city may deem necessary or appropriate. (Ord. 11851 § 1 (part), 1996: prior code § 20-2.01—20-2.11)

#### **4.44.030 Miscellaneous provisions.**

A. Liberal Construction. This chapter, being necessary for the health, welfare and safety of the city and its residents and the satisfaction by the city and the system of their respective obligations under Article XXVI of the Charter, shall be liberally construed to effect its purposes. Furthermore, the Coun-

cil declares that this chapter is an exercise of the power granted to the city by the City Charter and the Constitution of the state and is an exercise by the city of its powers as to municipal affairs and its police powers, and this chapter shall be liberally construed to uphold its validity under the laws of the state.

B. Provisions of this Chapter are Complete, Additional and Alternative. This chapter shall be deemed to provide a complete, additional and alternative method for doing the things authorized by this chapter, and shall be regarded as supplemental and additional to the powers conferred by other laws. The issuance of the debentures and bonds and the entering into of any credit, reimbursement or other agreement under the provisions of this chapter need not comply with the requirements of any other law applicable to the issuance of debentures and bonds or the execution of such agreements, except that all such actions shall be consistent with the Charter. The purposes authorized hereby may be effectuated and debentures and bonds are authorized to be issued for any such purposes under this chapter, notwithstanding that any other law may provide for such purposes or for the issuance of bonds for like purposes and without regard to the requirements, restrictions, limitations or differing provisions contained in any other law. Notwithstanding the foregoing provisions of this section, the city may avail itself of any power or authority conferred upon general law cities by the general laws of this state in order to better effectuate the purposes of this chapter which are consistent and not conflicting with the provisions of the Charter and this chapter and any such laws which are relied upon by the city in connection with any proceedings under this chapter are expressly authorized pursuant to Section 106 of the Charter.

C. Actions to Determine Validity of Bonds and Proceedings. An action may be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure of the state of California or any of the general laws of the state applicable in the premises, to determine the validity of the debentures and bonds and the legality

and validity of all proceedings previously taken and proposed to be taken for the authorization and issuance of debentures and bonds, the authorization, issuance, sale, and delivery of the debentures and bonds, for entering into any trust agreement, funding agreement, credit, reimbursement or other agreement in connection therewith, for the application and use of the proceeds of the debentures and bonds, and for the payment of the principal thereof and interest thereon.

D. Chapter Controlling. To the extent that the provisions of this chapter are inconsistent with the provisions of any general statute or special act or parts thereof, the provisions of this chapter shall be deemed controlling. (Ord. 11851 § 1 (part), 1996: prior code § 20-3.01—20-3.04)

**Chapter 4.48****BUSINESS IMPROVEMENT  
MANAGEMENT DISTRICTS****Sections:**

- 4.48.010      Title.**  
**4.48.020      General provision.**  
**4.48.030      Alternative procedures.**  
**4.48.040      Definitions.**  
**4.48.050      Establishment.**  
**4.48.060      Management district plan—  
Contents.**  
**4.48.070      Procedures.**  
**4.48.080      Resolution of intention—  
Contents.**  
**4.48.090      Preliminary report of the City  
Clerk.**  
**4.48.100      Approval by the City Council.**  
**4.48.110      Resolution of intention notice—  
Mail and publication.**  
**4.48.120      Hearing of protests—Majority  
protest.**  
**4.48.130      Record of notice and map of  
assessment district.**  
**4.48.140      Establishment of district and  
levying of assessment.**  
**4.48.150      Contesting of validity of an  
assessment.**  
**4.48.160      Administration.**  
**4.48.170      Special fund advance.**  
**4.48.180      Collection of assessment—Time  
and manner.**  
**4.48.190      Advisory board—Appointment  
and duties.**  
**4.48.200      Advisory board—Report,  
contents.**  
**4.48.210      Modification of boundaries,  
assessments, improvements or  
activities.**  
**4.48.220      Dissolution of district.**

**4.48.010      Title.**

This chapter may be referred to as the “the city of Oakland business improvement management district ordinance.” (Ord. 12190 § 1, 1999)

**4.48.020      General provision.**

Whenever the public interest or convenience may require, the city council of the city assist specifically defined and boundaried commercial districts of the city in the formation of business improvement management districts. The city shall determine and declare the district to be benefitted by the improvements, maintenance and activities including all expenses incurred incidentally thereto, upon the lots or parcels of real property in proportion to the estimated benefits to be received, as specified in the management district plan. (Ord. 12190 § 2, 1999)

**4.48.030      Alternative procedures.**

The procedures established in this chapter shall be additional or alternative to any other procedure established by ordinance or state law. The election to proceed under this chapter shall be expressed in the resolution of intention to form the district which shall be referred to as a business improvement management district (“BIMD” or “district”). (Ord. 12190 § 3, 1999)

**4.48.040      Definitions.**

“Activities” which benefit real property located in the district, means, but is not limited to, all of the following:

1. Promotion of public events which benefit businesses or real property in the district;
2. Furnishing of music in any public place within the district;
3. Promotion of tourism within the district;
4. Marketing and economic development, including business retention and recruitment;
5. Providing security, sanitation, graffiti removal, street and sidewalk cleaning and other municipal services supplemental to those normally provided by the municipality.

"Improvement" means the acquisition, construction, installation, or maintenance of any tangible property with an estimated useful life of five years or more including, but not limited to, the following:

1. Parking facilities;
2. Benches, booths, kiosks, display cases, pedestrian shelters and signs, trash receptacles and public restrooms;
3. Lighting and heating facilities;
4. Decorations;
5. Fountains;
6. Planting areas;
7. Minor modification of existing streets;
8. Facilities or equipment or both, to enhance security of persons and property within the area; ramps, sidewalks, plazas, town centers or pedestrian malls;
9. Rehabilitation or removal of existing public structures;
10. Installation or planting of landscaping;
11. The installation or construction of statuary, fountains and other ornamental structures and facilities;
12. The installation or construction of any facilities which are appurtenant to any of the foregoing or which are necessary or convenient for the maintenance or servicing thereof, including, but not limiting to, grading, clearing, removal of debris, the installation or construction of curbs, gutters, walls, sidewalks or paving, or water, irrigation, drainage or electrical facilities;

"Maintain" or "maintenance" means the furnishing of services and materials for the ordinary and usual maintenance, operation, and servicing of any improvement, including:

1. Repair, removal, or replacement of any part of the improvement;
2. Providing for the life, growth, health and beauty of landscaping including cultivation, irrigation, trimming, spraying, fertilizing, or treating for disease or injury;
3. The removal of trimmings, rubbish, debris and other solid waste;

4. The cleaning, sandblasting and painting of walls and other improvements to remove or cover graffiti. (Ord. 12190 § 4, 1999)

#### **4.48.050 Establishment.**

Upon the written petition, signed and acknowledged, of the property owners in the proposed district who will pay more than thirty (30) percent of the assessments proposed to be levied, the City Council may initiate proceedings to form a district by the adopting of a resolution expressing its intention to form a district. The petition of property owners shall include the Management District Plan. (Ord. 12190 § 5, 1999)

#### **4.48.060 Management district plan—Contents.**

The management district plan to be submitted before the City Council can take any action on the establishment of a BIMD under this chapter shall contain all of the following:

- A. A map of the district in sufficient detail to locate each parcel of property within the district;
- B. The name of the proposed district;
- C. A description of the boundaries of the district, including the boundaries of any benefit zones, proposed for the establishment or extension of the district in a manner sufficient to identify the lands included. Under no circumstances shall the boundaries of a proposed district overlap with the boundaries of another existing district created pursuant to this part. Nothing in this part prohibits the boundaries of a district created pursuant to this part to overlap with other assessment districts established pursuant to other provisions of law including, but not limited to, the Parking and Business Improvement Area Law of 1989;
- D. The improvements and activities proposed for each year of operation of the district and the maximum cost thereof;
- E. The total annual amount proposed to be expended for improvements, maintenance and operations;
- F. The proposed source or sources of financing including the proposed method and basis of levying

the assessment in sufficient detail to allow each property owner to calculate the amount of the assessment to be levied against his or her property;

G. The time and manner of collecting the assessments;

H. Any proposed rules and regulations to be applicable to the district. (Ord. 12190 § 6, 1999)

#### **4.48.070 Procedures.**

A. The City Council shall identify all parcels which will have a special benefit conferred upon them and upon which an assessment will be imposed. The proportionate special benefit derived by each identified parcel shall be determined in relationship to the entirety of the capital cost of a public improvement or the maintenance and operation expense of a public improvement or for the cost of the property service being provided. No assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel. Parcels within a district that are owned or used by any governmental agency, the state, or the United States shall not be exempt from assessment unless the City Council finds that it has been demonstrated, by clear and convincing evidence, that such publicly owned parcels in fact receive no special benefit.

B. All assessments must be supported by a detailed engineer's report prepared by a registered professional engineer certified by the state. The engineer's report may be incorporated in the management district plan.

C. The amount of the proposed assessment for each identified parcel shall be calculated and the recorded owner of each parcel shall be given written notice by mail of the proposed assessment, the total amount thereof chargeable to the entire district, the amount chargeable to the owner's particular parcel, the duration of such payments, the reason for such assessment and the basis upon which the proposed assessment was calculated together with the date, time and location of a public hearing on the proposed assessment.

D. Each notice shall also include, in a conspicuous place thereon, a summary of the procedures

applicable to the completion, return and tabulation of the ballots required including a disclosure statement that the existence of a majority protest will result in the assessment not be imposed.

E. Each such notice mailed to owners of identified parcels within the district shall contain a ballot which includes the agency's address for receipt of any such ballot once completed by any owner receiving such notice whereby each such owner may indicate his or her name, reasonable identification or the parcel and support or opposition to the proposed assessment.

F. The City Council shall conduct a public hearing upon the proposed assessment not less than forty-five (45) days after mailing the notice of the proposed assessment to record owners of each identified parcel. At the public hearing, the agency shall consider all protests against the proposed assessment and tabulate the ballots. The City Council shall not impose an assessment if there is a majority protest. A majority protest exists if, upon the conclusion of the hearing, ballots submitted in opposition to the assessment exceed the ballots submitted in favor of the assessment. In tabulating the ballots, the ballots shall be weighted according to the proportional financial obligation of the affected property. (Ord. 12190 § 7, 1999)

#### **4.48.080 Resolution of intention—Contents.**

Before the City Council can establish a BIMD pursuant to this chapter, the City Council shall pass a resolution declaring its intention to do so. Such resolution, in addition to all other matters it is herein required to contain, shall briefly describe the proposed improvements, state the period of time, which shall not exceed ten years, for which the proposed improvements are to be made, and contain a description of the district to be benefited thereby and to be assessed to pay the costs and expenses thereof. The resolution of intention shall further do all of the following:

A. State that a BIMD is proposed to be established pursuant to this chapter and describe the boundaries of the proposed district and boundaries of each separate benefit zone to be established with-

in the district. The boundaries may be described by reference to the map and description contained in the preliminary report of the City Clerk on file in the office of the City Clerk;

- B. State the name of the proposed district;
- C. State the type or types of improvements and activities proposed to be funded by the levy of assessments on property owners within the district, including any improvements to be acquired;
- D. State the amount of the proposed assessment for the entire district, the amount chargeable to the owner's particular parcel, the duration of the payments, the reason for such assessment and the basis upon which the proposed assessment was calculated;
- E. State the date, time and location of a public hearing on the proposed assessment;
- F. Include a ballot as described in Section 4.48.070(F);
- G. State, in a conspicuous place, a summary of the procedures applicable to the completion, return and tabulation of the ballots, including a disclosure statement that the existence of a majority protest will result in the assessment not being imposed;
- H. State that the public hearing the testimony of all interested persons for or against the establishment of the district, the boundaries of the district, or the furnishing of specified types of improvements or activities will be heard;
- I. Refer to the preliminary report of the City Clerk on file in the office of the City Clerk;
- J. State the manner of collection of the assessment. (Ord. 12190 § 8, 1999)

#### **4.48.090      Preliminary report of the City Clerk.**

Before the City Council can take any action on such resolution of intention, the City Clerk shall prepare and file a report in writing, proposing that the proceeding be commenced as requested in the petition, designating the plans and specifications of the proposed maintenance, improvements and activities for the proposed district and an estimate of the cost and expenses of said work for each year during which the proposed work will be done; including a certified engineer's report stating the district estab-

lishment is consistent with the provisions of Article XIII of the State Constitution in that each lot or parcel within said district to be assessed is being assessed in proportion to the estimated benefit to be received; and containing a diagram showing the boundaries of the proposed assessment district and each lot or parcel of land within said district proposed to be assessed. (Ord. 12190 § 9, 1999)

#### **4.48.100      Approval by the City Council.**

Upon a demonstrated show of support, through petition, of at least thirty (30) percent of the weighted property owners who will pay into the proposed assessment district, the City Clerk will bring the issue of the proposed district to the City Council. (Ord. 12190 § 10, 1999)

#### **4.48.110      Resolution of intention notice—Mail and publication.**

A. A complete copy of the resolution of intention shall be mailed by first-class mail to each property owner in the proposed district, and to each local chamber of commerce and business organization known by the City Council to be located within the proposed district, no later than forty-five (45) days before the public hearing.

B. In addition to first class mailed notice to each property owner, chamber of commerce and business organization within the proposed district, the City Council shall publish the Resolution of Intention in a newspaper of general circulation in the City once, at least seven days before the public hearing. (Ord. 12190 § 11, 1999)

#### **4.48.120      Hearing of protests—Majority protest.**

A. At any time prior to the date set for hearing protests, any person affected by the proposed assessment may make a written protest stating his or her objections thereto. Such protests must contain the information contained in the ballot mailed to the property owner in sufficient detail to allow the City Clerk to identify the owner, the parcel and the amount of the proposed assessment.

B. At the time set for hearing protests, or any time to which the hearing may be continued, the City Council shall proceed to hear and pass up on all such protests. The City Council not impose an assessment if there is a majority protest. A majority protest exists if, upon the conclusion of the hearing, ballots submitted in opposition to the assessment exceed the ballots submitted in favor of the assessment. The ballots shall be weighted in proportion to the assessment upon the affected property. (Ord. 12190 § 12, 1999)

#### **4.48.130 Record of notice and map of assessment district.**

Following adoption of the resolution of intention, the City Clerk shall record a notice and map describing the assessment district pursuant to California Streets and Highways Code Division 4.5 (commencing with Section 3100). All the provisions of that Division 4.5 apply to the district established pursuant to this chapter. (Ord. 12190 § 13, 1999)

#### **4.48.140 Establishment of district and levying of assessment.**

Not earlier than thirty (30) days after the adoption of the resolution of intention to establish the proposed district, and if there is no majority protest as described in Section 4.48.120, and after effective date of the resolution of intention, the City Council shall adopt a resolution consistent with the resolution of intention. The adoption of the resolution establishing the district and levying the assessment, or if the district has been previously established, levying the new assessment, and recordation of the notice and map pursuant to Section 4.48.130, shall constitute the levy of an assessment in each of the fiscal years referred to in the management district plan. This resolution shall contain all of the following:

- A. The management district plan;
- B. The number, date of adoption, and title of the resolution of intention;
- C. The time and place where the public hearing was held concerning the establishment of the district or the levying of a new assessment;

D. A determination regarding any protests received;

E. A statement that a BIMD has been established;

F. A statement that the improvements and activities to be provided in the district will be funded by the levy of assessments. The revenue from the levy of assessments within a district shall not be used to provide improvements or activities outside the district or for any purpose other than the purposes specified in the resolution of intention, as modified by the City Council at the hearing concerning the establishment of the district;

G. A finding that the property within the BIMD will be benefited by the improvements and activities funded by the assessment to be levied. (Ord. 12190 § 14, 1999)

#### **4.48.150 Contesting of validity of an assessment.**

The validity of an assessment levied under the provisions of this chapter shall not be contested in any action or proceeding unless the same is commenced within thirty (30) days after the time said assessment is levied, and any appeal from a final judgment in such action or proceeding must be perfected within thirty (30) days after entry of such judgment. (Ord. 12190 § 15, 1999)

#### **4.48.160 Administration.**

The City Clerk shall administer the BIMD. The property owners at the time of balloting for the assessment ballot procedure shall determine whether they want the city to conduct or contract for some or all of the landscaping, security, programming or maintenance activities or improvements for the district or whether they want the city to contract with a designated nonprofit organization, comprised of the assesses themselves, to conduct the landscaping, security programming or maintenance activities or improvements. Any nonprofit corporation designated by the property owners shall enter into an annual contract with the city which will set forth the responsibilities and contractual obligations of the parties. (Ord. 12190 § 16, 1999)

**4.48.170 Special fund advance.**

The city may advance funds for the first quarter of a new district so that the district can commence work prior to the initial collection of the assessments. The funds advanced will not exceed one quarter of the total assessment for the first year. The funds advanced will then be deducted from the first year's assessment collections. (Ord. 12190 § 17, 1999)

**4.48.180 Collection of assessment—Time and manner.**

The collection of assessments levied pursuant to this chapter shall be made at the time and in the manner set forth by the City Council in the resolution of intention. The assessment may be collected at the same time and in the same manner as for the ad valorem property tax, and may provide for the same lien priority and penalties for delinquent payment. (Ord. 12190 § 18, 1999)

**4.48.190 Advisory board—Appointment and duties.**

A. Before adopting a resolution establishing the district, the City Council shall appoint an advisory board which shall make a recommendation to the City Council on the expenditure of revenues derived from the levy of assessments, on the classification of properties applicable, and on the method and basis of levying the assessments. The City Council may designate existing advisory boards or commissions to serve as the advisory board for the district or may create a new advisory board for that purpose. At least one member of the advisory board shall be a business licensee within the district who is not also a property owner within the district.

B. Any advisory board appointed by the City Council pursuant to subsection A of this section shall comply with provisions of the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division of Title 5 of the Government Code). (Ord. 12190 § 19, 1999)

**4.48.200 Advisory board—Report, contents.**

A. The advisory board shall cause to be prepared a report of each fiscal year for which assessments are to be levied and collected to pay the costs of the improvements and activities described in the report. The report may propose changes, including, but not limited to, the boundaries of the BIMD or any benefit zones within the district, the basis and method of levying the assessments, and any changes in the classification of property, if a classification is used.

B. The report shall be filed with the City Clerk and shall refer to the BIMD by name, specify the fiscal year to which the report applies, and with respect to that fiscal year, shall contain all of the following information:

1. Any proposed changes in the boundaries of the BIMD or in any benefit zones within the district;
2. The improvements and activities to be provided for that fiscal year;
3. An estimate of the cost of providing the improvements and the activities for that fiscal year;
4. The method and basis of levying the assessment in sufficient detail to allow each real property owner to estimate the amount of the assessment to be levied against his or her property for that fiscal year;
5. The amount of any surplus or deficit revenues to be carried over from a previous fiscal year;
6. The amount of any contributions to be made from sources other than assessments levied pursuant to this part.

C. The City Council may approve the report as filed by advisory board or may modify any particular contained in the report and approve it as modified. Any modification shall be made pursuant to Section 4.48.140, except that any proposed increase in the amount of the levy above levels previously noticed and approved must be approved as provided in Sections 4.48.070 through 4.48.140. The City Council shall not approve a change in the basis and method of levying assessments that would impair an authorized or executed contract to be paid from the

revenues derived from the levy of assessment. (Ord. 12190 § 20, 1999)

**4.48.210 Modification of boundaries, assessments, improvements or activities.**

A. Request for Modification of Management District Plan. The advisory board may, at any time, request that the City Council modify the management district plan. Any modification of the management district plan shall be made pursuant to this section.

B. Modification by Adoption of Resolution—Written Request of Advisory Board—Hearing.

1. Upon the written request of the advisory board, the City Council may modify the management district plan by adopting a resolution after holding hearings on the proposed modification pursuant to Sections 4.48.070 through 4.48.140.

2. The City Council shall adopt a resolution of intention which states the proposed modification prior to the public hearing required by this section. The public hearing shall be held not more than sixty (60) days after the adoption of the resolution of intention. Notice of the public hearing shall be provided in Section 4.48.110. The public hearing shall be conducted as provided in Section 4.48.120.

C. Modification of Improvements and Activities Funded—Adoption of Resolution—Hearing.

1. The City Council may modify the improvements and activities to be funded with the revenue derived from the levy of the assessments by adopting a resolution determining to make the modifications after holding a public hearing on the proposed modifications. Notice of the public hearing and the proposed modifications shall be published as provided in Section 4.48.110.

2. The public hearing shall be conducted as provided in Section 4.48.120.

D. Subsequent Modification of Resolution—Refection in Notices and Maps. Any subsequent modification of the resolution shall be reflected in subsequent notices and maps recorded pursuant to Division 4.5 (commencing with Section 3100 of the

California Streets and Highways Code). (Ord. 12190 § 21, 1999)

**4.48.220 Dissolution of district.**

A. Any district established or extended pursuant to the provisions of this chapter, where there is no indebtedness, outstanding and unpaid, incurred to accomplish any of the purposes of the district, may be disestablished by resolution of the City Council in either of the following circumstance:

1. If the City Council finds there has been misappropriation of funds, malfeasance, or a violation of law in connection with the management of the district, it shall notice a hearing on disestablishment. The notice and hearing shall be held pursuant to Sections 4.48.110 and 4.48.120.

2. During the operation of the district, there shall be a thirty (30) day period each year in which the assessed property owners may request disestablishment of the district. The first such period shall begin one year after the date of establishment of the district and shall continue for a thirty (30) day period. The next such thirty (30) day period shall begin two years after the date of the establishment of the district. Each successive year of operation of the district shall have such a thirty (30) day period. Upon the written petition of the owners of real property in the area who pay thirty (30) percent or more of the assessments levied, the City Council shall notice a hearing on disestablishment. The notice and hearing shall be held pursuant to Sections 4.48.110 and 4.48.120.

B. The City Council shall adopt a resolution of intention to disestablish the district prior to the public hearing required by this section. The resolution shall state the reason for the disestablishment, shall state the time and place of the public hearing, and shall contain a proposal to dispose of any assets acquired with the revenues of the assessments levied within the property and business improvement district. The public hearing shall be held not less than thirty (30) or more than sixty (60) days after the adoption of the resolution of intention. Notice of the public hearing shall be published as provided in Section 4.48.110.

C. Upon the disestablishment of a district, any remaining revenues derived from the levy of assessments, or any revenues derived from the sale of assets acquired with the revenues, shall be refunded to the owners of the property then located and operating within the district in which assessments were levied by applying the same method and basis that was used to calculate the assessments levied in the fiscal year in which the district was disestablished. If the disestablishment occurs before an assessment is levied for the fiscal year, the method and basis that was used to calculate the assessment levied in the immediate prior fiscal year shall be used to calculate the amount of refund.

D. Notice of the disestablishment of a district shall be published once in a newspaper of general circulation in the city, not later than fifteen (15) days after the resolution disestablishing the district is adopted. (Ord. 12190 § 22, 1999)

**Chapter 4.50****SEWER REVENUE BOND LAW****Sections:****Article I. General Provisions  
and Definitions****4.50.010 Title.****4.50.030 Definitions.****Article II. Issuance of Bonds****4.50.040 General powers.****4.50.050 Authorization of bonds.****4.50.060 Proceedings authorizing issuance—Public or private sales.****4.50.070 Application of proceeds of bonds.****4.50.080 Indenture.****4.50.090 Insurance or credit enhancement.****4.50.100 Bonds and investments—Contracts to place on interest rate, cash flow, or other basis.****4.50.110 Personal liability.****4.50.120 Refunding bonds.****4.50.130 Repayment of bonds.****4.50.140 Rate stabilization fund.****Article III. Miscellaneous Provisions****4.50.150 Liberal construction.****4.50.160 Provisions of this chapter are complete, additional and alternative.****4.50.170 Validity of bonds.****4.50.180 Amendment of Chapter.****4.50.190 Chapter controlling.****4.50.200 Partial invalidity.****Article I. General Provisions and Definitions****4.50.010 Title.**

This chapter may be cited as the city of Oakland Sewer Revenue Bond Law. (Ord. 12624 § 1 (part), 2004)

**4.50.020 Purpose.**

The Council hereby finds and declares that it is necessary, essential, a public purpose and a municipal affair for the city to be authorized to issue bonds for the purpose of financing the cost of capital improvements of the sewer system. (Ord. 12624 § 1 (part), 2004)

**4.50.030 Definitions.**

Unless the context otherwise requires, the following definitions shall govern the construction of this chapter:

“Bonds” means any bonds, notes, loans, interim certificates, debentures, installment purchase agreements, leases or other obligations issued by the city pursuant to this chapter, which are payable solely from revenues as described in the issuing instrument.

“Capital improvement” means any addition, betterment, replacement, renewal, extension or improvement of or to the sewer system, including, without limitation, the acquisition of land or any interests therein, determined by the city to be necessary or convenient in connection with the utilization of the sewer system.

“Chapter” means this chapter 4.50 of the Oakland Municipal Code, as amended from time to time in accordance herewith.

“Charter” means the charter of the city of Oakland, as amended from time to time.

“City” means the city of Oakland, California, a chartered city in the State existing under and exercising powers pursuant to the Charter and the Constitution of the State.

“Cost” means with respect to any capital improvement, all costs and expenses of planning, designing, acquiring, constructing, installing and financing such capital improvement, placing such capital improvement in operation, disposal of such capital

improvement, and obtaining governmental approvals, certificates, permits and licenses with respect thereto, heretofore or hereafter paid or incurred by the city. Payment of cost shall include the reimbursement to the city for any of the costs included in this definition of cost paid by the city which have not previously been reimbursed to the city and which are not to be reimbursed from contributions in aid of construction. The term cost shall include, but shall not be limited to, funds required for:

1. Costs of preliminary investigation and development, the performance or acquisition of feasibility and planning studies, and the securing of regulatory approvals, as well as costs for land and land rights, engineering and contractors' fees, labor, materials, equipment, utility services and supplies, legal fees and financing expenses.

2. Working capital and reserves therefor in such amounts as shall be determined by the city.

3. Interest accruing in whole or in part on bonds prior to and during construction of a capital improvement or any portion thereof, and for such additional period as the city may determine.

4. The deposit or deposits from the proceeds of the bonds in any funds or accounts which deposit or deposits are required by the issuing instrument.

5. The payment of principal, premium, if any, and interest when due (whether at the maturity of principal or at the due date of interest or upon redemption or otherwise) of any note or other evidence of indebtedness the proceeds of which were applied to any of the costs of a capital improvement.

6. Training and testing costs which are properly allocable to the acquisition, placing in operation, or construction of a capital improvement.

7. All costs of insurance applicable to the period of construction and placing a capital improvement in operation.

8. All costs relating to injury and damage claims arising out of the acquisition or construction of a capital improvement less proceeds of insurance.

9. Legally required or permitted federal, state and local taxes and payments in lieu of taxes applicable to the period of construction and placing a capital improvement in operation.

10. Amounts due the United States of America as rebate of investment earnings with respect to the proceeds of bonds or as penalties in lieu thereof.

11. Amounts payable with respect to capital costs for the expansion, reinforcement, enlargement or other improvement of facilities determined by the city to be necessary in connection with the utilization of a capital improvement and the costs associated with the removal from service or reductions in service of any facilities as a result of the expansion, reinforcement, enlargement or other improvement of such facilities or the construction of a capital improvement.

12. Costs of issuance of any bonds.

13. Fees and expenses pursuant to any lending or credit facility or agreement applicable to the period for construction and placing a capital improvement in operation.

14. All other costs incurred by the city, including but not limited to city staff costs, properly allocable to the acquisition, construction, or placing in operation of the sewer system.

"Council" means the City Council of the city.

"Issuing instrument" means the resolution of the Council adopted pursuant to this chapter and any indenture or trust agreement pursuant to which the city issues bonds.

"Rate stabilization fund" means the fund established pursuant to Section 4.50.140.

"Revenues" means all income, rents, rates, fees, charges and other moneys derived from the ownership or operation of the sewer system, including, without limiting the generality of the foregoing:

1. All income, rents, rates, fees, connection fees, charges, or other moneys derived by the city from the sewer services or facilities, and commodities or byproducts, sold, furnished or supplied through the facilities of or in the conduct or operation of the business of the sewer system, and including, without limitation, investment earnings on the operating reserves to the extent that the use of such earnings is limited to the sewer system by or pursuant to law, and earnings on any funds or accounts established for bonds, parity obligations or subordinated obligations but only to the extent that such earnings

may be utilized under the issuing instrument for the payment of debt service for such bonds, parity obligations or subordinated obligations;

2. Standby charges and capacity charges derived from the services and facilities, sold, furnished or supplied through the sewer system;

3. Any amount received from the levy or collection of taxes which are solely available and are earmarked for the support of the operation of the sewer system;

4. Transfers from the rate stabilization fund; and

5. Grants for maintenance and operations received from the United States of America or from the State of California; provided, however, that revenues shall not include in all cases, customers' deposits or any other deposits or advances subject to refund until such deposits or advances have become the property of the city.

"Sewer system" means the properties, improvements and works at any time owned, controlled or operated by the city as part of the system for the collection, storage, treatment, distribution, administration, disposal or discharge of sewage waste and its other commodities or byproducts, whether located within or without the city for public and private use and any related or incidental operations designated by the Council as part of the sewer system.

"State" means the State of California. (Ord. 12624 § 1 (part), 2004)

## **Article II. Issuance of Bonds**

### **4.50.040 General powers.**

The city is authorized and empowered:

A. To issue bonds for the purpose of financing the cost of capital improvements of the sewer system and for the purpose of refunding bonds.

B. To establish the terms and conditions for the financings undertaken pursuant to this chapter.

C. To employ or contract for such legal, consultant, underwriting, economic feasibility, or other services, as may be necessary in the judgment of the Council for the issuance and sale of bonds.

D. In addition to all other powers specifically granted in this chapter, to do all things necessary or convenient to carry out the purposes of this chapter. (Ord. 12624 § 1 (part), 2004)

### **4.50.050 Authorization of bonds.**

The city may issue bonds pursuant to a resolution of the Council for the purpose of financing the cost of capital improvements of the sewer system as authorized by this chapter. Every issue of bonds shall be payable from revenues as described in the issuing instrument. (Ord. 12624 § 1 (part), 2004)

### **4.50.060 Proceedings authorizing issuance—Public or private sales.**

A. The proceedings of the city authorizing the issuance of the bonds may provide all of the following for the bonds:

1. The form of the bonds, which may be issued as serial bonds, term bonds, or installment bonds, or any combination thereof.

2. The date or dates to be borne by the bonds.

3. The time or times of maturity of the bonds.

4. The interest, which may be taxable or tax-exempt, fixed or variable and which may be paid on a current interest or capital appreciation basis, to be borne by the bonds.

5. The time or times that the bonds shall be payable.

6. The denominations, form, and the registration privileges of the bonds.

7. The manner of execution of the bonds.

8. The place or places the bonds are payable.

9. The terms of redemption of the bonds.

10. Any other terms and conditions deemed necessary by the city.

B. The bonds may be sold at either a public or private sale and at a price at, above or below the par value thereof. (Ord. 12624 § 1 (part), 2004)

### **4.50.070 Application of proceeds of bonds.**

The proceeds of the bonds shall be applied to the cost of capital improvements, including all costs of issuing the bonds, including any bond reserve funds, and the costs of any insurance or other credit en-

hancement authorized by Section 4.50.090. (Ord. 12624 § 1 (part), 2004)

#### **4.50.080 Indenture.**

In the discretion of the Council, any bonds issued under the provisions of this chapter may be secured by an indenture or trust agreement by and between the city and a corporate trustee or trustees, which may be any trust company or bank having the powers of a trust company within or without the State. Such indenture or trust agreement may contain such provisions for protecting and enforcing the rights and remedies of the bond owners as may be reasonable and proper and not in violation of law. Any such indenture or trust agreement may set forth the rights and remedies of the bond owners and of the trustee or trustees, and may restrict the individual right of action by bond owners. In addition to the foregoing, any such indenture or trust agreement may contain such other provisions as the Council may deem reasonable and proper for the security of the bond owners. (Ord. 12624 § 1 (part), 2004)

#### **4.50.090 Insurance or credit enhancement.**

The city may obtain insurance or other credit enhancement of the bonds and may enter into any credit, reimbursement agreement or other agreement with any person or entity. The agreement shall contain the terms of the credit, reimbursement, interest rate, security, and any other terms the city deems necessary or appropriate. (Ord. 12624 § 1 (part), 2004)

#### **4.50.100 Bonds and investments—**

##### **Contracts to place on interest rate, cash flow, or other basis.**

In connection with, or incidental to, the issuance or carrying of the bonds, the city may enter into investment agreements, forward purchase agreements and other investments relating to the investment of amounts held pursuant to an issuing instrument, and the city may also enter into any contracts which the city determines to be necessary or appropriate to place the obligation, as represented by the bonds, in whole or in part, on the interest rate, cash-flow, or

other basis desired by the city, including, without limitation, contracts commonly known as interest swap agreements, forward payment conversion agreements, futures, or contracts providing for payments based on levels of, or changes in, interest rates, stock or other indices, or contracts to exchange cash flows or a series of payments, or contracts, including, without limitation, interest rate floors or caps, options, puts or calls to hedge payment, rate, spread, or similar exposure. These contracts and arrangements shall be entered into with the parties, selected by the means, and contain the payment, security, default, remedy, and other terms and conditions, determined by the city, after giving due consideration for the creditworthiness of the counter parties, where applicable, including any rating by a nationally recognized rating agency or any other criteria as may be appropriate. (Ord. 12624 § 1 (part), 2004)

#### **4.50.110 Personal liability.**

Neither the members of the Council, officers, employees or agents of the city, nor any person executing the bonds shall be liable personally on the bonds or be subject to any personal liability or accountability by reason of the issuance thereof. (Ord. 12624 § 1 (part), 2004)

#### **4.50.120 Refunding bonds.**

The Council may provide for the issuance of bonds any portion of which is to be used for the purpose of refunding outstanding bonds, including the payment of the principal thereof and interest and redemption premiums, if any, thereon. The proceeds of bonds issued to refund any outstanding bonds may, in the discretion of the Council, be applied to the retirement of such outstanding bonds at maturity, or the redemption (on any redemption date) or purchase of such outstanding bonds prior to maturity, upon such terms and subject to such conditions as the Council shall deem advisable. (Ord. 12624 § 1 (part), 2004)

#### **4.50.130 Repayment of bonds.**

The principal and any premium of, and interest on, the bonds shall be payable from revenues and other funds pledged therefor under the issuing instrument,

s described in the issuing instrument. The issuance of bonds shall not directly, indirectly or contingently obligate the Council to levy or pledge any form of taxation. (Ord. 12624 § 1 (part), 2004)

#### **4.50.140 Rate stabilization fund.**

The city hereby establishes the rate stabilization fund to be held by the city in connection with bonds. (Ord. 12624 § 1 (part), 2004)

### **Article III. Miscellaneous Provisions**

#### **4.50.150 Liberal construction.**

This chapter, being necessary for the health, welfare and safety of the city and its residents, shall be liberally construed to affect its purposes. Furthermore, the Council hereby declares that this chapter is an exercise of the power granted to the city by the City Charter and the Constitution of the State and is an exercise by the city of its powers as to municipal affairs and its police powers, and this chapter shall be liberally construed to uphold its validity under the laws of the State. (Ord. 12624 § 1 (part), 2004)

#### **4.50.160 Provisions of this chapter are complete, additional and alternative.**

This chapter shall be deemed to provide a complete, additional and alternative method for doing the things authorized hereby, and shall be regarded as supplemental and additional to the powers conferred by other laws. The issuance of bonds and the entering into of any credit, reimbursement or other agreement under the provisions of this chapter need not comply with the requirements of any other law applicable to the issuance of bonds. The purposes authorized hereby may be effectuated and bonds are authorized to be issued for any such purposes under this chapter notwithstanding that any other law may provide for such purposes or for the issuance of bonds for like purposes and without regard to the requirements, restrictions, limitations or other provisions contained in any other law. (Ord. 12624 § 1 (part), 2004)

#### **4.50.170 Validity of bonds.**

The validity of any bonds shall not be dependent on or affected in any way by any proceedings taken by the city for acquisition, construction, or completion of any properties or projects for which the bonds are to be issued or any contracts made in connection with the acquisition, construction, or operation of any such properties. The bonds shall be incontestable and shall by their issuance and delivery conclusively establish the due performance of all conditions precedent to their issue. (Ord. 12624 § 1 (part), 2004)

#### **4.50.180 Amendment of chapter.**

This chapter shall not be amended so as to have a material, adverse affect upon the rights of the owners of any outstanding bonds theretofore issued hereunder, without the written consent of such bond owners; provided, however, that this chapter may be amended at any time (a) to make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision herein contained, as the city may deem necessary or desirable; or (b) if such amendment does not materially impair or adversely affect the interests of any such Bond owner or city in the opinion of the Council; or (c) if such amendments apply solely to bonds not theretofore issued.

#### **4.50.190 Chapter controlling.**

To the extent that the provisions of this chapter are inconsistent with the provisions of any general statute or special act or parts thereof, the provisions of this chapter shall be deemed controlling.

#### **4.50.200 Partial invalidity.**

If any section, paragraph, sentence, clause or phrase of this chapter shall for any reason be held illegal or unenforceable, such holding shall not affect the validity of the remaining portions of this chapter. The Council hereby declares that it would have adopted this chapter and each and every other section, paragraph, sentence, clause or phrase hereof and authorized the proceedings authorized to be taken pursuant thereto irrespective of the fact that any one or more sections, paragraphs, sentences, clauses, or

phrases of this chapter may be held illegal, invalid or unenforceable. (Ord. 12624 § 1 (part), 2004)



## Title 5

### BUSINESS TAXES, PERMITS AND REGULATIONS

#### Chapters:

- 5.02      Business Permits Generally**
- 5.04      Business Taxes Generally**
- 5.06      Advertising Matter**
- 5.08      Auctions and Auctioneers**
- 5.10      Bingo**
- 5.12      Cabarets**
- 5.14      Carnivals**
- 5.16      Cable Systems and Open Video Systems**
- 5.17      State Video Service Franchises**
- 5.18      Charitable and Religious Solicitations**
- 5.20      Close-Out Sales**
- 5.22      Dance Halls**
- 5.24      Filming Permits**
- 5.26      Firearms Dealers**
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## 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 to examine applications as to zone.**
- 5.02.140      City 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 chapter, 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 chapter set forth. (Prior code § 5-2.01)

**5.02.020      Application.**

Application for any permit referred to in Section 5.02.010 shall be filed with the 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 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, or such official of the city to whom the application may be referred, may require. (Prior code § 5-2.02)

**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 Clerk shall place the acknowledged copy in the permanent records of his 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 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. (Ord. 12856 § 4 (part), 2007; prior code § 5-2.03)

#### **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 on filing the application or an application for renewal, a fee to pay for the cost of such investigation. (Prior code § 5-2.031)

#### **5.02.050 Notice of hearing on application.**

The City 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 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 notices thereof 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. (Ord. 12856 § 4 (part), 2007; prior code § 5-2.04)

#### **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 acts 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. (Prior code § 5-2.05)

#### **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 per-

mitted, except upon written permission of the City Administrator, 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. (Prior code § 5-2.06)

**5.02.080      Revocation and suspension of  
                  permit.**

Any permit granted pursuant to the provisions of this chapter may be revoked or suspended by the City Administrator 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 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 Manager after five 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 Manager.

Such revocation or suspension of any permit shall be in addition to any other penalties more specifically provided in this chapter. (Prior code § 5-2.07)

#### **5.02.090 Hearings.**

Any investigation, inquiry or hearing which the City Manager has power to undertake or to hold may be undertaken or held by such member of the City 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 Manager.

Within sixty (60) days after the filing of the findings and recommendations of the Hearing Officer, the City 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 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 chapter.

No informality in any proceeding or the manner of taking testimony shall invalidate any other deci-

sion, award or rule made as specified in this 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. (Prior code § 5-2.071)

#### **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 chapter, 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 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 chapter, or issued to another by the City Manager pursuant to the provisions of this Code, may appeal in writing to the City Council by filing with the City 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 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 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. (Prior code § 5-2.08)

#### **5.02.110 Inspection of premises.**

Any officer of the city charged with the enforcement or administration of any of the provisions of this chapter shall be permitted to enter and inspect at any reasonable time, without charge or other restraint, any premises to which any permit granted

## **5.02.110**

under the provisions of this chapter may pertain, or which are directly affected by such permit, for the purpose of ascertaining whether or not any of the provisions of this chapter applicable thereto are being violated. (Prior code § 5-2.09)

### **5.02.120 Permits to be exhibited.**

Any permit required under the provisions of this chapter shall be exhibited in a conspicuous place in that part, to which the public has access, of the premises to which such permit appertains. (Prior code § 5-2.10)

### **5.02.130 City Clerk to examine applications as to zone.**

Upon the filing of any application for a permit as in this chapter provided for, the City Clerk 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 Clerk shall refuse to accept such application. (Prior code § 5-2.11)

### **5.02.140 City 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 Clerk of such action, and shall, so far as possible, supply the City Clerk with copies of all communications, findings and records pertaining to such applications and permits, and the City Clerk shall place the same on file with the applications and permits to which they pertain. (Prior code § 5-2.12)

### **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 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 Manager may renew such permit upon written application being made prior to its expiration. (Prior code § 5-2.13)

## **Chapter 5.04**

### **BUSINESS TAXES GENERALLY\***

#### **Sections:**

- |                 |   |                 |   |
|-----------------|---|-----------------|---|
| <b>5.04.010</b> | <b>Short title.</b>   | <b>5.04.210</b> | <b>Prior year registration assessments.</b>                                 |
| <b>5.04.020</b> | <b>Business tax.</b>  | <b>5.04.220</b> | <b>Notice not required.</b>   |
| <b>5.04.030</b> | <b>Definitions.</b>   | <b>5.04.230</b> | <b>Interest.</b>  |
| <b>5.04.040</b> | <b>Separate certificate for each place of business.</b>   | <b>5.04.240</b> | <b>Business tax a debt—Liens.</b>   |
| <b>5.04.050</b> | <b>Revenue measure does not permit business otherwise prohibited.</b>                             | <b>5.04.250</b> | <b>Notice of hearing on lien.</b>   |
| <b>5.04.060</b> | <b>Public inspection.</b>   | <b>5.04.260</b> | <b>Collection of delinquent taxes by special tax roll assessment.</b>       |
| <b>5.04.070</b> | <b>Contents of certificate.</b>   | <b>5.04.270</b> | <b>Recordation of lien for delinquent charges.</b>                          |
| <b>5.04.080</b> | <b>Annual certificate.</b>  | <b>5.04.280</b> | <b>Conviction for violation not waiver of business tax.</b>                 |
| <b>5.04.090</b> | <b>Statement for renewal of business tax certificate.</b>   | <b>5.04.290</b> | <b>Retail sales.</b>  |
| <b>5.04.095</b> | <b>Notice of business termination.</b>  | <b>5.04.300</b> | <b>Grocer.</b>  |
| <b>5.04.100</b> | <b>New business registration.</b>   | <b>5.04.310</b> | <b>Automobile dealers.</b>  |
| <b>5.04.110</b> | <b>First year estimated tax.</b>  | <b>5.04.320</b> | <b>Wholesale sales.</b>   |
| <b>5.04.120</b> | <b>Second year renewal tax.</b>   | <b>5.04.330</b> | <b>Business and personal services.</b>                                      |
| <b>5.04.130</b> | <b>Declaration, additional statement by applicant for first renewal business tax certificate.</b> | <b>5.04.340</b> | <b>Professional-semi-professional connected business.</b>                   |
| <b>5.04.140</b> | <b>Declaration—Confidential documents.</b>  | <b>5.04.350</b> | <b>Real estate developer.</b>   |
| <b>5.04.150</b> | <b>Disclosure of business taxpayers, etc. limitation on rule.</b>                                 | <b>5.04.360</b> | <b>Rehabilitation of real estate.</b>                                       |
| <b>5.04.151</b> | <b>Tax abatement and liability caps.</b>  | <b>5.04.370</b> | <b>Recreation and entertainment.</b>  |
| <b>5.04.152</b> | <b>Review and modification of policy.</b>   | <b>5.04.380</b> | <b>Construction contractors.</b>  |
| <b>5.04.160</b> | <b>Procedure for changes to business tax certificate.</b>   | <b>5.04.390</b> | <b>Manufacturer.</b>  |
| <b>5.04.170</b> | <b>Business tax certificate to be conspicuously posted—Exception.</b>                             | <b>5.04.400</b> | <b>Administrative headquarters.</b>   |
| <b>5.04.180</b> | <b>Lost certificate.</b>  | <b>5.04.410</b> | <b>Transportation of persons and goods.</b>                                 |
| <b>5.04.190</b> | <b>Penalty for nonpayment of annual business tax.</b>   | <b>5.04.420</b> | <b>Rental of residential property—Gross receipts.</b>                       |
| <b>5.04.200</b> | <b>Return check penalty.</b>  | <b>5.04.430</b> | <b>Rental of commercial / industrial property—Exemption—Gross receipts.</b> |
|                 |   | <b>5.04.440</b> | <b>Special exemption.</b>   |
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|                 |   | <b>5.04.470</b> | <b>Media firms.</b>   |
|                 |   | <b>5.04.480</b> | <b>Medical cannabis businesses.</b>   |
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|                 |   | <b>5.04.485</b> | <b>Firearms/ammunitions sales.</b>  |
|                 |   | <b>5.04.490</b> | <b>Taxi and ambulance.</b>  |

\*\* Prior ordinance history: Ord. 11876

- 5.04.500 Miscellaneous business.**
- 5.04.510 Optional method of determining tax.**
- 5.04.520 Duties of the Director of Finance—Notice of decisions.**
- 5.04.530 Exhibit of tax certificates.**
- 5.04.540 Refund of tax, penalty or interest paid more than once or erroneously or illegally collected.**
- 5.04.550 Board of Review.**
- 5.04.560 Saving clause.**
- 5.04.570 Apportionment.**
- 5.04.580 Examination of books, records, witnesses—Information confidential—Penalty.**
- 5.04.590 Violations, infraction, misdemeanor.**
- 5.04.600 Results of audit.**
- 5.04.610 Records required from taxpayers.**
- 5.04.620 Small business exemption.**
- 5.04.630 Exemption for nonprofit corporation, association, etc.—Exemption for owners of low income housing tax-credit financed affordable housing developments.**
- 5.04.631 Exemption for family daycare.**
- 5.04.640 Deficiency determination.**
- 5.04.650 Determination if no declaration filed.**
- 5.04.660 Redetermination.**

#### **5.04.010 Short title.**

This chapter shall be known as the business tax ordinance.

(Prior code § 5-1.00)

#### **5.04.020 Business tax.**

It is unlawful for any person, either for himself or herself or for any other person, to carry on any business taxed pursuant to this chapter in the city,

without procuring a business tax certificate from said city; and the carrying on of any business without procuring a certificate from said city shall constitute a violation of this code, for each and every day that such business is so carried on.

(Prior code § 5-1.01)

#### **5.04.030 Definitions.**

Except where the context otherwise requires, the following terms shall, for the purposes of this chapter, have the following meanings:

"Business" means any activity, enterprise, profession, trade or undertaking of any nature conducted or engaged in, with the object of gain, benefit or advantage, whether direct or indirect, to the taxpayer or to another or others. Business shall include any transaction which is or which, in effect results in a sale, but shall not include the services rendered by an employee to his or her employer.

"Certificate" means business tax certificate.

"City" or "city" means the City of Oakland.

"Engaging in business" means commencing, conducting or continuing in business and also the exercise of corporate or franchise powers as well as liquidating a business when the liquidators thereof hold themselves out to the public as conducting such business.

"Gross receipts," except as otherwise specifically provided, means the taxpayer's gross receipts of the preceding fiscal year or part thereof, and is defined as follows: the total amount actually received or receivable from all sales; the total amount or compensation actually received or receivable for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit allowed, whether or not such act or service is done as a part of or in connection with the sale of materials, goods, wares or merchandise; discounts, rents, royalties, fees, commissions, dividends, and gains realized from trading in stocks or bonds, or other emoluments, however designated. Included in "gross receipts" shall be all receipts, cash, credits and property of any kind or nature, without any deduction therefrom on account of

the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever, except that the following shall be excluded therefrom:

1. Cash discounts allowed and taken on sales;
2. Credit allowed on property accepted as part of the purchase price and which property may later be sold, at which time the sales price shall be included as gross receipts;
3. Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
4. Such part of the sale price of any property returned by purchasers to the seller as refunded by



the seller by way of cash or credit allowances or return of refundable deposits previously included in gross receipts;

5. Receipts from investments where the holder of the investment receives only interest and/or dividends, royalties, annuities and gains from the sale or exchange of stock or securities solely for a person's own account, not derived in the ordinary course of a business.

6. Receipts derived from the occasion sale of used, obsolete or surplus trade fixtures, machinery or other equipment used by the taxpayer in the regular course of the taxpayer's business;

7. Cash value of sales, trades or transactions between departments or units of the same business;

8. Receipts of community chest funds, foundations or corporations organized and operated for religious or charitable purposes, which are not conducted for profit and no part of the net earnings of which inures to the benefits of any private shareholder or individual;

9. Receipts of nonprofit educational institutions of collegiate grade, defined herein to mean institutions incorporated as colleges or seminaries under the laws of the State of California; receipts of nonprofit secondary schools which are duly accredited by the University of California, and receipts of nonprofit elementary schools in which instruction is given to students in the preprimary grades in the several branches or studies required to be taught in the public schools of the State of California;

10. Whenever there are included within the gross receipts amounts which reflect sales for which credit is extended and such amount proved uncollectible in a subsequent year, those amounts may be excluded from the gross receipts in the year they prove to be uncollectible; provided, however, if the whole or portion of such amounts excluded as uncollectible are subsequently collected, they shall be included in the amount of gross receipts for the period when they are recovered;

11. Transactions between partnership and its partners;

12. Receipts from services or sales in transactions between affiliated corporations. An affiliated corporation is a corporation:

a. The voting and nonvoting stock of which is owned at least eighty (80) percent by such other corporation with which such transaction is had, or

b. Which owns at least eighty (80) percent of the voting and nonvoting stock of such other corporation, or

c. At least eighty (80) percent of the voting and nonvoting stock of which is owned by a common parent corporation which also has such ownership of the corporation with which such transaction is had.

13. Transactions between a limited liability company and its member(s), provided the limited liability company has elected to file as a subchapter K entity under the Internal Revenue Code and that such transaction(s) shall be treated the same as between a partnership and its partner(s) as specified in subsection 11 above.

"Newly established business" is defined as:

1. A business in operation in the city for the first time;

2. An additional location of an existing business, which location goes into operation in the city for the first time;

3. A business which resumes operation in the city after having been out of operation in the city during the entire previous tax year; or

4. An existing business in the city which in a single tax year sells eighty (80) percent or more of its ownership to the same person, except that such sale shall not create a newly established business if the sale is:

a. Between departments or units of the same business,

b. Between a partnership and its partners, or

c. Between "affiliated corporations" as that term is defined in subsection 12 above.

"Person" or "persons" means any natural person, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, company, joint stock company, busi-

ness trust, limited liability company, municipal corporation, political subdivision of the state of California, domestic or foreign corporation, association, syndicate, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, non-profit, or otherwise, and the United States or any instrumentality thereof, and any natural person, who as an individual or with a spouse, owns fifty-one (51) percent or more of the capital stock of a corporation obligated to file a declaration and pay tax pursuant to this chapter; and in addition, is a person with the power to control the fiscal decision-making process by which the corporation allocates funds to creditors in preference to its tax obligations under the provisions of this chapter. A person as defined herein, who is also an officer or director of a corporation obligated to file declarations and pay tax pursuant to this chapter, shall be presumed to be a person with the power to control the fiscal decision-making process. Whenever the term "person" is used in any clause prescribing and imposing a penalty, the term as applied to association shall mean the owners or part owners thereof, and as applied to corporation, the officers thereof.

"Sale" and "sell" shall be deemed to include and refer to: The making of any transfer of title, in any manner or by any means whatsoever, to property for a price, and to the serving, supplying or furnishing, for a price of any property fabricated or made at the special order of consumers who do or do not furnish directly or indirectly the specifications therefor. A transaction whereby the possession of property is transferred, but the seller retains the title as security for the payment of the price, shall likewise be deemed a sale.

Shall and May. "Shall" is mandatory, "may" is permissive. (Ord. 12838 § 3 (part), 2007; Ord. 12208 § 1, 3, 2000; prior code § 5-1.02, 5-1.02(a)C 5-1.02(i))

#### **5.04.040 Separate certificate for each place of business.**

A separate certificate must be obtained for each and every business activity at each and every branch establishment or separate place of business at which

such business activity takes place. Notwithstanding the previous sentence, a separate certificate shall not be required for each separate business activity if such activity produces less than twenty percent (20%) of the total gross receipts for all business activity at such place of business. (Ord. 12838 § 3 (part), 2007; prior code § 5-1.03)

#### **5.04.050 Revenue measure does not permit business otherwise prohibited.**

The taxes prescribed by the provisions of this chapter constitute a tax for revenue purposes, and are not regulatory permit fees. The payment of a business tax required by this chapter, and its acceptance by the city, and the issuance of a certificate to any person shall not entitle the holder thereof (1) to carry on any business unless he or she has complied with all of the requirements of this chapter and all other applicable laws, nor (2) to carry on any business activity in any building or on any premises designated in such business tax certificate in the event that such business activity in the building or premises violates of any law. (Ord. 12838 § 3 (part), 2007; prior code § 5-1.04)

#### **5.04.060 Public inspection.**

A. The following information for each business tax certificate under this chapter shall be available for inspection by the public during normal working hours:

1. The name and address of the business;
2. The name of the owner of the business, if such name is shown on the records filed pursuant to this chapter;
3. Industrial classification;
4. Expiration date;
5. Account number.

B. The Director of Finance may enact such regulations as are necessary to permit reasonable public access to the information. Such regulations may prescribe the time and manner in which to receive and act upon requests for such information. (Prior code § 5-1.05)

**5.04.070      Contents of certificate.**

Every person required to have a certificate under the provisions of this chapter shall make application for the same to the Business Tax Section of the city, and upon payment of the prescribed tax to said Division, said Division shall issue to said person a certificate which shall contain (A) the name of the business; (B) the place where the business is to be carried on; (C) the business activity; (D) the date of the expiration of such certificate; and such other information as the Business Tax Section shall determine. (Ord. 12838 § 3 (part), 2007; prior code § 5-1.06)

**5.04.080      Annual certificate.**

A. All business tax certificates issued under this chapter shall be issued on a calendar year basis and shall be considered to be issued on January 1st of each year and shall expire on December 31st of the same year.

B. The Director of Finance may refuse to issue to any person another certificate for the same or any other business until such person has filed all declarations for prior years as required by this chapter and has paid all liabilities in full.

C. Every person who, without an extension authorized by the Director of Finance, fails to timely file any regular or amended business tax declaration and/or statement of renewal shall pay a late filing fee of fifty dollars (\$50.00) or in the amount set forth in the City of Oakland master fee schedule (as amended from time-to-time). (Ord. 12838 § 3 (part), 2007; prior code § 5-1.08)

**5.04.090      Statement for renewal of business tax certificate.**

A. Every person who is conducting usual and customary business activities on January 1st of the current tax year shall pay the annual business tax in full, without proration, and shall, before the business tax become delinquent, file with the Business Tax Section a written statement setting forth the then applicable factor or factors that constitute the measure of the tax, together with such other information as shall be required by the business tax section to enable it to administer the provisions of this chapter and

shall pay at such time the amount of the tax computed thereon.

B. The written statement provided for herein shall be on a form prescribed by the Business Tax Section and shall include a declaration substantially as follows:

I declare under penalty of perjury that to my knowledge all information contained in this statement is true and correct.

C. For purposes of this section, a taxpayer did not intend to carry on "usual and customary business activities" beyond December 31st of any given year if: (1) it is established by written documentation (i.e., opening escrow, bill of sale, etc) that the taxpayer was in the act of selling, liquidating, transferring or otherwise permanently disposing of its business on or before December 31st of the year preceding the calendar year such business was terminated or transferred. Such transfer, if any, may not be made to a related business with more than fifty percent (50%) financial or equity interest in the business being terminated or transferred; and, (2) such termination, liquidation, transfer or disposition is final with no gross receipts either received or attributable to the taxpayer eligible for the subject proration as of the 15th day of April of the calendar year after action to terminate, transfer, liquidate or otherwise dispose of the business was initiated.

D. Notwithstanding the date provided herein for the payment of tax due under section 5.04.190, the Director of Finance is authorized in the exercise of reasonable discretion to grant extensions not in excess of forty-five (45) days for the payment of such tax and for the making and filing of such declaration. In no event will such an extension be granted for an annual tax on any written application received after the annual March 1st deadline. No penalty shall be added to the amount due and payable if, and only if, said tax is paid within the extension period granted by the Director of Finance, but during such extension period the amount which is the subject of the extension shall bear interest beginning with the original due date to the date of filing of declaration and pay-

ment at the rate of one and one-half percent per month or fraction thereof, notwithstanding the granting of the extension by the Director of Finance.

E. Taxpayers who are unable to provide final figures in order to timely file the business tax declaration must file an estimated return, following the procedures established by the Director of Finance. (Ord. 12838 § 3 (part), 2007; prior code § 5-1.09)

#### **5.04.095 Notice of business termination.**

Any business that ceases their normal and customary business activities must notify the Business Tax Section within thirty (30) days of cessation of business activities. This notification must be in writing and signed by the registered business owner or authorized agent. Failure to file a timely notification will be subject to a late filing fee as specified in Section 5.04.080(C). (Ord. 12838 § 3 (part), 2007)

#### **5.04.100 New business registration.**

Every person applying for a first certificate for a newly established business shall pay a registration fee in the amount set forth in the City of Oakland master fee schedule (as amended from time to time) within thirty (30) days from the date of commencement of business activity. The purpose of this fee is to offset a portion of the administrative costs. Failure to register shall subject the taxpayer to penalty and interest as provided for by Sections 5.04.190 and 5.04.230, respectively. (Ord. 12838 § 3 (part), 2007; prior code § 5-1.10(a))

#### **5.04.110 First year estimated tax.**

Upon making application for the first certificate to be issued for a newly established business, an applicant may furnish to the Director of Finance, for guidance in ascertaining the amount of tax to be paid, a written statement, upon a form provided by the Director of Finance, setting forth such information as may be required to properly determine the amount of the tax liability at the time of the statement.

The applicant may estimate gross receipts, gross payroll, average number of employees, value added, manufacturing expense, number of permits or number of vehicles (hereinafter referred to as "tax base"),

for the period covered by the certificate to be issued. Such estimate, if accepted by the Director of Finance as a reasonable one, shall be used in determining the amount of tax to be paid by the applicant; if such estimate is found to be unreasonable or the applicant elects not to estimate the tax base, the Director of Finance shall use the average tax base for the industry. Said industry code average is to be prorated on a one-twelfth basis for each month remaining in the calendar year in which the newly established business commences. The estimated tax is determined by multiplying the tax rate times the tax base applicable to the business classification.

The applicant may pay the full estimated tax at the time of registration; or the taxpayer may elect to file and pay the first year tax on or before March 1st of the second year.

If the business terminates on or before the end of the calendar year in which the business began, the taxpayer shall file an amended declaration within thirty (30) days of cessation following the procedures established by the Director of Finance and pay a first year tax based upon the tax base and rate applicable to the business classification for the period that the business was in operation. (Ord. 12838 § 3 (part), 2007; prior code § 5-1.10(b))

#### **5.04.120 Second year renewal tax.**

If the business continues operation after December 31st of the year in which it began, the taxpayer shall file a renewal declaration and pay by March 1st the full amount of the renewal tax. The second year renewal tax shall be based upon an estimate of or the actual tax base for a twelve (12) month period or shall be based upon any factual information which is in the Director of Finance's possession or which may come into the Director's possession, and shall be determined by the rate applicable to the business classification. If the taxpayer elects not to estimate or if the estimate submitted is determined to be unreasonable, the average tax base as set forth in Section 5.04.110 shall apply.

If the business terminates on or before the end of the calendar year of the second year, the taxpayer shall file an amended declaration within thirty (30)

days of cessation following the procedures established by the Director of Finance and pay any second year tax based upon the tax base and rate applicable to the business classification for the period that the business was in operation. (Ord. 12838 § 3 (part), 2007; prior code § 5-1.10(c))

**5.04.130 Declaration, additional statement by applicant for first renewal business tax certificate.**

In addition to the information required to be included in the written statement of the applicant for a first business tax certificate and of the taxpayer for a renewal of certificate, as provided in Sections 5.04.090, each applicant who is subject to the contractors license law, shall state that he is licensed under such law, that this license is in full force and effect, and the number thereof. (Prior code § 5-1.11)

**5.04.140 Declaration—Confidential documents.**

The statements filed pursuant to the provisions of this chapter shall be deemed confidential in character and shall not be subject to public inspection, and shall be kept so that the contents thereof shall not become known except to the persons charged with the administration of this chapter.

Any officer or employee who shall willfully violate any provision of this section shall be deemed guilty of an infraction, and such violation shall be cause for discharge from the city's service. (Prior code § 5-1.13)

**5.04.150 Disclosure of business taxpayers, etc. limitation on rule.**

Notwithstanding any other provision of any city ordinance, the Director of Finance is authorized to enter into agreements with the California Franchise Tax Board, the State Board of Equalization, and/or the Internal Revenue Service providing for the exchange of information for official purposes of said agencies, and to implement any such agreement through the exchange of information. (Ord. 12838 § 3 (part), 2007; Ord. 11877 § 1, 1996; prior code § 5-1.13(b))

**5.04.151 Tax abatement and liability caps.**

A. For years one through ten, starting with the first year the business is enrolled in the tax abatement program, the annual tax liability of a taxpayer within the targeted industries designated below will be calculated as per the rate applicable to that industry. Once calculated, a reduced tax liability will be determined by applying the percentage, as per Schedule A, to the initial calculation above. This reduced figure will not exceed the current cap in effect adjusted by the CPI as described in subsection B of this section.

B. The business tax will be capped at one hundred fifty thousand dollars (\$150,000.00) for all new and existing businesses whose business activity is classified by the Finance and Management Agency to be within one of the five targeted industries (food processing, transportation, bioscience/biotechnology, software/multimedia, and telecommunications). Thereafter, the cap will be adjusted every odd year to reflect cost of living increases as reflected in the Consumer Price Index for Urban Consumers (CPI-U).

C. All new businesses in one of the five targeted industries shall be eligible to receive a phased-in abatement of their business tax for a period of ten years (see Schedule A). The abatement will amount to a tax calculated in increments of ten percent of the full tax liability annually until the full tax liability without abatement is reached. In the eleventh year, the business shall pay the full measure of tax that is then applicable to the taxpayer pursuant to this Chapter, provided that the tax does not exceed the current cap in place. There will be no collection of that portion of taxes abated during the prior ten years.

D. A new business is defined as one conforming to the provisions of Section 5.04.030 of this code, except the following shall be excluded therefrom:

1. An existing business that changes its business name but does not satisfy change of ownership requirements under Section 5.04.030 of this code;

2. A business that does not conform to the provisions of the Business Tax Ordinance by the March 1 following its application to the program;

3. A business of short term, promotional or infrequent event in nature;

4. Building contractors (general or subcontractor) who establish a location within the city for the sole purpose of obtaining and/or working on a job(s) in Oakland.

E. If application to the tax abatement program is received between January 1 and March 1 of any year, the calendar year the application is received will be the "effective year" for purposes of the tax abatement program. If application to the tax abatement program is received at any time between March 2 and December 31, the "effective year" for such business will be the immediately succeeding calendar year.

F. Any existing business in one of the targeted industries also would be eligible for an abatement of its business tax liability. The gross receipts total for the calendar year preceding a businesses enrollment in the tax abatement program is used to determine the base-year business tax liability (or "benchmark") for an existing business. The benchmark for a new business is sixty dollars (\$60.00). This benchmark does not change and is the base tax liability to which the following abatement is added: any tax due on growth beyond the benchmark would be prorated at ten percent of this growth factor per year for the next ten consecutive years (see Schedule B). In the eleventh year, the business shall pay the full measure of tax that is then applicable to the taxpayer's industry classification pursuant to this Chapter, provided the tax does not exceed the applicable cap in effect at the time.

Notwithstanding anything in this section to the contrary, if the tax liability for a business participating in the tax abatement program would exceed the tax liability for said business without regard to the tax abatement program, said business shall pay the lesser of the two.

G. No business incentive shall apply to a business that is (or has been at any time during the immediately preceding 3-year period prior to applying for enrollment in the tax abatement program) delinquent or is identified through the city's noncompliance program.

H. A business may only participate once in the tax abatement program.

I. In order to determine eligibility for the tax abatement program, a business must first complete and submit an application to the Business Tax Section. A business will be enrolled in the tax abatement program, only upon approval of the application by the Director of the Finance and Management Agency or his/her designee. An application may be obtained from the City of Oakland, Finance and Management Agency, Business Tax Section, 250 Frank H. Ogawa Plaza, Suite 1320, Oakland, California 94612, (510) 238-3704.

J. Tax incentives are applicable to any firm in one of five targeted industries:

1. Food processing;
2. Telecommunications;
3. Transportation;
4. Bioscience/biotechnology;
5. Software/multimedia.

#### Schedule A

Payment Schedule for New Businesses	Year Effective
\$60	Year 1
Benchmark + 10% of tax due above benchmark	Year 2
Benchmark + 20% of tax due above benchmark	Year 3
Benchmark + 30% of tax due above benchmark	Year 4
Benchmark + 40% of tax due above benchmark	Year 5
Benchmark + 50% of tax due above benchmark	Year 6
Benchmark + 60% of tax due above benchmark	Year 7
Benchmark + 70% of tax due above benchmark	Year 8
Benchmark + 80% of tax due above benchmark	Year 9
Benchmark + 90% of tax due above benchmark	Year 10

<b>Payment Schedule for New Businesses</b>	<b>Year Effective</b>
Firm pays full tax liability, not to exceed the cap	Year 11

### Schedule B

<b>Payment Schedule for Existing Businesses</b>	<b>Year Effective</b>
Benchmark** (which never changes)	Year 1
Benchmark + 10% of tax due above benchmark	Year 2
Benchmark + 10% of tax due above benchmark	Year 3
Benchmark + 10% of tax due above benchmark	Year 4
Benchmark + 10% of tax due above benchmark	Year 5
Benchmark + 10% of tax due above benchmark	Year 6
Benchmark + 10% of tax due above benchmark	Year 7
Benchmark + 10% of tax due above benchmark	Year 8
Benchmark + 10% of tax due above benchmark	Year 9
Benchmark + 10% of tax due above benchmark	Year 10
Firm pays full tax liability, not to exceed the cap	Year 11

\*\* The benchmark for calculating the base year tax liability of an existing business is defined as the gross receipts total for the calendar year preceding enrollment in the tax abatement program

The benchmark for a new business is \$60 00

The city relies on the integrity of the taxpayer in the filing of business tax declarations and, therefore, if a subsequent audit reveals that a taxpayer has misreported or underreported the measure of the tax, the benchmark is subject to change or this incentive cancelled

K. The first and second year taxes to be paid by new businesses enrolled in the tax abatement program shall be calculated in accordance with Sections 5.04.110 and 504.120 of this chapter.

L. The last date for enrollment in the tax abatement program provided in this section is December 31 2003. (Ord. 12838 § 3 (part), 2007; Ord. 12541 § 3, 2003; Ord. 12080 § 1, 1998)

### 5.04.152 Review and modification of policy.

A. City staff shall review the impact of the policy every three years and to recommend changes if necessary. If the City Council modifies the program or policy, such changes would apply only to new and existing businesses not yet covered by the policy. Any abatement agreements between the city and individuals or corporate entities already in force at the time of the review will not be modified.

B. Any abatement agreements between the city and an individual or corporate entity will be guaranteed for the life of the policy except in the event of natural disaster or other crises during which the city may be at risk due to limited resources to cope with the disaster or crisis. At such time, the City Council may terminate the abatement program if it is in the best interest of the city to do so.

C. City staff shall review the level of the business license cap every odd year following the inception of the program and adjust it to reflect cost of living increases as reflected in the Consumer Price Index for Urban Consumers (CPI-U). (Ord. 12080 § 2, 1998)

### 5.04.160 Procedure for changes to business tax certificate.

No certificate granted or issued under the business tax provisions of this chapter shall be in any manner transferred or assigned, or authorize any person other than the person named in the certificate to carry on the business therein named or to transact such business in any place other than the place or location therein named without the written consent of the Business Tax Section endorsed thereon. Any time the place of location for the carrying on of such business and/or the business name is changed, the person applying for such change shall pay to the Business Tax Section a fee in the amount set forth in the City of Oakland master fee schedule (as amended from time-

to-time). (Ord. 12838 § 3 (part), 2007; prior code § 5-1.14)

#### **5.04.170 Business tax certificate to be conspicuously posted—Exception.**

Every person having a business tax certificate and carrying on a business at a fixed place of business shall keep such certificate conspicuously posted and exhibited while in force in a part of said place of business accessible to the view of the public.

Every person having such a certificate and not having a fixed place of business shall carry such certificate with him or her at all times while carrying on the business for which the same was granted. (Ord. 12838 § 3 (part), 2007; prior code § 5-1.15)

#### **5.04.180 Lost certificate.**

The Business Tax Section shall issue a duplicate business tax certificate to replace any certificate issued under the provisions of this chapter that has been lost or destroyed at no cost to the taxpayer for the first duplicate certificate. Each replacement certificate issued thereafter will be issued for the amount set forth in the City of Oakland master fee schedule (as amended from time-to-time). (Ord. 12838 § 3 (part), 2007; Ord. 12569 § 4, 2004; prior code § 5-1.16)

#### **5.04.190 Penalty for nonpayment of annual business tax.**

A. The following are declared delinquent:

1. Every annual business tax or portion thereof that is not paid on or before March 1st of each year; and

2. Every registration fee and portion thereof for a newly established business, as defined in Section 5.04.030 that is not paid within thirty (30) days after commencing business.

B. The aggregate total of all applicable penalties shall be:

March 2nd—May 1st	10%
May 2nd and thereafter	25%

C. For newly established businesses, the aggregate total of all penalties shall be:

1 day delinquent—60 days delinquent	10%
61 days delinquent and thereafter	25%

D. Proof of payment of Business Tax or Registration Fee. If a dispute arises regarding the date a payment was received by the city, the burden of proof is on the taxpayer. Only the following are considered proof of timely payments:

1. Cash register receipt issued by the City of Oakland through an authorized employee to those taxpayers making payment;
2. Certificate of mailing issued by the U.S. Post Office;
3. Certificate of registered or certified mail issued by the U.S. Post Office;
4. Receipt of delivery to private mail services; or
5. Postmark issued by the U.S. Post Office. (Ord. 12838 § 3 (part), 2007; prior code §§ 5-1.17, 5-1.17(a)—5-1.17(d))

#### **5.04.200 Return check penalty.**

Whenever a check is submitted for payment of a business tax and said check is subsequently returned unpaid by the bank upon which said check is drawn, and the check is not redeemed prior to the expiration of the renewal or registration due date, the taxpayer will be liable for the tax amount due plus penalties and interest as provided for in Sections 5.04.190 and 5.04.230. (Ord. 12838 § 3 (part), 2007; prior code § 5-1.18)

#### **5.04.210 Prior year registration assessments.**

If any person has failed to apply for and secure a business tax certificate, the business tax due shall be that amount due and payable from the first date on which the person was engaged in business in the city,

together with applicable penalties and interest. (Ord. 12838 § 3 (part), 2007; prior code § 5-1.19)

#### **5.04.220 Notice not required.**

The Director of Finance is not required to send a renewal, delinquency or other notice or bill to any person subject to the provisions of this chapter and failure to send such notice or bill shall not affect the validity of any tax, penalty or interest due under the provisions of this chapter. (Ord. 12838 § 3 (part), 2007; prior code § 5-1.19(a))

#### **5.04.230 Interest.**

In addition to the penalties imposed, any person who fails to remit any business tax imposed by the provision of this chapter shall pay interest at the rate of one percent per month or fraction thereof, on the amount of the tax inclusive of penalties from the date on which the business tax first became delinquent until paid. Interest is not a penalty. Interest is charged in order to compensate the city for the loss of the use of revenue after the due date of the tax. (Ord. 12838 § 3 (part), 2007; prior code § 5-1.20)

#### **5.04.240 Business tax a debt—Liens.**

The amount of any business tax and penalty imposed by this chapter shall be deemed a debt to the city; and any person carrying on any business without first having procured a business tax certificate from said city shall be liable to an action in the name of said city in any court of competent jurisdiction, for the amount of tax, penalty and interest imposed on such business.

An action to collect the business tax or registration fee must be commenced within three years of the date the business tax or registration fee becomes due. An action to collect the penalty and interest for non-payment of the business tax or registration fee must be commenced within three years of the date the penalty and interest accrues. The statute of limitations on an action by the city to collect unpaid taxes is tolled while the city is unaware of the existence or ongoing activities of a business due to the taxpayer's failure to obtain a business license and/or failure to comply with annual reporting requirements. The statute of

limitations is also tolled while an administrative appeal is pending.

The amount of tax, penalty and interest imposed under the provisions of this chapter is assessed against the business property on which the tax is imposed in those instances where the owner of the business and the business property are one and the same. If the taxes are not paid when due, such tax, penalty and interest shall constitute an assessment against such business property and shall be a lien on the property for the amount thereof, which lien shall continue until the amount thereof including all penalties and interest are paid, or until it is discharged of record. (Ord. 12838 § 3 (part), 2007; prior code § 5-1.21)

#### **5.04.250 Notice of hearing on lien.**

The Director of Finance shall file with the City Administrator a written notice of those persons against whose property the city will file liens. Upon receipt of such notice the City Administrator shall present same to the City Council, and the City Council shall forthwith fix a time and place for a public hearing on such notice.

The Director of Finance shall cause a copy of such notice to be served upon the owner of the business/business property not less than ten days prior to the time fixed for such hearing. Mailing a copy of such notice to the owner of the business/business property at the address listed in the most recent property ownership records provided to the city by the County Assessor as of the date that the Director of Finance causes notice to be mailed shall comprise proper service. Service shall be deemed complete at the time of deposit in the United States mail. (Ord. 12838 § 3 (part), 2007; prior code § 5-1.21(a))

#### **5.04.260 Collection of delinquent taxes by special tax roll assessment.**

With the confirmation of the report by the City Council, the delinquent business tax charges contained therein which remain unpaid by the owner of the business/business property shall constitute a special assessment against said business property and shall be collected at such time as is established by the

County Assessor for inclusion in the next property tax assessment.

The Director of Finance shall turn over to the County Assessor for inclusion in the next property tax assessment the total sum of unpaid delinquent business tax charges consisting of the delinquent business taxes, penalties, interest at the rate of one percent per month or fraction thereof from the date of recordation to the date of lien, an administrative charge in the amount set forth in the City of Oakland master fee schedule (as amended from time-to-time) and a release of lien filing fee in an amount equal to the amount charged by the Alameda County Recorder's Office.

Thereafter, said assessment may be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure of sale as provided for delinquent ordinary municipal taxes. The assessment liens shall be subordinate to health and safety liens except for those of state, county and municipal taxes with which it shall be upon parity. The lien shall continue until the assessment and all interest and charges due and payable thereon are paid. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to said special assessments. (Ord. 12838 § 3 (part), 2007; Ord. 12569 § 5, 2004; prior code § 5-1.21(b))

#### **5.04.270 Recordation of lien for delinquent charges.**

Upon confirmation of the report of delinquent business tax charges by the City Council, a lien on the real property for delinquent business tax charges which were assessed will be recorded with the Recorder of the County of Alameda. (Ord. 12838 § 3 (part), 2007; prior code § 5-1.21(c))

#### **5.04.280 Conviction for violation not waiver of business tax.**

The conviction and punishment of any person for transacting any business without a business tax certificate shall not excuse or exempt such person from the payment of any business tax due or unpaid at the time of such conviction, and nothing herein shall

prevent a criminal prosecution of any violation of the provisions of this chapter. (Ord. 12838 § 3 (part), 2007; prior code § 5-1.22)

#### **5.04.290 Retail sales.**

A. Every person engaged in the business of selling any goods, wares or merchandise at retail, and not otherwise specifically taxed by other business tax provisions of this chapter, shall pay a business tax of sixty dollars (\$60.00) per year or fractional part thereof for the first fifty thousand dollars (\$50,000.00) or less of gross receipts, plus one dollar and twenty cents (\$1.20) for each additional one thousand dollars (\$1,000.00) of gross receipts or fractional part thereof in excess of fifty thousand dollars (\$50,000.00)

B. For the purpose of this section, "a retail sale" or "sale at retail" means a sale of goods, wares or merchandise for any purpose other than resale in the regular course of business. (Prior code § 5-1.23)

#### **5.04.300 Grocer.**

A. Every person engaged in business as a grocer shall pay a business tax of sixty dollars (\$60.00) per year or fractional part thereof for the first one hundred thousand dollars (\$100,000.00) or less of gross receipts, plus sixty cents (\$.60) each additional one thousand dollars (\$1,000.00) of gross receipts or fractional part thereof in excess one hundred thousand dollars (\$100,000.00).

B. For the purpose of this section, "Grocer" means a retailing of perishable and non-perishable food type items, such as, but not limited to, meats, fish, poultry, vegetables, fruits, nuts, breads, dairy products, non-alcoholic beverages, etc., from a fixed location within the city. (Ord. 12838 § 3 (part), 2007; prior code § 5-1.24)

#### **5.04.310 Automobile dealers.**

Every person engaged in the business of selling new or used motor vehicles at wholesale or retail shall pay a business tax of sixty dollars (\$60.00) per year or fractional part thereof for the first fifty thousand dollars (\$50,000.00) or less of gross receipts, plus one dollar and twenty cents (\$1.20) for each ad-

ditional one thousand dollars (\$1,000.00) of gross receipts or fractional part thereof in excess of fifty thousand dollars (\$50,000.00). (Prior code § 5-1.25)

#### **5.04.320 Wholesale sales.**

A. Every person engaged in the business of selling any goods, wares or merchandise at wholesale, and not otherwise specifically taxed by other business tax provisions of this chapter, shall pay a business tax of sixty dollars (\$60.00) per year or fractional part thereof for the first fifty thousand dollars (\$50,000.00) or less of gross receipts, plus one dollar and twenty cents (\$1.20) for each additional one thousand dollars (\$1,000.00) of gross receipts or fractional part thereof in excess of fifty thousand dollars (\$50,000.00), except that any business engaged in the wholesale of firearms or firearms ammunition, as defined in Section 5.04.085 of this chapter, shall pay a gross receipts tax of sixty dollars (\$60.00) per year or fractional part thereof for the first two thousand five hundred dollars (\$2,500.00) or less of gross receipts, plus twenty-four dollars (\$24.00) per year for each additional one thousand dollars (\$1,000.00) of gross receipts or fractional part thereof in excess of two thousand five hundred dollars (\$2,500.00) from wholesaling firearms or firearms ammunition.

B. For the purpose of this section, "a wholesale sale" or "sale at wholesale" means a sale of goods, wares or merchandise for the purpose of resale in the regular course of business. (Amended by Measure D, passed by voters June 2, 1998; prior code § 5-1.26)

#### **5.04.330 Business and personal services.**

A. Every person engaged in the business of providing business or personal services not specifically taxed by other business tax provisions of this chapter shall pay a business tax of sixty dollars (\$60.00) per year or fractional part thereof for the first thirty-three thousand three hundred thirty-five dollars (\$33,335) or less of gross receipts, plus one dollar and eighty cents (\$1.80) for each additional one thousand dollars (\$1,000.00) of gross receipts or fractional part thereof in excess of thirty-three thousand three hundred thirty-five dollars (\$33,335.00) for services performed within the city.

B. "Business and personal services" means any business providing services, website hosting, internet and data exchange, repairs or improvements to or on real and personal property, renting or leasing personal property to businesses or persons, or providing services to persons such as, but not limited to, laundries, cleaning and dyeing, shoe repair, barber and beauty shops, photographic studios, parking lots and garages, title guarantee companies and stevedoring.

C. Parking stall operators who are subject to the parking stall fee shall be exempt from business tax under this section. (Ord. 12838 § 3 (part), 2007; prior code § 5-1.28)

#### **5.04.340 Professional-semi-professional connected business.**

A. Every person engaged in the business of providing professional services not specifically taxed by other business tax provisions of this chapter shall pay a business tax of sixty dollars (\$60.00) per year or fractional part thereof for the first sixteen thousand six hundred dollars (\$16,600.00) or less of gross receipts, plus three dollars and sixty cents (\$3.60) for each additional one thousand dollars (\$1,000.00) of gross receipts or fractional part thereof in excess of sixteen thousand six hundred dollars (\$16,600.00) for services performed within the city.

B. Providing professional services shall include, but not be limited to, the following: business management services, website development services, finance, insurance services, real estate services; medical and other health services; educational services, legal services; engineering and architectural services; accounting, auditing, and bookkeeping services; commission merchants; savings and loan and other financial institutions.

C. The term "commission merchant" means a person who, for compensation in the form of a commission, engages in selling activities, including the solicitation or negotiation of a sale, or the forwarding of sales orders, which lead to the sale of goods, wares or merchandise owned by some person other than the commission merchant. The business of a commission merchant shall be deemed to include also the buying

and selling of goods, wares or merchandise by a person to the extent that the person:

(1) Does not engage in the business of manufacturing, refining, fabricating, milling, treating or other processing of the goods, wares or merchandise bought and sold, and does not cause said goods, wares or merchandise to be manufactured, refined, fabricated, milled, treated or otherwise processed; and

(2) Does not obtain or retain title to said goods, wares or merchandise except in one or more of the following situations: while such may be in transit or for short periods of time before transportation commences or after it ceases; and

(3) Does not store or warehouse such goods, wares or merchandise except during one or more of the following situations: while such goods, wares or merchandise are actually in transit or for short periods of time before transportation commences or after it ceases.

D. Every person conducting, managing, or carrying on the business of furnishing reports on persons to insurance companies for underwriting purposes, or furnishing reports on persons to mercantile concerns as a basis for extending credit, shall be classified as semi-professional and shall pay an annual business tax based upon the schedule set forth in this section.

E. Every person conducting, managing or carrying on the business of lending money or advancing credit or arranging for the loan of money or advancing of credit as principal or agent, where the obligation to repay the money lent or debt incurred or to compensate for the advance of credit is secured by a lien on real property, or some interest in real property, unless such business is exempt therefrom by law, shall be classified as semi-professional and shall pay an annual business tax based upon the schedule set forth in this section. (Ord. 12838 § 3 (part), 2007; prior code §§ 5-1.29, 5-1.30, 5-1.31)

#### **5.04.350 Real estate developer.**

Every person engaged in the business of developing and selling real property in which said person has an equity interest or title, and not specifically taxed by other provisions of this chapter, shall pay a busi-

ness tax of sixty dollars (\$60.00) for the first thirty-three thousand three hundred thirty-five dollars (\$33,335) or less of gross receipts, plus one dollar and eighty cents (\$1.80) for each additional one thousand dollars (\$1,000) of gross receipts or fractional part thereof in excess of thirty-three thousand three hundred thirty-five dollars (\$33,335). A person shall be deemed to be engaged in the business described in this section who:

A. As a subdivider, as that term is defined in Section 11508 of the California Business and Professions Code, has recorded a subdivision map respecting the property sold in accordance with the Subdivision Map Act of California; provided, however, that a person filing or joining in filing of a subdivision map for the sole purpose of accomplishing a street vacation shall not be considered a subdivider; or

B. Has, prior to sale, divided the property held pursuant to the "lot-split" regulations of the Oakland Municipal Code; or

C. Sells two or more pieces of real property within a calendar year and upon each of which a building was constructed or caused to be constructed by the seller; provided such sales were within three years of the recordation by anyone of a subdivision map respecting the property sold pursuant to the Subdivision Map Act; or

D. Sells any real property upon which said person has constructed or caused to be constructed an apartment house or commercial building; provided such sale is either prior to or within three years after the issuance of a certificate of occupancy or its equivalent respecting the property sold. (Prior code § 5-1.31(a))

#### **5.04.360 Rehabilitation of real estate.**

Every person engaged in the business of rehabilitating and selling real estate in which said person has an equity interest or title and not specifically taxed by other provisions of this chapter, shall pay a business tax of sixty dollars (\$60.00) per year or fractional part thereof for the first thirty-three thousand three hundred thirty-five dollars (\$33,335) or less of gross receipts, plus one dollar and eighty cents (\$1.80) for each additional one thousand dollars (\$1,000) of

gross receipts or fractional part thereof in excess of thirty three thousand three hundred thirty-five dollars (\$33,335). A person who sells real property on which said seller performed the rehabilitation or had rehabilitation performed by another person, shall be deemed to be engaged in business described in this section. (Prior code § 5-1.31(b))

#### **5.04.370 Recreation and entertainment.**

A. Every person engaged in the business of providing entertainment, recreation, or amusement, and not otherwise specifically taxed by other provisions of this chapter, shall pay a business tax of sixty dollars (\$60.00) per year or fractional part thereof for the first thirteen thousand three hundred thirty-five dollars (\$13,335.00) or less of gross receipts, plus four dollars and fifty cents (\$4.50) for each additional one thousand dollars (\$1,000.00) of gross receipts or fractional part thereof in excess of thirteen thousand three hundred thirty-five dollars (\$13,335.00).

B. The business of providing entertainment, recreation or amusement shall include, but is not limited to, the following: theatrical or musical entertainment, all shows or exhibits, exhibiting motion pictures, athletic clubs, sports and athletic exhibition or contest, pool or billiard room, bowling alley, golf course, circus, penny arcade. (Prior code § 5-1.32)

#### **5.04.380 Construction contractors.**

A. Every person conducting or carrying on a business who is licensed as a contractor by the state of California and who undertakes to, or offers to undertake to, or purports to have the capacity to undertake to, or submits bids to, or does himself or herself or by or through others, construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish any building, highway, road, railroad, excavation or other structure project, development or improvement, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith, is defined as a contractor. The term contractor as used in this section also includes subcontractor and specialty contractor. Every contractor shall pay a business tax of sixty dollars (\$60.00) per year or fractional part thereof for the first thirty-three

thousand three hundred thirty-five dollars (\$33,335) or less of gross receipts, plus one dollar and eighty cents (\$1.80) for each additional one thousand dollars (\$1,000.00) of gross receipts or fractional part thereof in excess of thirty-three thousand three hundred thirty-five dollars (\$33,335.00) for work engaged in at sites within the city. (Prior code § 5-1.33)

#### **5.04.390 Manufacturer.**

A. Every person manufacturing or processing any goods, wares, merchandise, articles or commodities at a location within or outside of the City of Oakland and selling such items at retail and/or wholesale in the City of Oakland shall pay an annual business tax of sixty dollars (\$60.00) per year or fractional part thereof for the first fifty thousand dollars (\$50,000.00) or less of gross receipts less the value of raw materials, plus one dollar and twenty cents for each additional one thousand dollars (\$1,000.00) of gross receipts less the value of raw materials or fractional part thereof in excess of fifty thousand dollars (\$50,000.00), or the value of the partially completed product at the time it enters the manufacturing process within the city.

B. Subject to the appointment provisions set forth in Section 5.04.570 of this Municipal Code, whenever the process of manufacturing goods, wares, merchandise, articles or commodities at a location within the City of Oakland does not result in a finished product, or its results in a finished product, but does not result in gross receipts, the following alternate method of calculating business tax under this section shall be used:

Each person taxed under this subsection shall pay a business tax of sixty dollars (\$60.00) per year or fractional part thereof for the first fifty thousand dollars (\$50,000.00) or less of all expenses incurred in the manufacturing process at the business location within the city, plus one dollar and twenty cents (\$1.20) for each additional one thousand dollars (\$1,000.00) or fractional part thereof in excess of fifty thousand dollars (\$50,000.00) on the total of all expenses incurred in the manufacturing process at the business location within the city, including, but not

limited to payroll, utilities, depreciation, and rent. (Res. 77339 § 2, 2002: prior code § 5-1.34)

#### **5.04.400      Administrative headquarters.**

A. Every person conducting or carrying on the operation of an administrative headquarters shall pay a business tax of sixty dollars (\$60.00) per year or fractional part thereof for the first fifty thousand dollars (\$50,000.00) or less of gross payroll, plus one dollar and twenty cents for each additional one thousand dollars (\$1,000.00) of gross payroll or fractional part thereof in excess of fifty thousand dollars (\$50,000.00), of all persons employed by the business at such administrative headquarters.

B. "Administrative headquarters" means a location where the principal business transacted consists of providing administrative or management related services such as, but not limited to, recordkeeping, data processing, research, advertising, public relations, personnel administration, legal and corporate headquarters services, to other locations where the operations of the same business are conducted which lead more directly to the production of gross receipts.

C. "Gross payroll" means and includes the total gross amount of all salaries, wages, commissions, bonuses, or other money payment of any kind which a person received from or is entitled to receive from or be given credit for by his or her employer for any work done or personal service rendered in any trade, occupation or profession, including any kind of deductions before "take home" pay is received; but shall not mean or include amounts paid to traveling salespersons or other workers as allowance or reimbursement for traveling or other expenses incurred in the business of the employer, except to the extent of the excess of such amounts over such expenses actually incurred and accounted for by the employee to the employer. (Res. 77339 § 3, 2003: prior code § 5-1.35)

#### **5.04.410      Transportation of persons and goods.**

A. Every person engaged in the transportation of goods and/or persons and not otherwise specifically taxed by other business tax provisions of this

chapter shall pay an annual business tax based upon the average number of persons employed by such business in the city according to the following schedule:

For the first person employed	\$72.00
For the next 19 persons employed, per person	18.00
For the next 80 persons employed, per person	9.00
For the next 100 persons employed, per person	7.50
For all other persons employed, per person	4.50

B. "Average number of persons employed" means the average number of persons employed daily in the business for the period of one year, and shall be determined by ascertaining the total number of hours of service performed by all employees during the previous year, and dividing the total number of hours of service thus obtained by the number of hours of service constituting a day's work, according to the custom or laws governing such employments, and by again dividing the sum thus obtained by the number of business days in each year. In computing the "average number of persons employed," fraction of numbers shall be excluded.

"Employee," as used in this section, means all persons engaged in the operation or conduct of the business, whether as owner, any member of the owner's family, partner, manager and any and all other persons employed or working in said business. (Ord. 12838 § 3 (part), 2007; prior code § 5-1.36)

#### **5.04.420      Rental of residential property—Gross receipts.**

A. Every person engaged in the business of conducting or operating an apartment house, lodging house, and every person engaged in the business of conducting or letting rooms, and/or any building structure, for dwelling, sleeping or lodging, including, and limited to, a single-family house, duplex, townhouse, condominium or co-operative, shall pay

a business tax of thirteen dollars and ninety-five cents (\$13.95) or each one thousand dollars (\$1,000.00) of gross receipts or fractional part thereof.

B. Every person engaged in the business of conducting or operating a hotel or motel shall pay a business tax of sixty dollars (\$60.00) per year or fractional part thereof for the first thirty-three thousand three hundred thirty-five dollars (\$33,335.00) or less of gross receipts, plus one dollar and eighty cents (\$1.80) for each additional one thousand dollars (\$1,000.00) of gross receipts, plus one dollar and eighty cents (\$1.80) for each additional one thousand dollars (\$1,000.00) of gross receipts or fractional part thereof in excess of thirty-three thousand three hundred thirty-five dollars (\$33,335.00), received from rentals to transients, as defined in Section 4.24.020. All other residential rental hotel and motel owners shall be taxed under the provisions of subsection A of this section.

C. The tax basis for persons taxed pursuant to subsection A of this section shall include gross receipts as defined per Section 5.04.030 plus all payments made to the lessor, and/or paid to third parties on behalf of the lessor as part of said lease and/or paid to third parties on behalf of lessor as part of said lease agreement, including but not limited to, all taxes, insurance, mortgage payment, rent, and cash value of all services rendered to or on behalf of the lessor by said lessee in lieu of rental or lease fee payments.

Note: If the business tax is paid by the lessee on behalf of the lessor, said tax payment, including penalty and interest payments, shall be included in the tax base for the immediately succeeding business tax period.

(Ord. 12838 § 3 (part), 2007; prior code §§ 5-1.37, 5-1.37(d))

#### **5.04.430      Rental of commercial/industrial property—Exemption—Gross receipts.**

A. Every person engaged in the business of renting or letting a building, structure, or other

property for commercial/industrial purposes, or a portion of such building, structure or property within the city for a purpose other than dwelling, sleeping, or lodging to a tenant shall pay a business tax of thirteen dollars and ninety-five cents (\$13.95) for each one thousand dollars (\$1,000.00) of gross receipts or fractional part thereof.

B. A lessor otherwise subject to the business tax described in subsection A of this section shall not be exempt therefrom by reason of the fact that one or more persons may reside within a building or structure where the primary purpose of the particular tenancy or the primary use or right to use by the tenant is for some purpose other than dwelling, sleeping, or lodging.

#### **C. Five-Year Exemption.**

1. All new buildings and those buildings on which major renovations are completed after July 1, 1981 will be eligible for a five-year exemption from the business tax rate described in subsection A of this section.

2. A lessor that qualifies for this exemption shall pay a business tax of sixty dollars (\$60.00) per year or fractional part thereof for the first thirty-three thousand three hundred thirty-five dollars (\$33,335.00) or less of gross receipts, plus one dollar and eighty cents (\$1.80) for each additional one thousand dollars (\$1,000.00) of gross receipts or fractional part thereof in excess of forty-four thousand four hundred forty-five dollars (\$44,445.00), during the five-year exemption period.

3. In determining the five-year exemption period:

a. The five-year exemption shall be deemed to commence in the year in which new buildings and/or major renovations are completed and to end in the fifth year from the year of completion irrespective of the date on which an application for exemption is filed.

b. There will be no extensions of the five-year exemption period for subsequent major renovations after the first major renovations are completed.

c. All lessors are entitled to only one five-year exemption for each business location. The five-year exemption applies to the building or structure and not the lessor.

d. There will be no proration in applying for the first year of the five-year exemption. The year in which new buildings are completed or major renovations are completed shall be considered to be a full year regardless of the date of completion.

4. To qualify for an exemption, the lessor of commercial/industrial property must file an annual exemption on a form prescribed by the Business Tax Section.

5. Definitions applicable to this subsection are as follows:

"Major renovation" means any instance where the cost of renovation is equal to or exceeds fifty (50%) percent of the after-renovation appraised value of the building as determined by a certified, independent appraiser.

"New building" means any newly constructed building completed after July 1, 1981 for which a temporary certificate of occupancy or certificate of occupancy has been issued by the city.

"New lessor" means any change which results in an eighty (80%) percent or more change of ownership.

D. Gross Receipts for Rental of Commercial/Industrial Property. The tax basis for persons, taxed pursuant to subsection A of this section shall include gross receipts as defined per Section 5.04.030 plus all payments made to the lessor, and/or paid to third parties on behalf of the lessor as part of said lease agreement, including but not limited to, all taxes, insurance, mortgage payment, rent, and the cash value of all services rendered to or on behalf of the lessor by said lessee in lieu of rental or lease fee payments.

Note: If the business tax is paid by the lessee on behalf of the lessor, said tax payment, including penalty and interest payments, shall be included in the tax base for the immediately succeeding business tax period.

(Ord. 12838 § 3 (part), 2007; prior code §§ 5-1.38, 5-1.38(d), 5-1.38(f))

#### **5.04.440 Special exemption.**

All buildings rented/leased by the city for which the city assumes responsibility for payment of the business tax pursuant to agreement between the city and owner(s) shall be exempt from business tax while said agreement is in effect.

(Prior code § 5-1.138(g))

#### **5.04.460 Public utility.**

A. Every person engaged in the business of conducting or operating a public utility shall pay a business tax of sixty dollars (\$60.00) per year or fractional part thereof for the first sixty thousand dollars (\$60,000.00) or less of gross receipts, plus one dollar (\$1.00) for each additional one thousand dollars (\$1,000.00) of gross receipts or fractional part thereof in excess of sixty thousand dollars (\$60,000.00).

B. This section includes, but is not limited to, establishments providing to the general public or to private business sectors the following services: gas, sanitary and garbage, cable television, and P.U.C.-related telephone services.

(Ord. 12838 § 3 (part), 2007; Ord. 11911 § 2, 1996; prior code § 5-1.40)

#### **5.04.470 Media firms.**

A. Every person engaged in the business of conducting or operating a media business shall pay a business tax of sixty dollars (\$60.00) per year or fractional part thereof for the first fifty thousand dollars (\$50,000.00) or less of gross receipts, plus one dollar and twenty cents (\$1.20) for each additional one thousand dollars (\$1,000.00) of gross receipts or fractional part thereof in excess of fifty thousand dollars (\$50,000.00).

B. For the purposes of this section, persons engaged in the business of "media firms" means those businesses providing published or electronic media including newspapers, publishing, radio and broadcast television companies.

(Ord. 12838 § 3 (part), 2007; prior code § 5-1.41)

#### **5.04.480 Medical cannabis businesses.**

For the purposes of this section:

A. "Medical Cannabis Business" means any activity regulated or permitted by Chapter 5.80

and/or Chapter 5.81 of this Code that involves planting, cultivating, harvesting, transporting, dispensing, delivering, selling at retail or wholesale, manufacturing, compounding, converting, processing, preparing, storing, packaging, or testing any part of the plant Cannabis sativa L. or any of its derivatives, pursuant to Health and Safety Code Sections 11362.5 and 11362.7-11362.83.

B. Every person engaged in a "medical cannabis business" not otherwise specifically taxed by other business tax provisions of this chapter, shall pay a business tax of \$50.00 for each \$1,000.00 of gross receipts or fractional part thereof.

(Res. No. 82949, § 2, 7-26-2010; Res. No. 81925, § 2, 4-21-2009)

**Editor's note**—Res. No. 82949, § 2, adopted July 26, 2010, changed the title of Section 5.04.480 from "Cannabis" to "Medical cannabis businesses." The historical notation has been preserved for reference purposes.

#### **5.04.481 Non-medical cannabis businesses.**

For the purpose of this section:

A. "Non-medical cannabis business" means any of the activities described in Subsection 5.04.480 A. that are not conducted pursuant to Health and Safety Code Sections 11362.5 and 11362.7-11362.83, but are otherwise authorized by State law.

B. Every person engaged in a "non-medical cannabis business" not otherwise specifically taxed by other business tax provisions of this chapter, shall pay a business tax of \$100.00 for each \$1,000.00 of gross receipts or fractional part thereof.

(Res. No. 82949, § 2, 7-26-2010)

#### **5.04.485 Firearms/ammunitions sales.**

A. Notwithstanding any other provision of this chapter, commencing January 1, 1998, for every person engaged in the business of selling firearms or firearms ammunition, as defined by this section, the tax shall be sixty dollars (\$60.00) per year or fractional part thereof for the first two thousand five hundred dollars (\$2,500.00) or less of gross receipts, plus twenty-four dollars (\$24.00) per year for each additional one thousand dollars

(\$1,000.00) of gross receipts or fractional part thereof in excess of two thousand five hundred dollars (\$2,500.00) from sell-



ing firearms or firearms ammunition or from any other activity which is subject to tax under the provisions of this chapter.

B. As used herein, the term "firearm" means any device, designed to be used as a weapon, from which is expelled through a barrel a projectile by the force of any explosion, or other form of combustion. The term also includes any rocket, rocket-propelled projectile launcher, or similar device containing any explosive or incendiary material and not designed for emergency or distress signaling purposes.

C. As used herein, the term "firearms ammunition" means any projectiles with their fuses, propelling charges, or primers fired from weapons, and any of the individual components thereof, including, but not limited to, black powder and reloading primers.

D. As used herein, the term "engage in the business of selling firearms or firearms ammunition" means the selling, leasing or transferring of firearms or firearms ammunition, except for wholesale sales, as provided in Section 5.04.320.

E. This section shall not be applied to establishments exclusively involved in the sales of firearms or firearms ammunition to law enforcement officials.

F. This section shall not be applied to any business licensed as a pawnbroker pursuant to the Oakland Municipal Code that (1) receives firearms or firearms ammunition as bond or other security for loans, advances or other forms of compensation, or (2) sells or resells firearms or firearms ammunition wholesale to properly licensed and registered dealers exclusively. (Added by Measure D, passed by voters June 2, 1998)

#### **5.04.490      Taxi and ambulance.**

Every person engaged in taxicab, ambulance or limousine business in the city shall pay an annual business tax as follows:

A. For each ambulance or limousine	\$ 75.00
B. For each taxicab permit	180.00

(Prior code § 5-1.47)

#### **5.04.500      Miscellaneous business.**

Any person engaged in a business not specifically taxed by other provisions of this chapter and not otherwise exempted shall pay a business tax of sixty dollars (\$60.00) per year or fractional part thereof for the first fifty thousand dollars (\$50,000) or less of gross payroll plus one dollar and twenty cents (\$1.20) for each additional one thousand dollars (\$1,000) of gross payroll or fractional part thereof in excess of fifty thousand dollars (\$50,000). (Ord. 12838 § 3 (part), 2007; prior code § 5-1.48)

#### **5.04.510      Optional method of determining tax.**

When a person engages in two or more businesses, other than manufacturing, which are taxed on the basis of gross receipts under different provisions of this chapter, such person may elect to combine all such gross receipts and pay a tax determined by applying the rate of tax applicable to that business activity producing the greatest amount of gross receipts, subject to the following provisions:

A. All businesses must be conducted at the same location; and

B. The gross receipts of all business activities, except the business producing the greatest amount of gross receipts, must not exceed twenty (20) percent of the total combined gross receipts of all business activities.

C. Each person required to obtain a business tax certificate for engaging in the business of selling firearms or firearms ammunition under the provisions of Section 5.04.485 shall not be required to obtain a business tax certificate for activities covered by any other section of this chapter and shall pay tax on gross receipts derived from any activity covered by any section of this chapter at the rate prescribed for gross receipts from the sale of firearms or firearms ammunition. (Ord. 12838 § 3 (part), 2007; amended by Measure D, passed by voters June 2, 1998; prior code § 5-1.49)

**5.04.520      Duties of the Director of Finance—  
                  Notice of decisions.**

It shall be the duty of the Director of Finance, acting by and through the Business Tax Section, to collect and receive all taxes imposed by this chapter and to keep an accurate record thereof. Said Director of Finance, acting by and through the Business Tax Section, is charged with the enforcement of this chapter, except as otherwise provided herein, and may prescribe, adopt and enforce those rules and regulations necessary or advisable to effectuate the purposes of this chapter, including provisions for the re-examination and correction of declarations and payments; the exclusive discretionary authority to waive penalties; and the authority to defer the payment due dates as prescribed by Section 5.04.190 by up to ten calendar days. In individual cases, the Director of Finance may make findings of fact in support of decisions, determinations and rulings enforcing this chapter. The Director of Finance may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect. (Ord. 12838 § 3 (part), 2007; prior code § 5-1.52)

**5.04.530      Exhibit of tax certificates.**

The Director of Finance and all employees of the Business Tax Section shall have the right to enter free of charge during business hours any place of business for which a tax certificate is required, for the sole purpose of verifying the existence of and to demand the exhibition of such tax certificates for the current term from any person engaged or employed in the transaction of such business. (Ord. 12838 § 3 (part), 2007; prior code § 5-1.52(a))

**5.04.540      Refund of tax, penalty or interest  
                  paid more than once or  
                  erroneously or illegally collected.**

A. Illegally Collected Tax. Whenever the amount of any tax, penalty or interest has been illegally paid to, collected, or received by the city under Title 5 of the Municipal Code, so much of the tax as has been illegally collected may be refunded, provided a verified claim in writing therefore, stating under penalty of perjury the specific grounds upon

which the claim was founded, with specificity sufficient to enable the Director of Finance to understand and evaluate the claim, is filed with the Director of Finance within one year from the date the tax was paid. In the event that a provision in this chapter is found to be invalid, the taxpayer will be compensated to the extent of the taxpayer's injury from the tax as established by the taxpayer in accordance with the procedures adopted by the Director of Finance.

B. Erroneously Collected Tax. Whenever the amount of any tax, penalty or interest has been, due solely to a clerical, accounting or mathematical error, erroneously paid to, collected or received by, the city under Title 5 of the Municipal Code, so much of the tax collected or received by the city due to said clerical, accounting or mathematical error, may be refunded, provided a verified claim in writing therefore, stating under penalty of perjury the specific grounds upon which the claim was founded, with specificity sufficient to enable the Director of Finance to understand and evaluate the claim, is filed with the Director of Finance within fifteen (15) months from the date the tax was paid.

C. Submission of Claim. A claim shall be on a form furnished by the Director of Finance. A claim for refund may only be signed by the taxpayer or other person determined to be liable for the tax or said person's guardian or conservator. No other agent, including the taxpayer's attorney, may sign a refund claim. Class claims for refunds shall not be permitted. If the claim is approved by the Director of Finance, the excess amount collected may be refunded or may be credited on any amount due and payable from the person from whom it was collected, or by whom paid, and the balance may be refunded to such person, his or her administrators or executors.

No refund of any tax or registration fee paid under this chapter shall be made by virtue of the discontinuance, dissolution, or other termination of a business. The City Auditor shall annually on a test basis audit refunds previously approved by the Director of Finance. (Ord. 12838 § 3 (part), 2007; Ord. 12432 § 3, 2002; prior code § 5-1.53)

**5.04.550      Board of review.**

A. Composition. A business tax board of review consisting of the City Administrator, the City Auditor, an employee of the City selected by the City Administrator, and two community members nominated by the Mayor and appointed by the Council each for a term of four years is hereby created. The Board shall select from its members a chairperson who shall serve at its pleasure. The City Administrator and the City Auditor may each deputize in writing filed with the Board for such period or for such hearings as may be desired, a person to serve as his/her designee to the Board. A majority of members of the Board shall constitute a quorum. The Board shall be deemed to be in the Finance and Management Agency, shall meet and keep its files in such office and all filings with the Board relating to appeals or otherwise shall be mailed to Chairperson, Board of Review in care of Business Tax Section—Finance and Management Agency, 250 Frank H. Ogawa Plaza, Suite 1320, Oakland, CA 94612. A Board member may fully participate in all decisions in which such Board member participates while on holdover status and such decisions are not invalid because of the Board member's holdover status. Neither the members of the Board nor the members of their offices deputized to serve in their places at any time shall receive any compensation as such members or acting members for their services on the Board.

B. Appeals. Any person whose rights or interests have been directly and adversely affected by a business tax ruling or finding of fact made by the Director of Finance under the authority of this chapter may appeal therefrom in writing to the Board of Review within twenty (20) days from the date of notification, in the manner provided in Section 5.04.640D, of such ruling or finding. The Board of Review in individual cases may, in its exercise of reasonable discretion in administering the provisions of this chapter, enlarge the twenty (20) day period in which to file an appeal. The Board shall make findings of fact in support of its decisions on appeal. The Board shall exercise its reasonable discretion in administering the provisions of this chapter in rendering a

decision on appealed rulings and findings. The Board's decision on appeal becomes final upon giving notice thereof to the appellant in the manner provided in Section 5.04.640D. Any tax, penalty, or interest found to be owing is due and payable at the time the Board's decision thereon becomes final.

C. Extension of Time for Filing and Payment. On written application showing good cause, the Board or its chairperson may, with or without hearing, by written order filed with the Director of Finance, extend for not more than forty-five (45) days the time provided in this chapter for the filing of any declaration or making any payment. In no event will such an extension be granted for an annual tax on any written application received after the annual March 1st deadline. For the period of such extension the penalty in regard thereto shall be waived.

D. Exhaustion of Remedies. Any person whose case may be resolved by employing the administrative remedies provided by this section must exhaust those remedies before filing suit for refund, rebate, exemption, cancellation, amendment, adjustment, or modification of tax, interest or penalty.

E. Review of Tax Rulings. The Board of Review shall, on motion of any one of its members, hold a hearing to ascertain its position regarding any business tax ruling. The Board may affirm, modify, or reverse such ruling as necessary or advisable to effectuate the purposes of this chapter. The Board of Review's decision on such ruling shall have only prospective effect. (Ord. 12838 § 3 (part), 2007; Ord. 12552 § 3, 2003; Prior code § 5-1.54)

**5.04.560      Saving clause.**

A. The provisions of this chapter shall not apply to any person, association, corporation or to any property, as to whom or which it is beyond the power of the City Council to impose the business tax herein provided. If any sentence, clause, section or part of this chapter, or any business tax against any individual or any of the several groups specified herein is found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall affect only such clause, sentence, section or part of this chapter and shall not affect or impair any of the re-

maining provisions, sentences, clauses, sections or other parts of this chapter. It is declared to be the intention of the City Council of the city that this would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

B. Any person claiming an exemption from the business tax imposed by this chapter by virtue of this section, shall submit to the Business Tax Section a statement signed under penalty of perjury setting forth the facts necessary to establish such claim of exemption. (Prior code § 5-1.55)

#### **5.04.570 Apportionment.**

A. None of the taxes provided for by this chapter shall be applied so as to occasion an undue burden upon interstate commerce or be violative of the equal protection and due process clauses of the Constitutions of the United States of the State of California.

B. If any case where a business tax is believed by a licensee to place an undue burden upon interstate commerce or be violative of such constitutional clauses, the licensee may apply to the Director of Finance for an adjustment of the tax. It shall be the licensee's obligation to request in writing for an adjustment within one-year after the date of payment of the prescribed tax. If the licensee does not request in writing within one-year from the date of payment, it shall be conclusively deemed to have waived any adjustment for that year.

C. The licensee shall, by sworn statement and supporting testimony, show the method of business and the gross volume or estimated gross volume of business and such other information as the Director of Finance may deem necessary in order to determine the extent, if any, of such undue burden or violation. The Director of Finance shall then conduct an investigation, and shall fix as the tax for the licensee an amount that is reasonable and nondiscriminatory, or if the tax has already been paid, shall order a refund of the amount over and above the tax so fixed. In fixing the tax to be charged, the Director of Finance shall have the power to base the tax upon a percentage of gross receipts or any other measure which will assure that the tax assessed shall be uniform with that

assessed on businesses of like nature, so long as the amount assessed does not exceed the tax as prescribed by this chapter. From time to time, the Director of Finance shall issue guidelines to be used to determine the percentage of gross receipts to be used as a tax base. In no event is any taxpayer entitled to a refund that results in a windfall to such taxpayer.

D. Should the Director of Finance determine the gross receipts measure of tax to be the proper basis, he/she may require the licensee to submit a sworn statement of the gross receipts and pay the amount of tax determined by the Director of Finance, providing that no licensee shall be required to pay any additional tax during any one calendar year if the business shall have paid during said calendar year an amount equal to the annual tax prescribed in this chapter. (Ord. 12432 § 4, 2002: prior code § 5-1.56)

#### **5.04.580 Examination of books, records, witnesses—Information confidential—Penalty.**

The Director of Finance or any authorized employee is authorized to examine the books, papers, tax returns and records of any person subject to this chapter for the purpose of verifying the accuracy of any declaration made, or if no declaration was made, to ascertain the business tax due.

Every person subject to the provisions of this chapter is directed and required to furnish to the Director of Finance or duly authorized agent or employee, the means, facilities and opportunity for making such examination and investigations. The Director of Finance is authorized to examine a person under oath, for the purpose of verifying the accuracy of any declaration made, or if no declaration was made, to ascertain the business tax or registration fees due under this chapter. In order to ascertain the business tax or registration fees due under this chapter, the Director of Finance may compel, by administrative subpoena, the production of relevant books, papers and records and the attendance of all persons as parties or witnesses.

The refusal to submit to such examination or production by any employer or person subject to the provisions of this chapter shall be deemed a violation

of this chapter, and administrative subpoenas shall be enforced pursuant to applicable state law. (Prior code § 5-1.57)

**5.04.590 Violations, infraction, misdemeanor.**

In the exercise of the duties imposed upon the Director of Finance hereunder, and acting through deputies or duly authorized representatives, the Director of Finance shall examine or cause to be examined all places of business in the city to ascertain whether the provisions of this chapter have been complied with. For the purposes of this paragraph, in the case of a person coming into the city to do business from a location outside the city, the "place of business" shall be deemed to be the place where such person is engaging in business or offering to engage in business in the city.

Any person violating any provision of this chapter shall be guilty of an infraction. Any person knowingly or intentionally misrepresenting to any officer or employee of this city any material fact in procuring the certificate herein provided for shall be guilty of a misdemeanor, and conviction thereof shall be punishable by a fine of not more than five hundred dollars (\$500.00) or imprisonment in the county jail for a period of not more than six months or by both fine and imprisonment. (Prior code § 5-1.57(a))

**5.04.600 Results of audit.**

A. If an audit results in reclassification, not made necessary by earlier misclassification based upon incorrect and/or incomplete information supplied by a taxpayer to the Business Tax Section, the reclassification shall be effective in the current year only and shall not be retroactive. The taxpayer shall have twenty (20) days from notification of audit results in which to pay any additional tax liability resulting from the reclassification. If full payment is not received within the twenty (20) day period, the unpaid amount is deemed to be delinquent. Interest pursuant to Section 5.04.230 shall begin accruing upon delinquent amounts and penalties shall be assessed upon delinquent amounts as follows:

1 day delinquent—60 days delinquent:	10%
61 days delinquent and thereafter:	25%

B. If an audit results in reclassification made necessary by earlier misclassification based upon incorrect and/or incomplete information supplied by a taxpayer to the Business Tax Section, penalties and interest pursuant to Sections 5.04.190 and 5.04.230 shall be retroactively assessed upon amounts underpaid from the date the correct taxes would have been due.

C. The city shall mail notice of the audit results to the taxpayer within ten (10) days from the date of the audit finalized by the city. Any person upon whom an audit is performed has twenty (20) days after notification of audit results to file a petition to question such audit. The Director of Finance in individual cases may, in the exercise of reasonable discretion in administering the provisions of this chapter, increase the twenty (20) day period.

D. Audit results become final at the end of the twenty (20) day period unless a petition to question audit has been filed:

1. Within the twenty (20) day period; or
2. Within the extension period granted by the Director of Finance.

E. The Director of Finance shall provide taxpayer with notice of:

1. Audit results;
2. Decisions on applications for extensions of time in which to file petitions to question audit results; and
3. Decisions on petitions to question audit results in the manner provided in Section 5.04.640D.

F. The taxpayer shall be given twenty (20) days to pay the additional tax liability, resulting from the reclassification. If payments in full is not received within the twenty (20) day period, appropriate penalties and interest shall be assessed from notification date of additional assessment until the total liabilities are paid in full. (Ord. 12838 § 3 (part), 2007; prior code § 5-1.57(b))

**5.04.610 Records required from taxpayers.**

Every person required to obtain a certificate shall keep and preserve for a period of three years such records as may be necessary to determine the amount of tax for which the person is liable. (Prior code § 5-1.57(c))

**5.04.620 Small business exemption.**

A. Notwithstanding any other provisions of this chapter, "small business enterprises" as hereinafter defined, shall be exempt from payment of business tax; provided, however, that small business enterprises shall pay the registration fee pursuant to Section 5.04.100 and shall submit an annual statement pursuant to Section 5.04.090.

B. The term "small business enterprise" shall mean and include any person (other than persons subject to taxation pursuant to Section 5.04.420 and 5.04.430 of this code):

1. Whose tax basis under this chapter is set as gross receipts;

2. Whose annual gross receipts do not exceed two thousand five hundred dollars (\$2,500.00); and

3. Any person claiming exemption from the requirement of paying the business license tax under this section shall be required to obtain a business license and timely file for exemption and subsequent renewals before the delinquency date. The failure to timely file or renew prior to the date the taxes would otherwise have been delinquent, shall render the small business exemption inapplicable and shall subject the person to the tax that would otherwise be payable as well as to any interest and penalties applicable thereto. Persons claiming exemption shall be required to pay the business licenses application fee and all other applicable city fees, and to obtain all permits required for the operation of the business.

4. Any person claiming exemption under this section shall submit documentation evidencing the total taxable and nontaxable gross receipts of the applicant in support of the initial exemption registration and the annual exemption renewal. Such documentation shall comply with the requirements established by the Finance Director to ensure accuracy and valid-

ity of the city's determination on the exemption claim.

5. Beginning with the 2010 tax year, the maximum annual gross receipts threshold for the small business exemption shall be adjusted to reflect the rate of inflation every three years to the level equal to the cumulative change in the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index (CPI) or other method of measuring the rate of inflation which the City Administrator determines is reliable and generally accepted, over the three preceding fiscal years, and rounding the exemption amount to the nearest one hundred dollars (\$100.00). (Ord. 12691 § 4, 2005: Ord. 12691 § 3, 2005)

**5.04.630 Exemption for nonprofit corporation, association, etc.—Exemption for owners of low income housing tax-credit financed affordable housing developments.**

A. Every institution, corporation, organization or association that qualifies for nonprofit tax-exempt status under either state or federal law seeking an exemption pursuant to this section shall submit an annual statement to the Business Tax Section setting forth such information as required to determine eligibility for such exemption.

B. The owner of an affordable housing project that has received federal and/or state low income housing tax credits in connection with the affordable housing ownership, is exempt from the payment of business taxes pursuant to this chapter in connection with such affordable housing project; provided that the property is owned and operated by a partnership in which the managing partner is an eligible non-profit corporation or limited liability company and provided that the property qualifies for the property tax exemption pursuant to Section 214(g) of the California Revenue and Taxation Code. The gross receipts of the owner's business derived solely from the portion of the property that is eligible for the exemption pursuant to Section 214(g) shall be exempt from the Business Tax. The owner must submit an application and statement to the Business Tax Section setting forth evidence establishing its qualifi-

cations for this exemption, including a copy of the Section 214(g) exemption, in form and substance satisfactory to the Business Tax Section. The owner shall file annual statements setting forth such information necessary to determine continued eligibility for the exemption. (Ord. 12838 § 3 (part), 2007; prior code § 5-1.59)

#### **5.04.631      Exemption for family daycare.**

Every person licensed by the State of California Department of Social Services as a family daycare provider, and maintaining a state license permitting up to fourteen (14) children or less per facility, shall be exempt from the business tax imposed under this chapter. Persons seeking an exemption pursuant to this section must submit an annual statement, as described in Section 5.04.090, together with a copy of the most current license issued by the State of California Department of Social Services to the Business Tax Section. (Ord. 12838 § 3 (part), 2007; Ord. 12172 § 1, 1999)

#### **5.04.640      Deficiency determination.**

A. Recomputation of Tax—Authority to Make—Basis of Recomputation. If the Director of Finance in the exercise of reasonable discretion is not satisfied with the declaration or declarations of the tax or the amount of tax computed therefrom, the Director may compute and determine the amount required to be paid upon the basis of the facts contained in the declaration or declarations or upon the basis of any factual information within the Director of Finance's possession or that may come into the Director's possession. One or more deficiency determination may be made of the amount due for one or for more than one period.

B. Interest on Deficiency. The amount of the determination in excess of that amount timely paid by the taxpayer, inclusive of penalties, shall bear interest in the amount and manner set forth in Section 5.04.230 of this chapter.

C. Offsetting of Overpayments. In making a determination, the Director of Finance may offset overpayments for a period or periods against under-

payments for any period or periods, and against any city debt.

D. Notice of Director of Finance's Determination—Service Of. The Director of Finance shall give to the taxpayer written notice of the Director's determination, and of any interest and penalty which are due. The notice may be served personally or mailed; if mailed, such service is complete upon mailing to the taxpayer at the taxpayer's last address shown on the Business Tax Section records. (Ord. 12838 § 3 (part), 2007; prior code § 5-1.64)

#### **5.04.650      Determination if no declaration filed.**

A. Estimate of Gross Receipts or Other Measure of Tax—Computation of Tax—Penalty. If any person fails to file a declaration as required by this chapter, the Director of Finance shall in the exercise of reasonable discretion make an estimate of the amount of the gross receipts or other measure of tax applicable to the person or persons subject to the tax. The estimate shall be made for the period or periods for which the person failed to file a declaration and shall be based upon any factual information which is in the Director of Finance's possession or which may come into the Director's possession. Upon the basis of this estimate, the Director of Finance shall compute a determination of the amount required to be paid to the city. The Director shall add to the determination a penalty, pursuant to Section 5.04.190. One or more determinations may be made for one or for more than one period.

B. Offsets. In making the determination, the Director of Finance may offset overpayments for a period or periods against underpayments for any period or periods, and against any city debt.

C. Interest on the Amount Due. The amount of the determination, exclusive of penalties, shall bear interest in the amount and manner set forth in Section 5.04.230 of this chapter.

D. Giving of Notice—Manner of Service. Promptly after making a determination, the Director of Finance shall give to the person whose tax has been determined pursuant to this section written notice of the estimate, determination, interest and pen-

alty. The notice shall be served personally or by mail in the manner prescribed for service of notice of deficiency determination in Section 5.04.640D. (Ord. 12838 § 3 (part), 2007; prior code § 5-1.65)

#### **5.04.660 Redetermination.**

A. Right of Petition For—Time to File Petition. Any person against whom a determination is made under this chapter or any person directly interested may petition for a redetermination within twenty (20) days after service of notice of determination. The Director of Finance in individual cases may, in the exercise of reasonable discretion in administering the provisions of this chapter, enlarge the twenty (20) day period. If a petition for redetermination is not filed within the twenty (20) day period or within the extension period granted by the Director of Finance, the determination becomes final at the expiration of the twenty (20) day period. The Director of Finance's decisions on applications for extension of time in which to file petitions for redetermination must be served in the manner provided in Section 5.04.640D.

B. Grant of Oral Hearing—Notice—Continuances. If a petition for redetermination is filed within the twenty (20) day period, the Director of Finance shall reconsider the determination and, if the petition includes a request for hearing, shall grant the person an oral hearing, giving the person ten days' notice of the time and place thereof. The Director of Finance may continue the hearing from time to time as may be necessary. The Director of Finance shall exercise reasonable discretion in the decision on redetermination.

C. Alteration of Determination—Limitation on Right to Increase Amount. Once petition for reconsideration has been filed, the Director of Finance may increase or decrease the amount of the determination until the determination becomes final; however, the Director of Finance must assert a claim for increase at or before the hearing, if a hearing has been requested. If no hearing has been requested, or if the Director of Finance asserts a claim before the hearing without reasserting it at the hearing, notice of the increase must be served on the person in the manner provided in Section 5.04.640D.

D. Finality of Order on Petition. The order or decision of the Director of Finance upon a petition for redetermination becomes final thirty (30) days after service upon the petitioner of notice thereof in the manner provided in Section 5.04.640D, unless appeal of such order or decision is filed with the Board of Review pursuant to Section 5.04.550B.

E. Time for Payment of Amounts Found Due—Penalty for Delinquency. All determinations made by the Director of Finance or Board of Review are due and payable at the time they become final. (Ord. 12838 § 3 (part), 2007; prior code § 5-1.66)

## Chapter 5.06

### ADVERTISING MATTER

**Sections:**

- 5.06.010**      **Handbills and circulars.**
- 5.06.020**      **Regulations governing the posting of signs.**
- 5.06.030**      **Advertising in public streets.**
- 5.06.040**      **Advertising matter in motor vehicles.**
- 5.06.050**      **Secondhand and defective merchandise.**
- 5.06.060**      **Littering streets.**
- 5.06.070**      **Immoral advertising.**
- 5.06.080**      **Care of signboard locations.**
- 5.06.090**      **Mutilating signs.**
- 5.06.100**      **False advertising.**

**5.06.010      Handbills and circulars.**

The following ordinance is an initiative measure adopted November 8, 1932:

**AN ORDINANCE REGULATING THE DISTRIBUTION OF ADVERTISING MATTER UPON PRIVATE PROPERTY, PROVIDING A PENALTY FOR VIOLATION HEREOF, AND REPEALING ORDINANCE NO. 3144 AND ALL ORDINANCES IN CONFLICT HEREWITH.**

**BE IT ORDAINED** by the qualified Electors of the City of Oakland as follows:

**SECTION 1. DEFINITIONS.** For the purpose of this Ordinance the following words and phrases are defined as follows:

- (a) **PERSON.** A person is an individual, association, firm, copartnership or corporation.
- (b) **PRIVATE PROPERTY.** Private property is any parcel of real property in the city of Oakland, or any dwelling, residence, or other building thereon.

(c) **ADVERTISING MATTER.** Advertising matter is any broadside, booklet, card, circular, dodger, handbill, poster, newspaper, or other advertising medium of similar nature, excluding, however, any newspaper eligible for entry as second-class matter under the provisions of the United States Post Office Regulations of March 3, 1879, and other regulations and statutes of the United States.

**SECTION 2. UNLAWFUL TO DISTRIBUTE IN CERTAIN CASES.** It shall be unlawful to distribute or cause to be distributed any advertising matter in or upon private property when,

- (a) There is erected or painted in a conspicuous place upon such property a sign containing the words, "No advertising matter" or other words of similar import; or
- (b) It is apparent that said property is vacant; or
- (c) It is apparent that a previous day's distribution of advertising matter has not been removed.

**SECTION 3. MANNER OF DISTRIBUTION.** Subject to the provisions of the preceding Section of this Ordinance, it is hereby declared to be unlawful for any person to distribute or cause to be distributed in or upon any private property any advertising matter except in the following manner, and distribution in such manner is hereby declared to be lawful:

- (a) By placing the same in a receptacle, clip, or other device designed or intended to receive advertising matter when such receptacle, clip, or other device shall have been erected in a conspicuous place near the front door or front entrance or near the mail box of any private property; or
- (b) If no such receptacle, clip, or other device shall have been erected as hereinabove pro-

vided, then by handing said advertising matter to an occupant of said property, or placing the same upon the porch or vestibule of a house or building on said private property, provided that in the latter case, said advertising matter is wrapped, tied, folded, or otherwise so prepared or placed that it will not be blown therefrom by the winds.

**SECTION 4. UNLAWFUL TO DISTRIBUTE WITHOUT PERMIT.** It is unlawful for any person, except the holder of a distributor's permit granted pursuant to the terms of this Ordinance, to distribute or cause to be distributed by his or her employees or otherwise, any advertising matter.

**SECTION 5. GRANTING OF PERMIT.** Any person desiring a distributor's permit shall file an application therefor with the City Clerk upon forms to be furnished by said City Clerk, and containing such pertinent information as the City Clerk may require.

Forthwith upon filing such application, said City Clerk shall issue a distributor's permit to the applicant, together with a serial number thereon, without cost therefor and without any period of expiration thereof, provided, however, that, in the event that a distributor's permit previously issued to the applicant shall have been revoked, then such permit shall not be issued to the applicant without the consent of the Chief of Police. The Chief of Police shall consent to the issuance of such permit if the applicant, in the sound discretion of the Chief of Police, despite the previous revocation of his distributor's permit, is a fit and proper person to hold such permit.

**SECTION 6. REVOCATION AND SUSPENSION OF PERMIT.** Any distributor's permit issued under the provisions of this Ordinance may be revoked by the Chief of Police in the event that the holder of such permit or any of his or her employees is distributing advertising mat-

ter contrary to the provisions of this Ordinance, and to such an extent that, in the discretion of the Chief of Police, the holder of such permit is not a fit and proper person to hold the same. Such revocation shall be made only after a hearing granted to the holder of such permit before the Chief of Police upon five days' notice to such permit holder, setting forth the grounds of complaint against him and stating the time and place where such hearing will be held. Such hearing may be continued from time to time. Upon revocation of any distributor's permit the same shall be forthwith surrendered to the Chief of Police, providing, however, that, if an appeal is taken from the order revoking such permit as hereinafter provided for, said order of revocation shall be stayed until a final determination of such appeal by the City Council. A distributor's permit may be suspended by the Chief of Police for a definite period of time for the same reasons and subject to the same limitations and procedure as provided for the revocation of such permit.

**SECTION 7. METHOD OF APPEAL.** An appeal may be taken to the City Council from any order of the Chief of Police, denying, revoking, or suspending a distributor's permit by filing with the City Clerk, within fourteen days after notice of the action appealed from, a written notice of such appeal setting forth the grounds thereof. The City Clerk shall forthwith set said matter for hearing before the City Council and cause notice thereof to be given to the appellant not less than five days prior to such hearing. Such hearing may be continued from time to time by the City Council. The City Council, in the exercise of a sound and reasonable discretion shall, upon such appeal, have the power to reverse, modify or affirm the action appealed from.

**SECTION 8. MANNER OF GIVING NOTICE.** Any notice required by this Ordinance must be in writing and may be given by personal service or by mail. In case of service by mail, notice must be deposited in the United States

Post Office, or in a United States post box, in a sealed envelope with postage thereon prepaid, addressed to the person on whom it is to be served at his or her last known address. Service shall be deemed completed at the time of the deposit of the same in such post office or post box.

**SECTION 9. PERMIT NUMBER TO BE ON ADVERTISING MATTER.** It is unlawful for any person to distribute or cause to be distributed any advertising matter to or upon any private property unless there shall be printed, stamped, or otherwise clearly designated in legible characters in a conspicuous place on the front page of each and every piece of advertising matter, the words "Distributor's Permit No.\_\_\_\_," with the permit number designated by the City Clerk inserted thereon.

**SECTION 10. CONSTITUTIONALITY.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance.

**SECTION 11. PENALTY.** Any person violating any provision of this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than one hundred dollars, or by imprisonment in the city jail for a period of not more than twenty days, or by both such fine and imprisonment.

**SECTION 12. REPEAL.** Ordinance No. 3144 and all ordinances in conflict herewith are hereby repealed.

**SECTION 13. TAKING EFFECT.** This Ordinance shall take effect five days after the declaration of the official canvas.

(Prior code § 5-3.01)

**5.06.020      Regulations governing the posting of signs.**

A. Except as otherwise provided in this code, it is unlawful for any person, candidate or political committee, except a public officer or employee in the performance of his or her duty, to post, stick, stamp, paint, mark, staple, or otherwise affix any sign, banner, billboard, pennant, flyer, poster, notice, handbill, or advertisement of any kind:

1. Upon any private property, without permission in writing from the owner, agent, trustee or occupant of such premises; or
2. Upon any public property, which includes, but is not limited to:

a. Any sidewalk, crosswalk, curb, curbstone, street lamp post, hydrant, public tree, public shrub, public tree stake or guard, railroad trestle, electric light or power or telephone or telegraph or trolley wire pole, or wire appurtenance thereof or upon any fixture of the fire alarm or police telegraph system or upon any public lighting system, upon bridge, public drinking fountain, public ornamental fountain, public life buoy, public life preserver, public life boat or other life saving equipment, street sign, traffic sign, public building, improvement or facility, or

b. On any public trash or garbage receptacle, or parking meter; or

3. To suspend any banner, sign, or advertising notice from, or attach the same to, any wire or other device crossing or overhanging any public street, sidewalk, park, thoroughfare or right-of-way, without the written permission of the city.

B. Nothing contained in this section shall apply to the installation of terrazzo sidewalks or sidewalks of similar construction, sidewalks permanently colored by an admixture in the material of which the same are constructed, and for which the city has granted a written permit.

C. Nothing in this section shall apply to the painting of house numbers under curbs done under permits issued by the city.

D. Any sign, banner, billboard, pennant, flyer, poster or handbill found, placed, painted, marked,

## **5.06.020**

written upon, posted, stapled, taped, glued or otherwise affixed upon any public property contrary to the provisions of this section may be removed immediately by the city.

E. As defined in this section, "sign" shall include, but not be limited to, any sign designed to influence voters to support or oppose any candidate or ballot measure.

F. As defined in this section, "candidate" shall include any person who seeks nomination or election to an office at any election.

G. As defined in this section, "political committee" shall include any committee, organization, association, or corporation organized for the purpose of charged with the duty of conducting the election campaign in support of or in opposition to any candidate or ballot measure at any election.

H. As defined in this section, the term "public" shall include any facility, structure, building, property activity or object which is owned, leased, or otherwise operated, controlled or managed by the city of Oakland, Redevelopment Agency of the city, any department, office, agency or sub-agency of the city. (Prior code § 5-3.02)

### **5.06.030 Advertising in public streets.**

It is unlawful for any person upon any public sidewalk or in any street in the city, to carry, bear or support any banner, sign, transparency, framework, device or emblem used, or purported to be used, or intended, as an advertisement of any trade, profession or business, place of business, office, store or occupation, or to distribute, by hand or otherwise, upon any sidewalk, street, square or other public place, or to throw upon any sidewalk, street, square or other public place, any advertisement, bill, poster, flyer, notice or advertisement, device or emblem used, or purporting to be used, or intended as, an advertisement or notice of any article or merchandise, or of any trade, business, profession, office, store, or occupation of any person. (Prior code § 5-3.03)

### **5.06.040 Advertising matter in motor vehicles.**

It is declared to be unlawful for any person to place, stick or affix, or cause or permit any other person in his or her behalf to place, stick or affix, any broadside, booklet, card, circular, dodger, handbill, poster, or any other advertising medium of a like or similar nature, in or upon any automobile or other motor vehicle not in such person's rightful possession, while said automobile or other vehicle is in or upon any public street, highway or other public place. (Prior code § 5-3.04)

### **5.06.050 Secondhand and defective merchandise.**

It is unlawful for any person in any newspaper, magazine, circular, form letter or any open publication published, distributed or circulated in the city, or on any billboard, card, label or other advertising medium, or by means of any other advertising medium or device, to advertise, call attention to, or give publicity to, the sale of any merchandise, which merchandise is secondhand or used merchandise, or which merchandise is defective in any manner, or which merchandise consists of articles or units or parts known as "seconds," or blemished merchandise, or which merchandise has been rejected by the manufacturer thereof as not first class, unless there are conspicuously displayed directly in connection with the name and description of such merchandise and each specified article, unit or part thereof, a direct and unequivocal statement, phrase or word which will clearly indicate that such merchandise, or each article, unit or part thereof, so advertised is secondhand, used, defective, or consists of "seconds" or is blemished merchandise, or has been rejected by the manufacturer thereof, as the fact shall be. (Prior code § 5-3.05)

### **5.06.060 Littering streets.**

It is unlawful for any person to scatter, daub or leave any paint, paste, glue, or other substance used; or to be scattered or thrown any bills, waste matter, paper, cloth or material of whatsoever kind removed

from a signboard or any other structure erected for advertising purposes, upon any private property, public streets or other public property. (Prior code § 5-3.07)

sentation, assertion, cognomen or designation concerning such goods, wares, merchandise, matter of service which is false or untrue or which is in any manner deceptive or misleading. (Prior code § 5-3.11)

#### **5.06.070      Immoral advertising.**

It is unlawful for any person to display for advertising purposes upon any billboard or advertising signboard, or upon or in any window, or upon any building or fence in any public place, any activity or event prohibited by law, or any matter which, to the average person applying contemporary standards, appeals to the prurient interest, and is matter which, taken as a whole, depicts or describes in a patently offensive way sexual conduct and which, taken as a whole, lacks serious literary, artistic, political, or scientific value for minors. (Ord. 11919, 1996: prior code § 5-3.08)

#### **5.06.080      Care of signboard locations.**

It is unlawful for any person owning, controlling or maintaining any billboard or other board, fence, sign or structure upon which advertising matter is exhibited, to refuse or neglect to cut all weeds and remove all rubbish from the base of same. (Prior code § 5-3.09)

#### **5.06.090      Mutilating signs.**

It is unlawful for any person to maliciously destroy, or in any way mutilate, any sign placed upon any real estate, advertising said real estate for sale or for rent, whenever such sign is placed thereon by the owner, or authorized agent of the owner, of said real estate. (Prior code § 5-3.10)

#### **5.06.100      False advertising.**

It is unlawful for any person, with intent to sell, deliver, or solicit, or to induce the public in any manner to enter into any obligation relative to, any goods, wares, merchandise, matter, or service, to bring or place, or cause to be brought or placed, before the public in the city, through or by means of any advertising medium or device whatsoever, or by public outcry or proclamation, or by any means or in any manner whatsoever, any statement, repre-

	<b>Chapter 5.08</b>	
	<b>AUCTIONS AND AUCTIONEERS</b>	
<b>Sections:</b>		
<b>5.08.010</b>	<b>Auctioneer defined.</b>	<b>5.08.240</b> <b>Auctioneers, substitutes and criers.</b>
<b>5.08.020</b>	<b>Jewelry auction defined.</b>	<b>5.08.250</b> <b>Auctions—Records—Reports.</b>
<b>5.08.030</b>	<b>Auctioneer—Permit required.</b>	<b>5.08.260</b> <b>Auctions—Judicial, etc. sales.</b>
<b>5.08.040</b>	<b>Sales by public auction.</b>	<b>5.08.270</b> <b>Violation—Penalty.</b>
<b>5.08.050</b>	<b>Auctioneer's application for permit.</b>	
<b>5.08.060</b>	<b>Auctioneer's limited permit.</b>	<b>5.08.010</b> <b>Auctioneer defined.</b>
<b>5.08.070</b>	<b>Auctioneer—Bond—Forfeitures.</b>	"Auctioneer" means and includes every person who shall, at public outcry, offer for sale, as principal or agent to the highest bidder on the spot, or by any method of sale described in Section 5.08.040, any article of merchandise or property. (Prior code § 5-9.01(g))
<b>5.08.080</b>	<b>Auctions—False representations—Substituted merchandise false bids.</b>	<b>5.08.020</b> <b>Jewelry auction defined.</b>
<b>5.08.090</b>	<b>Auction sale inventory required.</b>	"Jewelry auction" means and includes any sale, or offer for sale, of any platinum, gold, silver, precious stones, semi-precious stones, watches, or other jewelry by public outcry to the highest bidder. Nothing in this chapter shall be construed to permit any sale, or offer for sale, of any jewelry by public outcry whereby any item is offered at a stated price and thereafter at successively or gradually lower prices until an accepter or purchaser is found, or at a stated price with the addition of other merchandise until an accepter or purchaser is found, or by what is commonly known as "Dutch Sale," or "Down-hill Selling," or any other method of a like or similar nature. (Prior code § 5-9.01(h))
<b>5.08.100</b>	<b>Ownership of auctioned property.</b>	
<b>5.08.110</b>	<b>Interim suspension of auction.</b>	
<b>5.08.120</b>	<b>Auctions identifying bidders and buyers.</b>	
<b>5.08.130</b>	<b>Auctions—Identifying properties offered.</b>	
<b>5.08.140</b>	<b>Jewelry auctions—Stock in trade and used.</b>	
<b>5.08.150</b>	<b>Jewelry auctions—Time of.</b>	
<b>5.08.160</b>	<b>Jewelry auctions—Permit required.</b>	
<b>5.08.170</b>	<b>Jewelry auctions—Application for permit.</b>	<b>5.08.030</b> <b>Auctioneer—Permit required.</b>
<b>5.08.180</b>	<b>Jewelry auctions—Identification of merchandise.</b>	It is unlawful for any person to engage in the calling of auctioneer, or to hold, conduct, carry on, or maintain any auction room or place for holding public auction sales, or to advertise or hold himself or herself out to the public as an auctioneer, or to conduct, carry on or maintain any sale of goods by public auction, in the city, unless there exists a valid permit therefor, granted and existing in compliance with the provisions of Chapter 5.02. The investigating official referred to in Section 5.02.030, to whom the application shall be referred, shall be the Chief of Police. Such permit may be granted to a firm or corporation provided such firm or corpora-
<b>5.08.190</b>	<b>Jewelry auctions—Investigation of application.</b>	
<b>5.08.200</b>	<b>Jewelry auctions—Duties of police department representative.</b>	
<b>5.08.210</b>	<b>Jewelry auctions—Conduct of.</b>	
<b>5.08.220</b>	<b>Jewelry auctions—Place of.</b>	
<b>5.08.230</b>	<b>Jewelry auctions—Additional requirements.</b>	

tion shall designate the member thereof to act as such auctioneer. (Prior code § 5-9.16)

#### **5.08.040 Sales by public auction.**

Without limiting the generality of the term "sale by public auction," such sale shall include a sale in which, instead of the bidders making increasingly higher bids for an article or articles of merchandise, the seller or auctioneer announces a price at which he or she will sell one or more articles of merchandise and then, if no sale occurs, increasingly adds additional articles of merchandise to those originally offered, with or without varying the previously announced price, until a buyer is finally induced to buy the accumulated articles at the price fixed.

Without limiting the generality of the term "sale by public auction," such sale shall include a sale in which, instead of the bidders making increasingly higher bids for an article or articles of merchandise, the seller or auctioneer announces a price at which he or she will sell one or more articles of merchandise and then, if no sale occurs, decreases the price of that offered until a buyer is finally induced to buy the article or articles offered for sale. (Prior code § 5-9.161)

#### **5.08.050 Auctioneer's application for permit.**

In addition to the requirements of Section 5.02.060, every person applying for a permit under Section 5.08.030, and all substitutes and criers provided for in Section 5.08.240, shall be fingerprinted at the request of Oakland Police Department. Should any such person be found to have a prior criminal record of conviction of any theft, obtaining money or property by false pretenses, embezzlement, extortion, receiving stolen property, or violating any provisions of law regulating auctions, auctioneers or auction houses, the application for such permit shall be denied. Normally, approximately thirty (30) days are required to process the application subsequent to the taking of fingerprints. (Prior code § 5-9.162)

#### **5.08.060 Auctioneer's limited permit.**

Any person applying for an Auctioneer's permit who shall establish to the satisfaction of the City Manager that his or her auction business is limited exclusively to dealers for resale of the merchandise or property sold, may be granted a limited permit in lieu of that required by Section 5.08.030. The sale by auction by any person operating under such limited permit and to other than any such dealer for resale shall invalidate such limited permit. The provisions of Sections 5.08.090 and 5.08.100 shall not apply to an auctioneer granted and complying with the restricted purposes of such limited permit. (Prior code § 5-9.163)

#### **5.08.070 Auctioneer—Bond—Forfeitures.**

No person shall engage in the calling of an auctioneer in the city of Oakland, unless, in addition to the permit required under the provisions of Section 5.08.030, he or she shall have filed with the City Clerk a surety company bond issued by a surety company authorized to do business in the state of California, for the faithful performance of his or her duties, which bond shall be in the principal amount of five thousand dollars (\$5,000.00), payable to the city of Oakland. Said bond shall be approved by the City Attorney.

For every violation of any of the provisions of this chapter pertaining to the calling of auctioneer, or to auctions, in addition to such penalty as may be otherwise provided for such violation, such auctioneer shall forfeit to the city the sum of two hundred fifty dollars (\$250.00), which amount shall be recoverable upon said bond. (Prior code § 5-9.17)

#### **5.08.080 Auctions—False representations—Substituted merchandise false bids.**

It is unlawful for any person to sell, or attempt to sell, by auction, or to advertise for sale by auction, any goods, wares or merchandise falsely representing or pretending the same to be, in whole or in part, a bankrupt or insolvent stock, or damaged

## **5.08.080**

goods, or goods saved from a fire, or to make any false statement as to the previous history, ownership, quality or character of such goods, wares and merchandise, or for any person to offer for sale at auction any article and induce its purchase by any bidder and afterwards to substitute any article in lieu of that offered to and purchased by the bidder, except with the bidder's knowledge and consent.

It is unlawful for any person to falsely act as bidder in the capacity of what is commonly known as a "capper," "booster" or "shiller" merely for the purpose of increasing the amount of the bids at any auction sale or place for conducting public auctions, or to offer or make any false bid, or pretend to buy any article sold or offered for sale at any public auction. (Prior code § 5-9.18)

### **5.08.090      Auction sale inventory required.**

In all cases where a public auction sale is to be held under the provisions of this chapter, an inventory of the articles or merchandise to be sold at public auction must be made and submitted to the Chief of Police not less than three days prior to the sale. The inventory required must show the items to be offered for sale on the premises by public auction and will include, but not be limited to, the lot number or item number, a brief description of the item, its serial number if serialized, and the number of items in the lot. The auctioneer must make and subscribe an oath, to be attached to the inventory, that said inventory contains a true and itemized account of all property to be sold at said auction. Not more than one supplemental inventory may be filed if so filed not less than three days prior to the sale of the merchandise therein listed. At the time of delivery of such inventory, the Chief of Police or his or her representative shall deliver to said auctioneer a receipt for the inventory. The receipt shall show the date on which the inventory was delivered to the Police Department and the date of the intended sale. It is unlawful for any auctioneer or a public auction house to hold a public auction sale unless they have received said receipt from the Chief of Police or his or her representative. It is unlawful to sell or offer for sale at any public auction sale any

article which is not listed in the inventory submitted to the Chief of Police prior to the sale.

A copy of all proposed advertisements, pamphlets, leaflets, brochures, catalogs and other literature announcing the public auction sale which the auctioneer intends to distribute or otherwise make available to the public shall be forwarded to the Chief of Police not less than three days prior to the actual date of the auction sale by the licensed auctioneer. (Prior code § 5-9.181)

### **5.08.100      Ownership of auctioned property.**

A. It is unlawful for any auctioneer or any member of a firm operating a public auction house to bid for or to purchase for his or her own use, for resale or for any other purpose any article the property of another person, firm, or corporation given into their custody to be sold at a public auction sale conducted by said auctioneer or operator of said public auction house.

B. Any auctioneer or operator of a public auction house as defined and covered by this chapter who has in his or her possession merchandise belonging to him or her, or purchases or buys for or on his or her or its own account new or secondhand merchandise, and who sells the same, or offers for sale the same at a public auction, must, in all notices or advertising of said auction sale, which may be either published, printed or distributed, and likewise prior to the commencement of such auction sale, thoroughly and distinctly state and declare that the property so being sold or offered or advertised for sale belongs to, and is the property of, said auctioneer or public auction house. This information will also be submitted with the verified inventory to the Chief of Police. (Prior code § 5-9.182)

### **5.08.110      Interim suspension of auction.**

In addition to the provisions for suspension of permit provided for in Chapter 5.02 the Chief of Police shall have the authority to cause an auction sale to be temporarily discontinued when he or she shall have sufficient evidence, in his or her opinion, that any provision of this code regulating auctions has been violated. Immediately thereafter, unless

such violation is remedied, the Chief of Police shall forward to the City Manager notice of such termination, together with his or her evidence supporting such action, and proceedings and hearings for the revocation or suspension of the permit shall thereupon be instituted as provided for in said code. (Prior code § 5-9.183)

#### **5.08.120      Auctions identifying bidders and buyers.**

A. It shall be the duty of the auctioneer conducting the auction sale to give some description or identification of the person making a bid every time bid is announced, and also to point out or designate the position on the premises or in the area of said bidder.

B. It shall be the duty of the auctioneer to announce clearly to all buyers or prospective buyers present when there is a "starting price" for an article offered for bid, and to clearly state the said "starting price" prior to the acceptance of any bids.

C. When an auctioneer accepts a final bid and designates the article or articles as "sold," such action shall be final and bidding shall not be reopened. (Prior code § 5-9.185)

#### **5.08.130      Auctions—Identifying properties offered.**

It shall be the duty of every auctioneer who shall offer for sale any goods or other articles to be sold, to announce to the persons present at said auction sale, before proceeding to sell the same, the true character, quality, description, kind, weight and other peculiar or identifiable characteristics of the respective properties or articles offered for sale. (Prior code § 5-9.186)

#### **5.08.140      Jewelry auctions—Stock in trade and used.**

It is unlawful for any person to conduct a jewelry auction in the city except:

A. The sale of a stock on hand of any person who shall, for the period of one year next preceding such sale, have been continuously in business in the city as a retail or wholesale merchant of such mer-

chandise, and is disposing of his or her stock for the purpose of retiring from business; or

B. The sale by auction of new or used jewelry by any person who has a valid auctioneer permit. (Prior code § 5-9.19)

#### **5.08.150      Jewelry auctions—Time of.**

Any jewelry auction of merchandise described in Section 5.08.140A shall be held on successive days, Sundays and legal holidays excepted, and shall not continue more than thirty (30) days in all from the commencement of said sale. (Prior code § 5-9.21)

#### **5.08.160      Jewelry auctions—Permit required.**

It is unlawful for any person to conduct a jewelry auction unless such person has first procured a permit so to do pursuant to an application filed with the Chief of Police by the city. (Prior code § 5-9.211)

#### **5.08.170      Jewelry auctions—Application for permit.**

The permit to conduct a jewelry auction shall be granted and shall exist in compliance with the provisions of Chapter 5.02. If the permit is issued for the sale of merchandise described in Section 5.08.140A the application shall set forth, in addition to the requirements specified in Section 5.02.020, the following:

- A. The purpose of the sale;
- B. The date or dates on which the applicant desires to hold a jewelry auction;
- C. The name of the auctioneer who will conduct the auction;
- D. Attached to the application, in duplicate, a detailed inventory, item by item, of the goods, wares and merchandise to be sold, the wholesale value, or cost of the applicant, of each item, and the quality and grade thereof. Each item of merchandise must be numbered separately in the inventory, and the number in the inventory must correspond to the number physically attached to such item. Such inventory, when filed with the Chief of Police must be accompanied by a statement, sworn to by the

applicant, that all of the merchandise described in the inventory is a bona fide part of the applicant's stock in trade and is not secured, purchased or brought into his or her place of business for, or in anticipation of, said sale, and that no other merchandise will be brought into said place of business after the date of the filing of said application, and that no merchandise will be sold, or offered for sale, that is not set forth in said inventory, and that each of the statements in said inventory is true and correct to his or her own personal knowledge. (Prior code § 5-9.212)

**5.08.180 Jewelry auctions—Identification of merchandise.**

The applicant must attach a tag to each item of merchandise listed in the inventory submitted to the Chief of Police, which number must correspond with the number of such item in the inventory, and such article when sold must be delivered to the purchaser with the original tag and number intact. (Prior code § 5-9.213)

**5.08.190 Jewelry auctions—Investigation of application.**

Upon receipt of an application for a jewelry auction permit, the Chief of Police or his or her representative shall check each item of the inventory submitted with the actual item in the applicant's place of business, and make an investigation to ascertain the truthfulness of the sworn statement submitted by the applicant. (Prior code § 5-9.215)

**5.08.200 Jewelry auctions—Duties of police department representative.**

A representative of the Police Department shall attend all auctions and check each item offered for sale, or sold, with the inventory filed by the applicant with the Police Department, and enter on such inventory the date of the sale of each item and the price thereof. (Prior code § 5-9.217)

**5.08.210 Jewelry auctions—Conduct of.**

It is unlawful for the person to whom such permit is granted, or the auctioneer, or any other person, to sell or offer for sale any article not listed in the inventory, or to sell or offer for sale any article listed in inventory without first giving the representative of the Chief of Police an opportunity to check the same against the inventory filed with the application, or to make any representation concerning the quality or grade of the article contrary to that set forth in the said inventory. (Prior code § 5-9.218)

**5.08.220 Jewelry auctions—Place of.**

The permit to hold a jewelry auction shall set forth the street address where such auction is to be held, which shall be the applicant's regular place of business, and it is unlawful to hold any such auction at any place other than such address. (Prior code § 5-9.219)

**5.08.230 Jewelry auctions—Additional requirements.**

Any persons conducting a jewelry auction pursuant to Section 5.08.140B shall:

A. Cause each item of jewelry to be sold at an auction for which a permit is sought to be appraised at fair market value by an appraiser chosen from a list of qualified jewelry appraisers maintained by the Chief of Police. The appraiser shall not be employed or related to the person conducting the auction or have any financial interest in the auction. The Chief of Police shall not place the name of any person on the list of qualified jewelry appraisers unless such person has been regularly engaged in the San Francisco-Oakland metropolitan area in the business of jewelry appraisal or employed as a jewelry appraiser.

B. Prepare an inventory separate from and in addition to the inventory required by Section 5.08.090 of all of the articles of jewelry to be sold at public auction and submit the same to the Chief of Police not less than fifteen (15) days prior to the date of sale. Each article of jewelry shall be fully

and separately described, together with the appraisal specified herein. The appraiser shall sign a statement, which shall be attached to the inventory, that he or she has personally examined and appraised each item listed in the inventory. No supplemental inventory shall be permitted.

C. Hold all items listed on the inventory specified herein for a period of fifteen (15) days prior to the commencement of the date of sale. No item listed on the inventory shall be delivered to any person or otherwise disposed of during the fifteen (15) day period.

D. Post a copy of the appraisal required by this section in a conspicuous location on the premises where auction is to be conducted so that it may be viewed by persons attending the auction. The appraisal shall remain posted throughout the conduct of the auction.

E. Announce the appraisal value of each article of jewelry for which an appraisal is required and the appraisal number immediately prior to the auction of the article.

(Prior code § 5-9.26)

ing him or her, or the person acting in the auctioneer's behalf as mentioned herein, must be present during the auction sale at all times.

(Prior code § 5-9.22)

#### **5.08.250 Auctions—Records—Reports.**

Each auctioneer must keep a record book in which he or she must enter all sales, the amount paid and the date of each sale, and the name and address of the buyer, which book must be open at all times to the inspection of the Police Department of the City and duly authorized representatives thereof. Within seven days after the close of each sale, a report must be filed with the Chief of Police of all sales held under the provisions of this chapter pertaining to auctions, which reports shall set forth a description of the article sold, the persons to whom sold, the amount received, the lot number or pledge number, or stock number of the items so sold, which shall in each case comply with such number contained in the inventory filed previous to holding such sale.

(Prior code § 5-9.23)

#### **5.08.260 Auctions—Judicial, etc. sales.**

The provisions of this chapter shall not apply to judicial sales or sales by executors or administrators.

(Prior code § 5-9.20)

#### **5.08.270 Violation—Penalty.**

Any person or persons aggrieved or damaged by any act of an auctioneer in the City in violation of, or contrary to, the provisions of this chapter, may be liable to an action against such auctioneer and his or her bondsmen upon his or her official bond therefor.

(Prior code § 5-9.25)

#### **5.08.240 Auctioneers, substitutes and criers.**

Every auctioneer, when unable to attend in person at any auction sale conducted under his or her license and permit therefor, may employ a co-partner or clerk to hold such auction in his or her name, except that any co-partner or clerk who has not been a bona fide resident of the county of Alameda for a period of one year immediately prior to the time of holding such auction may not be so employed. A partner or employee who is eligible to hold an auction sale in the name of such auctioneer shall make and file with the Chief of Police an affidavit to faithfully perform the duties of said auctioneer setting forth the necessary residence requirement and secure the approval of the Chief of Police. Said auctioneer shall be responsible for the acts of his or her partners or employees upon his or her bond. The auctioneer shall be responsible on his or her bond for the acts, errors or omissions of any crier employed by him or her. When a crier is employed, the auctioneer employ-

**Chapter 5.10****BINGO\*****Sections:**

- 5.10.010 Limited authorization.**
- 5.10.020 Definitions.**
- 5.10.030 Penal Code Section 326.5 incorporated.**
- 5.10.040 Permit required.**
- 5.10.050 Posting of bingo permit.**
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- 5.10.190 Use of profits or proceeds.**
- 5.10.200 Monthly reports.**

\*Editor's note—Ord. No. 12967, § 4, adopted July 28, 2009, amended Chapter 5.10 in its entirety. Formerly, Chapter 5.10, §§ 5.10.010 - 5.10.370 pertained to similar subject matter, and derived from the prior code, §§ 3-17.01- 3-17.29; Ord. No. 12117, § 1, adopted 1999, and Ord. No. 12469, § 1, adopted 2006.

- 5.10.210 Financial interest—Permittee only.**
- 5.10.220 Exclusive operation by permittee.**
- 5.10.230 Bingo games open to public.**
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- 5.10.290 Alcoholic beverages.**
- 5.10.300 Number of games—Notice to police department.**
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- 5.10.320 Participant must be present.**
- 5.10.330 Summary suspension of permit.**
- 5.10.340 Suspension/revocation of permit—Hearing.**
- 5.10.350 Effect of suspension or revocation of a permit.**
- 5.10.360 City may enjoin violation.**
- 5.10.370 Violation—Penalty.**

**5.10.010 Limited authorization.**

Notwithstanding any other provision of this Code, bingo games are allowed pursuant to and as restricted by Section 19(c) of Article IV of the California Constitution, California Penal Code Section 326.5 (including future amendments thereto), and the provisions of this Chapter. (Ord. No. 12967, § 4, 7-28-2009)

**5.10.020 Definitions.**

As used in this Chapter:

"Bingo" means a game of chance in which prizes are awarded on the basis of designated numbers or symbols on a card which conform to numbers or symbols selected at random. Notwithstanding Penal Code Section 330c, as used in this Section the

game of bingo shall include cards having numbers or symbols which are concealed and preprinted in a manner providing for distribution of prizes. The winning cards shall not be known prior to the game by any person participating in the playing or operation of the bingo game. All such preprinted cards shall bear the legend, "for sale or use only in a bingo game authorized under California law and pursuant to local ordinance."

"Bingo game operator" means an organization that meets the criteria specified in Section 5.10.070 and that conducts bingo games with a valid permit.

"Bingo hall operator" means an individual, corporation, partnership or legal entity that has obtained a bingo hall permit and that provides facilities and other services to bingo game operators for a fee.

(Ord. No. 12967, § 4, 7-28-2009)

#### **5.10.030      Penal Code Section 326.5 incorporated.**

The provisions of Penal Code Section 326.5 (including future amendments) are incorporated herein by reference.

(Ord. No. 12967, § 4, 7-28-2009)

#### **5.10.040      Permit required.**

No organization, individual, or other entity shall conduct a bingo game without a valid bingo game operator permit as provided for by this Chapter. No individual, corporation, partnership or legal entity shall operate a bingo hall if such bingo hall operator is a separate entity from the charitable bingo game operator without a valid bingo hall operator permit from the City Administrator.

(Ord. No. 12967, § 4, 7-28-2009)

#### **5.10.050      Posting of bingo permit.**

A copy of the bingo game operator permit shall be posted at the location of the bingo games.

(Ord. No. 12967, § 4, 7-28-2009)

#### **5.10.060      Posting and filing of bingo rules.**

The rules for the bingo games conducted by a bingo game operator shall be posted in a conspic-

uous place at the location of the bingo games. A copy of the rules shall be filed with the City Administrator along with the permit application, and any amendment to the rules shall be filed with the City Administrator within 30 days after the amendment becomes effective.

(Ord. No. 12967, § 4, 7-28-2009)

#### **5.10.070      Organizations eligible to conduct bingo.**

Pursuant to Section 19(c) of Article IV of the California Constitution, California Penal Code Section 326.5 and the provisions of this Chapter, no individual, corporation, partnership or legal entity shall be permitted to conduct a bingo game except organizations exempt from the payment of the Bank and Corporation Tax by Sections 23701a, 23701b, 23701d, 23701e, 23701f, 23701g, 23701l of the Revenue and Taxation Code and mobile home park associations and senior citizen organizations; provided that the receipts of such games are used only for charitable purposes.

(Ord. No. 12967, § 4, 7-28-2009)

#### **5.10.080      Application for permit.**

Eligible organizations desiring to obtain a permit to conduct bingo games or operate bingo halls in the City shall file an application in writing therefor with the City Administrator upon forms to be provided by the City Administrator.

A. Applicants who are nonprofit, charitable organizations, as defined in Section 5.10.070, shall also file with said department, copies of certificates or letters of determination from the State Franchise Board and the United States Internal Revenue Service, respectively, demonstrating that the organization is exempt from the payment of the Bank and Corporation Tax under Sections 23701a, 23701b, 23701d, 23701e, 23701f, 23701g, 23701l of the State Revenue and Taxation Code, and that a contribution or gift to the organization would be a charitable contribution under Section 170(c)(2) of the Internal Revenue Code.

B. Senior citizen organizations and mobile home parks must submit a copy of their charters, constitutions, articles of incorporation or bylaws in order to verify the organization's purpose.

C. All applications for renewal shall be filed with the City Administrator prior to the expiration date of the existing permit.

(Ord. No. 12967, § 4, 7-28-2009)

#### **5.10.090 Permits—Denial, suspension, revocation, or conditional approval.**

A. The City Administrator may refuse to issue a bingo permit or may suspend or revoke an existing permit, pursuant to Chapter 5.02, for any of the following reasons:

1. Operation of the bingo game would not be in compliance with state or federal law, or with the provisions of this Chapter;

2. Operation of the bingo game would constitute a fire, health or safety hazard, or would not be in compliance with building or zoning regulations, requirements and ordinances;

3. That any officer of the bingo game or bingo hall applicant's organization or person operating in a bingo game has been convicted within the past five years of a crime involving lotteries, gambling, larceny, perjury, bribery, extortion, fraud or similar crimes involving moral turpitude;

4. That there has been a willful misstatement of fact in an application or report filed hereunder;

5. That there has been a negligent failure to file any report required hereunder;

6. That there has been any other violation of any provision of this Chapter;

7. The annual permit fee and/or the monthly law enforcement and public safety fee has not been paid within 30 days of its due date;

8. The bingo hall operator provides and/or the bingo game operator utilizes electronic bingo machines that have been determined to be illegal in the State of California.

B. The City Administrator may conditionally approve the issuance of a permit for a term of six months to any applicant whose prior permit was suspended and/or revoked as provided for in this Chapter or for any other violations of Subsection A. of this Section.

(Ord. No. 12967, § 4, 7-28-2009)

#### **5.10.100 Appeal from denial and conditional issuance of permits.**

There shall be no appeal from the denial or conditional issuance of permits as the decision of the City Administrator or his or her designee is final.

(Ord. No. 12967, § 4, 7-28-2009)

#### **5.10.110 Term of permit.**

All permits issued shall be for a term of one year from January 1st until December 31st of the same year, or for such shorter term as the City Administrator may deem necessary, subject to renewal and annual fees. All fees shall be fixed by the City Council. The initial and annual fee for a bingo hall permit is specified in the Master Fee Schedule. It shall include, in addition to any administrative and audit costs incurred by the City for the permitting of bingo halls, the costs for law enforcement and public safety attributable to the presence of bingo halls.

Nothing in this Section shall be construed to require any refund of license fees paid in the event a bingo permit is revoked pursuant to the provisions of this Chapter.

(Ord. No. 12967, § 4, 7-28-2009)

#### **5.10.115 Law enforcement and public safety fee.**

Bingo game operators with monthly gross proceeds in excess of \$10,000.00 shall pay a monthly fee to offset the City's costs of law enforcement and maintenance of public safety. The fee shall be due the 10th of each month with the bingo game operator's monthly report, pursuant to Section 5.10.200. Any fee not paid by the 15th of the month shall be subject to late fees. The monthly fee and the late fee shall be specified in the master fee schedule.

(Ord. No. 12967, § 4, 7-28-2009)

#### **5.10.120 Applicant must be qualified.**

No bingo game operator permit shall be issued to any organization unless such applicant is an eligible organization as defined by Section 5.10.070.

No permit shall be issued unless the application conforms to the requirements, terms and conditions of these regulations.

(Ord. No. 12967, § 4, 7-28-2009)

#### **5.10.130      Contents of bingo game operator application.**

Said application for a permit shall contain the following:

A. The name of the applicant organization and a statement that the applicant is an eligible organization as defined by Section 5.10.070;

B. The name and signature of at least two officers, including the presiding officer, of the organization;

C. A list of all members of the organization who will operate or assist in operating the bingo games;

D. The particular property within the City, including the street number, owned or leased by the applicant, used by such applicant for the performance of the purposes for which the applicant is organized, on which property bingo games will be conducted, together with the occupancy capacity of such place;

E. Proposed days of week and hours of day for conduct of bingo games;

F. A statement that the applicant agreed to conduct bingo games in strict accordance with the provisions of Section 326.5 of the California Penal Code, this Chapter, and the same as they may be amended from time to time;

G. A statement that the applicant agrees to five days' prior notice to the Criminal Investigations Division of the Oakland Police Department before conducting any bingo game;

H. A statement that the applicant's state and federal nonprofit exemption status are currently in effect;

I. Said application shall be signed by the applicant under penalty of perjury;

J. The applicable permit or renewal fee shall accompany the application;

K. Such other information as is required by the City Administrator and which is necessary for enforcement of this Chapter.

(Ord. No. 12967, § 4, 7-28-2009)

#### **5.10.135      Contents of bingo hall operator application.**

Said application for a permit shall contain the following:

A. The name of the applicant;

B. The name and signature of at least two officers, including the presiding officer, of the corporation, partnership, or other legal entity, if applicable;

C. The particular property within the City, including the street number, owned or leased by the applicant, on which property bingo games will be conducted, together with the occupancy capacity of such place;

D. Proposed days of week and hours of day for conduct of bingo games;

E. A list of the facilities, goods, and services that applicant will provide to bingo game operators, the name and address of the supplier, and the fee to be charged to bingo game operators;

F. A statement that applicant will not participate in any transaction for the provision of facilities, goods or services to a bingo game operator if either of the following applies:

(1) Applicant is a director, officer, partner, trustee, employee or holds any position of management in the bingo game operation;

(2) A member of applicant's immediate family, including spouse, child, domestic partner, or other person cohabitating with applicant, is a director, officer, partner, trustee, employee or holds any position of management in the bingo game operator.

For the purposes of this Section, applicant includes an individual or the presiding directors, officers, partners, trustees or managers of any corporation, partnership, or other legal entity, if applicable;

G. Said application shall be signed by the applicant under penalty of perjury;

H. The applicable permit or renewal fee shall accompany the application;

I. Such other information as is required by the City Administrator and which is necessary for enforcement of this Chapter.

(Ord. No. 12967, § 4, 7-28-2009)

#### **5.10.140 Investigation of applicant.**

Upon receipt of the completed application and the fee, the City Administrator shall refer the application to the Fire Marshal for investigation as to whether or not the property of the applicant qualifies and the extent to which it qualifies as property on which bingo games may lawfully be conducted, as to fire, occupancy, and other applicable restrictions.

(Ord. No. 12967, § 4, 7-28-2009)

#### **5.10.150 Contents of permit.**

Upon being satisfied that the applicant is fully qualified, under the law, to conduct bingo games or to operate a bingo hall in the City, the City Administrator shall issue a permit and shall notify the Criminal Investigations Division of the Oakland Police Department of the following information:

- A. The name and nature of the organization to whom the permit is issued;
- B. The address where bingo games are authorized to be conducted;
- C. The occupancy capacity of the room in which bingo games are to be conducted;
- D. The date of the expiration of such permit;
- E. Such other information as may be necessary or desirable for the enforcement of the provisions of these regulations.

(Ord. No. 12967, § 4, 7-28-2009)

#### **5.10.160 Inspection.**

Any peace officer of the City shall have free access to any bingo game authorized under these regulations. The permittee shall have the bingo permit, and the list of approved staff available for inspection at all times. It is unlawful for any person

to interfere, block doorways, or otherwise impede the efforts of a peace officer to make such inspections.

(Ord. No. 12967, § 4, 7-28-2009)

#### **5.10.170 Maximum amount of prize.**

The total value of prizes awarded during the conduct of any bingo game shall not exceed five hundred dollars (\$500.00) in cash or kind, or both for each separate game which is held.

(Ord. No. 12967, § 4, 7-28-2009)

#### **5.10.180 Profits or proceeds—Separate fund or account.**

A. With respect to organizations exempt from payment of the bank and corporation tax by Section 23701d of the Revenue and Taxation Code, all profits derived from a bingo game shall be kept in a special fund or account and shall not be commingled with any other fund or account.

B. With respect to all other organizations authorized to conduct bingo games pursuant to Penal Code Section 326.5, all proceeds derived from a bingo game shall be kept in a special fund or account and shall not be commingled with any other fund or account.

C. The bingo game operator shall keep full and accurate records of the income and expenses received and disbursed in connection with its operation, conduct, promotion, supervision and any other phase of bingo games which are authorized by these regulations. The City, by and through its authorized officers, including the City Administrator, shall have the right to examine and audit such record at any reasonable time and permittee shall fully cooperate with the City by making such records available.

D. The bingo hall operator shall keep full and accurate records of the income and expense associated with its business relationship with the bingo game operator. The City, by and through its authorized officers, including the City Administrator, shall have the right to examine and audit such record at any reasonable time and permittee shall fully cooperate with the City by making such

records available. The bingo hall operator agrees to either voluntarily disclose annually the financial information regarding its bingo-related operations or have a complete financial audit annually of all bingo related operations at its own expense. The annual audit must be conducted by a certified public accountant who is approved in advance by the City Auditor. Upon completion of the annual financial audit, copies must be submitted to the City Administrator and the City Auditor no later than 90 days after the close of the bingo hall operator's fiscal year.

(Ord. No. 12967, § 4, 7-28-2009)

#### **5.10.190 Use of profits or proceeds.**

A. With respect to organizations exempt from payment of the bank and corporation tax by Section 23701d of the Revenue and Taxation Code, all profits derived from a bingo game shall be used only for charitable purposes. At least 90 percent of bingo profits from bingo games conducted in Oakland must be used annually for charitable purposes within the City.

B. With respect to all other organizations authorized to conduct bingo games pursuant to Penal Code Section 326.5, all proceeds shall be used in accordance with Penal Code Section 326.5. At least 70 percent of the proceeds from bingo games conducted in Oakland must be used annually for charitable purposes within the City.

C. Organizations applying for a new bingo game operator permit must provide a statement that they will meet the requirements of this Section at the time of application. Permitted bingo game operators must provide verification that they have met and will continue to meet the requirements of this Section with their annual application for renewal.

(Ord. No. 12967, § 4, 7-28-2009)

#### **5.10.200 Monthly reports.**

The permittee shall, on a monthly basis, provide the City Administrator with complete and correct written reports of all expenses and income related to activities conducted pursuant to this

Chapter. The reports shall be due on the tenth day of the month following the month for which activity is being reported.

(Ord. No. 12967, § 4, 7-28-2009)

#### **5.10.210 Financial interest—Permittee only.**

No individual, corporation, partnership, or other legal entity except the permittee shall hold a financial interest in the conduct of such bingo game.

(Ord. No. 12967, § 4, 7-28-2009)

#### **5.10.220 Exclusive operation by permittee.**

A bingo game shall be operated and staffed only by members of the permittee organization. Such members shall not receive a profit, wage, or salary from any bingo game. Only the permittee shall operate such game, or participate in the promotion, supervision or any other phase of such game.

(Ord. No. 12967, § 4, 7-28-2009)

#### **5.10.230 Bingo games open to public.**

All bingo games shall be open to the public.

(Ord. No. 12967, § 4, 7-28-2009)

#### **5.10.240 Attendance limited to occupancy capacity.**

Notwithstanding that bingo games are open to the public, attendance at any bingo game shall be limited to the occupancy capacity of the room in which such game is conducted as determined by the Fire Marshal of the City in accordance with applicable laws and regulations. Permittee shall not reserve seats or space for any person.

(Ord. No. 12967, § 4, 7-28-2009)

#### **5.10.250 Bingo games conducted on property utilized by permittee for its charitable purposes.**

A permittee shall conduct a bingo game only on property owned or leased by it, and which property is used by such organization for an office or for the performance of the purposes for which the organization is organized. The permit issued hereunder shall authorize the holder thereof to con-

duct bingo games only on such property, the address of which is stated in the application. In the event the described property ceases to be used as the organization's office or as a place for the performance of the purposes for which the permittee is organized, the permit shall have no further force or effect. A new permit may be obtained by an eligible organization, upon application under these regulations, when it again owns or leases property used by it for the performance of the purposes for which the organization is organized.

(Ord. No. 12967, § 4, 7-28-2009)

**5.10.260 Transfer of permits.**

No permits are transferable.

(Ord. No. 12967, § 4, 7-28-2009)

**5.10.270 Minors not to participate.**

No person under the age of 18 years of age shall enter or remain or be permitted to enter or remain in any place while bingo games are being played in any place where bingo games are authorized.

(Ord. No. 12967, § 4, 7-28-2009)

**5.10.280 No participation in bingo games by intoxicated persons.**

No person who is obviously intoxicated shall be allowed to participate in any bingo games.

(Ord. No. 12967, § 4, 7-28-2009)

**5.10.290 Alcoholic beverages.**

No alcoholic beverages shall be consumed, sold, or given away, served or delivered to any person within the place where any bingo games are being conducted, nor shall any bingo game be conducted on any premises licensed to serve alcoholic beverages.

(Ord. No. 12967, § 4, 7-28-2009)

**5.10.300 Number of games—Notice to police department.**

At least five days before any bingo game is to be conducted, the permittee shall notify the Criminal Investigations Division of the Oakland Police Department of the time and place of said game.

(Ord. No. 12967, § 4, 7-28-2009)

**5.10.310 Hours of operation.**

No bingo game shall be conducted between the hours of 2:00 a.m. and 10:00 a.m.

(Ord. No. 12967, § 4, 7-28-2009)

**5.10.320 Participant must be present.**

No person shall be allowed to participate in a bingo game unless the person is physically present at the time and place in which the bingo game is being conducted.

(Ord. No. 12967, § 4, 7-28-2009)

**5.10.330 Summary suspension of permit.**

A. Whenever it appears to the Chief of Police or his or her representative that the permittee is conducting a bingo game in violation of any of these provisions, said Chief of Police or his or her representative shall have the authority to summarily suspend the permit for a period not to exceed five days and to order the permittee to immediately cease and desist any further operations of any bingo games for a period not to exceed five days. After a permit has been summarily suspended, the Chief of Police or his or her representative shall refer the matter to the City Administrator for an investigation.

B. Any person who continues to conduct a bingo game after any summary suspension thereof under Subsection A. of this Section shall be deemed guilty of an infraction.

C. Access to Criminal History Information. The Chief of Police or his or her representative shall have the authority to obtain criminal history information for each officer of the permittee organization and each person operating or assisting in the operation of a bingo game for purposes of determining those who have been convicted within the past five years of crimes involving lotteries, gambling, larceny, perjury, bribery, extortion, fraud, or similar crimes involving moral turpitude, and to provide such information to the City Administrator for his or her use in granting, denying and suspending or revoking bingo permits.

(Ord. No. 12967, § 4, 7-28-2009)

**5.10.340 Suspension/revocation of permit—Hearing.**

A. Whenever it appears to the City Administrator that the permittee has been or is conducting bingo games or operating a bingo hall in violation of California Penal Code Section 326.5 or any of these provisions, or that the permit was obtained by fraudulent representation, the permit may be suspended or revoked.

B. Hearings on suspensions and revocations shall be noticed and conducted pursuant to Chapter 5.02, except that within 20 days after close of hearing the City Administrator shall render his or her decision based upon the record and present and notify the permittee in writing of such decision. The decision of the City Administrator shall be final.

C. Judicial review may be had by filing a petition for a writ of mandate in accordance with the Code of Civil Procedure.

D. Within seven days after written notification of the City Administrator's decision, the permittee must surrender its permit to the City Administrator's Office.

(Ord. No. 12967, § 4, 7-28-2009)

**5.10.350 Effect of suspension or revocation of a permit.**

When the City Administrator has suspended or revoked a permit pursuant to the provisions of this Chapter and his or her decision has become final, no application for a bingo permit shall be accepted from the applicant for a period of one year from the date of the City Administrator's final decision suspending or revoking the permit unless a shorter period is allowed in the decision.

(Ord. No. 12967, § 4, 7-28-2009)

**5.10.360 City may enjoin violation.**

The City may bring an action in a court of competent jurisdiction to enjoin a violation of Section 326.5 of the California Penal Code or of these regulations.

(Ord. No. 12967, § 4, 7-28-2009)

**5.10.370 Violation—Penalty.**

A. It is a misdemeanor under Section 326.5 of the California Penal Code for any person to receive a profit, wage, or salary from any bingo game authorized hereunder, a violation of which is punishable by a fine not to exceed \$10,000.00, which fine shall be deposited in the general fund of the City.

B. Except as provided in Subsection A. of this Section, a violation of any provision of this Chapter is an infraction and shall be punishable by:

1. A fine not exceeding \$50.00 for a first violation;
2. A fine not exceeding \$100.00 for a second violation within one year;
3. A fine not exceeding \$250.00 for each additional violation within one year.

C. If the City Administrator or his/her designee determines that a violation of this Chapter has occurred, he/she may issue an administrative citation, pursuant to Chapter 1.12. Such citation may be issued in addition to any other applicable legal, injunctive, or equitable remedies.

D. The recipient of an administrative citation may request an administrative hearing to adjudicate any penalties issued under this Chapter by filing a written request with the City Administrator, or his or her designee. The City Administrator, or his or her designee, will promulgate standards and procedures for requesting and conducting an administrative hearing under this Chapter. Any determination from the administrative hearing on penalties issued under this Chapter will be final and conclusive.

(Ord. No. 12967, § 4, 7-28-2009)

**Chapter 5.12****CABARETS\*****Sections:**

- 5.12.010 Definitions.**
- 5.12.020 Permit required.**
- 5.12.030 Cabaret permit process.**
- 5.12.040 Extended hours permit process.**
- 5.12.050 Application review process.**
- 5.12.060 Regulations.**
- 5.12.070 Booths and entertainers.**
- 5.12.080 Permit fee.**

**5.12.010 Definitions.**

As used in this Chapter:

A. "Cabaret" shall be construed to include any place where the general public is admitted, for a fee, entertainment is provided, and alcohol is served. A place that does not charge for admission but where the general public is admitted, alcohol is served, dancing is permitted, and the venue operates past 11:00 p.m. shall also be construed as a cabaret.

B. "Disqualifying offense" means any offense which disqualifies an applicant from obtaining a permit pursuant to this Chapter or which mandates revocation of the permit if the offender already holds a permit. Disqualifying offenses are:

1. Conviction, plea of nolo contendere, plea bargain, or forfeiture pertaining to any felony offense involving the sale of a controlled substance specified in Sections 11054, 11055, 11056, 11057 or 11058 of the Health and Safety Code of the State of California;

2. Conviction, plea of nolo contendere, plea bargain, or forfeiture on a charge of committing a

\*Editor's note—Ord No. 13006, §4, adopted May 4, 2010, amended chapter 5.12 in its entirety to read as herein set out. Formerly, chapter 5.12, §§ 5.12.010—5.12.050 pertained to similar subject matter, and derived from the prior code, §§ 5-4.05—5-4.08; Ord. No. 11918, adopted 1996; Ord. No. 11944, adopted 1996; Ord. No. 12113, § 1, adopted 1999, and Ord. No. 12855, § 4, adopted 2008.

violent crime or a crime of dishonesty, fraud or deceit with an intent to substantially injure another.

(Ord. No. 13006, § 4, 5-4-2010)

**5.12.020 Permit required.**

A. It is unlawful for any person to own, conduct, operate or maintain, or to participate therein, or to cause or to permit to be conducted, operated, or maintained, any cabaret in the City unless the cabaret has paid the annual permit fee, holds a valid permit with the Office of the City Administrator, and has met any other permit requirements developed by the City Administrator, including but not limited to those put forth in Section 5.12.030. A proposed cabaret may be excluded from obtaining a permit for failure to meet requirements of the City building code, City fire code, City planning code, this Code and/or any violation of State or local law relevant to the operation of cabarets. Cabaret permits are not transferable. The application for such permit shall set forth the fact that the proposed location of such cabaret is not within 300 feet of any church or synagogue or any building in use as a place of public worship or school or public library. This requirement may be waived only if the City Administrator makes written findings that the cabaret will not have a negative impact on City resources, public safety and neighborhood quality of life.

B. A cabaret permit may not be issued and an existing permit may be suspended to any cabaret where any owner(s), operator(s), or other party with an interest in the cabaret has committed a disqualifying offense as defined in Section 5.12.010 and/or violated any provision of this Chapter that has resulted in a suspension or revocation of any permit issued under this Chapter, or violated a similar law in any other jurisdiction within the past five years that has resulted in a suspension or revocation of a permit under that law.

C. Notwithstanding any other provisions of this Chapter, the cabaret must comply with all applicable requirements, including but not limited to any Conditional Use Permit ("CUP") and State

of California Department of Alcoholic Beverage Control ("ABC") requirements. Any ABC licensed business and/or CUP that currently does not offer entertainment (and would like to offer entertainment) shall revise its ABC license and/or CUP to include a condition that permits entertainment activities, if applicable.

(Ord. No. 13006, § 4, 5-4-2010)

#### **5.12.030 Cabaret permit process.**

A. A business that conducts cabaret activity shall be allowed to conduct such activity under the following conditions:

- (a) The business applies for and is approved by the City Administrator for the cabaret permit;
- (b) The business maintains the permit by paying the annual fee;
- (c) The business successfully completes an annual inspection by the Fire Department;
- (d) The business does not create a public nuisance, adversely affect the health, safety, and general welfare of the public, or negatively impact City resources. A determination of such public nuisance, adverse affect, or negative impact shall be made only after a public hearing conducted according to the requirements of Chapter 5.02.

The cabaret permit fee shall be specified in the master fee schedule.

B. A cabaret permit application may be denied or an existing cabaret permit suspended or revoked on the basis of a disqualifying offense, as defined in this Chapter, or any basis for permit denial, suspension, or revocation specified in Chapter 5.02. Such denial, suspension, or revocation shall be in writing, specifying the reasons for the decision. A business whose permit is denied, suspended, or revoked may request a hearing to show cause why the permit should not be denied, suspended, or revoked. The hearing shall be conducted according to the requirements of Chapter 5.02.

C. In addition to suspension, revocation or denial of a cabaret permit pursuant to Subsection B., a cabaret establishment creating a public nuisance may be subject to other penalties and en-

forcement actions, including but not limited to civil penalties and administrative citations pursuant to Title 1 of this Code.

(Ord. No. 13006, § 4, 5-4-2010)

#### **5.12.040 Extended hours permit process.**

A. An extended hours permit shall be required for cabaret operation between the hours of 2:00 a.m. and 5:00 a.m.

B. The pilot extended hours permit program will commence on May 30, 2010, or as soon as practicable thereafter, with all applications due by June 11, 2010. Following the public hearings process, all permits will be issued on July 30, 2010 for an 18-month period.

C. A maximum of ten extended hours permits shall be issued during the two-year pilot program in the City's Central District (defined as within the boundaries of I-980 and Brush Street to the west; 27th Street to the north; Harrison Street/Lake Merritt and the Lake Merritt Channel to the east; and the Estuary to the south) per Oakland Planning Code Subsection 17.102.210 B.1.a.

D. The permits shall be issued at the discretion of the City Administrator or his/her designee to existing cabarets in good standing following a public hearing conducted according to the requirements of Chapter 5.02, and based on an evaluative point system that takes into consideration the operating history and business practices of the applicant, and any other factors that is deemed necessary to the peace, order and welfare of the public. Such issuance shall factor into consideration and give great weight to the recommendation of the Chief of Police or his/her designee. A proposed extended hours permittee may be denied for failure to meet requirements of the City building code, City fire code, City planning code, this Code, any violation of State or local law relevant to the operation of cabarets.

E. The City Administrator shall establish conditions of approval, including but not limited to a security plan, parking plan, and set hours of op-

erations. Set hours may be adjusted only pursuant to 30 days notification to and approval by the City Administrator's Office.

F. Permittees must submit a monthly calendar of events to the City Administrator's Office and to the special events unit of OPD. Calendars shall be submitted 30 days in advance.

G. The permit shall be subject to suspension or revocation according to the standards of Chapter 5.02, and the owner/operator shall be liable for excessive police costs related to enforcement. The Chief of Police, in his or her discretion, may immediately suspend, and recommend for revocation, such permit for any reason for which the granting of such permit might be lawfully denied, to protect the person and property of patrons of the location, or to protect the safety and welfare of the general public. Such suspension shall last no longer than is practically necessary to schedule a due process hearing on the merits of the revocation and the recommendation by the Chief of police or his/her designee to revoke the permit. A hearing to show cause must be held within ten business days from the date of suspension, except that such suspension cannot exceed ten days. If such suspension was the result of violent crime, narcotic related crime, melee, or gang activity emanating from or occurring on the premises the suspension shall not be removed until a final decision from the hearing officer has been rendered. All other suspensions may be removed prior to the hearing if the hearing cannot be held within ten days although the decision of the hearing officer may include additional suspension or revocation of the permit.

H. The application fee and annual fee for the extended hours permit shall be specified in the master fee schedule.

I. A business whose extended hours permit is denied, suspended, or revoked may request a hearing to show cause why the permit should not be denied, suspended, or revoked. The hearing shall be conducted by an Administrative Hearing Officer, as defined in Chapter 5.02.  
(Ord. No. 13006, § 4, 5-4-2010)

#### **5.12.050 Application review process.**

A. Application Filing. All applications for cabaret permits and extended hours permits-issued pursuant to this Chapter, including renewals, shall be filed in the Office of the City Administrator. Applicants must acknowledge receipt of cabaret operating regulations and conditions, and submit proof of fire inspection, health inspection and permit, business tax license, ABC license and conditions, and zoning clearance prior to issuance of permit. The City Administrator shall receive any fee required for the application, ensure that the application is complete, and refer the application to the Chief of Police for investigation, review and recommendation.

B. Investigation for Extended Hours Permits and New Cabaret Permit Applicants. The City Administrator shall refer the application to the Chief of Police who shall conduct background investigations on all applicants requesting extended hours permits. Where the applicant(s) is any type of association, partnership, corporation or other entity, background investigations of all publicly named or registered persons, officers, directors, managers and shareholders within those entities shall be conducted as appropriate. The applicant shall be fingerprinted and photographed and consideration shall be given to their criminal record, if any. After reviewing the information obtained, the Chief of Police shall transmit in writing any recommendation or findings from the investigation to the City Administrator and shall give particular consideration to the safety and general welfare of the public. The City Administrator shall also refer the application to other city and county agencies as appropriate and warranted to ensure compliance with existing state, county and local laws.

(Ord. No. 13006, § 4, 5-4-2010)

#### **5.12.060 Regulations.**

It is unlawful for any person operating a cabaret under the provisions of Section 5.12.020, or any cabaret whatsoever, in the City, or any agent, employee or representative of such person to permit

any breach of peace therein or any disturbance of public order or decorum by any tumultuous, riotous or disorderly conduct, or to permit such cabaret to remain open, or patrons to remain upon the premises, after 2:00 a.m. unless the cabaret has on file a current extended hours permit with the Office of the City Administrator.

(Ord. No. 13006, § 4, 5-4-2010)

**5.12.070      Booths and entertainers.**

It is unlawful for any person operating a cabaret under the provisions of Section 5.12.020, or any cabaret whatsoever in the City, or any agent, employee or representative of such person, to erect, construct, maintain, or cause or permit to be erected, constructed or maintained, within such cabaret any private rooms, booths or compartments, or any closed stalls, or any alcoves of any nature, so arranged that the entire inner portion of the same shall not at all times be visible; or to permit any conduct in such place prejudicial to public morals, or to permit any entertainment in such cabaret, except that which is furnished by entertainers employed by the management of such cabaret.

(Ord. No. 13006, § 4, 5-4-2010)

**5.12.080      Permit fee.**

Every person conducting, managing or maintaining the business of a cabaret in the City shall pay a permit fee specified in the master fee schedule annually in advance, and shall keep a copy of the business tax certificate issued by the Business Tax Office, together with a copy of the cabaret permit issued, and where applicable, the extended hours permit, pursuant to the provisions of Section 5.12.020, together with a copy of this Chapter, including the regulations set forth in Section 5.22.020 and incorporated in Section 5.12.060, posted in a conspicuous place in the premises maintained as such cabaret at all times during which such cabaret is being operated.

(Ord. No. 13006, § 4, 5-4-2010)



**Chapter 5.14****CARNIVALS****Sections:**

<b>5.14.010</b>	<b>Definitions.</b>
<b>5.14.020</b>	<b>Permit required.</b>
<b>5.14.030</b>	<b>Permit requirements.</b>
<b>5.14.040</b>	<b>Permits—Denial or revocation.</b>
<b>5.14.050</b>	<b>Health and sanitation.</b>
<b>5.14.060</b>	<b>Insurance.</b>

**5.14.010 Definitions.**

For the purpose of this chapter:

“Carnival” means and includes any group of attractions such as transient fairs or shows, Ferris wheels, scenic railways, merry-go-rounds, swings, chute-the-chutes, open air amusement devices, merchandise booths, games of skill, and other like or similar exhibitions or amusements, other than circuses, whether said attractions are owned by one or different persons.

“Carnival sponsor” means any person or group who holds a carnival permit such as an educational institution, church, nonprofit or similar organization, and who performs the following acts in the execution of a carnival:

1. Locates the site for a carnival,
2. Enters into an agreement with a carnival equipment operator; and
3. Shares in the revenues of said carnival. (Prior code § 5-4.17)

**5.14.020 Permit required.**

It is unlawful for any person to conduct, hold, maintain or carry on, or to cause or permit to be conducted, held, maintained, or carried on, any carnival in the city unless a valid permit has been issued in compliance with the provisions of Chapter 5.02. Investigating official referred to in Section 5.02.030, to whom the application shall be referred, shall be the Chief of Police.

No permit shall be issued for sponsoring a carnival in the city for a period of more than two weeks duration, and no carnival sponsor shall be issued a

permit to sponsor a carnival in the city for more than one period in each calendar year.

A carnival operator is not limited to providing carnival equipment to one carnival sponsor per calendar year, but may provide carnival equipment to any carnival sponsor with a valid carnival permit. No portion of any street shall be used for the purpose of operating any carnival. (Prior code § 5-4.18)

**5.14.030 Permit requirements.**

In addition to the requirements of Section 5.02.020, the applicant for a carnival permit shall furnish, to the extent required by the City Manager, letters of recommendation and other evidence of good reputation of the applicant and of the carnival operator in cities in which the carnival operator has conducted carnivals during the preceding two months. (Prior code § 5-4.19)

**5.14.040 Permits—Denial or revocation.**

In addition to the grounds therefor set forth in Chapter 5.02, the City Manager shall have the power to deny the granting of a carnival permit, or may revoke a previously granted permit, upon evidence submitted to him that there is connected with such carnival any immoral exhibit, gambling attraction, or other feature or exhibit which is contrary to law or inimical to public health, safety, morals or general welfare. (Prior code § 5-4.20)

**5.14.050 Health and sanitation.**

Any person operating a carnival shall at all times comply with all standards and requirements of sanitation prescribed by the Health Officer and designed to protect the health of both customers, employees and the surrounding neighborhood. (Prior code § 5-4.21)

**5.14.060 Insurance.**

No permit shall be issued for conducting a carnival until the applicant therefor has placed on file with the City Clerk a certificate or certificates of an insurance carrier duly authorized to do business within the state of California, that it has issued and there is in effect for the benefit of the person con-

ducting such carnival public liability insurance covering damages arising out of the use and operation of any and all devices operated in connection with such carnival and resulting in personal injury or death, which insurance shall be in the minimum amount of three hundred thousand dollars (\$300,000.00) for the injury or death of any person, and subject to such limitation for each person injured or killed, in the minimum amount of five hundred thousand dollars (\$500,000.00) for injury or death to two or more persons in any one accident. Such insurance policy shall be subject to the approval of the City Attorney as to form and legality. (Prior code § 5-4.22)

	<b>Chapter 5.16</b>	
	<b>CABLE SYSTEMS AND OPEN VIDEO SYSTEMS</b>	
<b>Sections:</b>		
	<b>Part 1. General</b>	
<b>5.16.010</b>	<b>Definitions.</b>	<b>5.16.340</b> <b>Franchise term.</b>
<b>5.16.020</b>	<b>Access, PEG access, or PEG use.</b>	<b>5.16.350</b> <b>Costs borne by franchisee.</b>
<b>5.16.030</b>	<b>Public access or public use.</b>	<b>5.16.360</b> <b>Failures to perform.</b>
<b>5.16.040</b>	<b>Education access or education use.</b>	<b>5.16.370</b> <b>Administration of ordinance; adoption of regulations.</b>
<b>5.16.050</b>	<b>Government access or government use.</b>	<b>5.16.380</b> <b>Transfers.</b>
<b>5.16.060</b>	<b>Affiliate.</b>	<b>5.16.390</b> <b>General conditions upon construction, operation and repair.</b>
<b>5.16.070</b>	<b>Basic service.</b>	<b>5.16.400</b> <b>Protection of city and residents.</b>
<b>5.16.080</b>	<b>Cable Act.</b>	<b>5.16.410</b> <b>Enforcement and remedies.</b>
<b>5.16.090</b>	<b>Cable communications system.</b>	<b>5.16.420</b> <b>Books and records.</b>
<b>5.16.100</b>	<b>Cable service.</b>	<b>5.16.430</b> <b>Reports.</b>
<b>5.16.110</b>	<b>Cable system.</b>	<b>5.16.440</b> <b>Maps required.</b>
<b>5.16.120</b>	<b>Channel.</b>	<b>5.16.450</b> <b>Other records required.</b>
<b>5.16.130</b>	<b>City.</b>	<b>5.16.460</b> <b>Exemptions.</b>
<b>5.16.140</b>	<b>City Administrator.</b>	<b>5.16.470</b> <b>Privacy.</b>
<b>5.16.150</b>	<b>Construction, operation or repair.</b>	<b>5.16.480</b> <b>Procedures for paying franchise fees and fees in lieu of franchise fees.</b>
<b>5.16.160</b>	<b>FCC.</b>	
<b>5.16.170</b>	<b>Franchise.</b>	<b>Part 3. Special Rules Applicable to Cable Systems</b>
<b>5.16.180</b>	<b>Franchise area.</b>	<b>5.16.490</b> <b>Applications—Generally.</b>
<b>5.16.190</b>	<b>Franchisee.</b>	<b>5.16.500</b> <b>Application for an initial franchise or renewal franchise.</b>
<b>5.16.200</b>	<b>Gross revenues.</b>	<b>5.16.510</b> <b>Application for renewal filed pursuant to 47 U.S.C. Section 546.</b>
<b>5.16.210</b>	<b>Operator.</b>	<b>5.16.520</b> <b>Application for transfer.</b>
<b>5.16.220</b>	<b>OVS.</b>	<b>5.16.530</b> <b>Legal qualifications.</b>
<b>5.16.230</b>	<b>OVS agreement.</b>	<b>5.16.540</b> <b>Franchise fee.</b>
<b>5.16.240</b>	<b>Person.</b>	<b>5.16.550</b> <b>No exclusivity.</b>
<b>5.16.250</b>	<b>Public property.</b>	<b>5.16.560</b> <b>Rate regulation.</b>
<b>5.16.260</b>	<b>Public rights-of-way.</b>	<b>5.16.570</b> <b>Consumer protection and customer service.</b>
<b>5.16.270</b>	<b>School.</b>	
<b>5.16.280</b>	<b>Subscriber.</b>	<b>Part 4. Open Video Systems</b>
<b>5.16.290</b>	<b>User.</b>	<b>5.16.580</b> <b>Applications for grant or renewal of franchises.</b>
	<b>Part 2. General Provisions</b>	<b>5.16.590</b> <b>Transfers.</b>
<b>5.16.300</b>	<b>Franchise required.</b>	<b>5.16.600</b> <b>Legal qualifications.</b>
<b>5.16.310</b>	<b>Form of franchise.</b>	<b>5.16.610</b> <b>Minimum requirements.</b>
<b>5.16.320</b>	<b>Scope of franchise.</b>	<b>5.16.620</b> <b>Fee in lieu of franchise fee.</b>
<b>5.16.330</b>	<b>Franchise non-exclusive.</b>	<b>5.16.630</b> <b>Exclusive contracts.</b>

**Part 5. Miscellaneous**

- 5.16.640      Captions.**
- 5.16.650      Calculation of time.**
- 5.16.660      Severability.**
- 5.16.670      Connections to cable systems; use of antennae.**
- 5.16.680      Discrimination prohibited.**

**Part I. General****5.16.010      Definitions.**

- A. The definitions set forth in this Part shall govern the application and interpretation of this chapter.
- B. When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number; and words in the singular number include the plural number; and the masculine gender includes the feminine gender.
- C. Subject to the provisions of Section 1.04.020 of Title 1 of the Municipal Code, the words "shall" and "will" are mandatory, and "may" is permissive.
- D. Words not defined in this chapter shall have the same meaning as in Title VI of Title 47 of the United States Code in effect on the effective date of the ordinance enacting this chapter, and, if not defined therein, their common and ordinary meaning.
- B. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority.
- F. If specific provisions of law referred to herein are renumbered, then the reference shall be read to refer to the renumbered provision.
- G. Unless otherwise specified, references to laws, ordinances or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances and regulations now in force or hereinafter enacted or amended. (Ord. 12729 § 1 (part), 2006)

**5.16.020      Access, PEG access, or PEG use.**

"Access," "PEG access," or "PEG use" refers to the availability of a cable system or OVS for public,

education or government use (including channel capacity on institutional networks designated for PEG use) by various agencies, institutions, organizations, groups, and individuals, including the city and its designated access providers, to distribute programming not under a franchisee's editorial control, including, but not limited to the access or use described in Sections 5.16.030, 5.16.040 and 5.16.050 below. (Ord. 12729 § 1 (part), 2006)

**5.16.030      Public access or public use.**

"Public access" or "public use" means access where organizations, groups, or individual members of the general public are the designated programmers or users having editorial control over their communications. (Ord. 12729 § 1 (part), 2006)

**5.16.040      Education access or education use.**

"Education access" or "education use" means access where schools are the designated programmers or users having editorial control over their communications. (Ord. 12729 § 1 (part), 2006)

**5.16.050      Government access or government use.**

"Government access" or "government use" means access where government institutions or their designees are the designated programmers or users having editorial control over their communications. (Ord. 12729 § 1 (part), 2006)

**5.16.060      Affiliate.**

"Affiliate" means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. (Ord. 12729 § 1 (part), 2006)

**5.16.070      Basic service.**

"Basic service" means any service tier regularly provided on a cable communications system to all subscribers which includes the retransmission of local television broadcast signals. (Ord. 12729 § 1 (part), 2006)

**5.16.080      Cable Act.**

“Cable Act” means the Cable Communications Policy Act of 1984, 47 U.S.C. § 521 et seq., as amended by the Cable Television Consumer Protection and Competition Act of 1992, as further amended by the Telecommunications Act of 1996, as it may be amended from time to time. (Ord. 12729 § 1 (part), 2006)

**5.16.090      Cable communications system.**

“Cable communications system” refers to open video systems (OVS) and cable systems. (Ord. 12729 § 1 (part), 2006)

**5.16.100      Cable service.**

“Cable service” shall have the same meaning as in Title VI of Title 47 of the United States Code, as amended from time to time. (Ord. 12729 § 1 (part), 2006)

**5.16.110      Cable system.**

“Cable system” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include:

- A. A facility that serves only to retransmit the television signals of one or more television broadcast stations;
- B. A facility that serves subscribers without using, or connecting to a facility that uses, any public right-of-way within the city;
- C. A facility of a common carrier which is subject, in whole or in part, to the provisions of Title II (Common Carriers) of the Federal Communications Act of 1934, as amended, except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services;
- D. Any facilities of any electric utility used solely for operating its electric utility systems; or

E. An OVS that complies with 47 USC Section 573 and FCC regulations promulgated thereunder. (Ord. 12729 § 1 (part), 2006)

**5.16.120      Channel.**

“Channel” means a portion of the electromagnetic frequency spectrum which is used in a cable system or OVS and which is capable of delivering a standard NTSC broadcast video programming service whether in an analog or digital format. The definition does not restrict the use of any channel to the transmission of analog television signals. (Ord. 12729 § 1 (part), 2006)

**5.16.130      City.**

“City” means the city of Oakland and all departments, divisions, and agencies thereof except that, when used to describe a geographic area, the term refers to the boundaries of the city of Oakland, California, as they exist now or may exist in the future. (Ord. 12729 § 1 (part), 2006)

**5.16.140      City Administrator.**

“City Administrator” means the City Administrator or the City Administrator’s designee. (Ord. 12729 § 1 (part), 2006)

**5.16.150      Construction, operation or repair.**

“Construction, operation or repair” and similar formulations of that term means the named actions interpreted broadly, encompassing, among other things, installation, extension, maintenance, replacement of components, relocation, undergrounding, grading, site preparation, adjusting, testing, make-ready, excavation and the management of the cable system and its operations. (Ord. 12729 § 1 (part), 2006)

**5.16.160      FCC.**

“FCC” means the Federal Communications Commission. (Ord. 12729 § 1 (part), 2006)

**5.16.170      Franchise.**

“Franchise” refers to an authorization granted by the city to the operator of a cable communications

system giving the operator the non-exclusive right to occupy the space, or use facilities upon, across, beneath, or over public rights-of-way in the city, to provide specified services within a franchise area. A permit is not a franchise. (Ord. 12729 § 1 (part), 2006)

#### **5.16.180      Franchise area.**

“Franchise area” means the area of the city that a franchisee is authorized to serve by the terms of its franchise ordinance or by operation of law. (Ord. 12729 § 1 (part), 2006)

#### **5.16.190      Franchisee.**

“Franchisee” refers to a person holding a cable communications system franchise granted by the city. (Ord. 12729 § 1 (part), 2006)

#### **5.16.200      Gross revenues.**

“Gross revenues” means any and all revenue as determined in accordance with generally accepted accounting principles (“GAAP”) derived from the operation of a cable communications system to provide cable service. Gross revenues include, by way of example and not limitation, revenues from equipment sales and rentals services, installation, late fees and other subscriber charges, fees for carriage of programming, advertising revenue and shopping services recorded as revenue in accordance with GAAP; the term encompasses revenues that are received now, as well as new revenue sources that may develop in the future. “Gross revenues” shall include revenues of affiliates using the cable communications system in the city to provide cable service (other than those revenues which are already treated as the revenues of the franchisee) to the extent required to prevent avoidance of fees owed on gross revenues. (Ord. 12729 § 1 (part), 2006)

#### **5.16.210      Operator.**

“Operator” when used with reference to a cable communications system, refers to a person (a) who directly or through one or more affiliates provides cable service or OVS over a cable communications system and directly or through one or more affiliates

owns a significant interest in such system; and (b) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a system. (Ord. 12729 § 1 (part), 2006)

#### **5.16.220      OVS.**

“OVS” means an open video system. A reference to an OVS includes pedestals, equipment enclosures (such as equipment cabinets), amplifiers, power guards, nodes, cables, fiber optics and other equipment necessary to operate the OVS, or installed in conjunction with the OVS. (Ord. 12729 § 1 (part), 2006)

#### **5.16.230      OVS agreement.**

“OVS agreement” means a franchise entered into in accordance with the provisions of this chapter between the city and an OVS franchisee setting forth the terms and conditions under which the OVS franchise will be exercised. (Ord. 12729 § 1 (part), 2006)

#### **5.16.240      Person.**

“Person,” unless it otherwise appears from the context as used, means and includes any person, individual, firm, organization, corporation, partnership, association, limited liability company, joint stock or other company, business or other trust, public agency, school district, the state of California, its political subdivisions and/or instrumentalities, or any other legal entity, but not the city. (Ord. 12729 § 1 (part), 2006)

#### **5.16.250      Public property.**

“Public property” means any property that is owned or under the control of the city that is not a public right-of-way, including but not limited to, buildings, parks, structures such as utility poles and light poles, or similar facilities or property located in a public right-of-way or owned by or leased to the city. (Ord. 12729 § 1 (part), 2006)

#### **5.16.260      Public rights-of-way.**

“Public rights-of-way” means the surface of and the space above and below any street, road, highway, freeway, bridge, lane, path, alley, court, sidewalk,

parkway, parkstrip, drive, or right-of-way or easement generally available to and used by utilities, communication companies, or for travel by the public, now or hereafter existing within the city which may be properly used and the city has the authority to allow the use of, for the purpose of installing, maintaining, and operating a cable communications system; and any other property, that a franchisee is entitled by state or federal law to use by virtue of the grant of a franchise. (Ord. 12729 § 1 (part), 2006)

#### **5.16.270 School.**

“School” means any publicly funded charter school or public primary and secondary schools (K—12) located within the city. (Ord. 12729 § 1 (part), 2006)

#### **5.16.280 Subscriber.**

“Subscriber” means any person who is lawfully receiving, for any purpose or reason, any cable service via a cable communications system, whether or not a fee is paid for such service. (Ord. 12729 § 1 (part), 2006)

#### **5.16.290 User.**

“User” means a person or the city utilizing a channel, capacity or equipment and facilities of a cable communications system for purposes of transmitting programming material, as contrasted with the receipt thereof in the capacity of a subscriber. (Ord. 12729 § 1 (part), 2006)

### **Part 2. General Provisions**

#### **5.16.300 Franchise required.**

No person may construct, operate or repair a cable communications system in the city without first obtaining a franchise from the city pursuant to the terms and provisions of the City Charter and this chapter. (Ord. 12729 § 1 (part), 2006)

#### **5.16.310 Form of franchise.**

Any franchise shall be issued in the form of an ordinance and must be accepted by the franchisee pursuant to the terms of this chapter and the franchise

ordinance to become effective. (Ord. 12729 § 1 (part), 2006)

#### **5.16.320 Scope of franchise.**

A franchise granted pursuant to this chapter shall authorize and permit a franchisee to construct, operate and repair a cable system, or an OVS (as applicable) pursuant to the terms of its franchise ordinance and this chapter to provide cable service in the city, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain facilities appurtenant to such system in, on, over, under, upon, across, and along those public rights-of-way that the city may authorize a franchisee to use.

A. A franchise shall not convey rights other than as expressly specified in this chapter, or in a franchise ordinance.

B. A franchise shall not include, or be a substitute for:

1. Any permit, agreement or authorization required commonly of all utilities in connection with construction, operation or repair on or in public rights-of-way or public property;

2. Any permits or agreements for occupying any other property of the city or private entities to which access is not specifically granted by the franchise.

C. A franchise does not relieve a franchisee of its duty to comply with all lawful city ordinances, resolutions, written policies, and regulations in effect as of the date on which the franchise becomes effective, and every franchisee must comply with the same. The rights granted under a franchise ordinance are subject to the lawful exercise of police powers the city now has or may later obtain. To the extent legally permitted, the terms of every franchise granted shall be subordinate to all the requirements of the Oakland City Charter as of the date the franchise becomes effective. Nothing herein prevents a franchisee from raising a claim or defense that a particular provision of the City Charter, a city ordinance, resolution, written policy, or regulation is unlawful or is unlawful as applied to the franchisee.

D. A franchise does not convey title, equitable or legal, in the public rights-of-way or public prop-

erty. Any right granted to franchisee by a franchise ordinance shall not be subdivided or subleased to any other person or affiliate. (Ord. 12729 § 1 (part), 2006)

#### **5.16.330 Franchise non-exclusive.**

No franchise shall be exclusive, or prevent the city from issuing other franchises or authorizations, or prevent the city from itself constructing, operating, or repairing its own cable communications system. (Ord. 12729 § 1 (part), 2006)

#### **5.16.340 Franchise term.**

Every franchise ordinance shall specify the franchise term as a precise number of years. (Ord. 12729 § 1 (part), 2006)

#### **5.16.350 Costs borne by franchisee.**

Unless otherwise specifically stated in a franchise ordinance or required by law, all acts which a franchisee is required to perform under the franchise ordinance or applicable law must be performed at the franchisee's expense and at no cost to the city, provided that nothing contained in this Section 5.16.350 is intended to restrict or limit franchisee's rights under applicable law to recover costs from third parties, or assess or pass-through costs to its subscribers. (Ord. 12729 § 1 (part), 2006)

#### **5.16.360 Failures to perform.**

If a cable communications system operator fails to perform work that it is required to perform within the time provided for performance, the city may perform the work or cause the work to be performed and bill the operator therefor. Except in the case of safety issues or other urgent circumstances, the city shall provide the operator with thirty (30) days notice and opportunity to perform the work before the city acts pursuant to this Section 5.16.360. The operator shall pay the actual cost incurred within thirty (30) days receipt of invoice. City will not unreasonably deny a request for an extension of time to perform, where the City Administrator finds that the delay will not adversely affect the work, the city, third parties af-

fected by the work, or the public. (Ord. 12729 § 1 (part), 2006)

#### **5.16.370 Administration of ordinance; adoption of regulations.**

A. The city may from time to time adopt regulations in a manner consistent with this chapter to implement the provisions of this chapter. This chapter, and any regulations adopted pursuant to this chapter are not contracts with any franchisee, and may be amended at any time by the city.

B. Except where this chapter specifically directs that action be taken by the City Council, the City Administrator or its designees are hereby authorized to administer and enforce the provisions of this chapter and any franchise issued pursuant hereto, to provide any notices (including noncompliance notices), and to take any action on the city's behalf that may be required hereunder or under applicable law.

C. The failure of city, upon one or more occasions, to exercise a right or to require compliance or performance under a franchise ordinance or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right has been specifically waived in writing.

D. The city may designate one or more persons, including itself, to control and manage the use of public, educational or government access channels, facilities and equipment. (Ord. 12729 § 1 (part), 2006)

#### **5.16.380 Transfers.**

A. No transfer of a franchise, franchisee, or cable communications system, or of control over the same (including, but not limited to, transfer by forced or voluntary sale, merger, consolidation, receivership, or any other means) shall occur unless prior application is made by the franchisee to the city and the city's prior written consent is obtained, pursuant to this chapter and the franchise ordinance. Every franchise shall be deemed to be held in trust, and to be personal to the franchisee. Any transfer that is made without the prior approval of the city shall be deemed to impair that trust. The granting of approval

for a transfer in one instance shall not render unnecessary approval of any subsequent transfer.

B. A transfer of control of a franchise, franchisee, or cable communications system will be deemed to have occurred whenever there is a change, acquisition or transfer of control of fifty (50) percent or more of the ownership in the franchisee or its direct or indirect parents by any person, or a group of persons acting in concert, or whenever there is a change in actual working control, in whatever manner exercised, over the affairs of a franchisee or its direct or indirect parents, regardless of the percentage of ownership change. Without limiting the above, any change in the general partners of a franchisee will be presumed a change in control.

C. Notwithstanding any other provision of this chapter, pledges in trust or mortgages of the assets of a cable communications system to secure the construction, operation, or repair of the system may be made without application and without the city's prior consent. However, no such arrangement may be made if it would in any respect under any condition: (1) prevent the cable communications system operator or any successor from complying with, this chapter, the franchise ordinance or other applicable law or regulation; or (2) permit a third party to succeed to the interest of the operator, or to own or control the system, without the prior consent of the city. Any mortgage, pledge or lease shall be subject to and subordinate to the rights of the city under any franchise, this chapter, or other applicable law. (Ord. 12729 § 1 (part), 2006)

#### **5.16.390 General conditions upon construction, operation and repair.**

A. The construction, operation, upgrade and repair of cable communications systems shall be performed in compliance with all laws, ordinances, resolutions, departmental rules, regulations, written policies, and practices affecting such system. By way of example, and not limitation, this includes the relevant portions of the Oakland Municipal Code (i.e., the city's zoning ordinance), ordinances, regulations and policies to preserve or protect the public safety, construction standards, regulations for providing notice

to persons that may be affected by system construction, and directives governing the time, place and manner in which facilities may be installed in the public rights-of-way. Persons engaged in the construction, operation, upgrade or repair of cable communications systems shall exercise reasonable care in the performance of all their activities and shall use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public or to property.

B. A franchise is required before a permit may be issued for work associated with the construction, operation, upgrade or repair of a cable communications system. Any permit issued for such work to a person that does not hold a franchise shall vest no rights in the permittee; the permit may be revoked at will, and the permittee shall remove all facilities installed under the permit upon and in full compliance with the city's demand.

C. Construction, operation, upgrade or repair of a cable communications system shall not commence until all required permits have been obtained from the proper city officials and all required fees have been paid. All work performed will be performed in strict accordance with the conditions of the permit. Upon order of the city, any work and/or construction undertaken that is not completed in compliance with the city's requirements, or which is installed without obtaining necessary permits and approvals shall be removed in accordance with the reasonable timeline set forth by the city. A franchisee shall reimburse the city for costs incurred in inspecting construction projects undertaken in the course of major or minor upgrades, installation of fiber optics, minor and major repairs, all other work for which the city requires inspection, and permit review and processing.

D. Interference with the use of the public rights-of-way by others, including others that may be installing cable communications systems, must be minimized. The city may require, except as prohibited by law or the franchise, a person using the public rights-of-way to cooperate with others through joint trenching and other arrangements to minimize adverse impacts on the public rights-of-way.

E. To the extent possible, operators of cable communications systems shall use existing poles and conduit. Additional poles may not be installed in the right-of-way, nor may pole capacity be increased by vertical or horizontal extenders, without the permission of the City Administrator, which permission shall not be unreasonably withheld.

F. Undergrounding.

1. Whenever all existing utilities are located underground in an area in the city, every cable communications system operator installing its system in the same area must locate its cable communications system underground.

2. Whenever the owner of a pole locates or relocates underground within an area of the city, every cable communications system operator in the same area shall concurrently relocate its cables, wires or fiber optics underground.

3. The City Council may, in its discretion, exempt a particular cable communications system or facility or group of cable communications systems or facilities from the obligation to locate or relocate the cable communications system or facility underground, where a franchisee has demonstrated that relocation is impractical, or where the interest in protecting against visual blight can be protected in another manner.

G. Any and all public property, or private property that is disturbed or damaged during the construction, operation, upgrade or repair of a cable communications system shall be promptly repaired by the operator. Public property must be restored to a condition as good as before the disturbance or damage occurred. Public rights-of-way must be restored to a condition consistent with city standards that are generally applicable to all persons performing construction or excavation in the public rights-of-way.

H. Relocation.

1. A cable communications system operator shall at no cost to the city and by a time specified by city, protect, support, temporarily disconnect, relocate, or remove any of its property when requested by the city by reason of traffic conditions; public safety; public right-of-way construction and repair (including regrading, resurfacing or widening); pub-

lic right-of-way vacation; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of government-owned system or utility, public work, public facility, or improvement; or for any other purpose where the work involved would be aided by the removal or relocation of the cable communications system. Collectively, such matters are referred to below as the "public work."

2. The city shall provide written notice describing where the public work is to be performed at least three weeks prior to the deadline by which a cable communications system operator must protect, support, temporarily disconnect, relocate or remove its facilities. The cable communications system operator may seek an extension of the time to perform the work. The city shall not unreasonably deny such an extension where the operator demonstrates it can not perform the work by the deadline even with the exercise of due diligence. Provided that, in an emergency, or where a cable communications system creates or is contributing to an imminent danger to health, safety, or property, the city may protect, support, temporarily disconnect, remove, or relocate any or all parts of the cable communications system without prior notice, and charge the cable communications system operator for costs incurred; however, city will make reasonable efforts, considering the circumstances, to provide prior notice.

I. Construction activities of others.

1. To accommodate the construction, operation, upgrade or repair of the facilities of another person authorized to use the public rights-of-way or public property, a franchisee shall, by a time specified by such person, protect, support, temporarily disconnect, relocate or remove its facilities. The franchisee shall be given written notice describing where the construction, operation or repair is to be performed at least fifteen (15) days prior to the time by which its work must be completed. Unless the matter is governed by a valid contract or a state or federal law or regulation, or unless the cable communications system that is being requested to move was not properly installed, the reasonable cost of the same shall be borne by the person requesting the protection, sup-

port, temporary disconnection, removal, or relocation and at no charge to the city, even if the city makes the request for such action. In cases where the requesting person is required under this Section 5.16.390(I)(1) to bear the cost of relaying, relocation or temporary removal, a franchisee may require the person to agree, before the work is performed, to pay the reasonable actual cost of the work. If the franchisee does so, it must provide an estimate of the cost of the work and support for that estimate.

2. A cable communications system operator shall, on the request of any person holding a valid permit issued by a governmental authority, temporarily raise or lower its wires by a time specified to permit the moving of buildings or other objects. A cable communications system operator shall be given not less than fifteen (15) days advance notice to arrange for such temporary wire changes. The expense of such temporary removal or raising or lowering of wires shall be paid in advance by the person requesting the same.

#### J. Abandonment.

1. A cable communications system operator may abandon any property in place in the public rights-of-way or upon public property upon written notice to the city. However, if, within ninety (90) days of the receipt of written notice of abandonment, the city determines, that the safety, appearance, functioning or use of the public right-of-way or public property and facilities in the public right-of-way or on public property will be adversely affected, the property must be removed by a date specified by the city. In specifying a date for removal, the city shall take into account the amount of work to be performed.

2. A cable communications system operator that abandons its property must, upon request, transfer ownership of the property to the city at no cost, and execute necessary quitclaim deeds provided that nothing in the preceding sentence prevents a cable communications system operator from bringing an action in a court of competent jurisdiction if it believes that the cable communications system was not abandoned. Whether or not ownership is transferred, the operator must indemnify the city against future

costs associated with mitigating or eliminating any hazard associated with the abandoned property.

K. Every cable communications system shall be subject to inspection and testing by the city. Each operator must timely and fully respond to requests for information regarding its system and plans for the system as the city may from time to time issue, including requests for information regarding its plans for construction, operation and repair and the purposes for which the plant is being constructed, operated, or repaired.

L. Each operator of a cable communications system that places facilities underground shall be a member of the regional notification center for subsurface installations (Underground Services Alert) and shall field mark the locations of its underground communications facilities upon request. The operator shall locate its facilities for the city at no charge.

M. At least ninety (90) days prior to commencing construction, each cable communications system operator shall provide the city a construction plan for any initial cable communications system construction, operation or repair or for any substantial rebuild, upgrade or extension of its cable communications system, which shall show its timetable for construction of each phase of the project, and the areas of the city that will be affected. The construction plans and timetables shall be reviewed by the city. The city acknowledges that certain portions of the construction plan may be tentative. The cable communications system operator shall provide additional information requested by the city within thirty (30) days of receipt of the request, to the extent such information is available. During construction, notice of changes to the construction plans and/or timetables must be provided to the city forty-eight (48) hours in advance. To the extent that any portion of such plan is tentative, franchisee shall provide the city with an update reasonably in advance of initiating such construction and repair.

N. Unless otherwise specified in a franchise, upon request of the city and subject to the terms of the franchise, every cable communications system shall be required to interconnect, temporarily, with every other cable communications system within the

city, on fair and reasonable terms, for the purpose of providing access to PEG programming.

O. Upon any request given within one hundred eighty (180) days from and after effective date of the ordinance awarding the franchise or franchise renewal, the franchisee shall make available for the city's review all contracts which it may have with all public utility companies, whereby franchisee is granted any right to use any of the property, equipment or facilities of such utility or utilities in the conduct of any operations pursuant to the franchise or franchise renewal awarded to said franchisee. (Ord. 12729 § 1 (part), 2006)

#### **5.16.400 Protection of city and residents.**

A. No franchise shall be valid or effective until and unless the city obtains an adequate indemnity from the franchisee. The indemnity must, to the extent permitted by law:

1. Release the city from and against any and all liability and responsibility in or arising out of the construction, operation, upgrade repair or maintenance of the cable communications system; and
2. Indemnify and hold harmless the city, its trustees, elected and appointed officers, agents, and employees, from and against any and all claims, demands, or causes of action of any kind or nature, and the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities, damages, orders, judgments, or decrees sustained by the city or any third party arising out of, or by reason of, or resulting from or of the acts, errors, or omissions of the cable communications system operator, or its agents, independent contractors or employees related to or in any way arising out of the construction, operation, upgrade or repair of the system except those claims which arise out of the negligence or willful misconduct of the city.

B. A franchise (or those acting on its behalf) shall not commence construction or operation of the cable communications system without first obtaining insurance in amounts and of a type satisfactory to the city. The required insurance must be obtained and maintained for the entire period the franchisee has facilities in the public rights-of-way or on public

property. If the franchisee, its contractors, or subcontractors do not have the required insurance, the city may order such persons to stop operations until the insurance is obtained and approved.

C. Certificates of insurance, reflecting evidence of the required insurance and naming the city as an additional insured, and other proofs as the city may find necessary, shall be filed with the city. For persons issued franchises after the effective date of this chapter, certificates and other required proofs shall be filed within thirty (30) days of the issuance of a franchise, once a year thereafter, and whenever there is any expiration of or change in coverage. For persons that have facilities in the public rights-of-way as of the effective date of this chapter, the certificate shall be filed within sixty (60) days of the effective date of this chapter, annually thereafter, and whenever there is any expiration of or change in coverage, unless a pre-existing franchise ordinance expressly provides for filing of certificates in a different manner. Each franchisee's insurance coverage shall be primary insurance as respects the city. Any insurance or self-insurance maintained by the city shall be excess of the franchisee's insurance and shall not contribute with it.

D. Certificates shall contain a provision that coverage afforded under these policies will not be canceled until at least thirty (30) days' prior written notice has been given to the city. Policies shall be issued by companies authorized to do business under the laws of the state of California. Financial ratings must be no less than "A" in the latest edition of "Bests Key Rating Guide," published by A.M. Best Guide.

E. A cable communications system operator (and those acting on its behalf to construct, operate or repair the system) shall maintain the following insurance, in the minimum amounts specified under the applicable franchise. The city shall be named as an additional insured on the general liability and automobile policies; those insurance policies shall be primary and contain a cross-liability clause.

1. Commercial general liability insurance to cover liability from bodily injury and property damage. Exposures to be covered shall include: premises,

operations, products/completed operations, and certain contracts. Coverage must be written on an occurrence basis.

Completed operations and products liability shall be maintained for two years after the termination of the franchise or license (in the case of the cable communications system owner or operator) or completion of the work for the cable communications system owner or operator (in the case of a contractor or subcontractor).

Property damage liability insurance shall include coverage for the following hazards: X - explosion, C - collapse, U - underground.

2. Workers' compensation insurance shall be maintained during the life of the franchise to comply with statutory limits for all employees, and in the case any work is sublet, each cable communications system operator shall require the subcontractors similarly to provide workers' compensation insurance for all the latter's employees unless such employees are covered by the protection afforded by each cable communications system operator. Each cable communications system operator and its contractors and subcontractors shall maintain during the life of this policy employers liability insurance.

3. Comprehensive auto liability coverage shall include owned, hired, and non-owned vehicles.

F. Every operator of a cable communications system shall obtain and maintain a performance bond to ensure the faithful performance of its responsibilities under this chapter and any franchise ordinance. In the case of any franchise ordinance that requires the cable communications system operator to initially build, or to upgrade a system, the amount of the bond shall be specified in the franchise. The amount of the bond shall be reduced upon successful completion of the required construction. The amount of the performance bonds shall be set by the City Administrator or may be set in a franchise ordinance in light of the nature of the work to be performed pursuant to or under the franchise. Bonds must be obtained prior to the effective date of any franchise, transfer or franchise renewal, unless a franchise ordinance specifically provides otherwise.

G. Every cable communications system operator shall establish and maintain a cash security fund or provide the city an irrevocable letter of credit in a form mutually acceptable to the city and franchisee, in an amount specified in the franchise ordinance but no less than one hundred thousand dollars (\$100,000.00) to secure the payment of fees owned, to secure any other performance promised in a franchise ordinance, and to pay any taxes, fees or liens owned to the city. The letter of credit shall be in a form and with an institution acceptable to the city's Director of Finance and in a form acceptable to the City Attorney. Should the city lawfully draw upon the cash security fund or letter of credit, the cable communications system operator shall, within fourteen (14) days, restore the fund or the letter of credit to the full required amount. This security fund/letter of credit may be waived or reduced by the city for a franchisee where the city determines in its discretion that a particular franchisee's operations are sufficiently limited that a security fund/letter of credit is not necessary to secure the required performance. The city may from time to time require a franchisee to change the amount of the required security fund/letter of credit to reflect changed risks to the city and to the public, including delinquencies in taxes or other payments to the city. The cash security fund or letter of credit must be obtained prior to the effective date of any franchise, transfer or franchise renewal, unless a franchise ordinance specifically provides otherwise.

H. A franchise ordinance may provide that the security fund requirements of Section 5.16.400(G) may be satisfied by a security bond in an amount provided in a franchise ordinance and in a form satisfactory to the city. (Ord. 12729 § 1 (part), 2006)

#### **5.16.410 Enforcement and remedies.**

A. The City Council may revoke a franchise if it finds, after a hearing, that a cable communications system operator has violated any material provision of this chapter, has committed a material breach of its franchise ordinance or repeatedly failed to comply with its franchise ordinance; has defrauded or attempted to defraud the city or subscribers; or has at-

tempted to evade the requirements of this chapter or its franchise ordinance. Before conducting a hearing to revoke the franchise: (1) the City Administrator must have given written notice of a claimed violation, breach, default or failure; and (2) the franchisee must have been given thirty (30) days to: (a) cure the claimed default, or (b) in the event that, by nature of the default, a cure is not feasible within such thirty (30) day period, initiate reasonable steps to remedy such default. An opportunity to cure is not required where the city finds that the defect in performance is part of a pattern of violations where the franchise has already had notice and opportunity to cure. The franchisee will be given at least thirty (30) days notice of the hearing date, and will be provided an opportunity to be heard at the hearing. Any revocation proceeding must be conducted in accordance with then applicable federal and state laws, and city shall be responsible for ensuring that franchisee is afforded due process under the law.

B. To the extent not prohibited by the U.S. Bankruptcy Code, a franchise will terminate automatically by force of law one hundred twenty (120) calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of the franchisee, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors, or other action or proceeding. However, the franchise may be reinstated within that one hundred twenty (120) day period, if: (1) such assignment, receivership or trusteeship has been vacated; or (2) such assignee, receiver or trustee has fully complied with the terms and conditions of this chapter and the franchise ordinance, and has executed an agreement, approved by any court having jurisdiction, assuming and agreeing to be bound by the terms and conditions of this chapter and the franchise ordinance. In the event of foreclosure or other judicial sale of any of the facilities, equipment or property of a franchisee, the city may revoke the franchise following a public hearing before the City Council, by serving notice upon the franchisee and the successful bidder at the sale, in which event the franchise and all rights and privileges thereunder will be revoked and will terminate

thirty (30) calendar days after serving such notice, unless: (1) the city has approved the transfer of the franchise to the successful bidder and (2) the successful bidder has covenanted and agreed with the city to assume and be bound by the terms and conditions of the franchise ordinance and this chapter.

C. Upon termination or forfeiture of a franchise, whether by action of the city as provided above, or by passage of time, the city may do one or a combination of the following.

1. The franchisee must, as the city so directs, stop using the cable communications system for the purposes authorized by the franchise.

2. The city may require the former franchisee to remove all or a portion of its facilities and equipment at the former franchisee's expense, subject to franchisee's right to abandon property in place. If the former franchisee fails to do so within a reasonable period of time, the city may have the removal done at the former franchisee's and/or surety's expense.

3. The city, by resolution of the City Council, may acquire ownership or effect a transfer of all or a portion of the cable communications system at the prices and under the conditions set forth in 47 U.S.C. § 547.

4. Subsection 5.16.410(D)(3) of this section does not apply to an abandonment. If a cable communications system or any part thereof is abandoned by franchisee, the city may require the franchisee to transfer title to the all or some of the abandoned portions to it at no charge, free and clear of encumbrances, and the same will become the city's property and the city may keep, sell, assign, or transfer all or part of the assets of the cable communications system, or otherwise dispose of those assets as it sees fit.

5. Notwithstanding the foregoing, the city may not, pursuant to this section, issue an order that violates 47 U.S.C. § 541(b)(3)(C).

D. Remedies provided for under this chapter, or under a franchise ordinance shall be cumulative and are in addition to all other remedies which may be available at law or equity. Recovery by the city of any amounts under insurance, the performance bond, the security fund or letter of credit, does not limit a

franchisee's duty to indemnify the city; or otherwise relieve a franchisee of its franchise obligations.

E. Each franchise shall contain a provision specifying liquidated damages payable to the city in the event of a breach of a franchise obligation where damages would otherwise be difficult to ascertain. (Ord. 12729 § 1 (part), 2006)

#### **5.16.420 Books and records.**

A. The city shall have the right to inspect and copy books and records that are relevant to monitoring compliance with the terms of this ordinance, a franchise or applicable law; or that are relevant to the exercise of any right or duty of the city under the same. Each cable communications system operator is responsible for maintaining control over such books and records whether created by it, or by those acting on its behalf. It is responsible for producing these records upon the city's request, for the city's inspection and copying. The records that franchisee must produce shall include, but are not limited to revenue records, and other records related to compliance with any provision of this chapter or a franchise ordinance. Books and records must be maintained for a period of three years, except that a franchise ordinance may specify a shorter period for certain categories of voluminous books and records where the information contained therein can be derived simply from other materials. The phrase "books and records" shall be read expansively to include information in whatever format stored.

B. Books and records requested shall be produced to the city by a time and at a location in the city designated by the City Administrator. However, if the requested books and records cannot be copied and moved for security reasons, then the franchisee may request that the inspection take place at some other location mutually agreed to by the city and the franchisee, provided that (1) the franchisee must make necessary arrangements for copying documents selected by the city after its review; and (2) the franchisee must pay all travel and additional copying expenses incurred by the city (above those that would have been incurred had the documents been produced

in the city) in inspecting those documents or having those documents inspected by its designee.

C. Any proprietary information received by the city from a franchisee must be clearly marked as proprietary information which the franchisee asserts is not required to be disclosed pursuant to the California Public Records Act. If a third party seeks release of a document held by the city marked as provided in this Section 5.16.420(C), the city will notify the franchisee so that the franchisee may seek court protection against the release of the document. (Ord. 12729 § 1 (part), 2006)

#### **5.16.430 Reports.**

A. The City Administrator may from time to time direct a franchisee to prepare reports related to the provisions of applicable law or the franchise, or the construction, operation, upgrade or repair of the cable communications system and to submit those reports by a date certain, in a format prescribed by the City Administrator, in addition to those required by this chapter.

B. Each franchisee shall submit the reports specified in the franchise ordinance, within the time limits specified in the ordinance.

C. No later than thirty (30) days after the end of each calendar year, a franchisee shall submit the following information:

1. A certified statement setting forth the computation of gross revenues used to calculate the franchise fee for the preceding year and a detailed explanation of the method of computation showing (i) gross revenues by category (e.g., basic, pay, pay-per-view, advertising, installation, equipment, late charges, miscellaneous, other); and (ii) what, if any, deductions were made from gross revenues in calculating the franchise fee (e.g., bad debt, credits and refunds), and the amount of each deduction.

2. A report showing, for each applicable customer service standard, the franchisees performance with respect to that standard for the preceding year. In each case where franchisee concludes it did not comply fully, the franchisee will describe the corrective actions it is taking to assure future compliance. In addition, the report should identify the number and

nature of all escalated customer service complaints received and an explanation of their dispositions. (Ord. 12729 § 1 (part), 2006)

#### **5.16.440 Maps required.**

Each franchisee shall maintain accurate maps and improvement plans that show the location, size, and a general description of all facilities installed in the public rights-of-way or on public property and any power supply sources (including voltages and connections). Each franchisee shall provide an as-built map to the city showing the location of its facilities and shall update such map whenever the facility expands or is relocated. Copies of the maps shall be provided on disk, in a commercially available electronic format specified by the City Administrator. As built must be submitted in the time and manner specified in the franchise ordinance and consistent with other city ordinances. (Ord. 12729 § 1 (part), 2006)

#### **5.16.450 Other records required.**

A franchisee shall make available for inspection by the City Administrator in the city during normal business hours within ten (10) business days a written request the following records for the preceding twelve (12) months or such longer period as the franchisee may be required to maintain the records under applicable state or federal law:

A. Records of all escalated complaints received, their nature and resolution. The term "complaints" refers to complaints about any aspect of the franchisee's construction, operations or repairs activities whether received directly by the franchisee or forwarded to the franchisee by the city or other agencies;

B. Records of outages known to the franchisee, their cause and duration;

C. Records of service calls for repair and maintenance indicating the nature of the call for service, the date and time service was requested, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was solved;

D. Records of installation/reconnection and requests for service extension, indicating date of request, date of acknowledgment, and the date and time service was extended;

E. Records sufficient to show whether the franchisee has complied with each customer service standard that applies to it; and

F. Records identifying all credits and/or refunds for outages, missed appointments and other service refunds, provided to any. (Ord. 12729 § 1 (part), 2006)

#### **5.16.460 Exemptions.**

The City Administrator may temporarily exempt any franchisee from its obligations under Sections 5.16.430—5.16.450 if the City Administrator determines that city and subscriber interests may be adequately protected in some other manner, so long as such temporary exemption does not conflict with any other city ordinance. (Ord. 12729 § 1 (part), 2006)

#### **5.16.470 Privacy.**

A franchisee shall take all reasonable steps required so that it is able to provide reports, books and records to the city. Each franchisee shall be responsible for redacting data that applicable law prevents it from providing to the city. Nothing in this section shall be read to require a franchisee to violate state or federal subscriber privacy laws. (Ord. 12729 § 1 (part), 2006)

#### **5.16.480 Procedures for paying franchise fees and fees in lieu of franchise fees.**

A. The franchise fee paid pursuant to Part 3, and the fee in lieu of franchise fee paid pursuant to Part 4 shall be paid quarterly unless otherwise specified in a franchise. Payment for each quarter shall be delivered to the city by check or electronic transfer not later than thirty (30) days after the end of each calendar quarter. Each payment made shall be accompanied by a report detailing how the payment was calculated.

B. No acceptance by the city of any payment shall be construed as an accord that the amount paid

is in fact the correct amount, nor shall such acceptance of such payment be construed as a release of any claim the city may have for additional sums payable or otherwise related to that payment.

C. Neither the franchise fee under Part 3, nor the fee paid in lieu of the franchise fee under Part 4, is a payment in lieu of any tax, fee or other assessment.

D. In the event that a fee payment is not received by the city on or before the due date set forth in this section or in a franchise ordinance, or the fee owed is not fully paid, the person subject to the fee will be charged interest on the outstanding amount owed from the due date at an interest rate equal to two percent above the rate for three-month Federal Treasury Bills, compounded daily, at the most recent United States Treasury Department sale of such Treasury Bills occurring prior to the due date of the franchise fee payment.

E. Within ninety (90) days of the date a franchisee ceases operations under a franchise (whether because of franchise termination, transfer, bankruptcy or for any other reason), the franchisee (or its successor in interest) shall: (A) make a final franchise fee payment, covering the period from the end of prior calendar month to date the franchisee ceased operations; and (B) file a final statement of gross revenues covering the period from the beginning of the calendar year in which the operations ceased to the date operations ceased. The statement shall contain the information and be certified as required by Section 5.16.430(C)(l). (Ord. 12729 § 1 (part), 2006)

### **Part 3. Special Rules Applicable to Cable Systems**

#### **5.16.490 Applications—Generally.**

A. An application must be filed for an initial and renewal cable system franchise, or for approval of a transfer. All applications under the provisions of this chapter shall be in writing and shall be filed in the Office of the City Clerk. These requirements do not apply to a renewal proposal submitted pursuant to 47 U.S.C. Section 546(h) as may be amended.

1. At a minimum, each application must identify the applicant, show that the applicant is financially, technically and legally qualified to construct, maintain and operate the cable system, contain a pro forma showing capital expenditures and expected income and expenses for the first five years the applicant is to hold the franchise, and show that the applicant is willing to comply unconditionally with this chapter and its franchise obligations. In addition, any application for an initial or renewal franchise must describe in detail the cable system that the applicant proposes to build or maintain, show where it is or will be located, set out the system construction or rebuild schedule, and show that the applicant will provide adequate channels, facilities and other support for public, educational and government use (including institutional network use) of the cable system. To be accepted for filing, an original and six copies of a complete application must be submitted. All applications shall include the names and addresses of persons authorized to act on behalf of the applicant with respect to the application.

2. The city may demand, and applicant shall provide, such supplementary, additional or other information as the City Council may deem reasonably necessary to determine whether the application should be granted. An applicant (and the transferor and transferee, in the case of a transfer) shall respond to any request for information from the city by the time specified by the city or by applicable law.

C. An application may be rejected if it is incomplete. (Ord. 12729 § 1 (part), 2006)

#### **5.16.500 Application for an initial franchise or renewal franchise.**

A. This section establishes additional provisions that apply to an application for an initial franchise, or a renewal franchise application that is not governed by 47 U.S.C. Section 546(a)—(h) as may be amended.

B. Any person may apply for an initial or renewal franchise by submitting an application therefor on that person's own initiative, or in response to a request for proposals issued by the city. If the city receives an unsolicited application, it may choose to

issue a request for additional proposals, and require the applicant to amend its proposal to respond thereto. The city may conduct such investigations as are necessary to act on an application.

C. Before taking final action on an application, the city shall conduct a public hearing in accordance with applicable state and federal law.

D. In determining whether to grant a franchise, the city may consider:

1. The extent to which an applicant for renewal has substantially complied with the applicable law and the material terms of any existing cable franchise ordinance;

2. Whether an applicant for renewal's quality of service under its existing franchise ordinance, including signal quality, response to customer complaints, billing practices, and the like has been reasonable in light of the needs of the community;

3. Where the applicant has not previously held a cable system franchise in the city, whether the applicant's record in other communities indicates that it can be relied upon to provide high-quality service throughout any franchise term;

4. Whether the applicant has the financial, legal, and technical ability to provide the services, facilities, and equipment set forth in an application, and to satisfy any minimum requirements established by the city;

5. Whether the applicants application is reasonable to meet the future cable-related needs and interests of the city, taking into account the cost of meeting such needs and interests;

6. Whether issuance of a franchise is warranted in the public interest considering the immediate and future effect on streets, public property, and private property that will be used by the applicant's cable system;

7. Whether issuance of the franchise would reduce competition in the provision of cable service in the city;

8. Whether the applicant has proposed to provide adequate facilities, equipment, channels and other support for PEG use of the cable system;

9. Such other matters as the city is authorized or required to consider.

E. If the city determines that issuance of a franchise would be in the public interest considering the factors described in this section, it may proffer a franchise ordinance to the applicant.

F. Within thirty-one (31) days after the effective date of the ordinance awarding a franchise or franchise renewal, or within such extended period of time as the City Council in its discretion may authorize, the successful applicant or franchisee shall file with the City Clerk an unconditional written acceptance, in form satisfactory to the City Attorney, of the franchise or franchise renewal, together with an agreement to be bound by and to comply with all applicable provisions of the city's Charter, this chapter, and the franchise ordinance. Such acceptance and agreement shall be acknowledged before a notary public and shall in form and content be satisfactory to and approved by the City Attorney. (Ord. 12729 § 1 (part), 2006)

#### **5.16.510 Application for renewal filed pursuant to 47 U.S.C. Section 546.**

A. This Section establishes provisions that apply to applications for renewal governed by 47 U.S.C. 546(a)—(g) as may be amended.

B. A franchisee that intends to exercise rights under 47 U.S.C. 546(a)—(g) as may be amended shall submit a notice in writing to the city in a timely manner clearly stating that it is activating the procedures set forth in those sections. The city shall thereafter commence any proceedings that may be required under federal law, and upon completion of those proceedings, the city may issue a request for proposals and an application may be submitted for renewal. The city may preliminarily deny the application by resolution, and if the application is preliminarily denied the city may conduct such proceedings and by resolution establish such procedures and appoint such individuals as may be necessary to conduct any proceedings to review the application.

C. An application for renewal pursuant to 47 U.S.C. § 546(h) may be submitted at any time, and may be rejected by the city at any time after public hearing. (Ord. 12729 § 1 (part), 2006)

**5.16.520 Application for transfer.**

A. This section establishes provisions that apply to applications for transfer approval.

B. An application for transfer must contain all the information required by Section 5.16.490, all information, required by the FCC Form 394 as it existed on January 1, 1999, and all information that it is required to file under applicable federal or state law.

C. Subject to limitations under applicable law, in determining whether a transfer application should be granted, denied, or granted subject to conditions, the city may consider the legal, financial, and technical qualifications of the transferee to operate the cable system any potential impact of the transfer on subscriber rates or services; whether the incumbent cable operator is in material compliance with its franchise, and if not any commitments to cure such non-compliance; whether the transfer may eliminate or reduce competition in the delivery of cable service in the city; and whether operation by the transferee or approval of the transfer would otherwise materially adversely affect subscribers, the public, or the city's interest under this chapter, the franchise ordinance, or other applicable law. The proposed transferee shall pay all reasonable costs incurred by the city in reviewing and evaluating the applications.

D. No application shall be granted unless the transferee agrees in writing that it will abide by and accept all terms of this chapter and the franchise ordinance, and that it will assume the obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of the previous franchisee for all purposes, except for purposes of Cable Act renewal proceedings to the extent that such a condition is prohibited by Section 626 of the Cable Act, 47 U.S.C. § 546. (Ord. 12729 § 1 (part), 2006)

**5.16.530 Legal qualifications.**

A.1. The applicant must be willing to comply with the provisions of this chapter and applicable laws; and to comply with such requirements of a franchise ordinance as the city may lawfully require.

2. The applicant must not have had any cable system or OVS franchise revoked by the city within three years preceding the submission of the applica-

tion. If franchisee challenges a revocation, it may not apply while the appeal is pending, or for three years after the final resolution of the appeal if the revocation is valid.

3. The applicant may not have had an application to the city for an initial or renewal cable system franchise denied on the ground that the applicant failed to propose a cable system meeting the cable-related needs and interests of the community, or as to which any challenges to such franchising decision were finally resolved (including any appeals) adversely to the applicant, within three years preceding the submission of the application and may not have had an application for an initial or renewal OVS franchise denied on any ground within three years of the application.

4. The applicant shall not be issued a franchise if at any time during the ten (10) years preceding the submission of the application, applicant was convicted of fraud, racketeering, anti-competitive actions, unfair trade practices or other conduct of such character that the applicant cannot be relied upon to deal truthfully with the city and the subscribers, or to substantially comply with its obligations.

5. Applicant must have the necessary authority under California and federal law to operate a cable system, or show that it is in a position to obtain that authority.

6. The applicant shall not be issued a franchise if it files materially misleading information in its application or intentionally withholds information that the applicant lawfully is required to provide.

7. For purposes of Section 5.16.530(A)(1)–(4), the term applicant includes any affiliate of applicant.

B. Notwithstanding Section 5.16.530(A), an applicant shall be provided a reasonable opportunity to show that a franchise should issue even if the requirements of Section 5.16.530(A)(2)–(4) are not satisfied, by virtue of the circumstances surrounding the matter and the steps taken by the applicant to cure all harms flowing therefrom and prevent their recurrence, the lack of involvement of the applicant's principals, or the remoteness of the matter from the operation of a cable system. (Ord. 12729 § 1 (part), 2006)

**5.16.540 Franchise fee.**

A cable system operator shall pay to the city a franchise fee in an amount equal to five percent of gross revenues from the provision of cable services, or such other amount as may be specified in the franchise ordinance. (Ord. 12729 § 1 (part), 2006)

**5.16.550 No exclusivity.**

To the extent prohibited by applicable law, a franchisee may not directly or indirectly require a subscriber or building owner or manager to enter into an exclusive contract as a condition of providing or continuing to provide cable service. A franchisee must offer service on a month-to-month basis. Nothing in this section shall prevent a franchisee from entering into a longer term and/or exclusive contract with a subscriber or building owner in exchange for discounted rates or other consideration, to the extent permitted by applicable law.

A. It is the policy of the city to ensure that every cable system provide service in its franchise area upon request to any residential dwelling unit. In addition, each franchisee shall provide service to any school or government building in the city, subject to written request from the city administrator and any applicable line extension policies in a franchise ordinance. Each franchisee shall extend service upon request within its franchise area, provided that, a franchise ordinance may permit a franchisee to require a potential subscriber to contribute a fair share of the capital costs of installation or extension as a condition of extension or installation in cases where such extension or installation may be unduly expensive. cable service must be provided within time limits specified in the franchise ordinance.

B. A cable system within the city shall meet or exceed the technical standards set forth in 47 C.F.R. § 76.601 and any other applicable technical standards as may be amended.

C. Each cable system operator shall perform at its expense such tests as may be necessary to show whether or not the franchisee is in compliance with its obligations under applicable FCC standards, this chapter or a franchise ordinance.

D. Each franchisee shall, during the term of its franchise, ensure that subscribers are able to receive continuous service. In the event the franchise is revoked or terminated, the franchisee may be required to continue to provide service for a reasonable period to assure an orderly transition of service from the franchisee to another person. A franchise ordinance may establish more particular requirements under which these obligations will be satisfied. (Ord. 12729 § 1 (part), 2006)

**5.16.560 Rate regulation.**

A. The city may regulate any of the cable communications system operator's rates and charges, except to the extent it is prohibited from doing so by law. The city will regulate rates in accordance with FCC rules and regulations, where applicable. Except to the extent FCC rules provide otherwise, all rates and charges that are subject to regulation, and changes in those rates or charges must be approved in advance. The City Administrator may take any required steps to file complaints, toll rates, issue accounting orders or take any other steps required to comply with FCC regulations. The City Council shall be responsible for issuing rate orders that establish rates or order refunds. A franchisee must comply with all rate orders issued by the City Council pending appeals by the franchisee unless a stay order has been issued by the FCC.

B. Except to the extent the city may not enforce such a requirement, a cable communications system operator is prohibited from discriminating in its rates or charges or from granting undue preferences to any subscriber, potential subscriber, or group of subscribers or potential subscribers; provided, however, that a franchisee may offer temporary, bona fide promotional discounts in order to attract or maintain subscribers, so long as such discounts are offered on a non-discriminatory basis to similar classes of subscribers throughout the franchise area; and a franchisee may offer bulk discounts at negotiated rates; and a franchisee may offer discounts for the elderly, the disabled, or the economically disadvantaged; and such other discounts as it is permitted to provide un-

der federal and state law, if such discounts are applied in a uniform and consistent manner.

C. A cable communications system operator shall not deny access or charge different rates to any group of subscribers or potential subscribers because of the income of the residents of the local area in which such group resides. (Ord. 12729 § 1 (part), 2006)

#### **5.16.570 Consumer protection and customer service.**

A. Each franchisee must comply with all applicable state and federal consumer protection provisions. In addition, each franchise ordinance shall set forth customer service standards which the franchisee must comply with.

B. For each violation of an applicable consumer protection or customer service standard, the city may impose penalties as follows:

1. Two hundred dollars (\$200.00) for each day of each material breach, not to exceed six hundred dollars (\$600.00) for each occurrence of the material breach).

2. If there is a subsequent material breach of the same provision within twelve (12) months, four hundred dollars (\$400.00) for each day of each material breach, not to exceed one thousand two hundred dollars (\$1,200.00) for each occurrence of the material breach.

3. If there is a third or additional material breach of the same provision within twelve (12) months of the first, one thousand dollars (\$1,000.00) for each day of each material breach, not to exceed three thousand dollars (3,000.00) for each occurrence of the material breach.

C. No penalty shall be assessed under this Section 5.16.570 for a breach where the city has the right to impose liquidated damages for the same occurrence.

D. A citation may be served on the franchisee by providing a copy to the person to whom notices are to be sent under the franchise ordinance.

E. Penalties under this Section 3.650 shall be imposed pursuant to the procedures set forth in Cal. Govt. Code Section 53088(r), and may be collected

by the city from the security fund required under Section 2.430(G) of the ordinance codified in this chapter. (Ord. 12729 § 1 (part), 2006)

#### **Part 4. Open Video Systems**

##### **5.16.580 Applications for grant or renewal of franchises.**

A.1. A written application shall be filed with the City Clerk for grant of an initial or renewal OVS franchise.

2. To be acceptable for filing, a signed original of the application shall be submitted together with six copies. The application must conform to any applicable request for proposals, and contain all information required under Section 3.570(B)(2). All applications shall include the names and addresses of persons authorized to act on behalf of the applicant with respect to the application.

B. The City Administrator may specify the information that must be provided in connection with a request for proposals or an application for an initial or renewal OVS franchise. At a minimum, each application must: identify the applicant, where it plans to construct its OVS, and the OVS construction schedule; show that the applicant will provide adequate channels, facilities and other support for public, educational and government use (including institutional network use) of the OVS; and show that the applicant is financially, technically and legally qualified to construct and operate the OVS.

C.1. A person may apply for an initial or renewal OVS franchise on its own initiative or in response to a request for proposals. Upon receipt of an application, the city may conduct such investigations as are necessary to consider the application. The city may request such additional information as it deems appropriate.

2. An applicant shall respond to requests for information completely, and within the time directed by the city, and must strictly comply with procedures, instructions, and requirements the city may establish.

3. An application may be rejected if it is incomplete or the applicant fails to follow procedures or respond fully to information requests.

D. In evaluating an OVS franchise application, the city may consider the following:

1. The extent to which the applicant has substantially complied with the applicable law and the material terms of any existing city OVS franchise;

2. Whether the applicant has the financial, technical, and legal qualifications to hold an OVS franchise;

3. Whether the application satisfies any minimum requirements established by the city for, or will otherwise provide adequate public, educational, and governmental use capacity, facilities, or financial support (including with respect to institutional networks);

4. Whether issuance of an OVS franchise would require replacement of property or involve disruption of property, public services, or use of the public right-of-way;

5. Whether the approval of the application may eliminate or reduce competition in the delivery of cable service in the city; and

6. Such other matters as it is required or entitled to consider.

E. If the city finds that it is in the public interest to issue an OVS franchise considering the factors above, shall proffer an OVS agreement to applicant and if applicant is willing to unconditionally accept the terms thereof and to comply with the requirements of applicable law, including this chapter, it shall issue an OVS franchise. (Ord. 12729 § 1 (part), 2006)

#### **5.16.590 Transfers.**

A. No transfer of an OVS franchise shall occur without prior written notice to and approval of the City Council.

B.1. An OVS franchisee shall promptly notify the city of any proposed transfer, and submit an application for its approval at least one hundred twenty (120) days in advance of the proposed and anticipated transfer date.

2. The City Administrator may specify information that must be provided in connection with a transfer application. At a minimum, an application must describe the persons involved in the transaction and the person that will hold the OVS franchise; describe the chain of ownership before and after the proposed transaction; show that the person that will hold the OVS franchise will be legally, financially, and technically qualified to do so; attach complete information on the proposed transaction, including the contracts or other documents that relate to the proposed transaction, and all documents, schedules, exhibits, or the like referred to therein; and attach any shareholder reports or filings with the Securities and Exchange Commission ("SEC") that discuss the transaction.

3. For the purposes of determining whether it shall consent to a transfer, the city or its agents may inquire into all qualifications of the prospective transferee and such other matters as the city may deem necessary to determine whether the transfer is in the public interest and should be approved, denied, or conditioned. If the transferee or OVS franchisee refuse to provide information, or provide incomplete information, the request for transfer may be denied.

C.1. In deciding whether a transfer application should be granted, denied or granted subject to conditions, the city may consider the legal, financial, and technical qualifications of the transferee to operate the OVS; whether the incumbent OVS operator is in compliance with its OVS agreement and this chapter and, if not, the proposed transferee's commitment to cure such noncompliance; whether the transferee owns or controls any other OVS or cable system in the city, and whether operation by the transferee may eliminate or reduce competition in the delivery of cable service in the city; and whether operation by the transferee or approval of the transfer would adversely affect subscribers, the public, or the city's interest under this chapter, the OVS agreement, or other applicable law.

2. No application shall be granted unless the transferee agrees in writing that it will abide by and accept all terms of this chapter and the OVS agreement, and that it will assume the obligations, liabili-

ties, and responsibility for all acts and omissions, known and unknown, of the previous franchisee for all purposes. The proposed transferee shall pay all reasonable costs incurred by the city in reviewing and evaluating the applications. (Ord. 12729 § 1 (part), 2006)

#### **5.16.600 Legal qualifications.**

A. In order to be legally qualified:

1. The applicant must be willing to comply with the provisions of this chapter and applicable laws, and to comply with such requirements of an OVS agreement as the city may lawfully require;

2. The applicant must not hold a cable system franchise, or have pending an application for a cable system franchise;

3. The applicant must not have had any cable system or OVS franchise revoked by the city within three years preceding the submission of the application. If franchisee challenges a revocation, it may not apply while the appeal is pending, or for three years after the final resolution of the appeal if the revocation is valid;

4. The applicant may not have had an application for an initial or renewal cable system franchise to the city denied on the ground that the applicant failed to propose a cable system meeting the cable-related needs and interests of the community, or as to which any challenges to such franchising decision were finally resolved (including any appeals) adversely to the applicant, within three years preceding the submission of the application;

5. The applicant may not have had an application for an initial or renewal OVS franchise denied on any grounds within three years of the applications;

6. The applicant shall not be issued an OVS franchise if, at any time during the ten (10) years preceding the submission of the application, applicant was convicted of fraud, racketeering, anti-competitive actions, unfair trade practices or other conduct of such character that the applicant cannot be relied upon to deal truthfully with the city and the subscribers, or to substantially comply with its obligations;

7. Applicant must have the necessary authority under California and federal law to operate an OVS, and must be certified by the FCC under Section 653 of the Cable Act as may be amended;

8. The applicant shall not be issued an OVS franchise if it files materially misleading information in its application or intentionally withholds information that the applicant lawfully is required to provide;

9. For purposes of Section 5.16.600(A)(2)–(6), the term applicant includes any affiliate of applicant.

B. Notwithstanding Section 5.16.600(A), an applicant shall be provided a reasonable opportunity to show that an OVS franchise should issue even if the requirements of Section 5.16.600(A)(3)–(6) are not satisfied, by virtue of the circumstances surrounding the matter and the steps taken by the applicant to cure all harms flowing therefrom and prevent their recurrence, the lack of involvement of the applicant's principals, or the remoteness of the matter from the operation of an OVS. (Ord. 12729 § 1 (part), 2006)

#### **5.16.610 Minimum requirements.**

A. No OVS operator shall be issued a franchise, or may commence construction of an OVS, until (A) it agrees to match in all respects the highest PEG obligations borne by any cable system operator in the city; or (B) it agrees to PEG obligations acceptable to the city.

B. Any OVS operator that constructs an I-Net must match in all respects the highest I-Net obligations borne by any cable system operator in the city, unless it agrees to alternative I-Net obligations acceptable to the city.

C. Every OVS agreement shall specify the construction schedule that will apply to any required construction, upgrade, or rebuild of the OVS. The schedule shall provide for prompt completion of the project, considering the amount and type of construction required.

D. Each OVS operator shall perform at its expense such tests as may be necessary to show whether or not the OVS franchisee is in compliance with its obligations under this chapter or a franchise or an OVS agreement.

E. Every OVS franchisee must satisfy customer service consumer protection requirements established from time to time under state or local law and applicable to OVS.

F. If an OVS franchisee's FCC certification is revoked or otherwise terminates as a result of the passage of time or as a matter of law, the city may revoke the OVS franchise after a hearing. The OVS franchise may also be revoked if federal regulations or statutory provisions governing OVS are declared invalid or unenforceable, or are repealed.

G. The city may regulate an OVS franchisee's rates and charges except as prohibited by law, and may do so by amendment to this chapter, separate ordinance, by amendment to an OVS agreement, or in any other lawful manner. (Ord. 12729 § 1 (part), 2006)

#### **5.16.620 Fee in lieu of franchise fee.**

A. In lieu of the franchise fee required by Part 3, an OVS franchisee shall pay to the city a fee of five percent of gross revenues.

B.1. A person leasing capacity from an OVS operator, other than a person whose revenues are included in the payment made under Section 5.16.620(A) shall pay the city a fee in lieu of the franchise fee required by Part 3 of five percent of the gross revenues of such person. For purposes of this Section 5.16.620(B)(1), the term gross revenues means all revenues, whether cash, in-kind or in any other form, of the person leasing capacity, or its affiliates, derived from use of the OVS to provide cable service in the city.

2. Notwithstanding the foregoing, where a person, other than an affiliate, pays an OVS franchisee to use its franchisee's OVS (the "use payments"); and that person recovers those use payments through charges to its subscribers that are included in that person's gross revenues; and the OVS franchisee pays a franchise fee on those use charges; then that person may deduct from its gross revenues the use payments it makes. (Ord. 12729 § 1 (part), 2006)

#### **5.16.630 Exclusive contracts.**

An OVS franchisee may not directly or indirectly require a subscriber or a building owner or manager to enter into an exclusive contract as a condition of providing or continuing service, nor may an OVS franchisee enter into any arrangement that would effectively prevent other persons from using the OVS to compete in the delivery of cable services with an OVS franchisee or its affiliates. A franchisee must provide service on a month to month basis; however, nothing in this section prevents a franchisee from entering into a longer term contract with a subscriber in exchange for discounted rates. (Ord. 12729 § 1 (part), 2006)

### **Part 5. Miscellaneous**

#### **5.16.640 Captions.**

The captions to sections throughout this chapter are intended solely to facilitate reading and reference to the sections and provisions of this chapter. Such captions shall not affect the meaning or interpretation of this chapter. (Ord. 12729 § 1 (part), 2006)

#### **5.16.650 Calculation of time.**

Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required under this chapter or any franchise, and a period of time or duration for the fulfillment of doing thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of time. (Ord. 12729 § 1 (part), 2006)

#### **5.16.660 Severability.**

If any term, condition, or provision of this chapter shall, to any extent, be held to be invalid or unenforceable by a valid order of any court or regulatory agency, the remainder hereof shall be valid in all other respects and continue to be effective. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the

city and shall thereafter be binding on the franchisee and the city. (Ord. 12729 § 1 (part), 2006)

**5.16.670      Connections to cable system; use of antennae.**

A. To the extent consistent with federal law, subscribers shall have the right to attach VCR's, receivers, and other terminal equipment to a franchisee's cable communications system, subscribers also shall have the right to use their own remote control devices and converters, and other similar equipment.

B. A franchisee shall not, as a condition of providing service, require a subscriber or potential subscriber to remove any existing antenna or satellite dish, or disconnect an antenna or satellite dish except at the express direction of the subscriber or potential subscriber, or prohibit installation of a new antenna or connection to any other multi-channel video provider's system. (Ord. 12729 § 1 (part), 2006)

**5.16.680      Discrimination prohibited.**

A. A cable communications system operator shall not unlawfully discriminate among persons or the city or take any retaliatory action against a person or the city because of that person's exercise of any right it may have under federal, state, or local law, nor may the operator require a person or the city to waive such rights as a condition of taking service.

B. A cable communications system operator shall not refuse to employ, discharge from employment, or unlawfully discriminate against any person in compensation or in terms, conditions, or privileges of employment because of race, color, creed, national origin, sex, age, disability, religion, ethnic background, marital status or sexual orientation. A cable communications system operator shall comply with all federal, state, and local laws and regulations governing equal employment opportunities, and hiring practices, as the same may be amended from time to time. (Ord. 12729 § 1 (part), 2006)

**Chapter 5.17****STATE VIDEO SERVICE FRANCHISES****Part 1  
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**Part 1  
General Provisions****5.17.010      Purpose.**

This chapter is intended to be applicable to video service providers who are applying for, or have been awarded, a state video franchise under California Public Utilities Code section 5800 et seq. (the Digital Infrastructure and Video Competition Act of 2006), to serve any area of the city. (Ord. 12819 § 1 (part), 2007)

**5.17.020      Rights reserved.**

The rights reserved to the city under this chapter are in addition to all other applicable rights of the city, whether reserved by other provisions of the Oakland Municipal Code or as otherwise authorized by law, and no action, proceeding, or exercise of a right shall affect any other rights which may be held by the city. (Ord. 12819 § 1 (part), 2007)

**5.17.030      Compliance.**

Nothing contained in this chapter shall be construed to exempt a state franchise holder from compliance with all applicable ordinances, rules, or regulations of the city now in effect or which may be hereafter adopted which are not inconsistent with this chapter or California Public Utilities Code section 5800 et seq. (Ord. 12819 § 1 (part), 2007)

**Part 2**  
**Definitions**

**5.17.100 Definitions generally — Interpretation of language.**

For purposes of this chapter, the following terms, phrases, words, and their derivations shall have the meaning given in this chapter. Unless otherwise expressly stated, words not defined in this chapter shall be given the meaning set forth in Division 2.5 of the California Public Utilities Code, section 5800 et seq. (the Digital Infrastructure and Video Competition Act of 2006) and the provisions of Title 1, Chapter 1.04, General Provisions, of the Oakland Municipal Code.

A. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority.

B. If specific provisions of law referred to herein are renumbered, then the reference shall be read to refer to the renumbered provision.

C. Unless otherwise specified, references to laws, ordinances or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances and regulations now in force or hereinafter enacted or amended. (Ord. 12819 § 1 (part), 2007)

**5.17.110 Public, Education and Government (“PEG”) access.**

“PEG access,” or “PEG use” refers to the availability of a cable or video system for public, education or government use by various agencies, institutions, organizations, groups, and individuals, including the city and its designated access providers, to distribute programming not under a state franchise holder’s editorial control. (Ord. 12819 § 1 (part), 2007)

**5.17.120 City.**

“City” means the city of Oakland and all departments, divisions, and agencies thereof; except that, when used to describe a geographic area, the term refers to the boundaries of the city of Oakland, Cali-

fornia, as they exist now or may exist in the future. (Ord. 12819 § 1 (part), 2007)

**5.17.130 City Administrator.**

“City Administrator” means the City Administrator of the city of Oakland or his or her designee. (Ord. 12819 § 1 (part), 2007)

**5.17.140 Gross revenues.**

“Gross revenues” means all revenues actually received by the holder of a state franchise that are derived from the operation of the holder’s network to provide cable service or video service within the areas of the city, subject to the specifications of California Public Utilities Code section 5860. (Ord. 12819 § 1 (part), 2007)

**5.17.150 Network.**

“Network” means a component of a facility that is wholly or partly physically located within the public right-of-way that is used to provide video service or cable service. (Ord. 12819 § 1 (part), 2007)

**5.17.160 Person.**

“Person,” unless it otherwise appears from the context as used, means and includes any person, individual, firm, organization, corporation, partnership, association, limited liability company, joint stock or other company, business or other trust, public agency, school district, the State of California, its political subdivisions and/or instrumentalities, or any other legal entity, but not the city. (Ord. 12819 § 1 (part), 2007)

**5.17.170 Public rights-of-way.**

“Public rights-of-way” or “rights-of-way” means the surface of and the space above and below any street, road, highway, freeway, bridge, lane, path, alley, court, sidewalk, parkway, parkstrip, drive, or right-of-way or easement generally available to and used by utilities, communication companies, or for travel by the public, now or hereafter existing within the city which may be properly used and the city has the authority to allow the use of. (Ord. 12819 § 1 (part), 2007)

**5.17.180 State franchise holder.**

“State franchise holder” or “holder” means a person or group of persons that has been issued a franchise by the California Public Utilities Commission to provide cable service or video service, as those terms are defined in California Public Utilities Code section 5830, within any portion of the areas of the city. (Ord. 12819 § 1 (part), 2007)

**Part 3  
Fees**

**5.17.200 State franchise fees.**

Each state franchise holder operating within the areas of the city shall pay to the city a state franchise fee equal to five percent of gross revenues. (Ord. 12819 § 1 (part), 2007)

**5.17.210 PEG fees.**

Each state franchise holder operating within the areas of the city shall pay to the city a PEG fee equal to one percent of gross revenues. (Ord. 12819 § 1 (part), 2007)

**5.17.220 Payment of fees.**

The state franchise fee required pursuant to Section 5.17.200, and the PEG fee required pursuant to Section 5.17.210, shall each be paid quarterly, in a manner consistent with California Public Utilities Code section 5860. The state franchise holder shall deliver to the city, by check or other means agreeable to the city, a payment for the state franchise fee and a separate payment for the PEG fee not later than forty-five (45) days after the end of each calendar quarter. Each payment made shall be accompanied by a report, detailing how the payment was calculated, and shall include such additional information on the appropriate form as designated by the city. (Ord. 12819 § 1 (part), 2007)

**5.17.230 Audits.**

The city may audit the business records of the holder of a state franchise in a manner not inconsistent with California Public Utilities Code section 5860(i). (Ord. 12819 § 1 (part), 2007)

**5.17.240 Late payments.**

In the event a state franchise holder fails to make payments required by this chapter on or before the due dates specified in this chapter, the city shall impose a late charge at the rate per year equal to the highest prime lending rate during the period of delinquency, plus one percent. (Ord. 12819 § 1 (part), 2007)

**5.17.250 Lease of city-owned network.**

To the extent not inconsistent with California Public Utilities Code section 5840(q)(2)(B), in the event a state franchise holder leases access to a network owned by the city, the city may set a franchise fee for access to the city-owned network separate and apart from the franchise fee charged to state franchise holders pursuant to Section 5.17.200. (Ord. 12819 § 1 (part), 2007)

**Part 4  
Customer Service**

**5.17.300 Customer service and consumer protection standards.**

Each state franchise holder shall comply with all applicable customer service and consumer protection standards, including, to the extent not inconsistent with California Public Utilities Code section 5900, and all existing and subsequently enacted customer service and consumer protection standards established by state and federal law and regulation. (Ord. 12819 § 1 (part), 2007)

**5.17.310 Penalties for violations of standards.**

A. The city shall monitor compliance with and enforce the provisions of Section 5.17.300.

B. For any material breach, as defined in California Public Utilities Code section 5900(j), by a state franchise holder of applicable customer service and consumer protection standards, the city may impose the following penalties:

1. For the first occurrence of a material breach, a fine of five hundred dollars (\$500.00) shall be imposed for each day the violation remains in effect,

not to exceed one thousand five hundred dollars (\$1,500.00) for each violation.

2. For a second material breach of the same nature within twelve (12) months, a fine of one thousand dollars (\$1,000.00) shall be imposed for each day the violation remains in effect, not to exceed three thousand dollars (\$3,000.00) for each violation.

3. For a third or further material breach of the same nature within twelve (12) months, a fine of two thousand five hundred dollars (\$2,500.00) shall be imposed for each day the violation remains in effect, not to exceed seven thousand five hundred dollars (\$7,500.00) for each violation.

C. Any penalties imposed by the city shall be imposed in a manner not inconsistent with California Public Utilities Code section 5900.

D. To the extent not inconsistent with California Public Utilities Code section 5900, the city may waive, modify, or defer the imposition of a penalty. (Ord. 12819 § 1 (part), 2007)

## Part 5 Permits and Construction

### **5.17.400 General requirements.**

A. The construction, operation, upgrade and repair of a state franchise holder's network shall be performed in compliance with all laws, ordinances, resolutions, departmental rules, regulations, written policies, and practices affecting such system. By way of example, and not limitation, this includes the relevant portions of the Oakland Municipal Code (e.g., the city's zoning regulations), ordinances, regulations and policies to preserve or protect the public safety, construction standards, regulations for providing notice to persons that may be affected by system construction, and directives governing the time, place and manner in which facilities may be installed in the public rights-of-way. Persons engaged in the construction, operation, upgrade or repair of a state franchise holder's network shall exercise reasonable care in the performance of all their activities and shall use commonly accepted methods and devices for preventing failures and accidents that are likely to cause

damage, injury, or nuisance to the public or to property.

B. A state franchise or a local franchise is required before a permit may be issued for work associated with the construction, operation, upgrade or repair of a network. Any permit issued for such work to a person that does not hold a franchise shall vest no rights in the permittee; the permit may be revoked at will, and the permittee shall remove all facilities installed under the permit upon and in full compliance with the city's demand.

C. Construction, operation, upgrade or repair of a state franchise holder's network shall not commence until all required permits have been obtained from the proper city officials and all required fees have been paid. All work performed will be performed in strict accordance with the conditions of the permit. Upon order of the city, any work and/or construction undertaken that is not completed in compliance with the city's requirements, or which is installed without obtaining necessary permits and approvals, shall be removed in accordance with the reasonable timeline set forth by the city. A state franchise holder shall reimburse the city for costs incurred in inspecting construction projects undertaken in the course of major or minor upgrades, installation of fiber optics, minor and major repairs, all other work for which the city requires inspection, and permit review and processing.

D. The City Administrator shall either approve or deny a state franchise holder's application for any permit within sixty (60) days of receiving a completed permit application from the state franchise holder. An application for a permit shall not be complete until the applicant has complied with applicable laws and regulations, including but not limited to, all applicable requirements of Division 13 of the California Public Resources Code section 21000 et seq. (the California Environmental Quality Act).

E. If the City Administrator denies a state franchise holder's application for a permit, the City Administrator shall, at the time of notifying the applicant of denial, furnish to the applicant a detailed explanation of the reason or reasons for the denial.

F. A state franchise holder that has been denied a permit by final decision of the City Administrator may appeal the denial to the City Council whose decision shall be final. Upon receiving a notice of appeal, the City Council shall take one of the following actions:

1. Affirm the action of the City Administrator without a hearing; or
2. Refer the matter back to the City Administrator for further review with or without instructions.

G. Interference with the use of the public rights-of-way by others must be minimized. The city may require, except as prohibited by law, a person using the public rights-of-way to cooperate with others through joint trenching and other arrangements to minimize adverse impacts on the public rights-of-way.

H. To the extent possible, state franchise holders shall use existing poles and conduit. Additional poles may not be installed in the right-of-way, nor may pole capacity be increased by vertical or horizontal extenders, without the permission of the City Administrator, which permission shall not be unreasonably withheld.

I. Undergrounding. Whenever all existing utilities are located underground in an area in the city, the installation of the network of every state franchise holder shall conform to and be governed by the Oakland Municipal Code, Subsection F of Section 5.16.390 of Chapter 5.16 entitled "Cable Systems and Open Video Systems."

J. Any and all public or private property that is disturbed or damaged during the construction, operation, upgrade or repair of a state franchise holder's network shall be promptly repaired by the holder. Public property must be restored to a condition as good as before the disturbance or damage occurred. Public rights-of-way must be restored to a condition consistent with city standards that are generally applicable to all persons performing construction or excavation in the public rights-of-way.

K. Relocation. A state franchise holder shall at no cost to the city and by a time specified by city, protect, support, temporarily disconnect, relocate, or remove any of its property when requested by the

city by reason of traffic conditions; public safety; public rights-of-way construction and repair (including regrading, resurfacing or widening); vacating public rights-of-way; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of government-owned system or utility, public work, public facility, or improvement; or for any other purpose where the work involved would be aided by the removal or relocation of the state franchise holder's network. Collectively, such matters are referred to below as the "public work."

L. The city shall provide written notice to the state franchise holder describing where the public work is to be performed at least three weeks prior to the deadline by which the state franchise holder must protect, support, temporarily disconnect, relocate or remove its facilities. The state franchise holder may seek an extension of the time to perform the work. The city shall not unreasonably deny such an extension where the state franchise holder demonstrates it can not perform the work by the deadline even with the exercise of due diligence. Provided that, in an emergency, or where a state franchise holder's network creates or is contributing to an imminent danger to health, safety, or property, the city may protect, support, temporarily disconnect, remove, or relocate any or all parts of the network without prior notice, and charge the state franchise holder for costs incurred; however, the city will make reasonable efforts, considering the circumstances, to provide prior notice.

M. Construction activities of others. To accommodate the construction, operation, upgrade or repair of the facilities of another person authorized to use the public rights-of-way or public property, a state franchise holder shall, by a time specified by such person, protect, support, temporarily disconnect, relocate or remove its facilities. The state franchise holder shall be given written notice describing where the construction, operation or repair is to be performed at least fifteen (15) days prior to the time the work will commence. Unless the matter is governed by a valid contract or a state or federal law or regulation, or unless the network that is being requested to

move was not properly installed, the reasonable cost of the same shall be borne by the person requesting the protection, support, temporary disconnection, removal, or relocation and at no charge to the city, even if the city makes the request for such action. In cases where the requesting person is required under this subsection 5.17.400(L)(1) to bear the cost of relaying, relocation or temporary removal, a state franchise holder may require the person to agree, before the work is performed, to pay the reasonable actual cost of the work. If the state franchise holder does so, it must provide an estimate of the cost of the work and support for that estimate.

2. A state franchise holder shall, on the request of any person holding a valid permit issued by a governmental authority, temporarily raise or lower its wires by a time specified to permit the moving of buildings or other objects. A state franchise holder shall be given not less than fifteen (15) days advance notice to arrange for such temporary wire changes. The expense of such temporary removal or raising or lowering of wires shall be paid in advance by the person requesting the same.

#### M. Abandonment.

1. A state franchise holder may abandon any property in place in the public rights-of-way or upon public property upon written notice to the city. However, if, within ninety (90) days of the receipt of written notice of abandonment, the city determines that the safety, appearance, functioning or use of the public rights-of-way or the public property and facilities in the public rights-of-way or on the public property will be adversely affected, the property must be removed by a date specified by the city. In specifying a date for removal, the city shall take into account the amount of work to be performed.

2. A state franchise holder that abandons its property must, upon request, transfer ownership of the property to the city at no cost, and execute necessary quitclaim deeds provided that nothing in the preceding sentence prevents a state franchise holder from bringing an action in a court of competent jurisdiction if it believes that the network was not abandoned. Whether or not ownership is transferred, the state franchise holder must indemnify the city against

future costs associated with mitigating or eliminating any hazard associated with the abandoned property.

N. Every network shall be subject to inspection by the city. Each state franchise holder must timely and fully respond to requests for information regarding its system and plans for the system as the city may from time to time issue, including requests for information regarding its plans for construction, operation and repair and the purposes for which the plant is being constructed, operated, or repaired.

O. Each state franchise holder that places facilities underground shall be a member of the regional notification center for subsurface installations (Underground Services Alert) and shall field mark the locations of its underground communications facilities upon request. The state franchise holder shall locate its facilities for the city at no charge.

P. At least ninety (90) days prior to commencing construction, each state franchise holder shall provide the city a construction plan for any initial construction, operation or repair or for any substantial rebuild, upgrade or extension of its network, which shall show its timetable for construction of each phase of the project, and the areas of the city that will be affected. The construction plans and timetables shall be reviewed by the city. The city acknowledges that certain portions of the construction plan may be tentative. The state franchise holder shall provide additional information requested by the city within thirty (30) days of receipt of the request; to the extent such information is available. During construction, notice of changes to the construction plans and/or timetables must be provided to the city forty-eight (48) hours in advance. To the extent that any portion of such plan is tentative, the state franchise holder shall provide the city with an update reasonably in advance of initiating such construction and repair. (Ord. 12819 § 1 (part), 2007)

#### **5.17.410 Identification required.**

A state franchise holder, its employees, agents, contractors, and subcontractors shall be properly identified as agents of the state franchise holder prior to and during entry on private and public property. Identification shall include the name and telephone

number of the state franchise holder on all trucks and vehicles used by installation personnel. (Ord. 12819 § 1 (part), 2007)

## **Part 6 Public, Education and Government (“PEG”) Requirements**

### **5.17.500 Emergency alert systems.**

Each state franchise holder shall comply with the emergency alert system requirements of the Federal Communications Commission in order that emergency messages may be distributed over the state franchise holder's network. (Ord. 12819 § 1 (part), 2007)

### **5.17.510 Interconnection for PEG programming.**

Each state franchise holder, and each incumbent cable operator operating under a city franchise, shall negotiate with each other in good faith to interconnect their networks for the purpose of providing PEG programming including, but not limited to, the exclusive city use channel. Interconnection may be accomplished by any means authorized under California Public Utilities Code section 5870(h). Each state franchise holder and each cable operator shall provide interconnection of PEG channels including the exclusive city use channel on reasonable terms and conditions and may not withhold the interconnection. If a state franchise holder and an incumbent cable operator cannot reach a mutually acceptable interconnection agreement, the city may require the incumbent cable operator to allow the state franchise holder to interconnect its network with the incumbent cable operator's network at a technically feasible point identified by the state franchise holder on the state franchise holder's network. If no technically feasible point for interconnection is available, the state franchise holder shall make an interconnection available to each channel originator and shall provide the facilities necessary for the interconnection. The cost of any interconnection shall be borne by the state franchise holder requesting the interconnection unless otherwise agreed to by the state franchise

holder and the incumbent cable operator. To the extent not inconsistent with California Public Utilities Code section 5870(h), the city may waive, modify, or defer this requirement of interconnection. (Ord. 12819 § 1 (part), 2007)

## **Part 7 Reports and Notices**

### **5.17.600 Reports to the City Administrator.**

Each state franchise holder, within sixty (60) days after the expiration of each calendar year, shall file a report with the City Administrator, which shall contain a streets and public rights-of-way map or maps of any convenient scale on which shall be plotted the location of the entire transmission and distribution system or systems as of the last day of the just expired calendar year, with the system or systems located in the city rights-of-way indicated by distinctive coloration or symbols. (Ord. 12819 § 1 (part), 2007)

### **5.17.610 Notices.**

A. Each state franchise holder or applicant for a state franchise shall file with the city a copy of all applications or notices that the state franchise holder or applicant is required to file with the California Public Utilities Commission.

B. Unless otherwise specified in this chapter, all notices or other documentation that a state franchise holder is required to provide to the city under this chapter or the California Public Utilities Code shall be provided to the City Administrator. (Ord. 12819 § 1 (part), 2007)

	<b>Chapter 5.18</b>		
	<b>CHARITABLE AND RELIGIOUS SOLICITATIONS</b>		
<b>Sections:</b>			
<b>5.18.010</b>	<b>Commission of Public Charities—Membership, term, vacancies, officers, meetings, rules and regulations—Application of Hearing Officer.</b>	<b>5.18.150</b>	<b>Books and records of permit holders.</b>
<b>5.18.020</b>	<b>Definitions.</b>	<b>5.18.160</b>	<b>Report required from permit holder.</b>
<b>5.18.030</b>	<b>Soliciting for private needs.</b>	<b>5.18.170</b>	<b>Religious solicitations—Registration and certificate required.</b>
<b>5.18.040</b>	<b>Charitable solicitations permit required—Exemptions.</b>	<b>5.18.180</b>	<b>Certificate of registration—Contents, credentials for solicitors—Exemptions.</b>
<b>5.18.050</b>	<b>Application for charitable solicitations permit.</b>	<b>5.18.190</b>	<b>Investigation of affairs of person soliciting for religious purposes and persons exempt from permit and certificate requirements—Publication of findings.</b>
<b>5.18.060</b>	<b>Investigation by commission of charitable solicitation permit applications.</b>	<b>5.18.200</b>	<b>Appeal.</b>
<b>5.18.070</b>	<b>Standards for commission's action in granting or denying applications for charitable solicitation permits.</b>	<b>5.18.210</b>	<b>Use of fictitious name, fraudulent misrepresentation and misstatements prohibited.</b>
<b>5.18.080</b>	<b>Commission's decisions regarding each application.</b>	<b>5.18.220</b>	<b>Reports of Commission.</b>
<b>5.18.090</b>	<b>Charitable solicitations permit—Form of granting of is not endorsement by city, agents and solicitors for charitable solicitation permit holders—Credential for solicitors.</b>	<b>5.18.010</b>	<b>Commission of Public Charities—Membership, term, vacancies, officers, meetings, rules and regulations—Application of Hearing Officer.</b>
<b>5.18.100</b>	<b>Permit nontransferable—Return of upon expiration.</b>		The Commission of Public Charities of the city heretofore created and now existing is continued in full force and effect. Said Commission shall consist of seven members, all of whom shall be appointed by the Council on nomination by the Mayor, and not more than four of whom shall be of the same sex. All of the said Commissioners shall serve without compensation. The term of office of the members of said Commission shall be three years; provided, however, that the seven members heretofore appointed shall continue in office hereunder for the balance of the terms that they are now serving. If any vacancy occurs, the Council, upon nomination by the Mayor, shall fill the same by appointment for the unexpired term. The Commission shall, in January of each year, elect from among its members a
<b>5.18.110</b>	<b>Written receipts required.</b>		
<b>5.18.120</b>	<b>Hearing after denial of application for a permit—Exceptions—Decisions.</b>		
<b>5.18.130</b>	<b>Revocation of permits, hearings, decision.</b>		
<b>5.18.140</b>	<b>Notice of suspension or revocation of permit to Chief of Police.</b>		

president, a vice-president who shall act as president during the temporary absence or disability of the president, and a secretary who shall act as president in the event of the temporary absence or disability of both the president and the vice-president, each of whom shall hold office for one year and until a successor is elected, unless the term of such member of said Commission shall have expired sooner. Said Commission shall hold such meetings at such time and place as it may fix, and may adopt rules and regulations for its guidance. Regardless of the reason, whenever the Commission of Public Charities lacks a quorum of at least four Commission members, the City Manager, or his or her designee, is empowered to serve as the interim hearing officer with the complete and full authority to function in place of the Commission of Public Charities and to perform all duties, tasks, services, and responsibilities of the Commission of Public Charities as established now, or hereafter, by resolution, ordinance, municipal code, charter, or other legislation.

The authority of the City Manager, or his or her designee, to act as interim Hearing Officer shall continue until the City Council takes future and further action to alter or eliminate this authority.

Whenever the City Manager, or his or her designee, acts as the interim Hearing Officer, any decision reached by the interim hearing officer may be appealed to the City Council pursuant to Section 5.18.200. (Prior code § 3-2.01)

#### **5.18.020 Definitions.**

Whenever used in this chapter, unless a different meaning clearly appears from the context:

“Charitable” means and includes the words triotic, philanthropic, social service, welfare, benevolent, educational, civic, or fraternal, either actual or purported.

“Commission” means the Commission of Public Charities.

“Contributions” means and includes the words alms, food, clothing, money, subscription, property or donations under the guise of a loan of money or property.

“Person” means any individual, firm, co-partnership, corporation, company, association, or joint stock association, church, religious sect, religious denomination, society, organization or league, and includes any trustee, receiver, assignee, agent, or other similar representative thereof.

“Promoter” means any person who promotes, manages, supervises, organizes, or attempts to promote, manage, supervise, or organize a campaign of solicitation.

“Religious” and “religion” shall not mean and include the word “charitable” as herein defined, but shall be given their commonly accepted definitions.

##### Solicit and Solicitation.

1. “Solicit” and “solicitation” mean the request directly or indirectly of money, credit, property, financial assistance, or other thing of value on the plea or representation that such money, credit, property, financial assistance, or other thing of value will be used for a charitable or religious purpose as those purposes are defined in this chapter. These words shall also mean and include the following methods of securing money, credit, property, financial assistance or other thing of value on the plea or representation that it will be used for a charitable or religious purpose as herein defined:

- a. Any oral or written request;
- b. The distribution, circulation, mailing, posting or publishing of any handbill, written advertisement, or publication;
- c. The making of any announcement to the press, by radio or television, by telephone or telegraph concerning an appeal, assemblage, athletic or sports event, bazaar, benefit, campaign, contest, dance, drive, entertainment, exhibition, exposition, party, performance, picnic, sale or social gathering, which the public is requested to patronize or to which the public is requested to make a contribution for any charitable or religious purpose connected therewith;
- d. The sale of, offer or attempt to sell, any advertisement, advertising space, book, card, chance, coupon, device, magazine, membership, merchandise, subscription, ticket or other thing in connection with which any appeal is made for any charitable or

religious purpose, or where the name of any charitable or religious person is used or referred to in any such appeal as an inducement or reason for making any such sale; or when or where in connection with any such sale, any statement is made that the whole or any part of the proceeds from any such sale will go or be donated to any charitable or religious purpose.

2. A "solicitation" as defined herein shall be deemed completed when made, whether or not the person making the same receives any contribution or makes any sale referred to in this section. (Prior code §§ 3-2.02—3-2.08)

#### **5.18.030      Soliciting for private needs.**

No person shall solicit contributions for himself or herself in or upon any public street or public place in the city. (Prior code § 3-2.081)

#### **5.18.040      Charitable solicitations permit required—Exemptions.**

No person shall solicit contributions for any charitable purpose within the city without a permit from the Commission authorizing such solicitation. Provided, however, that the provisions of this section shall not apply to any established person organized and operated exclusively for religious or charitable purposes and not operated for the pecuniary profit of any person if the solicitations by such established person are conducted among the members thereof by other members or officers thereof, voluntarily and without remuneration for making such solicitations, or if the solicitations are in the form of collections or contributions at the regular assemblies or services of any such established person. (Prior code § 3-2.09)

#### **5.18.050      Application for charitable solicitations permit.**

An application for a permit to solicit as provided by Section 5.18.040 shall be made to the Commission upon forms provided by the Commission. Such application shall be executed under oath by the applicant and, if a promoter is involved in the solicitation, he or she shall likewise execute under oath

such application. The application shall be filed with the Commission at least thirty (30) days prior to the time at which the permit applied for shall become effective; provided, however, that the Commission may for good cause shown allow the filing of an application less than thirty (30) days prior to the effective date of the permit applied for. The application herein required shall contain the following information, or in lieu thereof, a detailed statement of the reason or reasons why such information cannot be furnished:

- A. The name and address or headquarters of the person applying for the permit;
- B. If applicant is not an individual, the names and addresses of the applicant's principal officers and managers, and a copy of the resolution, if any, authorizing such solicitation, certified to as a true and correct copy of the original by the officer having charge of applicant's records;
- C. The purpose for which such solicitation is to be made, the total amount of funds proposed to be raised thereby, and the use or disposition to be made of any receipts therefrom;
- D. A specific statement, supported by reasons and, if available, figures showing the need for the contributions to be solicited;
- E. The names and addresses of the person or persons by whom the receipts of such solicitations shall be disbursed;
- F. The names and addresses of the person or persons who will be in direct charge of conducting the solicitation and the names of all promoters connected or to be connected with the proposed solicitation;
- G. An outline of the method or methods to be used in conducting the solicitations;
- H. The time when such solicitations shall be made, giving the dates for the beginning and ending of such solicitations;
- I. An itemization of the estimated cost of the solicitation;
- J. The amount of any wages, fees, commissions, expenses or emoluments to be expended or paid to any person in connection with such solicitations, and the names and addresses of all such persons;

K. A financial statement for the last preceding fiscal year of any funds collected for charitable purposes by the applicant, said statement giving the amount of money so raised, together with the cost of raising it, and final distribution thereof;

L. A full statement of the character and extent of the charitable work being done by the applicant within the city;

M. A statement that the cost of the solicitation for direct gifts shall not exceed sixteen (16) percent of the total amount to be raised, or for sale and benefit affairs shall not exceed seventy-five (75) percent of the total amount to be raised; and that in both types of solicitations all wages, fees, commissions, and emoluments to be paid to all salespersons, solicitors, collectors, conductors, and managers will not exceed ten (10) percent of the total amount to be raised;

N. A statement to the effect that if a permit is granted, it will not be used or represented in any way as an endorsement by the city, or by any department or officer thereof;

O. A statement that applicant, and if applicant is not an individual, all organization officers, and any promoter, has read and understands the provisions of this chapter.

If, while any application is pending, or during the term of any permit granted thereof, there is any change in fact, policy, or method that would alter the information given in the application, the applicant shall notify the Commission in writing thereof within twenty-four (24) hours after such change. (Prior code § 3-2.10)

#### **5.18.060      Investigation by commission of charitable solicitation permit applications.**

The Commission shall examine all applications filed under Section 5.18.050 and shall make, or cause to be made, such further investigation of the application and the applicant as the Commission shall deem necessary in order for it to perform its duties under this chapter. Upon request by the Commission, the applicant shall make available for inspection by the Commission, or any person design-

nated in writing by the Commission as its representative for such purpose, all of the applicant's books, records and papers at any reasonable time before the application is granted, during the time a permit is in effect, or after a permit has expired. (Prior code § 3-2.11)

#### **5.18.070      Standards for commission's action in granting or denying applications for charitable solicitation permits.**

The Commission shall issue the permit provided for in Section 5.18.040 whenever it shall find the following facts to exist:

A. That all of the statements made in the application are true;

B. That the applicant has not engaged in any fraudulent transactions or enterprise;

C. That the solicitation will not be a fraud on the public;

D. That the cost of raising the funds will be reasonable. Any such cost in excess of sixteen (16) percent for direct gifts, or seventy-five (75) percent for sale and benefit affairs, or ten percent (10%) for all wages, fees, commissions or emoluments paid or to be paid to all salespersons, solicitors, collectors, conductors, and managers, of the total amount collected shall be considered to be unreasonable unless special facts are presented showing that peculiar reasons make a cost higher than said sixteen (16) percent or said seventy-five (75) percent, or said ten percent, respectively, reasonable in the particular case;

E. That none of the following methods of solicitation are to be employed:

1. Solicitations by telephone by persons employed and paid primarily for that purpose, except of salvable property,
2. Solicitations from patrons at any theater, or other place of public performance, where admissions are charged for the privilege of attending,
3. Solicitations by children under fourteen (14) years of age except where both of the following exist:

- a. The children are members of the organization for whose benefit the solicitation is made, and
- b. All funds so solicited, less permissible costs, shall be expended solely for the direct benefit of the children locally,
- 4. Delivery by mail or otherwise of any unordered merchandise, except "seals" when permitted,
- 5. Solicitation by means of coin or currency boxes or receptacles, except:
  - a. When each such box or receptacle shall be serially numbered and the Commission advised of the number and location of each, and
  - b. When each such box or receptacle shall be the responsibility of a bona fide member, agent or solicitor of the soliciting organization, and
  - c. When such responsible person shall be required to pick up each such box or receptacle at the end of the solicitation period, and
  - d. When the use of such boxes and receptacles in the solicitation is expressly authorized by the Commission; and
  - e. When such responsible person shall have no more than a reasonable number of such boxes or receptacles for which he or she must account. (Prior code § 3-2.12)

**5.18.080      Commission's decisions regarding each application.**

The Commission shall file in its office for public inspection, and shall serve upon the applicant by mail, its decision upon each application. (Prior code § 3-2.13)

**5.18.090      Charitable solicitations permit—  
Form of granting of is not  
endorsement by city, agents and  
solicitors for charitable  
solicitation permit holders—  
Credential for solicitors.**

All persons to whom permits have been issued under this chapter shall furnish to each of their agents and solicitors, as credentials, a facsimile copy of the permit upon which shall appear the name, address, age, sex and signature of the agent or solicitor to whom such credentials are issued and the

specific period of time during which said agent or solicitor is authorized to solicit on behalf of the permit holder. A list of all agents or solicitors to whom facsimile copies have been provided shall be maintained by the permittee and shall be available for inspection by the Commission, its authorized agents, and any police officer of the city. Provided, however, as an alternative, facsimile copies of the permit, with the name, address, age, sex and signature of the agent or solicitor shall be furnished by the Commission. No person shall solicit under any permit granted under this chapter without the credentials required by this section in his or her possession. Said credentials must be shown, upon request, to all persons solicited and to any police officer of the city. (Prior code § 3-2.15)

**5.18.100      Permit nontransferable—Return of upon expiration.**

Any permit issued under this chapter shall be nontransferable and shall be returned to the Commission within seven days of its date of expiration, together with all facsimile copies thereof. (Prior code § 3-2.17)

**5.18.110      Written receipts required.**

Any person receiving money or anything having a value of one dollar (\$1.00) or more from any contributor under a solicitation made pursuant to a permit granted under this chapter shall give to the contributor a written receipt signed by the solicitor showing plainly the name and permit number of the person under whose permit the solicitation is conducted, the date, and the amount received. Provided, however, that this section shall not apply to any contributions collected by means of a closed box or receptacle used in solicitation with the express approval of the Commission, where it is impractical to determine the amount of such contributions. (Prior code § 3-2.18)

**5.18.120      Hearing after denial of  
application for a permit—  
Exceptions—Decisions.**

Within five days from the date of the mailing of

a notice that his or her application for a permit to solicit under this chapter has been denied, any applicant may file a written request for a public hearing on the application before the Commission, together with written exceptions to the decision of the Commission denying the application. Upon the filing of such a request, the President of the Commission shall fix a time and place for the hearing and shall notify the applicant thereof. The hearing shall be held within five days after the request is filed. At the hearing the applicant may present evidence in support of his or her application and exceptions. Any interested person may, in the discretion of the Commission, be allowed to participate in the hearing and present evidence in opposition to the applicant and exceptions. Within ten days after the conclusion of the hearing the Commission shall render its decision either granting or denying the application for a permit. Therein the Commission shall state the facts upon which the decision is based, and its ruling upon any exceptions filed to its original decision upon the application. This decision shall be filed in the Commission's office for public inspection and a copy shall be served by registered mail upon the applicant and all parties to the hearing. (Prior code § 3-2.19)

#### **5.18.130 Revocation of permits, hearings, decision.**

Whenever it shall be shown, or whenever any member of the Commission has knowledge that any person to whom a permit has been issued under this chapter has violated any of the provisions of this chapter, or any promoter, agent or solicitor of a permit holder has misrepresented the purpose of the solicitation, the President may immediately suspend the permit and give the permit holder written notice by registered special delivery mail of a hearing to be held within two days of such suspension to determine whether or not the permit should be revoked. This notice must contain a statement of the facts upon which the President has acted in suspending the permit. At the hearing, which shall be held before the Commission, the permit holder, and any other interested person, shall have the right to pres-

ent evidence as to the facts upon which the President based the suspension of the permit, and any other facts which may aid the Commission in determining whether this chapter has been violated and whether the purpose of the solicitation has been misrepresented. If, after such hearing, the Commission finds that this chapter has been misrepresented, it shall within two days after the hearing file in its office for public inspection and serve upon the permit holder, and all interested persons participating in the hearing, a written statement of the facts upon which it bases such finding and shall immediately revoke the permit. If, after such hearing the Commission finds that this chapter has not been violated and the purpose of the solicitation has not been misrepresented, it shall within two days after the hearing give to the permit holder, and all interested persons participating in said hearing, a written statement cancelling the suspension of the permit and stating that no violation or misrepresentation was found to have been committed. (Prior code § 3-2.20)

#### **5.18.140 Notice of suspension or revocation of permit to Chief of Police.**

The Chief of Police shall be notified forthwith by the President of the suspension or revocation of any permit issued under this chapter. (Prior code § 3-2.21)

#### **5.18.150 Books and records of permit holders.**

No person shall solicit any contributions for any charitable purpose without maintaining a system of accounting whereby all contributions to it and all disbursements are entered upon the books or records of such person's treasurer or other financial officer. For each solicitation a separate folder containing all vouchers supporting said accounting and containing a record of all contributions and disbursements will be maintained and available for inspection for a period of one year from the end of the period of solicitation. (Prior code § 3-2.22)

**5.18.160      Report required from permit holder.**

It shall be the duty of all persons issued permits under this chapter to furnish to the Commission within thirty (30) days after the solicitation has been completed, a detailed report and financial statement showing the amount raised by the solicitation, the amount expended in collecting such funds, including a detailed report of the wages, fees, commissions, and expenses paid to any person in connection with such solicitation, and the disposition of the balance of the funds collected by the solicitation. Whenever the sale or benefit affair is held in the city or the address or headquarters to the holder of the permit is Oakland, all moneys collected will be reported whether received within or outside of the city. This report shall be available for public inspection at the Commission's office at any reasonable time. Provided, however, that the Commission may extend the time for the filing of the report required by this section for an additional period of thirty (30) days upon proof that the filing of the report within the time specified will work unnecessary hardship on the permit holder. The permit holder shall make available to the Commission, or to any person designated in writing by the Commission as its representative for such purpose, all books, records and papers whereby the accuracy of the report required by this section may be verified. Failure to comply with this section shall be good and sufficient cause to deny the applicant a subsequent permit to solicit for charitable purposes. (Prior code § 3-2.23)

**5.18.170      Religious solicitations—Registration and certificate required.**

No person shall solicit contributions for any religious purpose within the city without a certificate from the Commission. Application for a certificate shall be made to the Commission upon forms provided by the Commission. Such application shall be sworn to, or affirmed, and shall contain the following information, or in lieu thereof, a statement of the reason or reasons why such information cannot be furnished:

A. The name and address or headquarters of the person applying for the permit;

B. If applicant is not an individual, the names and addresses of the applicant's principal officers and managers and a copy of the resolution, if any, authorizing such solicitation, certified to as a true and correct copy of the original by the officers having charge of applicant's records;

C. The purpose of which such solicitation is to be made, the total amount of funds proposed to be raised thereby, and the use or disposition to be made of any receipts therefrom;

D. A specific statement, supported by reasons and, if available, figures, showing the need for the contributions to be solicited;

E. The name and address of the person or persons by whom the receipts of such solicitations shall be disbursed;

F. The name and address of the person or persons who will be in direct charge of conducting the solicitation and the names of all promoters connected or to be connected with the proposed solicitation;

G. An outline of the method or methods to be used in conducting the solicitations;

H. The time when such solicitations shall be made, giving the dates for the beginning and ending of such solicitation;

I. The estimated cost of the solicitation;

J. The amount of any wages, fees, commissions, expenses or emoluments to be expended or paid to any person in connection with such solicitations, and the names and addresses of all such persons;

K. A financial statement for the last preceding fiscal year of any funds collected for religious purposes by the applicant, said statement giving the amount of money so raised, together with the cost of raising it, and final distribution thereof;

L. A full statement of the character and extent of the religious work being done by the applicant within the city;

M. A statement to the effect that if a certificate is granted, it will not be used or represented in any way as an endorsement by the city, or by any department or officer thereof;

N. Such other information as may be submitted to the Commission in order for it to determine the kind and character of the proposed solicitation.

If, while any application is pending or during the term of any certificate granted thereon there is any change in fact, policy, or method that would alter the information given in the application, the applicant shall notify the Commission in writing thereof within twenty-four (24) hours after such change. (Prior code § 3-2.24)

**5.18.180      Certificate of registration—Contents, credentials for solicitors—Exemptions.**

Upon receipt of such application, the Commission shall forthwith issue the applicant a certificate of registration. The certificate shall remain in force and effect for a period of six months after the issuance thereof, and shall be renewed upon the expiration of this period under the filing of a new application as provided for in this section. Certificates of registration shall bear the name and address of the person by whom the solicitation is to be made, the number of the certificate, the date issued, and a statement that the certificate does not constitute an endorsement by the city or by any of its departments or officers, of the purpose or person conducting the solicitation. All persons to whom certificates of registration have been issued shall furnish credentials to their agents and solicitors in the same manner and subject to the same conditions as set forth in Section 5.18.090 relating to the furnishing of facsimile copies of permits to solicit for charitable purposes. No person shall solicit for any religious cause without having such credentials in his possession, and such person shall, upon demand, present these credentials to any person solicited or to any police officer of the city. Provided, however, that the provisions of this section shall not apply to any established person organized and operated exclusively for religious purpose and not operated for the pecuniary profit of any person if the solicitations by such established person are conducted among the members thereof by other members or officers thereof, voluntarily and without remuneration for making

such solicitations, or if the solicitations are in the form of collections or contributions at the regular assemblies or services of any such established person. (Prior code § 3-2.25)

**5.18.190      Investigation of affairs of person soliciting for religious purposes and persons exempt from permit and certificate requirements—Publication of findings.**

The Commission is authorized to investigate the affairs of any person soliciting for religious purposes under a certificate issued under Section 5.18.170 and the affairs of any person exempted from the requirement of a permit under Section 5.18.040 or exempted from the requirement of a certificate under Section 5.18.180, and make public its written findings in order that the public may be fully informed as to the affairs of any of said persons. Said persons shall make available to the Commission, or to any representative designated by the Commission in writing for such specific purpose, all books, records, or other information reasonably necessary to enable the Commission to fully and fairly inform the public of all facts necessary to a full understanding by the public of the work and methods of operation of such persons. Provided, that five days before the public release of any findings under this section, the Commission must first serve a copy of said findings upon the person investigated and, at the time of the release of its findings, it must release a copy of any written statement said person may file with the Commission in explanation, denial, or confirmation of said findings. (Prior code § 3-2.26)

**5.18.200      Appeal.**

Any person whose application for a permit is denied after a hearing as provided in Section 5.18.120, or whose permit is revoked, may appeal to the City Council within fifteen (15) days from the date of the mailing of notice of such denial or revocation. Said Council shall conduct a hearing de novo thereon at a date to be set by said Council, and the City Clerk shall give at least five days notice thereof to the appellant, to the Commission, and to the

interested persons. The Council's determination after said hearing shall be final and conclusive. (Prior code § 3-2.27)

**5.18.210      Use of fictitious name, fraudulent misrepresentation and misstatements prohibited.**

No person shall directly or indirectly solicit contributions for any purpose by misrepresentation of his or her name, occupation, financial condition, social condition or residence, and no person shall make or perpetrate any other misstatement, deception, or fraud in connection with any solicitation of any contribution for any purpose in the city, or in any application or report filed under this chapter. (Prior code § 3-2.28)

**5.18.220      Reports of Commission.**

The Commission shall make written reports of its activities to the Council annually as of July 1st, and at such other times as shall be requested by the Council. (Prior code § 3-2.30)

## Chapter 5.20

### CLOSE-OUT SALES

**Sections:**

<b>5.20.010</b>	<b>Purpose.</b>
<b>5.20.020</b>	<b>Liberal construction.</b>
<b>5.20.030</b>	<b>Definitions.</b>
<b>5.20.040</b>	<b>Regulation of sales.</b>
<b>5.20.050</b>	<b>Licenses.</b>
<b>5.20.060</b>	<b>Application for license.</b>
<b>5.20.070</b>	<b>Term of license.</b>
<b>5.20.080</b>	<b>Term of renewals.</b>
<b>5.20.090</b>	<b>Rules and regulations.</b>
<b>5.20.100</b>	<b>Display of license.</b>
<b>5.20.110</b>	<b>Stock records.</b>
<b>5.20.120</b>	<b>No additional goods.</b>
<b>5.20.130</b>	<b>Advertising.</b>
<b>5.20.140</b>	<b>Exemptions.</b>

**5.20.010      Purpose.**

The purpose of this chapter is to safeguard the public and encourage competition by prohibiting unfair, dishonest, deceptive, destructive, fraudulent, and discriminatory practices by which fair and honest competition is destroyed or prevented and by which members of the public are injured. (Prior code § 5-18.00)

**5.20.020      Liberal construction.**

This chapter shall be liberally construed so that its beneficial purposes may be served. (Prior code § 5-18.01)

**5.20.030      Definitions.**

Whenever used in this chapter, the following terms shall mean:

“Publish,” “publishing,” “advertisement,” and “advertising” mean any and all means of conveying to the public notice of sale or notice of intention to conduct a sale, whether by word of mouth, by newspaper advertisement, by magazine advertisement, by handbill, by written notice, by printed notice, by printed display, by billboard display, by poster, by

radio, or television announcement and any and all means including oral, written or printed.

“Sale” means the sale or an offer to sell to the public, goods, wares and merchandise of any and all kinds and descriptions on hand and in stock in connection with a declared purpose, as set forth by advertising on the part of the seller that such sale is anticipatory to the termination, closing, liquidation, revision, wind-up, discontinuance, conclusion or abandonment of the business at its existing site in connection with such sale. It shall also include any sale advertised to be a “fire-sale,” “adjustment sale,” “creditor’s sale,” “trustee’s sale,” “liquidation sale,” “reorganization sale,” “alteration sale,” “executor’s sale,” “administrator’s sale,” “insolvent sale,” “insurance salvage sale,” “mortgage sale,” “assignee’s sale,” “adjustor’s sale,” “receiver’s sale,” “loss-of-lease sale,” “wholesaler’s closing-out sale,” “creditor’s committee sale,” “forced-out-of-business sale,” “removal sale,” “emergency sale” and any and all sales advertised in such manner as to reasonably convey to the public that upon the disposal of the stock of goods on hand, the business will cease and be discontinued at the place of sale. (Prior code § 5-18.02)

**5.20.040      Regulation of sales.**

The Chief of Police is authorized to supervise and regulate sales as defined in Section 5.20.030. (Prior code § 5-18.03)

**5.20.050      Licenses.**

It is unlawful for any person to publish or conduct any sale of the type defined in this chapter without a license therefor. (Prior code § 5-18.04)

**5.20.060      Application for license.**

A. Every application for a license required by this chapter shall be in writing and shall be verified under oath.

B. Such application must contain:

1. A description of the place where such sale is to be held;

2. The nature of the occupancy, whether by lease or sublease, and the effective date of termination of such occupancy;
3. The means to be employed in publishing such sale, together with the proposed content of any advertisement;
4. An itemized list of the goods, wares, and merchandise to be offered for sale, together with the cost at which the goods, wares and merchandise were obtained by the owner thereof, or person conducting such sale;
5. The place where such stock was purchased or acquired, and if not purchased, the manner of such acquisition; and in the case of stock placed upon the premises within ninety (90) days prior to such sale, the time of acquisition of such stock;
6. The name of the owner of the goods, wares and merchandise to be offered for sale; and if the sale is to be conducted by a person not the owner of the goods, then the name of the person conducting such sale;
7. Any additional information as the Chief of Police may require. (Prior code § 5-18.05)

#### **5.20.070 Term of license.**

Upon the filing of such application, the Chief of Police, after investigation thereof and determining that the provisions of this chapter have been complied with, shall issue such license for a period not to exceed thirty (30) days. If the Chief of Police determines that the provisions of this chapter have not been complied with, the application must be denied. (Prior code § 5-18.06)

#### **5.20.080 Term of renewals.**

- A. Upon satisfactory proof by the licensee that the stock itemized in the original application has not been disposed of, the Chief of Police may renew such license for an additional thirty (30) day period.
- B. Such proof shall be furnished on a form supplied by the Chief of Police. It shall contain an itemized list of stock on hand and shall be verified under oath.
- C. The Chief of Police shall cause the same to be examined and investigated and, if satisfied as to

the truth of the statements therein contained, the Chief of Police may issue a renewal license for a period of not to exceed thirty (30) days; provided, however, that a maximum of three such renewals may be granted for any such sale for the same location within one year from the issuance of the original license. (Prior code § 5-18.07)

#### **5.20.090 Rules and regulations.**

The Chief of Police may make such rules and regulations for the conduct and advertisement of such sales as, in his or her opinion, will serve to prevent deception and to protect the public. (Prior code § 5-18.08)

#### **5.20.100 Display of license.**

Upon commencement of any such sale, the license therefor shall be conspicuously displayed near the entrance to the premises. (Prior code § 5-18.10)

#### **5.20.110 Stock records.**

A. A duplicate original of the application and stock list pursuant to which such license was granted shall be available at all times to the Chief of Police or to his or her inspectors, and the licensee shall permit such inspectors to examine all merchandise on the premises for comparison with such stock list.

B. At the close of business each day the stock list attached to such application shall be revised, and items on such list disposed of during such day shall be noted thereon.

C. Suitable books and records as prescribed by the Chief of Police shall be kept by the licensee and shall be available at all times to the inspectors of the Police Department. (Prior code § 5-18.11)

#### **5.20.120 No additional goods.**

No goods, wares or merchandise shall be permitted to be offered for sale at the place of business where such sale is to be conducted other than those items listed in the inventory filed with the application for the license. (Prior code § 5-18.12)

**5.20.130**

**5.20.130 Advertising.**

A. All advertising shall be descriptive of the nature of such sale as stated in the application therefor. The language in such advertising shall be identical with the advertising content as indicated in the application.

B. It is unlawful to indicate in such advertising, either directly or indirectly, that such sale is held with the approval of the Chief of Police.

C. Such advertising shall contain a statement in the following words and no others: "Sale held pursuant to License No. \_\_\_\_\_ of the City of Oakland, granted the \_\_\_\_\_ day of \_\_\_\_\_," and in such blank spaces the license number and the requisite dates shall be indicated. (Prior code § 5-18.13)

**5.20.140 Exemptions.**

The following persons shall be exempt from the provisions of this chapter:

A. Persons acting pursuant to an order of the process of a court of competent jurisdiction;

B. Sheriffs and marshals acting in accordance with their powers and duties as public officers;

C. Duly licensed auctioneers, selling at auction.  
(Prior code § 5-18.14)

**Chapter 5.22****DANCE HALLS****Sections:**

- 5.22.010      Permit required.**  
**5.22.020      Regulations.**  
**5.22.030      Applicability of chapter.**

**5.22.010      Permit required.**

It is unlawful for any person to open, conduct, or carry on, or to participate in the opening, conducting, or carrying on of, a public dance in any public place in the city unless there exists a valid permit therefor, granted and existing in compliance with the provisions of Chapter 5.02. The application for such permit shall set forth, in addition to the requirements specified in Section 5.02.020, and such permit shall set forth the number and date of the dances to be held under such permit. The investigating official referred to in Section 5.02.030, to whom the application shall be referred, shall be the Chief of Police. (Prior code § 5-4.02)

**5.22.020      Regulations.**

It is unlawful for any person conducting any dance under a permit authorized in Section 5.22.010, or any public dance whatsoever, in the city, or any agent, employee or representative of such person, to violate or permit the violation of any of the following regulations:

- A. The hall, ballroom or other public place in which any dancing is being done shall be kept well lighted;
- B. No immoral or obscene dancing shall be permitted;
- C. No person under the age of eighteen (18) years shall be admitted unless accompanied by his or her parent, guardian or other person having the care and custody of such person;
- D. No vinous, spirituous or other alcoholic beverage shall be permitted on the premises where such dance is being conducted, or any premises directly connected therewith;

E. No person under the influence of intoxicating liquor shall be admitted;

F. No return checks shall be issued;

G. No dancing shall be permitted between the hours of one a.m. and nine a.m. next ensuing except with the written consent of the City Manager and the Chief of Police;

H. A copy of this section shall be kept posted in a conspicuous location in the hall, ballroom or other public place where the dance is being conducted, and at all times during the continuance of such dance. (Prior code § 5-4.03)

**5.22.030      Applicability of chapter.**

The provisions of this chapter shall be construed to apply to public dances given by the management of hotels, to public charitable exhibitions or entertainments given by any association or society, and to public dances given by fraternal or social organizations, even though no admission fee is charged. (Prior code § 5-4.04)

## Chapter 5.24

### FILMING PERMITS

**Sections:**

- 5.24.010      Purpose of chapter.**
- 5.24.020      Definitions.**
- 5.24.030      Permit required.**
- 5.24.040      Permit exemptions.**
- 5.24.050      Deadline for filing applications.**
- 5.24.060      Application form.**
- 5.24.070      Permit approval/denial.**
- 5.24.080      Permit conditions.**
- 5.24.090      Fees.**
- 5.24.100      Change of filming activity date.**
- 5.24.110      Insurance required.**
- 5.24.120      Liability and indemnification.**
- 5.24.130      Duties of permittee.**
- 5.24.140      Street closures.**
- 5.24.150      Pyrotechnics.**
- 5.24.160      Permit revocation or suspension.**
- 5.24.170      Appeals.**
- 5.24.180      Violation—Penalty.**

**5.24.010      Purpose of chapter.**

It is the purpose of this chapter to provide rules governing the issuance of permits for filming activities on location within the city. The intent of this chapter is to ensure that still photographers and motion picture, television, commercial and nontheatrical filming companies will be encouraged to use locations for filming activities within the city so long as those activities are consistent with the public safety and the protection of property. (Prior code § 17-1.01)

**5.24.020      Definitions.**

As used in this chapter:

“Applicant” means the person, organization, corporation, association or other entity applying for a permit to film in the city of Oakland.

“City” means the city of Oakland as a municipal corporation and existing pursuant to the laws of the state of California.

“Film Development Office” means the office designated by the Mayor and the City Council to coordinate filming and issue film permits in the city of Oakland.

“Filming activity” means the staging, shooting, filming, videotaping, photographing, or other similar process conducted for the making of still photographs, motion pictures, television programs, commercial and nontheatrical film productions.

“Film permit” means written authorization from the city’s representative designated by City Council to conduct the filming activity described in the permit.

“News purposes” means a filming activity conducted for the purpose of reporting on persons, events, or scenes which are in the news for newspapers, television news, and other news media.

“Permittee” means the person, organization, corporation, association or other entity issued a film permit under this policy.

“Public street” means any street or road maintained by the city and located within the city limits.

“Still photography” means and includes all activity attendant to staging or shooting commercial still photographs.

“Student filming activity” means filming activity conducted to fulfill a course requirement by a student enrolled at a public or private school.

“Studio” means a fixed place of business where filming activities are regularly conducted upon the premises. (Prior code § 17-1.02)

**5.24.030      Permit required.**

It is unlawful to conduct a filming activity as defined in Section 5.24.020 within the city without first obtaining a film permit from the Film Development Office.

A permit is issued by the Film Development Office for the purpose of filming on city-owned, leased or controlled real property or city streets. This permit does not constitute or grant permission to use or occupy property not owned, leased or controlled by the city. This permit must be in the possession of the permittee at all times while on location in Oakland.

An applicant shall obtain the private property owner's permission, consent, and/or lease for use of property not owned or controlled by the city. (Prior code § 17-1.03)

#### **5.24.040 Permit exemptions.**

The provisions of this chapter shall not apply to any of the following activities provided that the activity will not require the closure of a public street, or substantially impede vehicular traffic thereon:

- A. Filming activities conducted for news purposes as defined in Section 5.24.020;
- B. Filming activities conducted at studios as defined in Section 5.24.020;
- C. Filming activities conducted for use in a criminal investigation or civil or criminal court proceeding;
- D. Noncommercial filming activities conducted on private property solely for private or family use;
- E. Commercial still photography or staging thereof, when conducted to the exclusion of any other filming activity as defined in Section 5.24.020, when the following conditions apply:
  - 1. The still photography, or staging thereof, will not be conducted on city property.
  - 2. The still photography, or staging thereof, will not require the parking of more than two motor vehicles on any public street within the city;
- F. Filming activities conducted by or for the city. (Prior code § 17-1.04)

#### **5.24.050 Deadline for filing applications.**

Applications for a film permit must be filed with the Film Development Office a minimum of two business days in advance of the date the film activity is to begin, except that of an application for a permit which includes street closures, stunts, or pyrotechnics which must be filed a minimum of five business days in advance of the first day of filming.

No late applications will be processed by the city unless the Film Development Office determines that special circumstances exist relative to the application which would have precluded its application on a timely basis.

Applicants are encouraged to submit applications at the earliest advance date possible in order to facilitate coordination between city departments.

Upon such showing of good cause, the Film Development Office shall consider applications which are filed after the filing deadline if there is sufficient time to process and investigate the application, and for city staff to prepare for the filming activity. (Prior code § 17-1.05)

#### **5.24.060 Application form.**

The permit application shall be on a form furnished by the Film Development Office signed by the applicant or agent thereof. Such form shall include, but not be limited to, the following information:

- A. Name, address, and telephone number of applicant;
- B. Name, address, and telephone number of person in charge of filming on location;
- C. Filming location(s), dates and approximate daily call times of proposed filming activity;
- D. Description of scenes to be filmed including details of any hazardous filming activity employing firearms, explosives, the use of open flame, other pyrotechnical effects, animals, stunts, filming of moving motor vehicles, watercraft or aircraft;
- E. Description of the types and number of motor vehicles which will be parked on public streets, and description of any equipment to be placed on public property;
- F. Evidence of adequate insurance certification as stipulated by Section 5.24.110;
- G. Such other information as the Film Development Office may require. (Prior code § 17-1.06)

#### **5.24.070 Permit approval/denial.**

- A. The application shall be approved or denied within two business days of receipt of the application unless the proposed filming activity requires extensive review by other city departments due to fire or traffic safety. The film permit shall be approved by the Film Development Office unless determined from consideration of the application or

other pertinent information, that any of the following conditions exist:

1. The filming activity will substantially disrupt the use of a street at a time when it is usually subject to traffic congestion, or interfere with the operation of emergency vehicles in the proposed permit area.
2. The location of the filming activity will substantially interfere with street maintenance work, or a previously authorized excavation permit.
3. The proposed permit location is on city property and the filming activity will substantially interfere with other previously authorized activities, contracts or safety of the public or employees while on city property.
4. The proposed permit location is on city property and the filming activity will substantially interfere with municipal functions or the scheduled maintenance of city buildings or grounds.
5. The filming activity creates a substantial risk of injury to persons or damage to property.
6. The applicant failed to complete the application after being requested to do so, or the information contained in the application is found to be false in any material detail.
7. The particular filming activity would violate federal, state, or local law including licensing or permit requirements.

B. When the grounds for permit denial can be corrected by imposing reasonable permit conditions, the Film Development Office may impose such conditions rather than denying the permit. (Prior code § 17-1.07)

#### **5.24.080      Permit conditions.**

The Film Development Office may condition the issuance of a film permit by imposing reasonable requirements concerning the time, place, manner and duration of filming activities as referenced on the "Terms and Conditions" attached to the film permit, including but not limited to, the following:

- A. Requirements for the presence of employees of the city at the applicant's expense, when required for the particular filming activity;

B. Requirements concerning posting of no parking signs, placement of traffic control devices, and employment of traffic and crowd control monitors at the applicant's expense;

C. Requirements concerning posting of the outer boundaries of the filming activity, and providing advance notice to affected property owners/businesses;

D. Requirements concerning the cleanup and restoration of public streets and city property employed in the filming activity;

E. Restrictions concerning the use of city employee services, vehicles and other equipment in the filming activity;

F. Requirements that the applicant pay all fees, and obtain all permits and licenses required for the filming activity under local, state and federal law;

G. Restrictions on the use of firearms, explosions, and other noise-creating or hazardous devices which disturb the peace.

H. Restrictions on the use of stunts involving pyrotechnics, open flame, vehicle crashes or other hazardous materials.

I. Requirements concerning coverup of police, fire and other official uniforms worn by actors, when the actors are not on camera;

J. Restrictions concerning the use of city logos, insignias, badges or decals for filming purposes;

K. Restrictions on the daily hours the filming activity may be conducted within the city;

L. Requirements concerning the city's receipt of proper acknowledgement for any assistance provided in making feature, television, or commercial productions;

M. Requirements concerning affirmative action and nondiscriminatory practices for employment. (Prior code § 17-1.08)

#### **5.24.090      Fees.**

A. A schedule of fees for city services and use of city property shall be established as part of the city's master fee schedule, Ordinance No. 9336 C.M.S.

B. The applicant shall pay all costs incurred by the city in providing city employees to be present during filming activity. (Prior code § 17-1.09)

#### **5.24.100 Change of filming activity date.**

Upon reasonable notice by the permittee in advance of the filming activity, the Film Development Office is authorized to change the date for which the film permit has been issued without requiring a new application or permit. (Prior code § 17-1.10)

#### **5.24.110 Insurance required.**

The applicant for a film permit shall procure and maintain for the duration of the film activity insurance in the forms, types, and amounts prescribed by the city's Risk Manager. (Prior code § 17-1.11)

#### **5.24.120 Liability and indemnification.**

Prior to the issuance of the film permit, the permit applicant must agree in writing to comply with the "Filming Permit Terms and Conditions." (Prior code § 17-1.12)

#### **5.24.130 Duties of permittee.**

The permittee, and all agents, employees, and contractors of the permittee at the filming activity site within the city, shall comply with the following requirements:

- A. The permittee shall comply in writing with all "Term and Conditions" of the film permit.
- B. The permittee shall not conduct a filming activity within the city not authorized by the filming permit.
- C. The permittee shall comply with instructions made by the Oakland Police Department officer(s) assigned to police the filming activity site.
- D. The permittee shall comply with instructions made by city employees assigned to regulate the filming activity site.
- E. The permittee shall clean and restore all city-owned property utilized during the filming activity to the same condition as existed prior to the filming activity.

F. The permittee shall comply with this chapter and all other policies and ordinances of the city and state and federal law. (Prior code § 17-1.13)

#### **5.24.140 Street closures.**

The applicant for a film permit may request that the city authorize a street closure on the film permit application. A short-term encroachment permit shall be granted by the Chief of Police or his or her designee. (Prior code § 17-1.14)

#### **5.24.150 Pyrotechnics.**

During the filming of any special effect or stunt requiring the use of pyrotechnics or any material deemed hazardous, including but not limited to fireworks, open flames, or explosives, the applicant must obtain a fire permit by the Oakland Fire Department. (Prior code § 17-1.15)

#### **5.24.160 Permit revocation or suspension.**

A. **Permit Revocation.** The Film Development Office may revoke the film permit if the permittee, or any agents, employees or contractors of the permittee fail to comply with the requirements set forth in Section 5.24.13A through F, or if the Film Development Office determines after the permit is issued that the permit application was false in any material detail.

1. Notice of the grounds for revocation of the film permit shall be provided in writing by the Film Development Office to the permit applicant or person in charge at the location of the filming activity.

2. Appeals of the permit revocation shall be conducted in the manner specified in Section 5.24.170.

B. **Permit Suspension.** The Oakland Police Department officer assigned to police the filming activity site may suspend the film permit when the filming activity poses an immediate hazard to persons or property and the location manager will not, or cannot, prevent the hazard after being instructed to do so by the officer.

1. The grounds for the permit suspension shall be provided in writing by the Film Development

## **5.24.160**

Office to the permittee within one business day of the suspension.

2. Appeals of the permit suspension shall be conducted in the manner specified in Section 5.24.170. (Prior code § 17-1.16)

### **5.24.170 Appeals.**

The permit applicant or permittee may appeal a permit denial, revocation, suspension, permit condition, insurance/fees requirement or the Film Development Office's decision not to waive a deadline set forth in this policy. Such appeal shall be filed with the City Manager's Office not later than five business days after the date written notice of the decision is made. Failure to file timely appeal shall result in a waiver to the right to appeal. The appeal shall be heard by the City Manager or his or her designee.

The City Manager or his or her designee shall hold a hearing no later than five business days after the filing of the appeal, and shall render his or her decision not later than two business days after the appeal hearing. The decision of the City Manager may be appealed to the City Council at its next available meeting. The decision of the City Council shall be final. (Prior code § 17-1.17)

### **5.24.180 Violation—Penalty.**

The violation of any provision of this chapter shall constitute an infraction. (Prior code § 17-1.18)

**Chapter 5.26****FIREARMS DEALERS\*****Sections:**

- 5.26.010 Title.**
- 5.26.020 Findings.**
- 5.26.030 Definitions.**
- 5.26.040 Permit required.**
- 5.26.040.010 Display of permit.**
- 5.26.050 Application—Forms, fees.**
- 5.26.060 Application—Investigation.**
- 5.26.070 Application denial.**
- 5.26.080 Security.**
- 5.26.090 Permit form.**
- 5.26.100 Permit—Duration, renewal.**
- 5.26.110 Permit—Assignment.**
- 5.26.120 Permit—Conditions.**
- 5.26.130 Permit—Grounds for revocation.**
- 5.26.140 Permit—Hearing.**
- 5.26.150 Permit—Liability insurance and indemnification.**
- 5.26.160 Permit—Authority to inspect.**
- 5.26.170 Compliance.**
- 5.26.180 Suspension or revocation of permit.**
- 5.26.190 Severability.**

**5.26.010 Title.**

This Chapter shall be known as the firearms dealer or ammunition seller permit ordinance.

(Ord. No. 12994, 2-16-2010)

**5.26.020 Findings.**

The City Council finds that:

A. The number of unlicensed firearms dealers within the City far exceeds the number of legitimate licensed dealers; and

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\*Editor's note—Ord. No. 12994, adopted February 16, 2010, amended Chapter 5.26 in its entirety to read as herein set out. Formerly, Chapter 5.26 pertained to similar subject matter, and derived from the prior code, §§ 2-10 1—2-10 19, Ord. No 11947, § 1, adopted 1996; Ord. No. 12211, § 1, adopted 2000, and Ord. No 12212, § 1, adopted 2000.

B. Firearms used in violent crimes have been traced by the police department to firearms dealers operating without permits within the City; and

C. Firearms are used in nearly 80 percent of the homicides committed in the City; and

D. A considerable proportion of the firearms used in violent crimes were obtained illegally from unlicensed firearms dealers; and

E. Since June of 1990, Highland Hospital in Oakland has treated an average of 32 Oakland residents a month for gunshot wounds, an average of one a day; and

F. The average cost for treatment of a gunshot wound is \$33,000.00, most of the cost borne by taxpayers. Nearly 400 gunshot wounds were treated at Highland Hospital in 1991; and

G. The widespread availability of illegally obtained firearms has resulted in a rise in the number of shooting incidents involving minors; and

H. Because of the range and effectiveness of firearms, the use of firearms in violent crimes is more likely to lead to the death or injury of bystanders.

(Ord. No. 12994, 2-16-2010)

**5.26.030 Definitions.**

The following words and phrases, whenever used in this Chapter, shall be construed as defined in this Section:

"Ammunition" means projectiles, cartridge cases, primers, bullets, or propellant powder designed for use in any firearm, and any component thereof, but shall not include blank cartridges or ammunition that can be used solely in an "antique firearm" as that term is defined in section 921(a)(16) of Title 18 of the United States Code.

"Engaged in the business" means the conduct of a business by the selling, transferring, or leasing of any firearm or ammunition; or the preparation for such conduct of business as evidenced by the securing of applicable federal or State licenses; or the holding of one's self out as engaged in the business of selling, transferring, or leasing of any firearm or ammunition, or the selling, transfer-

ring, or leasing of firearms or ammunition in quantity, in series, or in individual transactions, or in any other manner indicative of trade.

"Firearm" means any device, designed to be used as a weapon or modified to be used as a weapon, from which is expelled through a barrel a projectile by the force of an explosion or other form of combustion.

"Firearms dealer" means a person engaged in the business of selling, transferring, or leasing, or advertising for sale, transfer, or lease, or offering or exposing for sale, transfer, or lease, any firearm.

"Permit" means a license to sell or transfer firearms or ammunition under this Chapter.

"Permittee" means a person or entity licensed to sell or transfer firearms or ammunition under this Chapter.

"Person" means natural person, association, partnership, firm, or corporation.

(Ord. No. 12994, 2-16-2010)

#### **5.26.040 Permit required.**

It is unlawful for any person, partnership, cooperative, corporation, firm, or association to engage in the business of operating or managing any business which sells, transfers, leases, or offers or advertises for sale, transfer, or lease, any firearm or ammunition without first obtaining a permit from the Chief of Police of the Oakland Police Department.

(Ord. No. 12994, 2-16-2010)

#### **5.26.040.010 Display of permit.**

The permit, or a certified copy of it, shall be displayed in a prominent place on the business premises where it can be easily seen by those entering the premises.

(Ord. No. 12994, 2-16-2010)

#### **5.26.050 Application—Forms, fees.**

An applicant for a permit under this Chapter shall file with the Chief of Police a sworn application in writing, on a form to be furnished by the City. The applicant shall provide all information requested, including proof of compliance with all

applicable federal, State, and local laws when required by the Chief of Police, or the application will not be deemed complete. The application shall be accompanied by a nonrefundable fee as set forth in the City municipal license/permit fee schedule. To the extent practicable, the fee amount shall reflect the cost of enforcing the requirements of this Chapter.

(Ord. No. 12994, 2-16-2010)

#### **5.26.060 Application—Investigation.**

The Chief of Police shall conduct an appropriate investigation to determine for the protection of the public safety whether the permit may be issued. The Chief of Police may require additional information of an applicant deemed necessary to complete the investigation.

(Ord. No. 12994, 2-16-2010)

#### **5.26.070 Application denial.**

The Chief of Police shall deny the issuance of a permit, and has the authority to revoke an existing permit, when any of the following conditions exist:

A. The applicant, or an officer, employee, or agent thereof, is under the age of 21 years.

B. The applicant is not licensed as required by all applicable federal, State and local laws.

C. The applicant, or an officer, employee, or agent thereof, has had a similar type permit previously revoked or denied for good cause within the immediately preceding two years.

D. The applicant, or an officer, employee, or agent thereof, has made a false or misleading statement of a material fact or omission of a material fact in the application for a permit.

E. The applicant, or an officer, employee, or agent thereof, has been convicted of:

1. Any offense so as to disqualify the applicant, or an officer, employee, or agent thereof, from owning or possessing a firearm or ammunition under applicable federal, State, and local laws;

2. Any offense relating to the manufacturing, sale, possession, use, or registration of any firearm, ammunition or dangerous or deadly weapon;

3. Any offense involving the use of force or violence upon the person of another;

4. Any offense involving theft, fraud, dishonesty, or deceit;

5. Any offense involving the manufacture, sale, possession, or use of any controlled substance as defined by the California Health & Safety Code as said definition now reads or may hereafter be amended to read.

F. The applicant, or an officer, employee, or agent thereof, is an unlawful user of any controlled substance as defined by the California Health & Safety Code as said definition now reads or may hereafter be amended to read, or is an excessive user of alcohol to the extent that such use would impair his or her fitness for a permit under this Chapter.

G. The applicant, or an officer, employee, or agent thereof, has been adjudicated as a mental defective, or has been committed to a mental institution, or suffers from any psychological disturbance which would impair his or her fitness for a permit under this Chapter.

H. The operation of the business as proposed will not comply with all applicable federal, State, or local laws.

I. The applicant, or an officer, employee, or agent thereof, proposes to operate in the following locations:

1. Within a zoning district in which general retail sales commercial activities are not a permitted or conditional use;

2. Within a zoning district in which residential use is the principal permitted or maintained use, or within 1,000 feet of the exterior limits of any such district;

3. Within 1,000 feet of a public or private day care center or day care home, or within 1,000 feet of any elementary, junior high, or high school whether public or private;

4. On or within 1,500 feet of the exterior limits of any other premises occupied by a dealer in firearms or ammunition, an adult entertainment establishment or a hot tub/sauna establishment.

J. The applicant, or an officer, employee, or agent thereof does not have and or cannot provide evidence of a possessory interest in the property at which the proposed business will be conducted.

K. Any ground for denial exists as specified in this Code.

(Ord. No. 12994, 2-16-2010)

### **5.26.080 · Security.**

In order to discourage the theft of firearms or ammunition stored on the premises, any business licensed under this Chapter must adhere to security regulations promulgated by the Chief of Police pursuant to the authority provided by this Chapter. Security measures shall include but not be limited to:

A. The provision of secure locks, windows and doors, storage lockers, adequate lighting, video surveillance and alarm systems installed and maintained by an alarm company operator licensed pursuant to the Alarm Company Act, Business & Professions Code Sections 7590 et seq. with additional requirements as specified by the Chief of Police;

B. Storing of all firearms and ammunition not principally used in handguns on the premises out of the reach of customers in secure, locked facilities, so that access to firearms and ammunition not principally used in handguns shall be controlled by the dealer or employees of the dealer, to the exclusion of all others. Ammunition principally used in handguns shall be stored pursuant to the requirements of Penal Code section 12061 (a)(2).

(Ord. No. 12994, 2-16-2010)

### **5.26.090 Permit form.**

All permits issued pursuant to this Chapter shall be in the form prescribed by the Attorney General of the State of California.

(Ord. No. 12994, 2-16-2010)

### **5.26.100 Permit—Duration, renewal.**

All permits issued pursuant to this Chapter shall expire one year after the date of issuance;

provided, however, that such permits may be renewed by the Chief of Police for additional periods of one year upon the approval of an application for renewal by the Chief of Police and payment of the renewal fee. Such renewal application must be received by the Chief of Police, in completed form, no later than 45 days prior to the expiration of the current permit.

(Ord. No. 12994, 2-16-2010)

#### **5.26.110      Permit—Assignment.**

The assignment or attempt to assign any permit issued pursuant to this Chapter is unlawful and any such assignment or attempt to assign a permit shall render the permit null and void.

(Ord. No. 12994, 2-16-2010)

#### **5.26.120      Permit—Conditions.**

Any permit issued pursuant to this Chapter shall be subject to all of the following conditions, the breach of any of which shall be sufficient cause for revocation of the permit by the Chief of Police. Any permit issued pursuant to this Chapter shall be subject to such additional conditions as the Chief of Police finds are reasonably related to the purpose of this Chapter.

A. The business shall be carried on only in the building located at the street address shown on the license.

B. The permittee shall comply with all federal, State, and local laws relating to the sale of firearms or ammunition.

C. The permittee shall post conspicuously within the licensed premises the following warning in block letters not less than one inch in height as per Penal Code Section 12071(b)(11):

**IF YOU LEAVE A LOADED FIREARM  
WHERE A CHILD OBTAINS AND IMPROPERLY USES IT, YOU MAY BE FINED OR  
SENT TO PRISON**

D. Persons Under the Age of 18 Excluded from Establishments Displaying Firearms. No person who maintains or operates any place of business in which firearms are kept, displayed or of-

fered in any manner, sold, furnished or transferred shall permit the entry into the premises of persons under the age of 18 years, unless all firearms are completely and wholly kept, displayed or offered within a separate room or enclosure to which persons under the age of 18 years are excluded. Each entrance to such a room or enclosure shall be signposted in block letters not less than one inch in height to the effect that firearms are kept, displayed or offered in such room or enclosure and that persons under the age of 18 are excluded.

A person who maintains or operates any place of business that openly displays firearms without providing for separate enclosures therefor, must prevent entry into the premises of persons prohibited by age under State law from purchasing firearms. The entrance to the establishment shall be signposted in block letters not less than one inch in height to the effect that firearms are kept, displayed or offered on the premises and that persons under the age of 18 are excluded.

The person who maintains or operates any place of business in which firearms are kept, displayed or offered in any manner, sold, furnished or transferred, and his employees, agents, and persons acting under his authority, are each and together separately and jointly responsible for requiring bona fide evidence of identity of persons to prevent the entry of persons not permitted to purchase a firearm under State law by reason of age. Bona fide evidence of identity of the person is a document issued by a federal, State, county, or municipal government, or subdivision or agency therefor, including, but not limited to, a motor vehicle operator's license or an identification card issued to a member of the Armed Forces, which contains the name, date of birth, description, and picture of the person.

E. Persons Under the Age of 21 Excluded from Establishments Displaying Concealable Firearms. No person who maintains or operates any place of business in which concealable firearms are kept, displayed or offered in any manner, sold, furnished or transferred shall permit the entry into the premises of persons under the age of 21 years,

unless all concealable firearms and concealable firearms accessories are completely and wholly kept, displayed or offered within a separate room or enclosure to which persons under the age of 21 years are excluded. Each entrance to such a room or enclosure shall be signposted in block letters not less than one inch in height to the effect that firearms are kept, displayed or offered in such room or enclosure and that persons under the age of 21 are excluded.

A person who maintains or operates any place of business that openly displays concealable firearms without providing for separate enclosures therefor, must prevent entry into the premises of persons prohibited by age under State law from purchasing concealable firearms. The entrance to the establishment shall be signposted in block letters not less than one inch in height to the effect that firearms are kept, displayed or offered on the premises and that persons under the age of 21 are excluded.

The person who maintains or operates any place of business in which concealable firearms are kept, displayed or offered in any manner, sold, furnished or transferred, and his employees, agents, and persons acting under his authority, are each and together separately and jointly responsible for requiring bona fide evidence of identity of persons to prevent the entry of persons not permitted to purchase concealable firearms under State law by reason of age. Bona fide evidence of identity of the person is a document issued by a federal, State, county, or municipal government, or subdivision or agency therefor, including, but not limited to, a motor vehicle operator's license or an identification card issued to a member of the Armed Forces, which contains the name, date of birth, description, and picture of the person.

**F. Persons Prohibited from Possessing Firearms and/or Ammunition Excluded from Establishments Displaying Firearms and/or Ammunition.** Persons prohibited from possessing or purchasing firearms pursuant to California Penal Code Section 12021 and 12021.1 or possessing or purchasing ammunition pursuant to Penal Code

Section 12316(b), or otherwise prohibited by federal, state or local law from possessing or purchasing firearms, shall not enter into or loiter about any firearms dealership, defined as a place of business in which firearms are openly kept, displayed or offered in any manner, sold, furnished or transferred pursuant to Penal Code Section 12070. Each entrance to such an establishment shall be signposted in block letters not less than one inch in height to the effect that persons prohibited from possessing firearms pursuant to Penal Code Section 12021 are excluded from the premises.

When a firearms dealer displays or offers for sale firearms within a separate room or enclosure that segregates the firearms, and firearms related accessories (including but not limited to, ammunition, ammunition clips, and holsters) from other general merchandise, each entrance to such a separate room or enclosure shall be signposted in block letters not less than one inch in height to the effect that persons prohibited from possessing firearms pursuant to Penal Code Section 12021 are excluded from entering the separate rooms or enclosures.

Any dealer engaging in the business of selling, transferring, or leasing, or advertising for sale, transfer, or lease, or offering or exposing for sale, transfer, or lease, any firearm and/or ammunition within the City who knowingly violates the provisions of Subsection G., or fails to adhere to the notice provisions of Subsection G., shall be subject to the penalty provisions of this Chapter, including but not limited to suspension and/or revocation of his or her permit to sell firearms.

Any person prohibited from possessing firearms pursuant to Penal Code Section 12021 who enters into or loiters about firearms dealership in Oakland that has been properly posted pursuant to this Section is guilty of a misdemeanor.

**G. Inventory Reports.** Within the first five business days of April and October of each year, the permittee shall cause a physical inventory to be taken that includes a listing of each firearm held by the permittee by make, model, and serial number, together with a listing of each firearm the

permittee has sold since the last inventory period. In addition, the inventory shall include a listing of each firearm lost or stolen that is required to be reported pursuant to Penal Code Section 12071(b)(13). Immediately upon completion of the inventory, the permittee shall forward a copy of the inventory to the address specified by the Chief of Police, by such means as specified by the Chief of Police. With each copy of the inventory, the permittee shall include an affidavit signed by an authorized agent or employee on behalf of the permittee under penalty of perjury stating that within the first five business days of that April or October, as the case may be, the signer personally confirmed the presence of the firearms reported on the inventory. The permittee shall maintain a copy of the inventory on the premises for which the law enforcement permit was issued for a period of not less than five years from the date of the inventory and shall make the copy available for inspection by federal, State or local law enforcement upon request.

**H. Background Investigation and Verification.** Employees, agents or supervisors of the applicant or permittee may not have access to or control over workplace firearms or ammunition until those persons have undergone a law enforcement investigation and background verification process as required by the Chief of Police. A new law enforcement investigation and background verification of such persons must be conducted each time the permittee renews his or her permit, or applies for a new permit. The Chief of Police shall deny the issuance or renewal of a law enforcement permit, or shall revoke an existing permit, if the applicant or permittee allows any employee, agent or supervisor to have access to or control over workplace firearms or ammunition prior to the completion of the law enforcement investigation and background verification of those persons, or if those persons have not undergone the law enforcement investigation and background verification process within the last 365 days.

(Ord. No. 12994, 2-16-2010)

### **5.26.130 Permit—Grounds for revocation.**

In addition to any provisions constituting grounds for denial shall also constitute grounds for revocation.

(Ord. No. 12994, 2-16-2010)

### **5.26.140 Permit—Hearing.**

A. Any person whose application for a permit under this Chapter has been denied, or whose permit has been revoked pursuant to the provisions of this Chapter, shall have the right to a hearing before the Chief of Police or a designee prior to final denial or prior to revocation.

B. The Chief of Police shall give the applicant or permittee written notice of the intent to deny the application or to revoke the permit. The notice shall set forth the ground or grounds for the Chief of Police's intent to deny the application or to revoke the permit, and shall inform the applicant or permittee that he or she has ten days from the date of receipt of the notice to file a written request for a hearing. The application may be denied or the permit revoked if a written hearing request is not received within the ten-day period.

C. If the applicant or permittee files a timely hearing request, the Chief of Police shall set a time and place for the hearing. All parties involved shall have the right to offer testimonial, documentary and tangible evidence bearing on the issues, to be represented by counsel, and to confront and cross-examine any witnesses against them. The decision of the Chief of Police whether to deny the application or revoke the permit is final and nonappealable.

(Ord. No. 12994, 2-16-2010)

### **5.26.150 Permit—Liability insurance and indemnification.**

No permit shall be issued or continued pursuant to this Chapter unless there is in full force and effect a policy of insurance in such form as the City Attorney deems proper, executed by an insurance company approved by the City Attorney whereby the applicant or permittee is insured against liability for damage to property and for

injury to or death of any person as a result of the sale, transfer or lease, or advertising for sale, transfer, or lease, or offering or exposing for sale, transfer, or lease, any firearm. The minimum liability limits shall not be less than \$1,000,000.00 for damage to or destruction of property in any one incident, and \$1,000,000.00 for the death or injury to any one person; provided, however, that additional amounts may be required by the City Attorney if deemed necessary.

Such policy of insurance shall contain an endorsement providing that the policy will not be canceled until notice in writing has been given to the City, addressed in care of the Chief of Police, 455 - 7th Street, Oakland, California, 94607, at least 30 days immediately prior to the time such cancellation becomes effective. Further, such policy of insurance shall name the City, its officers, agents, and employees as additional insureds. Additionally, applicants and permittees shall indemnify, defend, and hold harmless the City, its officers, agents, and employees, from claims arising from the negligence of the applicant or permittee.

No permit shall be issued or continued pursuant to this Chapter unless the applicant agrees to indemnify, defend and hold harmless the City, its officers, agents and employees from and against all claims, losses, costs, damages and liabilities of any kind pursuant to the operation of the business, including attorneys fees, arising in any manner out of the negligence or intentional or willful misconduct of the applicant, the applicant's officers, employees, agents and/or supervisors, or if the business is a corporation, partnership or other entity, the officers, directors or partners.

(Ord. No. 12994, 2-16-2010)

#### **5.26.160      Permit—Authority to inspect.**

Any and all investigating officials of the City shall have the right to enter the building designated in the permit from time to time during regular business hours to make reasonable inspections to observe and enforce compliance with building, mechanical, fire, electrical, plumbing, or health regulations, and provisions of this Chapter. A

police investigator may conduct compliance inspections from time to time during regular business hours to insure conformance to all federal, State, and local law, and all provisions of this Chapter.

(Ord. No. 12994, 2-16-2010)

#### **5.26.170      Compliance.**

Any person engaging in the business of selling, transferring, or leasing, or advertising for sale, transfer, or lease, or offering or exposing for sale, transfer, or lease, any firearm or ammunition on the effective date of this Chapter shall have a period of 60 days after such effective date to comply with the provisions of this Chapter.

(Ord. No. 12994, 2-16-2010)

#### **5.26.180      Suspension or revocation of permit.**

A. If the dealer violates any federal, State or local county or City law, the Chief of Police may immediately suspend the right of the dealer to sell firearms or ammunition. If the violation results in a criminal charge filed in court by a federal, State, or county District Attorney, such permit to sell firearms or ammunition may be suspended until the case is adjudicated in a court of law. If the person is convicted, such permit must be immediately revoked.

B. Notice of suspension shall be mailed to the person(s) who made application for the permit and shall be delivered to the address listed on the permit.

C. In addition to any other penalty or remedy, the City Attorney shall report any person or entity whose law enforcement permit is suspended or revoked pursuant to this Article to the Bureau of Firearms of the California Department of Justice and the Bureau of Alcohol, Tobacco, Firearms & Explosives within the U.S. Department of Justice.

(Ord. No. 12994, 2-16-2010)

#### **5.26.190      Severability.**

This Chapter shall be enforced to the full extent of the authority of the City. If any section, subsection, paragraph, sentence or word of this Chap-

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ter is deemed to be invalid or beyond the authority of the City, either on its face or as applied, the invalidity of such provision shall not affect the other sections, subsections, paragraphs, sentences, or words of this Chapter, and the applications thereof; and to that end the sections, subsections, paragraphs, sentences and words of this Chapter shall be deemed severable.

(Ord. No. 12994, 2-16-2010)

## Chapter 5.28

### FLYING FIELDS, HELIPORTS AND HELISTOPS

#### Sections:

**5.28.010 Defined.**

**5.28.020 Permit required.**

**5.28.030 Application for permit.**

**5.28.040 Notice of hearing.**

**5.28.050 Decision—Continuing conditions.**

**5.28.060 Revocation of permit.**

**5.28.070 Exceptions.**

**5.28.010 Defined.**

For the purposes of this chapter, a "flying field" shall be construed to include any field, pad, rooftop, or other place from or to which airplanes or other aircraft, including helicopters or other steep-gradient aircraft, are flown, or where aviation activities are carried on for the purpose of demonstrating aircraft for schools or instruction, for the carrying of goods, merchandise or passengers, or for other public or private purposes. The term "flying field" shall include heliports and helistops, as defined in the Oakland Building Code, both public and private, whether located on a rooftop or at ground level.

(Prior code § 5-15.09)

**5.28.020 Permit required.**

It is unlawful for any person to establish, conduct or maintain a flying field within the city without first paying the license fees by this chapter required, and obtaining a permit therefor, which shall be applied for and granted and shall exist in compliance with the provisions of Chapter 5.02. (Prior code § 5-15.10)

**5.28.030 Application for permit.**

In addition to the requirements specified in Section 5.02.020, the application for such permit

shall be signed by the owner of the property, or by his or her agent duly authorized in writing, and shall set forth the following:

A. Location, size and character of the proposed field or pad;

B. Proposed plans and specifications for the proposed field or pad;

C. Map showing the intended routes of ingress thereto, and egress therefrom, including emergency landing areas;

D. Qualifications of applicant to operate the proposed field or pad;

E. Ability to meet federal and state requirements for approval of proposed field or pad.

(Prior code § 5-15.11)

**5.28.040 Notice of hearing.**

Public notice of the hearing upon the application shall be given as provided in Section 5.02.050. The application shall be referred to the Executive Director of the Board of Port Commissioners and to all other interested officers or departments of the city.

(Prior code § 5-15.111)

**5.28.050 Decision—Continuing conditions.**

In the granting of an application the following conditions shall be deemed incorporated therein, in addition to any others which may be imposed as necessary and reasonable to protect life and property. A violation of any condition shall be grounds for revocation or suspension of the permit:

A. That all applicable laws, and all applicable regulations, rules and orders having the effect of law, shall be complied with including, but not limited to, agencies of the federal government and of the state of California charged with the licensing, establishment, operation and maintenance of airports, heliports and helistops, their operators, and pilots of aircraft using same.

B. That the permittee shall not authorize, allow or permit the use of his or her facilities by persons, firms, or corporations violating any provision of said aforementioned laws, rules, regulations or orders;

C. That the surface of any such facility shall be such that no dust, dirt, or other objectionable matter will be blown on adjoining property by the users thereof;

D. That, with respect to a rooftop heliport or helistop, no fueling, refueling, storage of aircraft parts or flammable liquids, or repairing, except emergency repairs, shall be permitted;

E. That smoking shall be prohibited in and on the facilities, except in such areas as may be approved for such use by the Fire Marshal;

F. That the permittee of any private heliport or helistop shall procure and maintain insurance covering all liability to anyone who might be killed or injured or whose property might be damaged, by reason of the negligence or nonfeasance of said permittee, his or her agents, officers or employees, in the operation of said heliport or helistop. Said insurance shall be in such limits as the City Manager shall specify. The city shall be named as an additional insured on all policies. A duplicate policy or a certificate thereof shall be filed with the City Clerk. Said insurance shall inure to the benefit of anyone killed, injured or whose property has been damaged, by the negligent operation of said facility. The policy may not be cancelled nor the amount of the coverage thereof be reduced until ten days after receipt of the City Manager of the city of a written notice of such cancellation or reduction in coverage, as evidenced by receipt of a registered letter. (Prior code § 5-15.112)

aircraft in the service of the government, nor be construed to apply to, or interfere with, the conduct or management of the Oakland Municipal Airport or the flying, operation or supervision of aircraft in connection therewith. So far as applicable, the provisions of this chapter shall be deemed to be in addition to any rules and regulations provided for the use of such airport by the Board of Port Commissioners of the city. Where a flying field is proposed to be located in the port area of the city, application therefor must be made exclusively to the said Board of Port Commissioners and its approval secured. (Prior code § 5-15.12)

#### **5.28.060 Revocation of permit.**

In addition to the grounds for revocation or suspension of a permit issued hereunder, it is expressly provided that such permit may be revoked, suspended or surcharged with additional conditions, if after investigation, notice and hearing, it is determined that the physical profile of the surrounding area renders the continued operation of the facility unsafe. (Prior code § 5-15.113)

#### **5.28.070 Exceptions.**

Nothing in this chapter provided, nor the requirement that a license fee be paid as in Section 5.04.570 provided, shall be construed to apply to officers and members of the United State Army and Navy or the Marine Corps, or officials of the United States while actively engaged in the operation of

	<b>Chapter 5.30</b>	<b>5.30.220</b>	<b>Limousine shall operate from fixed location.</b>
	<b>FOR-HIRE VEHICLES</b>	<b>5.30.230</b>	<b>Exclusive use by passengers—Window blinds prohibited.</b>
<b>Sections:</b>		<b>5.30.240</b>	<b>Driver to use direct route.</b>
<b>5.30.010</b>	<b>Definitions.</b>	<b>5.30.250</b>	<b>Receipt for fare.</b>
<b>5.30.020</b>	<b>Owner's permit to operate public motor vehicle.</b>	<b>5.30.260</b>	<b>Refusal to pay fare.</b>
<b>5.30.030</b>	<b>Notice of hearing on application.</b>	<b>5.30.270</b>	<b>Keeping of waybills required.</b>
<b>5.30.040</b>	<b>Action on application for owner's permit to operate public motor vehicle.</b>	<b>5.30.280</b>	<b>Motorbus service to general public.</b>
<b>5.30.050</b>	<b>Renewal of owner's permit.</b>	<b>5.30.290</b>	<b>Motorbus—Completion of trip.</b>
<b>5.30.060</b>	<b>Ambulance identification emblem.</b>	<b>5.30.300</b>	<b>Motorbus—Change in route.</b>
<b>5.30.070</b>	<b>Suspension and revocation of owner's permit to operate public motor vehicle.</b>	<b>5.30.310</b>	<b>Motorbus lights.</b>
<b>5.30.080</b>	<b>Driver's permit to operate a public motor vehicle.</b>	<b>5.30.320</b>	<b>Motorbus stops.</b>
<b>5.30.090</b>	<b>Driver's permit—Procedure and requirements.</b>	<b>5.30.330</b>	<b>Motorbus, railroad crossing.</b>
<b>5.30.100</b>	<b>Temporary driver's permit.</b>	<b>5.30.340</b>	<b>Emergency permits.</b>
<b>5.30.110</b>	<b>Notice of change of driver's address.</b>	<b>5.30.350</b>	<b>Smoking in public motor vehicles.</b>
<b>5.30.120</b>	<b>Suspension and revocation of driver's permit.</b>	<b>5.30.360</b>	<b>Additional vehicles.</b>
<b>5.30.130</b>	<b>No motorbus in certain area.</b>	<b>5.30.370</b>	<b>Maximum load.</b>
<b>5.30.140</b>	<b>Motor vehicle liability policy required.</b>	<b>5.30.380</b>	<b>Safety features—Motorbus signs.</b>
<b>5.30.150</b>	<b>Condition of motor vehicle liability policy amounts.</b>	<b>5.30.390</b>	<b>Daily operation.</b>
<b>5.30.160</b>	<b>Motor vehicle liability insurance—Cancellations—Continuing liability.</b>	<b>5.30.400</b>	<b>Motorbus extensions of street railroads.</b>
<b>5.30.170</b>	<b>Surplus lines insurance—Certificate.</b>	<b>5.30.410</b>	<b>Increase in number of buses operated.</b>
<b>5.30.180</b>	<b>Driver's identification.</b>	<b>5.30.420</b>	<b>Soliciting patronage.</b>
<b>5.30.190</b>	<b>Owner's identification and rates to be displayed in vehicle.</b>	<b>5.30.430</b>	<b>Livery stables.</b>
<b>5.30.200</b>	<b>Public motor vehicle stands.</b>	<b>5.30.440</b>	<b>Investigation by Health Officer.</b>
<b>5.30.210</b>	<b>Unattended vehicles in street stands prohibited.</b>	<b>5.30.450</b>	<b>Vehicles to be used as ambulances.</b>
		<b>5.30.010</b>	<b>Definitions.</b>
			For the purposes of this chapter certain words and phrases are defined, and certain provisions shall be construed, as herein set out, unless it shall be apparent from their context that they have a different meaning:
			"Driver" means any person in charge of or operating any public motor vehicle, as defined, either as agent, employee or otherwise, under the direction of the owner, as defined in this section.
			"Limousine" means a closed motor-propelled passenger-carrying vehicle, of private appearance (ex-

cept as to license plates), not equipped with a taximeter, designed to accommodate a minimum of seven persons, inclusive of the driver, and used for the transportation of persons for hire over and along the public streets, not over a fixed and defined route but, as to route and destination, under the direction of the passenger or person hiring such limousine, the charges for use of which are based upon rates per mile, per trip, per hour, per day, per week, or per month.

“Motorbus” means an automobile or other auto-motor-propelled vehicle used in the transportation of passengers for hire over the public streets of the city of Oakland and over a defined route and upon a fixed schedule excepting motorbus continuations of street railway lines and/or a part of a street railway system, and auto stages plying between the city of Oakland and other cities. The term shall include motorbuses used by airlines for transportation of their patrons.

“Motorcycle escort service” means the furnishing of a motorcycle and rider to lead or escort any funeral cortege or other motor procession for compensation or hire. Wherever the word “driver” is used in this chapter relative to public motor vehicles, it shall be deemed to also refer to a rider of a motorcycle in such escort service.

“Owner” means any person, firm or corporation having proprietary control of, or right to proprietary control of, any public motor vehicle as defined in this chapter.

“Private ambulance” means a vehicle for hire to move a sick or injured person.

“Public motor vehicle” means any “limousine,” “sightseeing bus,” “motorbus,” any vehicle used in a “motorcycle escort service” as defined in this chapter, or any “private ambulance,” other than a private ambulance operating in the city solely pursuant to a contract with the county of Alameda to provide emergency ambulance services.

“Sightseeing bus” means an automobile or other auto-motor-propelled vehicle used in the transportation of passengers for hire over the public streets of the city of Oakland and adjacent highways, leading to scenic, historic, educational, architectural and

other places of interest, in order that the passengers may view the same. Sightseeing buses need not run over a defined route or upon a fixed schedule, but must have an established rate of fare which shall cover the entire trip. (Prior code §§ 5-14.01, 5-14.01(b), 5-14.01(d)—5-14.01(j))

#### **5.30.020      Owner’s permit to operate public motor vehicle.**

It is unlawful to operate any public motor vehicle in the city unless the owner thereof shall apply for, and obtain, a permit so to do, which permit shall be applied for, granted and in existence, all in compliance with the provisions of Chapter 5.02. The application for such owner’s permit shall set forth, in addition to the requirements specified in Section 5.02.020, the number of vehicles proposed and a complete description of the vehicles proposed to be operated. In addition thereto, every application for an owner’s permit to operate a motorbus shall set forth, in full, the proposed routes and schedules. The contents of such notice in addition to those specified in Section 5.02.050, shall include a statement of the kind and number of the vehicles to be operated and the nature of the proposed operations. The investigating official referred to in Section 5.02.030, to whom the application shall be referred, shall be the Chief of Police. (Prior code § 5-14.02)

#### **5.30.030      Notice of hearing on application.**

In addition to the notice required in Section 5.30.020, the City Clerk shall give a written notice of the time and place of hearing to all persons holding valid permits of the class requested by the applicant, at least three days before the date of such hearing. (Prior code § 5-14.021)

#### **5.30.040      Action on application for owner’s permit to operate public motor vehicle.**

In addition to the grounds set forth in Section 5.02.060 upon which an application for an owner’s permit may be denied, the Police Department shall deny the same if it shall appear to his or her satisfaction that such vehicle proposed to be operated is

## **5.30.040**

inadequate or unsafe; that the applicant has been convicted of a felony or the violation of any narcotics law or of any penal law involving moral turpitude; that the applicant's proposed color scheme, name, monogram, insignia, uniform or cap will be in conflict with, or imitate, any color scheme, name, monogram, insignia, uniform or cap used by any other person operating a public motor vehicle in such a manner as to be misleading or tend to deceive or defraud the public; that in case of an application to operate a motorbus, the proposed schedule is inadequate or that the proposed route is incompatible with expedient traffic regulations. (Prior code § 5-14.03)

### **5.30.050      Renewal of owner's permit.**

Every owner's permit issued pursuant to Section 5.30.040 shall expire one year after date of issuance, or renewal, unless the same is renewed for an additional period of one year by the Police Department. Application for such renewal shall be made in conformity with, and shall contain such information as may be required by, rules prescribed by the Chief of Police. (Prior code § 5-14.031)

### **5.30.060      Ambulance identification emblem.**

It is unlawful to operate any ambulance in the city unless there is displayed within the vehicle an Identification Emblem issued by the Chief of Police. Such emblem shall be four inches by four inches, mounted and facing forward from the dashboard of the vehicle in a position visible through the windshield of the passenger side of the vehicle. The identification emblem shall set forth the name of the permittee, the name of the company under which the vehicle is operating, the year, make, license number, vehicle identification number, assigned fleet vehicle number, city permit number and permit expiration date.

The owner of an ambulance shall obtain one identification emblem issued by the Police Department for each said public motor vehicle to be operated in the city, when, to the satisfaction of the Chief of Police, said owner is in possession of a valid city permit for each said public motor vehicle,

and the vehicle meets such inspection standards as the Chief of Police may require. Identification emblems shall be renewed annually preceding the expiration date of the permit. Ambulances shall not be operated for hire until such time as all of the aforementioned requirements have been met. (Prior code § 5-14.032)

### **5.30.070      Suspension and revocation of owner's permit to operate public motor vehicle.**

In addition to the grounds set forth in Section 5.02.080 upon which the City Manager may revoke or suspend any owner's permit to operate a public motor vehicle, the City Manager shall have the power to so suspend or revoke the same for a violation of any of the provisions of this code or any ordinance relating to traffic or use of streets, or for a failure to pay any judgment for damages arising from the unlawful or negligent operation of the public motor vehicle for which the permit was issued. (Prior code § 5-14.04)

### **5.30.080      Driver's permit to operate a public motor vehicle.**

It is unlawful for any driver to operate any public motor vehicle in the city unless there exists a valid permit so to do as herein provided. Application for such driver's permit shall be made to the Chief of Police, shall be in writing and in duplicate, and the original thereof shall be duly acknowledged before some person lawfully authorized to administer oaths. Such original shall be forthwith transmitted by the Chief of Police to the City Clerk. Said application shall set forth the name, age and address of the applicant, his or her past experience in operating automobiles, the names and addresses of his or her employers during the preceding period of three years, whether or not a chauffeur's license issued to him or her by the state of California or any state or governmental agency has ever been revoked, the name and address of the owner by whom he or she is to be employed as a driver (which said owner shall endorse the said application), and such addi-

tional information as the Chief of Police may require. (Prior code § 5-14.05)

#### **5.30.090      Driver's permit—Procedure and requirements.**

Upon application for a driver's permit and before it shall be issued, the driver, whether the owner or otherwise, must evidence a proficient knowledge of the traffic laws of the city of Oakland and of the state of California, and demonstrate his or her ability to operate a public motor vehicle, all to the satisfaction of the Chief of Police. Upon satisfying the foregoing requirements, said driver shall be fingerprinted by, and his or her record filed in, the Police Department Bureau of Identification. Said driver shall also file with his or her application two recent photographs (size one and one-half inch by one and one-half inch), one to be filed with his or her application and one to be permanently attached to his or her driver's permit when issued, which permit shall be posted in a place conspicuous from the passengers' compartment of the public motor vehicle while said driver is operating same. Every driver's permit issued hereunder shall set forth the name of the owner for which said driver is authorized to operate a public motor vehicle, and shall be valid only so long as he or she continues in the employ of such owner. Upon the termination of such employment, the said driver shall forthwith surrender his or her driver's permit to the Chief of Police. No such driver's permit shall be granted to any person under the age of twenty-one (21) years. Such driver's permit may be denied upon substantial evidence of facts of either physical or moral deficiencies of the applicant which, in the sound discretion of the Chief of Police, would render such applicant not a competent person to operate a public motor vehicle.

No such driver's permit issued hereunder shall be transferable in any event. (Prior code § 5-14.06)

#### **5.30.100      Temporary driver's permit.**

The Chief of Police may, in his or her discretion, grant a temporary permit to drive or operate any public motor vehicle pending final action on any

application for a permanent driver's permit as in this chapter provided for, but no such temporary permit may be issued to any person who does not have a chauffeur's license issued by the state of California. Said temporary permit shall authorize the holder thereof to drive any such vehicle for a period of thirty (30) days when the holder thereof shall have such temporary permit in his or her immediate possession. (Prior code § 5-14.062)

#### **5.30.110      Notice of change of driver's address.**

Every person holding a public motor vehicle driver's permit shall at all times keep the Chief of Police notified of his or her residential address. He or she shall notify the Chief of Police, in writing, of any change in said address within ten days after such change is made. (Prior code § 5-14.063)

#### **5.30.120      Suspension and revocation of driver's permit.**

The City Manager and the Chief of Police, and either of them, shall have the power to revoke or suspend any driver's permit issued hereunder in the event the holder thereof shall be found guilty of a violation of any provisions of this chapter or shall be found guilty of reckless driving, or for the violation of any other provisions of this code or other law; which violation, in the sound discretion of said official, shall be deemed sufficient evidence of the fact that said driver is not a competent person to operate a public motor vehicle. Such revocation by the Chief of Police, together with the reason therefor, shall be forthwith reported to the City Manager.

In the event of such revocation or suspension of a driver's permit, such certificate as may be issued in connection therewith shall be, by the holder thereof, forthwith surrendered to the Chief of Police. (Prior code § 5-14.07)

#### **5.30.130      No motorbus in certain area.**

In order that the safety of the public may be adequately protected, and to relieve the congested condition of the street traffic now existing, no permit for the operation of any motorbus as such shall

### **5.30.130**

hereafter be granted under the provisions of this chapter upon any of the streets of the city within the following described area:

Commencing at the point of intersection of the north line of Seventh Street with the east line of Clay Street, thence running easterly along the northerly line of Seventh Street to its intersection with the east line of Webster Street, thence northerly along the east line of Webster Street to its intersection with the south line of Twentieth Street, thence westerly along the south line of Twentieth Street to its intersection with the easterly line of San Pablo Avenue; thence southeasterly along the easterly line of San Pablo Avenue to its intersection with the east line of Clay Street produced; thence southerly along said easterly line of Clay Street to its intersection with the north line of Seventh Street, being the point of commencement; provided, however, that the City Manager may, on any public occasion or in case of any public emergency or necessity, and upon oral or written application, grant to holders of permits issued under the provisions of this chapter special permits for such public occasion, or during such public emergency or necessity to operate upon or use any or all of the streets within the area hereinabove described in connection with the route or routes described in the application upon which such permit was issued. (Prior code § 5-14.09)

### **5.30.140      Motor vehicle liability policy required.**

It is unlawful for any owner to drive or operate, or cause or permit to be driven or operated, any public motor vehicle in the city unless such owner shall have placed on file with the City Clerk a written certificate or certificates of a responsible and solvent corporation holding a certificate of authority to do business in the state of California, or by an authorized surplus lines broker that there has been issued to or for the benefit of the owner, a motor vehicle liability policy or policies which at the date of said certificate or certificates are in full force and effect, and designating therein that any and all public motor vehicles which may be driven or operated under any permit granted to such owner under the

provisions of this chapter are or will be covered under said policy or policies. (Prior code § 5-14.10)

### **5.30.150      Condition of motor vehicle liability policy amounts.**

The motor vehicle liability policy required under the provisions of Section 5.30.140 shall insure the owner, as defined in this chapter, or any other person using or responsible for the use of any such vehicle, with the consent, expressed or implied, of such owner, against loss from liability imposed upon such owner by law for injury to, or death of, any person, or damage to property growing out of maintenance, operation or ownership of any public motor vehicle, to the amount or limit of one hundred thousand dollars (\$100,000.00) on account of injury to or death of any one person, of three hundred thousand dollars (\$300,000.00) on account of any one accident resulting in injury to or death of more than one person, and of fifty thousand dollars (\$50,000.00) for damage to property of others, resulting from any one accident. (Prior code § 5-14.11)

### **5.30.160      Motor vehicle liability insurance—Cancellations—Continuing liability.**

Every certificate required under the provisions of Section 5.30.140 shall certify that the motor vehicle liability policy or policies therein cited shall not be cancelled except upon ten days' prior written notice thereof to the City Manager. Said motor vehicle liability insurance shall be a continuing liability up to the full amount thereof notwithstanding any recovery thereon, and said certificates thereof shall so certify. All motor vehicle liability policies and all certificates thereof shall be subject to the approval of the City Manager in any and all matters and if, at any time in the judgment of the City Manager, said motor liability policies are not sufficient for any cause, said Manager may require the owner of such public motor vehicle who filed the same to replace said motor vehicle policies within ten days with other policies in accordance with the provisions of this chapter. If said owner fails to replace said mo-

tor vehicle policies within said ten-day period with good and sufficient policies as aforesaid, then at the termination of said period the owner's permit issued hereunder shall be by such failure automatically suspended until such time as said requirement is complied with, and the Chief of Police shall enforce such suspension. Such certificate of insurance shall be presented to the City Attorney and approved by him or her as to form. (Prior code § 5-14.12)

#### **5.30.170     Surplus lines insurance— Certificate.**

If the insurance company issuing such policy of insurance does not hold a certificate of authority issued by the Insurance Commissioner of the state of California to do business in the state of California, such certificate shall have endorsed thereon an endorsement executed by the company issuing such policy, which endorsement shall be substantially as follows:

It is agreed that in the event of a dispute as to the validity of any claim made by the assured under this certificate of insurance, or in the event of any suit instituted by the assured against the company upon this contract, the company hereon will submit to the jurisdiction of the courts of the State of California, and will comply with all legal requirements necessary to give such courts jurisdiction; and for this purpose said company hereby appoints \_\_\_\_\_ at Street, \_\_\_\_\_, California, its agent for the purpose of service of process; and in any suit instituted by the assured against the company upon this contract, the company will abide by the final decision of the courts of said State and settle accordingly.

(Prior code § 5-14.121)

#### **5.30.180     Driver's identification.**

Every operator of a sightseeing bus, while in the course of his or her employment and while outside his or her sightseeing bus, shall wear a distinctive hat or cap with an appropriate insignia in plain sight identifying his or her employment with the name or

fictitious company name under which the owner operates. (Prior code § 5-14.141)

#### **5.30.190     Owner's identification and rates to be displayed in vehicle.**

Every limousine shall have conspicuously displayed in full view of the passenger or passengers a card not less than two by four inches in size which shall have stated thereon the name of the owner, or the fictitious name under which the owner operates, together with the business address and telephone number of said business, and the owner's identifying number of such vehicle, and also the rates of fare to be charged for use of such vehicle. (Prior code § 5-14.151)

#### **5.30.200     Public motor vehicle stands.**

The Traffic Engineer may, upon the written application of any public motor vehicle owner, permit such owner to allow any vehicle operated by him or her to stand at certain places designated for said owner while awaiting employment. Such application shall state the number and kind of vehicles for which the permit is sought and the proposed location of such stands. Such application must be accompanied by the written consent of the person primarily affected by reason of the fact that such vehicle shall stand in front of the premises either owned or occupied by him or her or in which he or she is otherwise interested. Not more than three such vehicles shall be permitted to stand upon either side of a street within the limits of any one block. No permit shall be issued for any stand to be located within seventy-five (75) feet of another such stand on the same side of the street, nor shall more than two stands be granted to any owner for each licensed public motor vehicle. No owner shall permit any vehicle operated by him or her, and no driver shall cause any such vehicle to stand while awaiting employment at any place other than a stand for which a permit has been granted to him or her as herein provided; and not more than one such vehicle shall be so permitted or caused to stand in any one stand at any time; except, however, that

## **5.30.200**

where in the discretion of the City Manager, public conveniences so require, two such vehicles shall be permitted or caused to stand in any one stand.

It is unlawful for the driver of any vehicle, other than the driver of a public vehicle for which the stand permit has been issued, to park or leave standing such vehicle in any public motor vehicle stand. All such stands shall be distinctly identified as such. (Prior code § 5-14.16)

### **5.30.210 Unattended vehicles in street stands prohibited.**

No owner shall permit any public motor vehicle operated by him or her, and no driver shall cause any such vehicle, to be parked unattended in any street stand for a period of time exceeding five minutes. (Prior code § 5-14.161)

### **5.30.220 Limousine shall operate from fixed location.**

Every owner of a limousine shall operate from a fixed location, other than a public street. It is unlawful for any owner of a limousine to cruise the public streets for the purpose of soliciting fares. (Prior code § 5-14.162)

### **5.30.230 Exclusive use by passengers—Window blinds prohibited.**

When a limousine is engaged, the occupants shall have the exclusive right to the full and free use of the passenger compartment, and it is unlawful for the owner or driver of such vehicle to solicit or carry passengers contrary to such right; provided, however, that whenever the Chief of Police finds that public necessity temporarily requires the grouping of passengers in limousines, he or she may issue a special written permit, limited in time, which permit shall specifically set forth the rules and regulations under which such passenger grouping is permitted. It is unlawful for the driver of any limousine to cause or permit any shade or blind to be drawn over any window of such vehicle while the same is occupied. (Prior code § 5-14.17)

### **5.30.240 Driver to use direct route.**

The driver of a limousine employed to carry passengers to a definite point shall take the most direct route possible that will carry the passengers safely, lawfully and expeditiously to said destination. (Prior code § 5-14.171)

### **5.30.250 Receipt for fare.**

The driver of any public motor vehicle, other than a motorbus, shall give a receipt, upon the request of any passenger, for the fare paid by such passenger. (Prior code § 5-14.18)

### **5.30.260 Refusal to pay fare.**

It is unlawful for any person to hire a limousine or to enter and obtain a ride in the same, and to thereafter depart from such limousine without paying to the driver the legal fare. (Prior code § 5-14.181)

### **5.30.270 Keeping of waybills required.**

The driver of every limousine shall keep a separate waybill of every service rendered by such driver, which waybill shall include the following information: (A) location where passengers entered vehicle; (B) time of entry; (C) number of passengers; (D) location where passengers were discharged; and (E) amount of fare collected. The owner of every limousine shall keep said waybills in his or her office files for a period of ninety (90) days after the date of service rendered, and the same shall at all convenient times be open to examination by any authorized representative of the Chief of Police. The falsifying of any waybill by an owner or by a driver shall be grounds for revocation of his or her permit. (Prior code § 5-14.183)

### **5.30.280 Motorbus service to general public.**

No driver of any motorbus in the city shall at any time, unless said vehicle is filled to legal capacity, refuse to carry any person offering himself or herself to be carried, and tendering the fare for the same, to any place in the route of said vehicle; provided, however, that such driver shall refuse

transportation to any person who is in an intoxicated condition or who is conducting himself or herself in a boisterous or otherwise unruly manner. (Prior code § 5-14.19)

#### **5.30.290 Motorbus—Completion of trip.**

It is unlawful for any driver of any motorbus in the city, who has received a passenger for any announced or agreed trip, except for reasons beyond the control of the owner or driver, to fail to complete said trip with all reasonable dispatch and without any extra payment of fare, or to fail, refuse or neglect to operate such motorbus between the termini and over the entire route specified in the permit granted to so operate. (Prior code § 5-14.21)

#### **5.30.300 Motorbus—Change in route.**

No owner or driver of any motorbus operated in the city shall at any time change or alter the route of same except upon permission duly granted by the City Manager after application is made therefor. (Prior code § 5-14.22)

#### **5.30.310 Motorbus lights.**

No motorbus operated in the city other than a motorbus used by an airline for transportation of its patrons shall be operated in the nighttime unless the passengers' compartment thereof be kept continuously lighted. (Prior code § 5-14.23)

#### **5.30.320 Motorbus stops.**

It is unlawful for any motorbus operated in the city to receive or discharge passengers within any intersection of streets and in all cases such reception and discharge of passengers shall be at a point as near the curb as may be practicable, and shall be through and from the side of such motorbus nearest the street curb and on the right-hand side thereof. The places of receiving and discharging passengers by motorbuses shall be at all times subject to order of the Chief of Police. (Prior code § 5-14.24)

#### **5.30.330 Motorbus, railroad crossing.**

It is unlawful for any person operating a motorbus to permit, cause or allow such vehicle to cross any railroad track at any intersecting street in the city over which railroad trains are operated, without bringing such vehicle to a full stop before crossing said railroad track; it is unlawful for any person operating such motorbus to permit, cause or allow such vehicle to cross any street railroad track at any intersecting street unless such person shall have reduced the speed of such vehicle to not more than five miles per hour while crossing such track; provided, that at any point where a flagperson is stationed, such person operating such motorbus shall not be required to stop unless warned or directed by such flagperson so to do; and provided, further, that at any point where a traffic officer is stationed, such person operating such motorbus shall comply with the direction of such traffic officer. (Prior code § 5-14.25)

#### **5.30.340 Emergency permits.**

The City Council may, in case of any public emergency or necessity, waive or modify by ordinance any or all of the requirements of this chapter pertaining to public motor vehicles, and may authorize and direct the City Clerk to issue a temporary permit for the operation of any public motor vehicle over and upon the public streets of the city, without exacting any application fee or license fee therefor, to any person recommended by the Chief of Police, such permit to be revocable at any time, with or without notice, by the Chief of Police or by the City Council. (Prior code § 5-14.26)

#### **5.30.350 Smoking in public motor vehicles.**

It is unlawful for any person to smoke any cigar, pipe or cigarette, or to carry any lighted cigar, pipe or cigarette within any public motor vehicle, except limousines being operated within the city. Nothing in this section shall be deemed to render unlawful smoking within the units of commercial railroads designed for or set aside for smoking by the utility operating such trains. (Prior code § 5-14.261)

## **5.30.360**

### **5.30.360 Additional vehicles.**

Any owner holding a permit to operate one or more public motor vehicles as provided in this chapter who desires to add to the number of such vehicles shall do so only upon obtaining from the Chief of Police, permission therefor, which shall be granted only upon application made in the same manner and under the same proceedings as are required in this chapter in the instance of obtaining the original permit. Any owner holding a permit to operate one or more public motor vehicles as provided in this chapter, who desires to substitute a different vehicle for a vehicle operated under such permit, shall do so only upon obtaining, from the Chief of Police, permission therefor, which shall be granted only upon written application setting forth the particulars of such proposed substitution, and upon otherwise complying with the requirements of this chapter. The Chief of Police shall have the same authority in granting or denying such application for permission to add or substitute vehicles as is hereinbefore in this chapter vested in him or her in the manner of original applications. (Prior code § 5-14.27)

### **5.30.370 Maximum load.**

It is unlawful to drive or operate any public motor vehicle in the city while such vehicle is carrying or sustaining the weight of two or more persons in excess of the seating capacity thereof, according to the statement thereof contained in the application upon which the permit to operate such vehicle was granted, or to permit any passenger to ride upon the running board of such vehicle or to sit upon the fender or dash or doors thereof; provided however, that firefighter of the city may ride free upon any motorbus, or any part thereof, on their way to or from fires along the regular route then being traversed. For the purposes of this section, children in arms shall not be considered as persons. (Prior code § 5-14.28)

### **5.30.380 Safety features—Motorbus signs.**

The safety features and equipment of all public motor vehicles operated under permit issued under the provisions of this chapter shall be at all times

subject to the jurisdiction and orders of the Chief of Police. All motorbuses operated pursuant to permit issued under the provisions of this chapter shall carry on the front of such vehicle a sign, plainly readable by night or by day at a distance of one hundred (100) feet giving the route to be traversed and the termini of said route and the price or fare charged. Such sign shall be subject to the approval of the Chief of Police. (Prior code § 5-14.29)

### **5.30.390 Daily operation.**

Every person holding a permit under the provisions of this chapter relative to public motor vehicles shall regularly and daily operate his or her or its licensed public motor vehicle business during each day of the license year to the extent reasonably necessary to meet the public demand for such service. Upon abandonment of such public motor vehicle service for a period of ten consecutive days by an owner, the City Manager may conduct a hearing upon five days' notice to the holder of said permit, and, unless good and sufficient cause for such abandonment is evidenced, revoke the said permit granted under the terms of this chapter. (Prior code § 5-14.30)

### **5.30.400 Motorbus extensions of street railroads.**

The provisions hereinbefore in this chapter set forth in Sections 5.30.010 to 5.30.090, both inclusive, shall not apply to motorbuses operated upon the streets of the city as an extension to, or in connection with, a street railroad. It is unlawful for any person to operate, or cause to permit to be operated, any such motorbus extension to a street railroad unless there exists a valid permit therefor, granted and existing in compliance with the provisions of Chapter 5.02. The application for such permit shall set forth, in addition to the requirements specified in Section 5.02.020, the fact that the applicant is the owner of a street railroad in the city, and that he or she will operate such motorbus or buses in connection with such street railroad and under the same management, responsibility and control as such street railroad; the route or routes, including the

streets proposed to be traversed and the termini thereof; the minimum schedule to be observed, showing minimum times of departure from said termini; the transfer points, or points at which connection is to be made with said street railroad; the number of motorbuses proposed to be operated and the type, horsepower and seating capacity of each of said motorbuses; the age of the applicant if the same is a natural person.

The investigating official referred to in Section 5.02.030, to whom the application shall be referred, shall be the Chief of Police.

In addition to the grounds set forth in Section 5.02.060, the granting of such permit may be denied if it is the opinion of the City Manager that the public convenience and necessity do not warrant the operation of such motorbus or buses in accordance with said application.

Such permit, if granted, shall remain in full force and effect during the life of the franchise of the street railroad with which said bus line connects, or as to which it is an extension thereof, or is operated in connection therewith, but such permit and the service rendered thereunder may be revoked and abandoned upon the application of the holder thereof with the consent of the City Council. (Prior code § 5-14.31)

#### **5.30.410      Increase in number of buses operated.**

Any provision of this chapter set forth to the contrary notwithstanding, the holder of any permit provided for under Section 5.30.400, may from time to time, as in his or her judgment may be proper, increase the number of buses operated upon any route concerning which a permit has been granted, and may increase the schedule of time of departure less than the minimum schedule set forth in the application as in said Section 5.30.400 set out. (Prior code § 5-14.32)

#### **5.30.420      Soliciting patronage.**

It is unlawful for any person while soliciting or endeavoring to secure passengers, or freight or other custom for any public motor vehicle, or any vehicle

for hire whatsoever, or any express wagon, or for any hotel, lodging house or boarding house, to be on any railway depot or passenger platform, pavement or walk provided for the use of railroad passengers, or between such platform, pavement or walk and any railroad train standing in front of such depot, or between any railway tracks over which passengers usually pass to or from such train.

No person shall solicit patronage for any hotel, vehicle or other business upon any railroad train, steamboat or public carrier or vehicle whatsoever within the corporate limits of the city without first having obtained permission so to do from the owner, charterer, lessee, or managing agent of such owner, charterer or lessee, of such railroad train, steamboat or other vehicle. (Prior code § 5-14.34)

#### **5.30.430      Livery stables.**

It is unlawful for any person to establish, maintain, or cause or permit to be established or maintained, any building or premises as a public livery stable unless there exists a valid permit therefor, granted and existing in accordance with the provisions of Chapter 5.02. Public notice shall be given as provided in Section 5.02.050, and the investigating official referred to in Section 5.02.030, to whom the application shall be referred, shall be the Health Officer. The granting of such permit shall also be subject to the approval of the Fire Marshal. (Prior code § 5-14.35)

#### **5.30.440      Investigation by Health Officer.**

In addition to the requirements of Section 5.30.020, no application for an owner's permit to operate a private ambulance shall be granted until it has been referred to, and approved by, the Health Officer. It shall be the authority and duty of the Health Officer to promulgate and enforce rules and regulations governing the premises from which the private ambulance is to be operated, the condition of the vehicles, the equipment to be used therein, and the ambulance personnel, as changed from time to time, for the purpose of determining the fitness and suitability thereof from a health, safety and sanitary viewpoint. Findings by the Health Officer

**5.30.440**

that unsanitary or other conditions detrimental to health are found to exist in any private ambulance or private ambulance operation shall be grounds for denial, suspension or revocation of the owner's or driver's permit, in accordance with the provisions of Sections 5.02.080 and 5.30.040. (Prior code § 5-14.36)

**5.30.450      Vehicles to be used as ambulances.**

- A. No private ambulance shall be so decorated as to convey to the public the idea that it is an emergency hospital ambulance.
- B. The term "ambulance" shall not be used or displayed on any vehicle or conveyance, public or private, unless used to move a sick or injured person.
- C. No vehicle or conveyance which will in any manner be used or shall be used for the removal or conveyance of the dead shall be used as an ambulance.
- D. Any permit holder may adopt a color or combination of color scheme which may be exclusively allotted to such holder by the Chief of Police.  
(Prior code § 5-14.37)

## Chapter 5.32

### FRANCHISES

**Sections:**

- |                 |  |
|-----------------|--|
| <b>5.32.010</b> | <b>Franchises, permits and privileges, statement of receipts—To whom applies.</b>            |
| <b>5.32.020</b> | <b>Franchises, permits and privileges—Statement of receipts required.</b>                    |
| <b>5.32.030</b> | <b>City treasurer to supply forms for statement of receipts.</b>                             |
| <b>5.32.040</b> | <b>Statement of receipts submitted to Auditor and Treasurer.</b>                             |
| <b>5.32.050</b> | <b>Franchises, permits and privileges—Time of paying percentages—Examination by Auditor.</b> |
| <b>5.32.060</b> | <b>Franchises, permits and privileges—Treasurer's report of failure to comply.</b>           |
| <b>5.32.010</b> | <b>Franchises, permits and privileges, statement of receipts—To whom applies.</b>            |

The provisions of this chapter shall apply to every person operating any business under any franchise, permit or privilege granted by the city wherein there is required to be paid to said city a stipulated percentage of gross receipts, except a franchise permit, or privilege wherein a definite date is set for the making of such payments. (Prior code § 5-16.01)

- 5.32.020      Franchises, permits and privileges—Statement of receipts required.**

Every person referred to in Section 5.32.010 as subject to the provisions of this chapter operating any business under a franchise, permit, or privilege granted by the city wherein there is required to be paid annually to said city a stipulated percentage of gross receipts shall file annually in the Office of the City Auditor a verified statement in writing of gross

receipts arising from all business done by said person under said franchise, permit or privilege within the city for the fiscal year ending on the thirtieth day of June preceding the filing of such statement; and every person referred to in Section 5.32.010 as subject to the provisions of this chapter operating any business under a franchise, permit or privilege granted by the city where there is required to be paid semiannually to said city a stipulated percentage of gross receipts shall file semiannually in the Office of the City Auditor a verified statement in writing of gross receipts arising from all the business done by said person under said franchise, permit or privilege within the city during the period of six months ending on the thirtieth day of June and the thirty-first day of December respectively preceding the filing of such statement. (Prior code § 5-16.02)

**5.32.030      City Treasurer to supply forms for statement of receipts.**

On or before the first day of July each year, the City Treasurer shall furnish and forward a copy of the standard form of verified statement of gross receipts to each person referred to in Section 5.32.010 as subject to the provisions of this chapter, operating any business under a franchise, permit or privilege requiring the payment of a stipulated percentage of gross receipts under such franchise, permit or privilege; and on or before the first day of January of each year the City Treasurer shall likewise furnish and forward a copy of the standard form of verified statement of gross receipts to each such person subject to the provisions of this chapter operating any business under a franchise, permit, or privilege requiring the payment semi-annually or a stipulated percentage of gross receipts under such franchise, permit or privilege. (Prior code § 5-16.03)

**5.32.040      Statement of receipts submitted to Auditor and Treasurer.**

Such verified statement hereinabove in Sections 5.32.020 and 5.32.030 referred to shall be submitted to the Auditor in the form and detail of the standard form of verified statement of gross receipts fur-

**5.32.040**

nished by the City Treasurer. All statements filed annually shall be filed in the Office of the City Auditor on or before the first day of August, each year, and all statements filed semiannually shall be filed in the Office of the City Auditor on or before the first day of February and the first day of August respectively of each year. Every such statement shall be verified by the affidavit of the person, or of a member of the firm, or of the president, vice-president, or general manager of the corporation operating under the franchise to which such statement refers.

A copy of each verified statement shall be filed in the Office of the City Treasurer at the time of the filing of the original statement with the City Auditor. (Prior code § 5-16.04)

**5.32.050      Franchises, permits and  
privileges—Time of paying  
percentages—Examination by  
Auditor.**

The stipulation percentage of gross receipts provided to be paid for the use and enjoyment of any such franchise, permit or privilege of Section 5.32.010 referred to shall be paid to the City Treasurer at the time of filing the verified statement provided for in Section 5.32.040.

It shall be the duty of the Auditor to forthwith examine every such verified statement and ascertain the amount due and payable to said city from the person filing the same. The Auditor may for such purpose exercise the powers conferred upon him or her by the Charter of the city of Oakland, as he or she may deem necessary. In case the Auditor shall find the amount of percentage of gross receipts shown by such report, and paid to the City Treasurer at the time of filing the same, to be the full and correct amount due and payable to the City, he or she shall certify the fact to the city Treasurer, who shall thereupon notify the person making the payment of such finding and of the true and correct amount, as ascertained by the Auditor as aforesaid, and demand payment of the full and correct amount. The balance of said amount shall be forthwith paid to said City Treasurer by said person and if it be not

so paid within ten days after said demand, the City Treasurer shall report such default in payment to the Mayor. (Amended during 1997 codification; prior code § 5-16.05)

**5.32.060      Franchises, permits and  
privileges—Treasurer's report of  
failure to comply.**

On or before the fifteenth day of February and the fifteenth day of August of each year, it shall be the duty of the City Treasurer to file a semiannual statement with the Mayor, setting forth the names of all persons or corporations who or which have failed to comply with any of the provisions of this chapter relative to franchises, permits and privileges. (Prior code § 5-16.06)

## Chapter 5.33

### HOME MORTGAGE LENDING

**Sections:**

- 5.33.010      Purpose.**
- 5.33.020      Findings.**
- 5.33.030      Definitions.**
- 5.33.040      Prohibited terms and practices for home loans in general.**
- 5.33.050      Prohibited terms and practices for high-cost home loans.**
- 5.33.060      Corrections.**
- 5.33.070      Investments and loan assignments.**
- 5.33.080      Civil enforcement and remedies.**
- 5.33.090      Limitations on actions.**
- 5.33.100      Criminal liability.**
- 5.33.110      Nonwaiverability.**
- 5.33.120      Applicability.**

**5.33.010      Purpose.**

The purpose of this chapter is to prohibit certain predatory lending practices for home loans made in the city. (Ord. 12361 § 2 (part), 2001)

**5.33.020      Findings.**

The City Council finds and determines the following:

A. The city as a home rule charter city has the right and power to make and enforce all laws and regulations that are its municipal affair, including the power to regulate business practices to promote the health, morals, safety, property, good order, well being, general prosperity or general welfare of Oakland residents.

B. Predatory lending on home loans is a widespread, significant and growing problem in the city, and threatens the well being and general prosperity of Oakland residents and the city as a whole. Predatory lending practices are a significant economic drain on lower-income families and communities in Oakland. Predatory lending practices also lead to conditions of blight and the loss of

affordable housing in Oakland, increase displacement and economic dislocation, reduce property values, erode the tax base, and increase the strain on city services.

C. Because of socioeconomic and market conditions in Oakland which give rise to predatory lending practices, predatory lending is a municipal affair and a matter of unique local interest and concern for the city.

D. Neither state law nor federal law adequately address the predatory lending problem in Oakland.

E. The regulation of home mortgage lending practices by the city to prevent predatory lending, by prohibiting certain lending practices and requiring independent counseling on high-cost home loans, serves the public interest, is necessary to protect the health, morals, safety, property, general welfare, well being and prosperity of the residents of Oakland, and is within the home rule powers and police powers of the city. (Ord. 12361 § 2 (part), 2001)

**5.33.030      Definitions.**

As used in this chapter, the following terms have the following meanings:

“Affiliate” means any business entity that controls, is controlled by, or is under common control with, another entity, as set forth in the federal Bank Holding Company Act of 1956 (12 U.S.C. §1841, et seq.), as such statute may be amended from time to time, and includes any successors in interest or alter egos to the business entity.

“Annual percentage rate” means the annual percentage rate for a home loan calculated according to the provisions of the federal Truth in Lending Act (15 U.S.C. §1601, et seq.) and its implementing regulations, as such statute or regulations may be amended from time to time.

“Borrower” means singularly or collectively any natural person or persons with an obligation to repay a home loan, including without limitation a coborrower, cosigner or guarantor.

“Business entity” means any individual, domestic corporation, foreign corporation, association, syndicate, joint stock company, partnership, joint

venture, limited liability company, sole proprietorship or unincorporated association engaged in a business or commercial enterprise.

“City” means the city of Oakland.

“First mortgage” means a home loan secured by a deed of trust or mortgage on real property if the deed of trust or mortgage is senior in priority to any other deed of trust or mortgage on the real property.

“High-cost home loan” means a home loan that meets either of the following thresholds:

A. The annual percentage rate of the loan equals or exceeds:

1. By more than three percentage points, if the home loan is a first mortgage; or
2. By more than five percentage points, if the home loan is a junior mortgage, the rate set by the required net yield for a ninety (90) day standard mandatory delivery commitment for a first mortgage loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Association, whichever is greater, as such yield is reported on the fifteenth day of the month immediately preceding the month in which the application for the home loan is received by the lender; or

B. the total points and fees on the loan equal or exceed either five percent of the total loan amount or eight hundred dollars (\$800.00), whichever amount is greater.

If the terms of the home loan provide for an initial or introductory period during which the annual percentage rate is lower than that which will apply after the end of such initial or introductory period, then the annual percentage rate to be considered for purposes of this definition is the rate which applies after the initial or introductory period. If the terms of the home loan provide for an annual percentage rate that varies in accordance with an index plus a margin, then the annual percentage rate to be considered for purposes of this definition is the rate that is in effect on the date of loan consummation. In the case of a home loan with a regular interest rate that varies in accordance with an index plus a margin, but with an initial or introductory interest

rate established in some other manner, the annual percentage rate to be considered is the rate that would have been in effect on the date of loan consummation were the regular rate determined by the index plus the margin to apply, that is, the fully-indexed rate on the date of loan consummation.

“Home loan” means a loan of money, including without limitation a line of credit or an open-end credit plan, if all of the following apply:

A. The principal amount of the loan does not exceed the current conforming first mortgage loan size limit for a single-family dwelling as established by the Federal National Mortgage Association,

B. The borrower incurred the loan primarily for his or her personal, family, or household uses,

C. The loan is secured in whole or in part by a deed of trust, a mortgage (as defined under California Civil Code §2920 or §2924), or a similar security device or instrument, on real property located within the city,

D. This real property contains or will contain either 1) one to four residential units, or 2) individual residential units of condominiums or cooperatives, and

E. One of these residential units is or will be occupied by the borrower as the borrower’s principal dwelling.

In the case of multiple borrowers, the criteria in subsections (B) and (E) above will be considered satisfied if at least one of the borrowers has met the stated criteria. A “home loan” does not include a reverse mortgage as defined in California Civil Code §1923.

“Junior mortgage” means a home loan secured by a deed of trust or mortgage on real property if the deed of trust or mortgage is junior in priority to another deed of trust or mortgage on the real property.

“Lender” means any person or business entity that extends a home loan or arranges for the extension of a home loan. Notwithstanding the above, a lender does not include a bank chartered under the federal National Bank Act (12 U.S.C. §21, et seq.), a credit union chartered under the Federal Credit Union Act

(12 U.S.C. §1751, et seq.), or a savings and loan association regulated under the federal Home Owners' Loan Act of 1933 (12 U.S.C. §1461, et seq.); however, an affiliate of any such federally chartered or regulated bank, credit union or savings and loan association that extends home loans is considered a lender if the affiliate itself is not a bank, credit union or savings and loan association chartered or regulated under the above-referenced federal statutes.

“Mortgage broker” means any person who functions as intermediary for a fee between the borrower and the lender in the making of a home loan.

“Person” means a natural person or a business entity.

“Points and fees” means the following:

A. All items required to be disclosed under §226.4(a) and §226.4(b) of Title 12 of the Code of Federal Regulations, as amended from time to time, except interest or the time-price differential;

B. All charges for items listed under §226.4(c)(7) of Title 12 of the Code of Federal Regulations, as amended from time to time, but only if the lender receives direct or indirect compensation in connection with the charge or the charge is paid to an affiliate of the lender;

C. All compensation not otherwise specified in this definition paid directly or indirectly to a mortgage broker, including a broker that originates a home loan in its own name through an advance of funds and subsequently assigns the home loan to the person advancing the funds;

D. The premium of any single premium credit life, credit disability, credit unemployment or other life or health insurance; and

E. All prepayment fees or penalties.

Points and fees does not include any of the following:

A. Taxes, filing fees, recording and other charges and fees paid or to be paid to public officials for determining the existence of, or for perfecting, releasing or satisfying a security interest; or

B. Charges paid to a person other than the lender, an affiliate of the lender, a mortgage broker or an

affiliate of a mortgage broker, as follows: fees for flood certification; fees for pest infestation and flood determinations; appraisal fees, fees for inspections performed prior to loan closing; credit report fees; survey fees; attorneys’ fees (if the borrower has the right to select the attorney from an approved list or otherwise); notary fees; escrow charges that are not required to be disclosed under §226.4(a) and §226.4(b) of Title 12 of the Code of Federal Regulations; title insurance premiums; or fire insurance or flood insurance premiums (provided that the conditions in §226.4(d)(2) of Title 12 of the Code of Federal Regulations are met).

“Total loan amount” means the total credit received by the borrower as part of the loan, excluding points and fees. (Ord. 12361 § 2 (part), 2001)

### **5.33.040 Prohibited terms and practices for home loans in general.**

No lender may make a home loan in violation of any of the following prohibited terms or practices:

A. No Excessive Prepayment Penalties. No lender may charge a prepayment penalty on a home loan, unless the home loan is not a high-cost home loan, and the prepayment penalty is only imposed on prepayments within the first three years of the date of the promissory note for the home loan, and then solely as set forth herein and otherwise allowed by state and federal law. Any such prepayment penalty is limited to three percent of the total loan amount during the first year after the date of the note, two percent of the total loan amount during the second year, and one percent of the total loan amount during the third year. Notwithstanding the above, when a borrower refinances a home loan, at no time may a lender charge a prepayment penalty on the home loan being refinanced if the same lender or an affiliate of that lender will be the holder of the note for the new home loan. For purposes of this paragraph, a “prepayment penalty” means any penalty, fee or charge imposed on a borrower by the lender or an affiliate of the lender for paying all or part of the principal of the home loan before the date when the

principal payment is due.

B. No Financing of Credit Insurance. No lender may finance any credit life, credit disability, credit property or credit unemployment insurance, or any other life or health insurance premiums when making a home loan. Insurance premiums not included in the home loan principal and calculated and payable on a monthly basis will not be considered financed by the lender for purposes of this paragraph.

C. No Recommending Default. No lender may recommend or encourage a borrower to default or not to make payment on a home loan or any other debt, when such lender action is in connection with the closing or planned closing of a home loan that refinances all or part of the borrower's debt.

D. No Loans Violating Federal Lending Laws. No lender may make a home loan that violates any applicable provision of the federal Truth in Lending Act, as amended by the Home Ownership and Equity Protection Act of 1994 (15 U.S.C. §1601, et seq.), or any applicable provision of the federal Real Estate Settlement Procedures Act of 1974 (12 U.S.C. §2601, et seq.), or any regulations implementing these statutes, as these statutes and regulations may be amended from time to time. The city intends that any violation of provisions in these laws pertaining to home loans shall give rise to a cause of action under this chapter independent of federal law, and shall entitle the aggrieved party or the City Attorney to pursue any of the rights and remedies set forth in this chapter. (Ord. 12361 § 2 (part), 2001)

#### **5.33.050 Prohibited terms and practices for high-cost home loans.**

No lender may make a high-cost home loan in violation of any of the following prohibited terms or practices:

A. No Lending Without Home Loan Counseling. No lender may make a high-cost home loan without first receiving written certification from an independent housing or credit counselor approved by the United States Department of Housing and Urban Development, the state of California, or the city, that

the borrower either has received counseling on the advisability of the loan transaction and the appropriateness of the loan for the borrower, or has waived the counseling option as provided for in this subsection. A borrower may waive the counseling option by contacting an approved independent housing or credit counselor by personal meeting or live telephone conversation at least three days prior to the closing of the home loan and certifying in writing to the counselor that he or she has elected to waive the counseling option. The counselor shall keep any such certification of waiver on file for at least three years following the certification. A lender is not liable for the content of any advice or counseling an independent counselor gives to the borrower, nor is an independent counselor liable to a lender for the content of any advice or counseling the counselor gives to the borrower.

B. No Lending Without Regard for Repayment Ability. No lender may make a high-cost home loan unless the lender reasonably believes at the time it makes the loan that one or more of the borrowers under the loan will be able to make the scheduled payments on the loan. Such a determination of the lender must be based upon a consideration of the borrower's current and expected income, current obligations, employment status and other financial resources (other than the borrower's equity in the dwelling which secures repayment of the loan). A borrower is presumed to be able to make the scheduled payments to repay the loan if, at the time the loan is made, the borrower's debt-to-income ratio does not exceed fifty (50) percent. If the borrower's debt-to-income ratio exceeds fifty (50) percent, the lender must fully justify the decision to approve the high-cost home loan in a written statement provided to the borrower at loan closing that sets forth specific compensating factors, such as the excellent long-term credit history of the borrower, a demonstrated ability in the past by the borrower to make payments under comparable or greater debt-to-income ratios, conservative use of credit standards, significant liquid assets of the borrower, or other factors that

reasonably justify the approval of the loan. For purposes of this paragraph, "debt" means the scheduled monthly principal and interest payments on all of the borrower's debts, including amounts owed under the home loan as well as other secured or unsecured debts of the borrower, plus payments associated with the dwelling prorated monthly for property taxes and assessments, homeowners insurance premiums, mortgage insurance premiums, and condominium or homeowners association dues or fees, and "income" means the borrower's monthly gross income as verified by the credit application, the borrower's financial statement, a credit report, financial information provided to the lender by or on behalf of the borrower, or any other reasonable means. In the case of a high-cost home loan offering a lower introductory or initial interest rate, the lender's determination of borrower debt must be based on the borrower's monthly payments on said loan at the interest rate following the introductory or initial rate rather than the monthly payments under the introductory rate. The provisions of this paragraph apply only to a high-cost home loan in which all of the borrowers have an income, as reported on the loan application that the lender relied on in making the credit decision, no greater than one hundred twenty (120) percent of the median family income for the Oakland Metropolitan Statistical Area (as determined by the United States Department of Housing and Urban Development), adjusted for family size.

C. No Excessive Financing of Points and Fees. No lender may finance points and fees in excess of either five percent of the total loan amount or eight hundred dollars (\$800.00), whichever amount is greater, when making a high-cost home loan.

D. No Advance Payments. No lender may make a high-cost home loan that includes terms under which more than two periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower.

E. No modification or deferral fees. No lender may charge a borrower any fees or charges to modify, renew, extend, or amend a high-cost home

loan or to defer any payment due under the terms of a high-cost home loan, unless after the modification, renewal, extension or amendment, the home loan is no longer a high-cost home loan and the annual percentage rate on the home loan has decreased by at least two percentage points as a result of the modification, renewal, extension or amendment. The prohibition on such fees or charges shall not apply if the high-cost home loan is in default and the modification, renewal, extension, amendment, or deferral is part of a work-out arrangement.

F. No Prepayment Penalties. No lender may charge a prepayment penalty on a high-cost home loan. For purposes of this paragraph, a "prepayment penalty" means any penalty, fee, or charge imposed on a borrower by the lender or an affiliate of the lender for paying all or part of the principal of the high-cost home loan before the date when the principal payment is due.

G. No Call Provisions. No lender may make a high-cost home loan that includes terms which permit the lender in its discretion to accelerate the indebtedness. This restriction does not apply to terms that provide for the acceleration of repayment of the high-cost home loan upon default or pursuant to a due-on-sale clause.

H. No Increased Interest Rate Upon Default. No lender may make a high cost home loan that includes any provision increasing the interest rate after default or delinquency. This restriction does not apply to interest rate changes for a variable rate home loan otherwise consistent with the provisions of the loan documents, if the change in the interest rate is not triggered by an event of default, delinquency, or acceleration of the indebtedness.

I. No Refinancing Without Borrower Benefit. No lender may make a high-cost home loan if the high-cost home loan pays off all or part of an existing home loan or other debt of the borrower, and the borrower does not receive a reasonable and tangible net benefit from the new high-cost home loan considering all the circumstances, including the terms of both the new home loan and the refinanced debt, the cost of the new home loan, and the borrower's

circumstances. A borrower is presumed to receive a reasonable and tangible net benefit from a refinance if any of the following are true: 1) as a result of the refinance there is a net reduction in the borrower's total monthly payments on all debts consolidated into the new home loan combined with the borrower's payments, prorated monthly, for homeowners insurance, mortgage insurance, and property taxes and assessments, whether such insurance and taxes are paid through the lender or not, and this reduction will continue for at least thirty six (36) months after the refinance; 2) as a result of the refinance there is a reduction in the borrower's blended interest rate on all debts consolidated into the new home loan, and it will not take more than five years for the borrower to recoup the points and fees charged for the refinance; 3) the borrower receives cash proceeds from the refinance, provided that either the amount of the points and fees charged for the refinance is no greater than five percent of the amount of the cash proceeds received by the borrower, or the cash proceeds received by the borrower equals or exceeds the greater of fifteen (15) percent of the total loan amount of the new loan or twelve thousand dollars (\$12,000); or 4) the new home loan is necessary to prevent default under an existing home loan or other secured debt of the borrower, provided that the lender for the new home loan is not the same as or an affiliate of the creditor for the existing home loan or other secured debt.

J. No Refinancing Special Mortgages. No lender may make a high-cost home loan if the high-cost home loan pays off all or part of an existing home loan, and such existing loan 1) is originated, subsidized, or guaranteed by the state of California, the city or other unit of local government, or a nonprofit organization; and 2) either has an interest rate at least two percentage points below prevailing market mortgage interest rates, or has one or more nonstandard payment terms beneficial to the borrower, such as deferred payments, loan forgiveness features, or payments that vary with income, that would be lost as a result of the refinance. This restriction shall not apply if an

independent housing or credit counselor has reviewed the terms of the refinance of the special mortgage and has determined that the refinance is in the best interests of the borrower. (Ord. 12361 § 2 (part), 2001)

#### **5.33.060 Corrections.**

A lender who, when acting in good faith, fails to comply with this chapter, will not be considered to have violated this chapter if the lender establishes that, within thirty (30) calendar days of the closing of the home loan and prior to the institution of any action under this chapter, the lender has notified the borrower of the compliance failure, the lender has made appropriate restitution, and the lender has adjusted the terms of the home loan in a manner beneficial to the borrower to make the loan comply with this chapter. (Ord. 12361 § 2 (part), 2001)

#### **5.33.070 Investments and loan assignments.**

A lender may not make investments that are backed by any home loan that violates this chapter. Any person who purchases or is otherwise assigned a home loan is subject to all claims, actions and defenses related to that home loan that the borrower, the City Attorney, or others could assert against the original lender. (Ord. 12361 § 2 (part), 2001)

#### **5.33.080 Civil enforcement and remedies.**

A. An aggrieved borrower or an organization acting on behalf of an aggrieved borrower or borrowers may bring a civil action for injunctive relief or damages in a court of competent jurisdiction for any violation of this chapter. If the court finds that a violation of this chapter has occurred, the court shall award: 1) actual damages sustained by the borrower as a result of the violation; 2) exemplary damages to the borrower in the amount of the points and fees charged for the home loan plus ten percent of the total loan amount; and 3) reasonable costs and attorneys' fees. In addition the court may, as the court deems appropriate: 1) issue an order or injunction rescinding a home loan contract which violates this chapter, or barring the lender from

collecting under any home loan which violates this chapter; 2) issue an order or injunction barring any judicial or nonjudicial foreclosure or other lender action under the mortgage or deed of trust securing any home loan which violates this chapter; 3) issue an order or injunction reforming the terms of the home loan to conform to this chapter; 4) issue an order or injunction enjoining a lender from engaging in any prohibited conduct; 5) award punitive damages as the court may deem appropriate if the court determines by clear and convincing evidence that the lender has shown reckless disregard for the rights of the borrower; or 6) impose such other relief, including injunctive relief, as the court may deem just and equitable.

B. A borrower may also assert a violation of this chapter as a defense, bar, or counterclaim to any default action, collection action or judicial or nonjudicial foreclosure action in connection with a home loan.

C. Any relief granted to a borrower under this chapter under law or equity may not reflect negatively in the credit history of the borrower. A lender may not report any action or relief granted to a borrower under this chapter to any credit agency, and may not consider any such action or relief when considering the making of any future home loans to the borrower.

D. The City Attorney may bring a civil action for any violation of this chapter. If the court finds in any such action that a lender or other party has violated this chapter, the court shall impose civil penalties of not less than five hundred dollars (\$500.00) and not more than fifty thousand dollars (\$50,000.00) per violation, and shall award reasonable costs and attorneys' fees to the City Attorney. For purposes of this paragraph, each home loan made in violation of this chapter is considered a separate violation.

E. The remedies provided under this chapter are cumulative. The protections and remedies provided under this chapter are in addition to other protections and remedies that may be otherwise available under law. Nothing in this chapter is intended to limit the rights of any injured person to recover damages or

pursue any other legal or equitable action under any other applicable law or legal theory. (Ord. 12361 § 2 (part), 2001)

#### **5.33.090 Limitations on actions.**

A borrower must file any civil action brought under this chapter within three years after the discovery of the violation by the borrower. This limitation does not apply in the case of a borrower asserting a violation of this chapter as a defense, bar, or counterclaim to any default action, collection action or judicial or nonjudicial foreclosure action. The City Attorney must file any action brought under this chapter within six years after the violation. (Ord. 12361 § 2 (part), 2001)

#### **5.33.100 Criminal liability.**

Any person who wilfully violates this chapter is guilty of an infraction. (Ord. 12361 § 2 (part), 2001)

#### **5.33.110 Nonwaiverability.**

Any written or oral agreement in which a borrower purports to waive any rights or remedies that he or she may have under this chapter is against public policy and is void and unenforceable. (Ord. 12361 § 2 (part), 2001)

#### **5.33.120 Applicability.**

The provisions of this chapter apply to home loans made on or after November 1, 2001. For purposes of this paragraph, a home loan is considered "made" on the date the promissory note for the loan is signed by the borrower. (Ord. 12361 § 2 (part), 2001)



## Chapter 5.34

### HOTEL RATES AND REGISTRATION REQUIREMENTS

#### Sections:

- |                 |   |
|-----------------|---|
| <b>5.34.010</b> | <b>Definitions.</b>   |
| <b>5.34.020</b> | <b>Hotel hourly rates.</b>  |
| <b>5.34.021</b> | <b>Posting of rates.</b>  |
| <b>5.34.025</b> | <b>Guest receipts.</b>  |
| <b>5.34.030</b> | <b>Guest register.</b>  |
| <b>5.34.040</b> | <b>Period of retention.</b>   |
| <b>5.34.041</b> | <b>Failure to abide by registration and retention requirements.</b>                           |
| <b>5.34.042</b> | <b>Registration information subject to audit.</b>   |
| <b>5.34.050</b> | <b>Registration information and hotel facilities subject to inspection, review and audit.</b> |
| <b>5.34.051</b> | <b>Posting of identification of owner and operator.</b>                                       |
| <b>5.34.060</b> | <b>Separate offenses.</b>   |
| <b>5.34.070</b> | <b>Posting of this chapter.</b>   |
| <b>5.34.080</b> | <b>Civil penalties for violations.</b>  |

#### **5.34.010 Definitions.**

The words and phrases set out in this section, when used in this chapter, shall, for the purposes of this chapter, have the following respective meanings except where the context clearly indicates a different meaning:

“Hotel” means any public or private space or structure for living therein, including but not limited to any: inn, hostelry, tourist home or house, motel rooming house, mobile home or other living place within the city, offering the right to use such space for sleeping or overnight accommodations wherein the owner or operator thereof as defined in subsection C of this section, for compensation, furnishes such right of occupancy to any transient as defined in subsection D of this section.

“Occupancy” means the compensated use of, or the unexercised right to use, space in a hotel, as defined in subsection A of this section.

“Operator” means the person who is proprietor of a hotel whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other possessory capacity. In the event that an operator performs his functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall however, be considered to be compliance by both.

“Permanent resident” means any person who, as of a given date, has occupied or has had the right to occupy a room or rooms in a particular hotel, as defined in subsection A of this section, for more than thirty (30) consecutive days immediately preceding such date.

“Person” means any non-exempt individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

“Room rental” means the total charge made by a hotel as defined in subsection A of this section, for sleeping or overnight accommodations space furnished to a transient, as defined in subsection C of this section. If the charge made by such hotel to any transient includes a charge in addition to that for such occupancy or right to the use of such space for sleeping or overnight accommodations, then that portion of the total charge that represents only the sleeping or overnight accommodations shall be distinctly set out and billed to the transient as a separate item.

“Transient” means any person who, for any period of not more than thirty consecutive days, either at his own expense or at the expense of another, obtains the right to use space for sleeping or overnight accommodations in any hotel as defined in subsection A of this section for which a charge is made therefor. (Ord. 12061 § 1 (part), 1998: prior code § 3-22.06)

**5.34.020 Hotel hourly rates.**

No person or business providing transient sleeping accommodations in any hotel, within the city shall charge or accept money or other consideration by an hourly rate or any increment less than one full day's room rental. (Ord. 12061 § 1 (part), 1998; Ord. 12019 § 1 (part), 1997; prior code § 3-22.01)

**5.34.021 Posting of rates.**

Pursuant to California Civil Code Section 1863, the operator of any hotel within the city shall post the room rental rates in a conspicuous location in clear view of registrants and guests. The operator shall not charge or accept money or other consideration in excess of the room rental rates required to be posted by this section. (Ord. 12061 § 1 (part), 1998)

**5.34.025 Guest receipts.**

A. Receipts. Receipts shall be issued for all cash and noncash payments at the time paid. Transient Occupancy Tax and any charges other than room rental charges shall be listed separately.

B. Receipts shall be pre-numbered and in sequential order. Receipts may be in sequential order based upon date/time, when a reservation was made, or based upon date/time of registration.

C. Room Numbers. Room numbers shall be included on all receipts, bills and registration cards, with any changes noted.

D. Telephone Charges. Income from telephone charges is taxable and shall be reported.

E. In the event the hotel utilizes a computerized pre-arrival registration and/or billing procedure, the hotel shall not be required to comply with subsection B of this section; provided, however, that the pre-arrival registration and/or billing procedure must be submitted to and approved by the City Manager or his designee, and the hotel be able to certify that payments are properly tracked and recorded so as to create an audit trail. (Ord. 12136 § 3, 1999)

**5.34.030 Guest register.**

A. The operator of any hotel shall keep a register

on forms approved by or supplied by the city of the names and home or business addresses of all persons to be accommodated with the length of stay indicated.

B. 1. Except as otherwise provided in subsection C, the operator or his or her employee shall, at the time of registration, verify the identification of the registrant by requesting to see, and copying onto the registration form, any of the following: the registrant's valid driver's license number, the registrant's valid passport number and country of issuance, a valid military photo identification, and/or a credit card verification of a credit card issued in the registrant's name. The City Manager or his or her designee is authorized to allow the acceptance of other forms of verification, which may include housing vouchers approved by the city and/or the county of Alameda. In such a case the City Manager shall notify hotel operators when and if alternate forms of verification are permitted.

2. The operator or his or her employee must also include on the registration forms required by this subdivision the make, type and license number of the registrant's automobile, trailer or other vehicle, and the state in which such vehicle is registered and the year of registration, for any vehicle operated by the registrant that is parked on the premises. Hotels that can demonstrate that they take sufficient reasonable steps to control of access to and from parking areas on the premises shall not be required to include this information on the guest register forms. No person placing any information required by this law shall falsely or inaccurately state such information. The city shall develop forms for recording register information for all hotels that will conform to these requirements.

C. In the event that the hotel utilizes a pre-arrival registration or approval procedure that obviates the requirement for an arriving guest to go to the front desk and provide information typically required as part of the hotel's customary registration process, the hotel shall not be required to comply with subsection B of this section; provided, however, that the hotel's pre-arrival registration or approval procedure must be submitted to and approved

by the City Manager or his or her designee, and the hotel must obtain such guest-related information of the type specified in subsection B as the City Manager might reasonably require. (Ord. 12061 § 1 (part), 1998: Ord. 12019 § 1 (part), 1997: prior code § 3-22.02)

#### **5.34.040 Period of retention.**

Such register shall be kept on the hotel or transient lodging facility site for a period of not less than four years by the operator or business providing the accommodations. In the event that the hotel operates pursuant to a pre-arrival registration or approval procedure approved by the City Manager pursuant to Section 5.34.030(C), the information which is required to be obtained shall be retained on the hotel site or at such other location(s) as the City Manager might designate, for a period of not less than four years. (Ord. 12061 § 1 (part), 1998: Ord. 12019 § 1 (part), 1997: prior code § 3-22.03)

#### **5.34.041 Failure to abide by registration and retention requirements.**

Upon evidence that the operator of any hotel or transient lodging facility is not adhering to the registration requirements of Section 5.34.030, or is not retaining the registers pursuant to Section 5.34.040, or is not remitting the proper amount of transient occupancy or gross receipts tax required pursuant to Chapter 4.24 et seq., such operator shall upon notice provided by the city submit for one year copies of all guest registration information required pursuant to Section 5.34.030 to the Director of Finance or his or her designee at the time reporting and remitting of transient occupancy taxes and gross receipts is required pursuant to Section 4.24.070. The time period for submitting such copies may be extended upon evidence of further violations and upon notice provided by the city. An office hearing regarding a determination by the city may be requested within five days of receiving any notice pursuant to this section. The decision of the hearing officer is final. (Ord. 12061 § 1 (part), 1998: Ord. 12019 § 1 (part), 1997: prior code § 3-22.031)

#### **5.34.042 Registration information subject to audit.**

To verify compliance with transient occupancy tax requirements as contained in Chapter 5, Article 20 of the Oakland Municipal Code, and/or gross receipts tax requirements, the Director of Finance or his or her designee must upon request be provided access to all guest register information required to be maintained under Sections 5.34.030, 5.34.040 and 5.34.050. (Ord. 12019 § 1 (part), 1997: prior code § 3-22.032)

#### **5.34.050 Registration information and hotel facilities subject to inspection, review and audit.**

Upon a showing of probable cause therefor by the Director of Finance or his or her designee, or by any police officer, code compliance, fire or zoning inspector of the city of Oakland, the City Attorney shall issue an administrative subpoena compelling the inspection of rooms and facilities, and/or the production of guest registers and other records necessary to determine compliance with all applicable regulations, including but not limited to building, fire, health, occupancy and blight codes, and to verify collection and payment to the city of all taxes owed. (Ord. 12061 § 1 (part), 1998)

#### **5.34.051 Posting of identification of owner and operator.**

The name, business address and business telephone number of the owner and operator must be posted in a conspicuous location in the hotel registration and/or lobby area. The owner and the operator must provide to employees of the hotel a telephone number where the owner or his or her representative may be reached during any time the hotel is in operation. Failure to post or to provide the information required in this section is punishable pursuant to Section 5.34.080. (Ord. 12061 § 1 (part), 1998: Ord. 12019 § 1 (part), 1997: prior code § 3-22.041)

**5.34.060 Separate offenses.**

Each violation of this chapter shall constitute a separate offense. (Prior code § 3-22.05)

**5.34.070 Posting of this chapter.**

A copy of this chapter shall be posted in a conspicuous place in each hotel or transient lodging facility where registering guests will have full, unobstructed and accurate view of this law. (Prior code § 3-22.07)

**5.34.080 Civil penalties for violations.**

A violation of any provision of this chapter may be charged as a civil penalty or an infraction, and the use of the property may be encumbered, as authorized by the Oakland Municipal Code, Chapters 1.08, 1.12 and 1.16. Enforcement action specifically authorized by this chapter may be utilized in conjunction with, or in addition to, any other statutory, code, administrative or regulatory procedure applicable to the regulation of buildings, structures or property. In addition, nothing in this chapter shall be interpreted to preclude or limit the city from seeking injunctive or other judicial relief. (Ord. 12061 § 1 (part), 1998; Ord. 12019 § 1 (part); Ord. 11922 § 2, 1996; prior code § 3-22.08)

<p><b>Chapter 5.36</b></p> <p><b>MASSAGE ESTABLISHMENT AND MASSAGE THERAPISTS*</b></p> <p><b>Sections:</b></p> <ul style="list-style-type: none"> <li><b>5.36.010 Statement of legislative policy.</b></li> <li><b>5.36.020 Definitions.</b></li> <li><b>5.36.030 Exemptions.</b></li> <li><b>5.36.040 Fees.</b></li> <li><b>5.36.050 Not transferable.</b></li> <li><b>5.36.060 Schools of massage.</b></li> <li><b>5.36.070 Home occupation solo practitioners.</b></li> <li><b>5.36.080 Permits required—Massage establishments.</b></li> <li><b>5.36.090 Application contents—Massage establishments.</b></li> <li><b>5.36.100 Minimum requirements—Massage establishment permit.</b></li> <li><b>5.36.110 Applicability to existing massage establishments.</b></li> <li><b>5.36.120 Permit contents—Massage establishments.</b></li> <li><b>5.36.130 Permit to be exhibited—Massage establishments.</b></li> <li><b>5.36.140 Duration and renewal of permits—Massage establishments.</b></li> <li><b>5.36.150 Responsibility of owner(s)—Massage establishments.</b></li> <li><b>5.36.160 Operating requirements—Massage establishments.</b></li> <li><b>5.36.170 Enforcement—Inspection of massage establishments.</b></li> <li><b>5.36.180 Permits required—Massage therapists.</b></li> <li><b>5.36.190 Minimum requirements—Massage therapist permit.</b></li> <li><b>5.36.200 Massage therapist trainee permits.</b></li> </ul>	<p><b>5.36.2 10 Permit application contents—Massage therapists, massage therapist trainees and home occupation solo practitioners.</b></p> <p><b>5.36.220 Applicability to existing massage therapist permits.</b></p> <p><b>5.36.230 Contents of permits—Massage therapists and massage therapist trainees.</b></p> <p><b>5.36.240 Duration and renewal of permits—Massage therapists and massage therapist trainees.</b></p> <p><b>5.36.250 Operating requirements—Massage therapists and massage therapist trainees.</b></p> <p><b>5.36.260 Application review process.</b></p> <p><b>5.36.270 Permit issuance and conditions.</b></p> <p><b>5.36.280 Violations.</b></p> <p><b>5.36.290 Prohibited massage areas.</b></p> <p><b>5.36.300 Process and grounds for revocation and suspension.</b></p> <p><b>5.36.310 Appeals.</b></p>
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\* Prior ordinance history: Ord 12114.

**5.36.010 Statement of legislative policy.**

In enacting this chapter the Oakland City Council recognizes that massage is a viable professional field that offers the public valuable health and therapeutic services. The Council further recognizes that regulating massage and the operation of massage establishments reduces the potential for unlawful activities and exploitation that may threaten individuals practicing massage and the quality of life in our neighborhoods.

It is the purpose and intent of this chapter to provide minimum fire, sanitation, health and safety standards for massage establishments in the city, and to ensure that persons employed as massage therapists meet minimum training standards and are protected from being exploited to perform nonmassage services.

It is the intent of the City Council that this chapter apply to any business, location or individ-

ual that provides massage services regardless of the business name or individual's title or position. It is also the intent of the City Council that the person, business or entity holding a massage establishment permit be responsible for all activity that occurs on the establishment's premises whether the activity is offered or conducted by the business, the business owner(s), an employee, an independent contractor, an assistant, a sole practitioner, a lessee, sub-lessee or a separate business.

(Ord. 12675 § 4 (part), 2005)

## **5.36.020 Definitions.**

As used in this chapter:

"Applicant" is the individual or individuals applying for the massage establishment, massage therapist or massage therapist trainee permit. Only an owner or owners of a massage establishment may apply for a massage establishment permit.

"Chair massage" means massage given to a person who is fully clothed and sitting upright on a professional bodywork seat, a stool or office seat, wheelchair, or other chair-like device.

"Disqualifying offense" means any offense which disqualifies an applicant from obtaining a permit pursuant to this chapter or which mandates revocation of the permit if the offender already holds a permit. Disqualifying offenses are:

1. Conviction, plea of nolo contendere, plea bargain, or forfeiture on a charge of violating Section 243.4, 266, 266(a)—266(k), 314, 315, 316, 318 or Section 647(B) of the Penal Code of the State of California;

2. Requirement to register under the provisions of Section 290 of the Penal Code of the State of California;

3. Conviction, plea of nolo contendere, plea bargain, or forfeiture pertaining to any felony offense involving the sale of a controlled substance specified in Section 11054, 11055, 11056, 11057 or 11058 of the Health and Safety Code of the state of California;

4. Violation of any provision of this chapter that has resulted in a suspension or revocation of any permit issued under chapter, or violation of a

similar law in any other jurisdiction, within the past five years that has resulted in a suspension or revocation of a permit under that law;

5. Conviction, plea of nolo contendere, plea bargain, or forfeiture on a charge of committing a violent crime or a crime of dishonesty, fraud or deceit with an intent to substantially injure another;

6. Conviction, plea of nolo contendere, plea bargain, or forfeiture on a charge of human trafficking in violation of United States Code Title 18, Chapter 77, Sections 1590, 1591 or 1592; or

7. Making a false statement on a permit application.

"Employee" means anyone other than the owner or owners of a massage establishment or the massage therapists or massage therapist trainees that renders service to the permittee and receives direct compensation from that permittee but who does not provide massage services.

"Erogenous areas" means the genitals, the nipples, the areolas, and/or the anus.

"Home occupation solo practitioner" means a massage therapist that practices massage within his or her own residence or on an out-call massage basis. All home occupation solo practitioners are subject to the requirements for home occupation businesses under Section 5.36.070 and no more than two massage therapists may operate as home occupation solo practitioners in any single residence.

"Human trafficking" means all human trafficking activities defined under the Trafficking Victims Protection Act of 2000 and any activities that are defined as violations under United States Code Title 18, Chapter 77, Sections 1590, 1591 and 1592.

"Incidental service" means that no more than 25 percent of the business' revenue is derived from massage nor more than 25 percent of the floorspace is devoted to massage.

"Manager" or "Operator" means the individual or individuals appointed by the owner or owners of a massage establishment that are clearly desig-

nated in the employee register as having authority and responsibility to supervise employee(s), massage therapists or massage therapist trainees.

"Massage" means any method of pressure on or friction against the soft parts of the human body, whether clothed or unclothed, including but not limited to stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating with hands or with the aid of a mechanical electrical apparatus or appliance, with or without supplementary aids such as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointments, hot or cold packs, or other similar preparations commonly used in massage practice. Types of massage may include, but are not limited to activities commonly known as massage therapy, bodywork, acupressure, reflexology, deep tissue touch, and shiatsu release.

"Massage establishment(s)" means any establishment having a fixed place of business where any person, firm, association, or corporation engages in, permits to be engaged in or carries on any of the activities mentioned in this chapter. Any establishment engaged in, permitted to be engaged in or carrying on any combination of massage and bath house or other activity mentioned in this chapter shall be deemed a massage establishment.

"Massage therapist" means any person who, for any consideration whatsoever, engages in the practice of massage as herein defined, whether in a massage establishment within the city, in their residence or on an out-call basis anywhere within the city.

"Massage therapist trainee" means any person enrolled in a "recognized school" that has not completed three-hundred (300) hours of coursework at a recognized school.

"Non-massage business" means a business in which the practice of massage is not the principal activity of the business but is an incidental service and subordinate to the principal activity.

"Out-call massage service" means any business that provides, refers or otherwise facilitates massage for any consideration at a nonfixed location.

Any such business is not required to obtain a permit as a massage establishment under the provisions of this chapter.

"Owner" of a massage establishment, or an out-call massage service, means any person, firm association, corporation, limited partnership, limited liability company or any other entity that operates, maintains, or permits a massage establishment or out-call massage service. To the extent the "owner" is any type of association, partnership, corporation or other entity, "owner" includes all publicly named or registered persons, officers, directors, managers and shareholders within those entities. Where the "owner" is one or more persons, each such person is jointly and severally liable for compliance with this chapter. Only the "owner" of a massage establishment can hold the massage establishment permit.

"Patron" means any individual who pays or gives any consideration in exchange for massage services.

"Permittee" means the holder of the massage establishment, massage therapist, or massage therapist trainee permit.

"Public nuisance" shall be defined by state law. A violation of Sections 5.36.100, 5.36.160, 5.36.190 or 5.36.250 shall also be considered a public nuisance.

"Recognized school" means a school of massage, recognized by the state of California which: (i) teaches the theory, ethics, practice, profession and work of massage; and (ii) requires a residence course of study to be given and completed before the student is furnished with a diploma or certificate of learning or completion; and (iii) has been approved by the state of California Consumer Affairs Bureau pursuant to Section 94915 of the Education Code, or, if said school is not located in California, has complied with the standards commensurate with those specified in said Section 94915, or a school of equal or greater training that is approved by the corresponding agency in another state, or accredited by an agency recognized by the United States Department of Education.

"Unrecognized school" means any school of massage that does not meet the definition of "recognized school" but teaches or purports to teach the theory, ethics, practice, profession or work of massage.

(Ord. No. 12914, § 1, 2-17-2009; Ord. 12675 § 4 (part), 2005)

#### **5.36.030 Exemptions.**

A. **Massage Establishments.** Massage establishment permits required by this chapter shall not apply to or include the following:

1. Licensed hospitals, nursing homes, and sanitariums;
2. Recognized schools of massage;
3. Duly licensed athletic facilities;
4. Medical facilities in which massage is performed as prescribed treatment only on patients of the medical facility;
5. Residences of home occupation solo practitioners;
6. Barbershops and beauty shops provided that any massage services performed or provided are incidental or accessory and within the scope of any barber's or beautician's state of California license;
7. Businesses where only chair massage is performed, and it is performed in public view; or
8. Offices leased by solo practitioners for the practice of massage.
9. Non-massage businesses that lease space to a solo practitioner for therapeutic massage or that offer therapeutic massage as an incidental service.

B. **Massage Therapists.** Individuals that conduct massage in facilities exempt from massage establishment permit requirements are required to have massage therapist permits, except as provided below:

1. Persons holding a valid certificate to practice the healing arts under the laws of the state of California including, but not limited to, holders of medical degrees such as physicians, surgeons, chiropractors, osteopaths, naturopaths, podiatrists, acupuncturists, physical therapists, registered nurses and vocational nurses;

2. Students in training at a recognized school of massage where the student performs massage only under the direct personal supervision of an instructor certified by the California Department of Consumer Affairs Bureau for private post secondary and vocational education; or

3. Barbers and beauticians licensed under the laws of the state of California to provide massages to the neck, face, scalp, feet (up to the ankle), or hands (up to the wrists) while engaging in practices within the scope of their licenses.

C. **Massage as an Incidental or Accessory Activity.** Businesses that offer massage as an incidental or accessory service to their primary business services offered, as determined by the City Administrator, shall be required to comply with all provisions of this chapter, except that they shall be exempt from any requirements under this chapter that applies to employees or advertisements.

(Ord. No. 12914, § 1, 2-17-2009; Ord. 12675 § 4 (part), 2005)

#### **5.36.040 Fees.**

A fee shall be payable to the city, as set forth in the Master Fee Schedule, for any permit issued, or renewed under this chapter. A fee shall also be payable to the city, as set forth in the Master Fee Schedule for any inspections, reinspections, investigations, and reinvestigations required pursuant to this chapter.

(Ord. 12675 § 4 (part), 2005)

#### **5.36.050 Not transferable.**

All permits under this chapter are not transferable or assignable. Any massage establishment permit issued under this chapter shall not apply to any premises other than those originally specified in the massage therapist establishment permit.

(Ord. 12675 § 4 (part), 2005)

#### **5.36.060 Schools of massage.**

Massage establishments shall not be permitted to use the facilities or premises of a recognized school or unrecognized of massage in connection with the operation of a massage establishment.

Students training at a recognized school or unrecognized school of massage may perform a massage on a member of the general public on school premises if each of the following conditions is satisfied:

A. The school is approved by the California Department of Consumer Affairs Bureau for private post secondary and vocational education;

B. The school offers a massage curriculum requiring at least one hundred twenty-five (125) hours of classroom instruction; and

C. The student performs the massage only under the direct supervision of an instructor certified by the California Department of Consumer Affairs Bureau for private post secondary and vocational education.

(Ord. 12675 § 4 (part), 2005)

#### **5.36.070      Home occupation solo practitioners.**

A. Massage Therapist Permit Required. All home occupation solo practitioners must obtain a massage therapist permit before providing any massage services within his or her own residence or on an out-call massage basis. A massage therapist trainee permit is not a valid permit for home occupation solo practitioners.

B. Limitations on number of home occupation solo practitioners per residence. No more than two massage therapists may operate as home occupation solo practitioners in any single residence.

C. Requirements. Home occupation solo practitioners shall be regulated under this chapter and shall not be subject to the requirements of Chapter 17.112, "Home Occupation Regulations." All home occupation solo practitioners must comply with each of the following requirements:

1. Location. Other than on an out-call massage service basis, home occupation solo practitioners shall only operate within their residence, or within a garage which is attached to, and reserved for, such a living unit. When massage services are conducted within a garage, the doors thereof shall be closed.

2. Employees. No person other than the massage therapist shall be employed in the conduct of the home occupation solo practitioner.

3. Vehicular Storage. No commercial or passenger vehicle advertising or otherwise identifying the home occupation shall be parked on any portion of the lot containing the home occupation where it is visible by the average person at or beyond any lot line of the lot containing the home occupation.

4. Traffic Generation. The home occupation shall not generate pedestrian or vehicular traffic substantially greater than that normally generated by residential activities in the surrounding area.

5. Nuisances. The home occupation shall be conducted so as not to be a public nuisance, as defined by state law, to the average person at or beyond any lot line of the lot containing the home occupation.

D. Application Process. Home occupation solo practitioners must obtain massage therapist permits pursuant to Section 5.36.210.

(Ord. 12675 § 4 (part), 2005)

#### **5.36.080      Permits required—Massage Establishments.**

A. Valid Permit Required. It is unlawful and in violation of this chapter for any person, firm, association, corporation, limited partnership, limited liability company or other entity to own, operate, engage in, conduct, permit, or carry on in any way, a massage establishment without a valid permit granted in compliance with the provisions of this chapter.

B. Single Permit for Each Location. Only one massage establishment permit shall be granted for each fixed location where any of the activities in this chapter occur. The owner of the massage establishment, as defined in this chapter, shall hold the massage establishment permit.

C. Permits Not Issued if Disqualifying Offenses Committed. A massage establishment permit shall not be issued to any massage establishment where any owner(s), operator(s), employee(s), massage therapist, massage therapist trainee or

any other individual associated with the massage establishment has committed a disqualifying offense as defined in Section 5.36.020.

(Ord. 12675 § 4 (part), 2005)

#### **5.36.090 Application contents—Massage establishment.**

All massage establishment permit applications shall describe the exact nature of any massage that may be administered at the massage establishment 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. Official government issued identification that proves the applicant is at least eighteen (18) years of age;

C. The residence and business address and the citizenship of the applicant and if the applicant is any type of association, partnership, corporation or other entity, the residence and business address and the citizenship of all publicly named or registered persons, officers, directors, managers and shareholders within those entities;

D. If the applicant is an entity, such as a corporation, the name of the entity as shown in its articles of incorporation or other formation documents;

E. Any criminal convictions, except minor traffic violations, all pending criminal matters, any plea bargains, pleas of nolo contendere, forfeitures on charges and all actual or pending tax judgments of applicant(s);

F. The location of the proposed massage establishment, and the name of the owner and the present use of such premises;

G. The applicable zoning;

H. The name under which the massage establishment is to be operated;

I. The past experience of the applicant in owning, operating, managing or working in massage establishments; and the name, address, and past experience of the person(s) who will be in charge of, manage or operate the massage establishment;

J. If applicable, information on any previous permit revocations including the circumstances of such revocation in any jurisdiction;

K. The number of persons currently employed or intended to be employed therein as massage therapists, massage therapist trainees and employees, the names and residence addresses of all persons currently or intended to be employed, regardless of the nature of the employment and for employees, the nature of the work performed or to be performed and recent passport-sized photograph of each employee or intended employee;

L. Evidence that all employees have been screened and background checks have been conducted to ensure that no employee has committed a disqualifying offense;

M. A written statement that neither the applicant nor any persons to be directly or indirectly interested in the permit if granted have knowingly made any false, misleading, or fraudulent statement of facts in the application for the permit or in any other document required by the city of Oakland in conjunction therewith.

N. The number of fire escapes;

O. Such further or other information as may be required by the Fire Marshall, the Chief of Police, the Building Code and Housing Inspectors in connection with their determination as to compliance with applicable codes and laws;

P. The fingerprints and photographs of the applicant(s);

Q. Certification under penalty of perjury that the Applicant has not committed a disqualifying offense as defined by Section 5.36.020;

R. In the event that the applicant is not the legal owner of the property where the massage establishment is proposed to be located, the application must be accompanied by a copy of the lease, a letter of intent to lease or a rental agreement for the property;

S. Such further information as the City Administrator, or such official of the city to whom the application may be referred, may require; and,

T. The applicant(s) shall review, sign, and date a form provided by the City Administrator, certi-

fying that he or she: (a) has received a copy of this chapter; (b) understands its contents; and (c) understands and accepts duties and responsibilities provided in this chapter.

The City Administrator must have this information in a completed application form on file before considering issuing or renewing a massage establishment permit.

(Ord. 12675 § 4 (part), 2005)

#### **5.36.100 Minimum requirements—Massage establishment permit.**

Massage establishments must comply with all the following requirements before a permit may be issued:

A. Distance Requirements. The proposed location of the massage establishment is not within one thousand (1,000) feet of a public or private school or a public library or youth center (serving youth 18 and under), or city park, park and recreation facility or another massage establishment.

B. Zone. The proposed massage establishment must be located in a commercial, industrial or manufacturing zone, or its equivalent as may be amended.

C. Health and Safety Codes. The proposed massage establishment premises must comply with all applicable building, fire safety, health, electrical, plumbing, mechanical, heating and ventilating, sanitation, and other laws applicable to said premises.

D. Physical Requirements. The proposed massage establishment(s) must comply with all the following requirements:

1. All massage establishments shall provide on the premises at least one toilet room and at least one toilet room for each sex if the establishment serves both sexes simultaneously. All toilet rooms shall be equipped with a self-closing door.

2. All massage establishments shall provide wash basins in each toilet room, or vestibule, and in each massage room or cubicle. Each wash basin shall be equipped with hot and cold running water, soap in a dispenser and sanitary towels.

3. Physical requirements for toilet rooms or rooms containing bathtubs or shower areas. Toilet rooms or rooms containing bathtubs or shower areas in massage establishments shall meet the following requirements:

a. Floors shall have a smooth, hard, nonabsorbent surface such as portland cement, concrete, ceramic tile, or other approved material which extends upwards onto the walls at least five inches.

b. Walls of water closet compartments or rooms containing bathtubs shall be finished as specified under subsection (E)(1) of this section to a height of not less than four feet.

c. Shower areas shall be finished as specified in subsection (E)(1) of this section to a height of not less than six feet.

4. Massage establishment steam rooms shall meet the following requirements:

a. Steam rooms shall have floors, walls and ceilings finished with a smooth, hard, nonabsorbent surface such as portland cement, concrete, ceramic tile, or other approved material.

b. Floors of wet and dry heat rooms shall be adequately pitched to one or more floor drains properly connected to the sanitary sewer.

c. Hot water shall be available within the immediate vicinity of the wet and dry heat rooms to facilitate cleaning.

5. All massage establishments shall have a utility room on the premises equipped with a utility sink and a storage facility for cleaning compounds and equipment.

6. All massage establishments shall have a reception area within ten feet of the front door that directly serves massage service rooms, steam rooms, offices, or group of offices as an extension of the activities in those rooms. All reception areas shall have a window.

7. The walls of a massage establishment shall be clean and painted with an approved washable mold-resistant paint in all rooms where water or steam baths are given.

8. Adequate light and ventilation shall be provided by means of windows or skylights with an area of not less than one-eighth of the total floor

## **5.36.100**

area or by means of artificial light and a mechanical operating ventilating system. When windows or skylights are used for ventilation, at least one-half of total window area shall be capable of being opened. The height of partitions in rooms and areas serviced directly by a required window, skylight, or mechanical system of ventilation, shall not exceed three-fourths of the height of the room in which they are placed.

9. Room or cubicle where massage is administered shall have lighting equivalent to a minimum of ten footcandles as measured at surface of the massage table, at all times of occupancy.

10. Massage establishment permits shall be displayed in a conspicuous place on the premises, together with the permits of each massage therapists and trainees performing service on said premises.

E. Exceptions. A massage establishment permit may be issued to applicants that do not meet the requirements of this section if the City Administrator makes written findings that:

1. The massage establishment was granted a conditional use permit (CUP) for operating a massage establishment;

2. The massage establishment will not have an impact on public safety or neighborhood quality of life; or

3. Compliance with the requirements of this section would place an undue financial burden on or would be physically infeasible for existing establishments. The burden is on the applicant to provide sufficient evidence to demonstrate either an undue financial burden or physical infeasibility.

(Ord. 12675 § 4 (part), 2005)

## **5.36.110      Applicability to existing massage establishments.**

The provisions of this chapter, with the exception of the distance requirements and zoning requirements in Section 5.36.100, shall apply to any existing establishment having a fixed place of business where any person, firm, association, or corporation engages in, permits to be engaged in or carries on any of the activities mentioned in this

chapter, including any combination of massage and bath house. Existing establishments must comply with the terms of this chapter within one hundred and twenty (120) days or for previously permitted massage establishment, upon renewal of their massage establishment permits or within sixty (60) days, whichever is later.

(Ord. 12675 § 4 (part), 2005)

## **5.36.120      Permit contents—Massage establishments.**

Massage Establishment permits shall contain a description of the exact nature of any massage authorized to be administered at the massage establishment, the name of the massage establishment, the name of the owner(s) of the massage establishment, the location of massage establishment authorized by the permit, any conditions imposed on the permit, the date the permit was issued, and the date the permit expires.

(Ord. 12675 § 4 (part), 2005)

## **5.36.130      Permit to be exhibited—Massage establishment.**

Any massage establishment permit required under the provisions of this chapter shall be exhibited in a conspicuous place where the public has access on the premises where the permit applies.

(Ord. 12675 § 4 (part), 2005)

## **5.36.140      Duration and renewal of permits—Massage establishment.**

All massage establishment permits shall be valid for one year from the date of issuance and must be renewed annually. The applicant is responsible for initiating and completing the renewal process. The applicant and the City Administrator in renewing a permit shall be governed by the same provisions as are applicable to issuance of new permits.

(Ord. 12675 § 4 (part), 2005)

## **5.36.150      Responsibility of owner(s).**

It shall be the responsibility of the owner(s) of any massage establishment to ensure that each

person employed as massage therapist shall have in his or her possession a valid massage therapist permit as set forth in this chapter.

Any violation of this chapter by a massage therapist, massage therapist trainee, operator, manager or employee on the premises of a massage establishment shall be considered also as a violation by the owner.

(Ord. 12675 § 4 (part), 2005)

### **5.36.160      Operating requirements—Massage establishments.**

All massage establishments must comply with the following operating requirements:

A. Hours of Operation. Massage establishments shall only offer Massage services between the hours of 7:00 a.m. and 10:00 p.m. and no patrons for massage services shall be allowed on the premises after 10:00 p.m. or before 7:00 a.m. Pacific Standard Time.

B. Massage Therapists and Trainees. Massage therapists and trainees shall be required to wash their hands before administering a massage. All massage therapists and trainees working on the premises shall be free of any communicable disease. Instruments for massage shall be sanitized before each use by approved sanitization methods.

Massage therapists and trainees shall wear clean outer garments whose use is restricted to the massage establishment at all times while on the premises. All employees and other persons working on the premises shall be fully clothed at all times. All outer garments and other clothing required under this section shall be of a fully opaque, nontransparent material and provide complete covering from at least the mid thigh to two inches below the collarbone. The midriff may not be exposed.

All massage therapists and massage therapist trainees shall carry on his or her person at all times during business operations and be able to produce upon request an identification badge with their name, photograph, and permit number and expiration date thereof. The city shall issue such badges to permittees.

C. Personnel Register and Daily Log. Owners of massage establishments shall maintain a personnel register, approved as to form by the City Administrator, that contains the names and permit numbers of the massage therapists and massage therapist trainees performing massages on the premises, along with a description of the services performed and the names any other employee or person retained or working on the premises.

Owners of massage establishments shall maintain a daily log, approved as to form by the City Administrator that includes the names of the massage therapist(s) or massage therapist trainee(s) performing massage on the premises for that day, the hours they worked during that day, and a list of services they performed that day. The daily log shall also include the name and job title of every other employee or person retained or working on the premises that day and the services they performed that were performed. The daily log shall be completed by the close of business every day.

The personnel register shall identify clearly the manager(s) and/or operator(s) of the massage establishment, as designated by the owner(s), and the daily log shall identify clearly which manager(s) and/or operator(s) is responsible for the massage establishment on each day.

The personnel register and daily log shall be available for inspection by the city of Oakland at all times during regular business hours and shall be kept on file for one year. Failure to maintain either the personnel register or log in accordance with this section shall be a violation of this chapter.

D. Hiring New Employees. Permittees shall provide the city of Oakland with written notice, including the names, addresses and photographs, of any new massage therapists, massage therapist trainees, employees or other persons working or performing services on the massage establishment premises. The notice shall be provided to the city before the first day of employment and the city shall be allowed, to require a background check of anyone listed in the notification for identification purposes.

**E. Client Register.** Every massage establishment shall keep a client register, approved as to form by the City Administrator, that lists all patrons, their names, addresses, dates and times of massages including their arrival and departure time, the name of the patron's massage therapist or massage therapist trainee, the type of service obtained, including the room or cubicle where it was performed and the fee paid. The client register shall be updated by the close of business every day. The client register shall be available for inspection by the city of Oakland at all times during regular business hours. This record shall be considered confidential, not for public review, and may be inspected by the city of Oakland only as part of a criminal investigation or during proceedings to suspend or revoke a permit under this chapter. This record shall be kept on file for one year.

**F. Sanitation.** All massage establishments shall be provided with clean, laundered sheets and towels, in sufficient quantity, which shall be laundered after each use, and stored in a sanitary manner on the premises. Heavy white paper may be substituted for linen. Linen substitute cannot be used more than once.

All portions of the massage establishment premises shall be kept in a clean and sanitary condition.

No towel or sheet shall be laundered or dried in any massage establishment unless such establishment is provided with approved laundry facilities for laundering and drying. The massage establishment permittee shall provide approved receptacles for the storage of soiled linens and approved refuse containers for the disposal of paper towels and other waste material.

Wet and dry heat rooms, shower compartments, and toilet rooms, shall be disinfected at least once each business day. Bathtubs shall be disinfected after each use.

Pads on massage tables shall be made of durable, waterproof material.

**G. Prohibition of Door Locks for Massage Rooms.** No Massage activity may occur in any cubicle, room, booth or area that is fitted with a door capable of being locked.

**H. Requirements for Entry Doors.** Secondary security doors at the entrance of the business shall remain unlocked during business hours.

**I. Massage Services Posted.** Every service offered by a massage establishment, including the price and minimum length of time to perform the service, shall be posted in a conspicuous place where the public has access. No services shall be performed and no consideration shall be given for any service(s) not posted. Only services that are legitimate recognized massage functions shall be performed, offered to be performed, solicited or in any other way made available.

**J. Advertisements.** All advertisements for massage establishments shall reflect the professional nonsexual nature of the business. No massage establishment shall place, publish or distribute or cause to be placed, published or distributed any advertising matter that would reasonably suggest to prospective patrons that any service is available other than services described in this chapter.

**K. Payments and Tips.** All massage services shall be paid for in the reception area, and all tips, if any, shall be paid in the reception area.

**L. Prohibition Against Residence.** No person(s) shall reside on or within the premises of a massage establishment.

**M. Prohibition Against Warning Devices.** Massage establishments are prohibited from having any device that can be utilized as an early warning system to alert persons present at the massage establishment to the presence of law enforcement officers, city authorities, or county authorities on the premises. Said devices include, but are not limited to, light or music dimmers, electronic detection devices, external or internal video equipment and alarm systems other than those used for fire and security alarms.

(Ord. 12675 § 4 (part), 2005)

#### **5.36.170 Enforcement—Inspection of massage establishment.**

City or county employees charged with the enforcement of this chapter may enter the premises of any massage establishment during regular busi-

ness hours as may be necessary in performance of their duties. If the owner, operator, manager or any person in charge of the massage establishment refuses voluntarily to consent to the entry of any such employee or any inspection thereunder, an inspectional warrant as authorized by state law shall be utilized.

(Ord. 12675 § 4 (part), 2005)

#### **5.36.180 Permits required—Massage therapists.**

A. Valid Permit Required. It is unlawful and in violation of this chapter for any person to conduct, perform, carry out, engage in or give a massage without a valid massage therapist permit granted in compliance with the provisions of this chapter. This includes individuals that conduct massage in facilities exempt from massage establishment permit requirements pursuant to Section 5.36.030 of this chapter.

B. Permits Not Issued if Disqualifying Offenses Committed. A massage therapist permit may not be issued to any person who has committed a disqualifying offense as defined in Section 5.36.020.

C. Prohibition from Applying for or Obtaining Permits. Any individual conducting, performing, carrying out, engaging in or giving a massage without a valid massage therapist permit shall be prohibited from applying for or obtaining any permit under this chapter for five years from the date of violation(s).

(Ord. 12675 § 4 (part), 2005)

#### **5.36.190 Minimum requirements—Massage therapist permit.**

Massage therapist applicants must provide the City Administrator with evidence that they possess at least two of the following minimum qualifications before a permit may be issued:

A. An original copy of a diploma, certificate or academic transcript that demonstrates completion of three hundred (300) hours of in-class instruction from a recognized school;

B. Satisfactory passage of the National Certification Exam for Therapeutic Massage or Bodywork;

C. Membership in good standing in a National Professional Massage Organization or Association that requires its member to have the following:

1. Substantiation of at least one hundred (100) hours of massage training or education;
2. Possession of practitioner's liability insurance coverage in the minimum amount of one million dollars (\$1,000,000.00) per event;
3. Adherence to a code of ethics; and
4. Renewal of membership at a minimum of once every two years.

(Ord. 12675 § 4 (part), 2005)

#### **5.36.200 Massage therapist trainee permits.**

A. Eligibility. Any person currently enrolled in a recognized school, as defined in this chapter, may after successfully completing one hundred (100) hours of instruction at a recognized school or combination of recognized schools, be issued a massage therapist trainee permit. This permit allows massage therapist trainees to perform massage services under the direct supervision of a massage therapist permittee.

B. Application. Applicants for a massage therapist trainee permit must complete the application form for massage therapist permit and abide by the massage therapist operating requirements in Section 5.36.250. Applicants must also submit a letter signed by the director or administrator of the recognized school showing the date the applicant started school and the applicant's estimated date of graduation.

C. Expiration. Massage therapist trainee permits expire one hundred and twenty (120) days after issuance and are not renewable.

D. Permits Not Issued if Disqualifying Offenses Committed. A massage therapist trainee permit may not be issued to any person who has committed a disqualifying offense as described in Section 5.36.020.

E. Prohibition from Applying for or Obtaining Permits. Any massage therapist trainee permittee that violates any provision in this chapter shall be prohibited from applying for or obtaining any permit under this chapter for five years from the date of violation(s).

(Ord. 12675 § 4 (part), 2005)

**5.36.210      Permit application contents—  
Massage therapists, massage  
therapist trainees and home  
occupation solo practitioners.**

The application for massage therapist and massage therapist trainee permit shall contain the following information:

A. If the applicant is a U.S. citizen, his or her social security number, driver's license number, birth certificate, and U.S. passport with the accompanying original documents to be verified and copied by the City Administrator;

B. If the applicant is not a U.S. citizen, his or her original INS documents, passport, and all other immigration documents to be verified and copied by the City Administrator;

C. First, middle, and last name(s) of the applicant and current residence address;

D. The applicant's places of residence for the five preceding years of the date of application;

E. The applicant's personal characteristics, such as height, weight, eye color, hair color, and sex;

F. Written evidence that applicant is at least eighteen years of age;

G. The names, addresses and contact information of the applicant's current employer or if self-employed the name of the business, the type of services or products provided and the names, addresses and contact information of at least three business references;

H. The names, address and contact information of the applicant's employers for the five years immediately preceding the date of application or if self-employed name(s) of the business, the type of services or products provided and the names, addresses and contact information of at least three businesses' references for each of the previous five years;

I. Original documents to demonstrate the fulfillment of the minimum requirements for massage therapist permits described in Section 5.36.190;

J. If the applicant holds or has held any permit or license to offer or administer massages in California or any other state, the license or permit number, the identity of the issuing authority, and information whether such license or permit was ever revoked or suspended and the reason therefore;

K. The fingerprints and photograph of the applicant;

L. Certification under penalty of perjury that the applicant has not committed any disqualifying offenses described in Section 5.36.020;

M. Such further information as the City Administrator, or such official of the city to whom the application may be referred, may require; and,

N. The applicant(s) shall review, sign, and date a form provided by the City Administrator, certifying that he or she: (a) has received a copy of this chapter; (b) understands its contents; and (c) understands and accepts duties and responsibilities provided in this chapter.

Any massage therapist conducting, performing, engaging in or giving massages at their residence or on an out-call massage service basis is deemed a home occupation solo practitioner and must indicate on the form provided by the City Administrator his or her intent to operate as such and must also comply with the following requirement:

1. Client Register. Home occupation solo practitioner shall keep a client register, approved as to form by the City Administrator, that lists all patrons, their names, addresses, dates and times of massages including their arrival and departure time, the type of service obtained and the fee paid. The client register shall be updated by the close of business every day. The client register shall be available for inspection by the city of Oakland at all times during regular business hours. This record shall be considered confidential, not for public review, and may be inspected by the city of Oakland only as part of a criminal investigation or

during proceedings to suspend or revoke a permit under this chapter. This record shall be kept on file for one year.

(Ord. 12675 § 4 (part), 2005)

#### **5.36.220      Applicability to existing massage therapist permits.**

The provisions of this chapter shall apply to any person(s) conducting, performing, carrying out, engaging in or giving massages whether the activities were established before or after the effective date of this ordinance. Massage therapists permitted under the previous requirements of Chapter 5.36 must comply with the requirements of this chapter, upon renewal of their massage therapist permits, or within sixty (60) days, whichever is later but are not required to demonstrate that they possess the minimum qualifications for a massage therapist permit pursuant to Section 5.36.190. This recognition of possessing the minimum qualifications shall extend to each subsequent renewal of the massage Therapist permit provided the permit is not revoked, suspended or expired. Any massage therapist not in compliance within one year of the effective date of the ordinance will be declared in violation of this chapter.

(Ord. 12675 § 4 (part), 2005)

#### **5.36.230      Contents of permits—Massage therapists and massage therapist trainees.**

Massage therapist and massage therapist trainee permits shall contain a description of the any activities he or she is licensed, trained or authorized to perform, his or her name and residential address, any conditions imposed upon the permit, and the date the permit was issued and expires.

(Ord. 12675 § 4 (part), 2005)

#### **5.36.240      Duration and renewal of permits—Massage therapists and massage therapist trainees.**

All massage therapist permits shall be valid for one year from the date of issuance and must be renewed annually. The applicant is responsible for

initiating and completing the renewal process. The applicant and the City Administrator in renewing a permit shall be governed by the same provisions as are applicable to issuance of new permits.

Massage therapist trainee permits shall be valid for one hundred and twenty (120) days from issuance and shall not be renewed.

(Ord. 12675 § 4 (part), 2005)

#### **5.36.250      Operating requirements—Massage therapist and massage therapist trainees.**

A. Identification Card. All massage therapists and massage therapist trainees shall carry on his or her person at all times during business operations and be able to produce upon request an identification badge with their name, photograph, and permit number and expiration date thereof. The city shall issue such badges to permittees.

B. Cleanliness. All massage therapists and trainees shall wash their hands before administering a massage. All massage therapists and trainees shall be free of any communicable disease. Instruments for massage shall be sanitized before each use by approved sanitization methods.

C. Appropriate Attire. Massage therapists and massage therapist trainees shall be fully clothed at all times and shall wear clean outer garments that are of a fully opaque, nontransparent material that provides complete covering from at least the mid thigh to two inches below the collarbone. The midriff may not be exposed.

D. Hours of Operation. Massage therapist and massage therapist trainees shall only offer massage services between the hours of 7:00 a.m. and 10:00 p.m. Pacific Standard Time.

(Ord. 12675 § 4 (part), 2005)

#### **5.36.260      Application review process.**

A. Application Filing. All applications for permits issued pursuant to this chapter, including renewals, shall be filed in the Office of the City Administrator. The City Administrator shall receive any fee required for the application, ensure

that the application is complete, and refer the application to the Chief of Police for investigation, review and recommendation.

**B. Procedures on Applications.** Immediately on the filing of any application under this chapter, the City Administrator shall make a copy of such application available for public review and shall refer one copy to Chief of Police, who shall be the investigating official.

**C. Investigation.** The City Administrator shall refer the application to the Chief of Police who shall conduct background investigations on all applicants requesting permits under this chapter. Where the applicant(s) is any type of association, partnership, corporation or other entity, background investigations of all publicly named or registered persons, officers, directors, managers and shareholders within those entities shall be conducted as appropriate. Where the application is for a massage establishment permit, background investigations of all nonmassage employees shall be conducted as appropriate. The applicant shall be fingerprinted and photographed and consideration shall be given to their criminal record, if any. For massage establishment permits, all owners shall be fingerprinted and photographed, consideration shall be given to their criminal record, if any, and to the character and business responsibility of the owner and all persons to be directly or indirectly interested in the permit if granted. After reviewing the information obtained, the Chief of Police shall transmit in writing any recommendation or findings from the investigation to the City Administrator and shall give particular consideration to the safety and general welfare of the public, and for massage establishment permits, shall make a determination whether operating the massage establishment would create an unreasonable risk to the health, safety, or general welfare of the public.

The City Administrator shall also refer the application to other city and county agencies as appropriate and warranted to ensure compliance with existing state, county and local laws.

**D. Hearing.** A hearing date shall be set on the application not less than five days and no more than sixty (60) days from the date the application is filed. All persons interested in the application shall be entitled to file objections, protests or recommendations at the hearing. The City Administrator may continue the hearing over from time to time as circumstances may require.

**E. Personal Interview.** The City Administrator may conduct a personal interview of an applicant to demonstrate and verify individual's qualifications. A written summary of the interview shall be prepared and included as part of the file or record for the application.

**F. Hearing Officer.** The City Administrator may designate the power to hear, inquire and make recommendations on any permit issued pursuant to this chapter to a member of the City Administrator's staff. The person designated shall be deemed the "Hearing Officer." The City Administrator and the Hearing Officer shall not be bound by the common law or statutory rules of evidence and procedure, but any hearing or inquiry conducted shall be designed to best ascertain the substantial rights of the public parties and carry out the intent and provisions of this chapter. The informality of any proceeding, the manner of taking testimony and the admission of evidence into the record that is not admissible under the common law or statutory rules of evidence and procedure shall not invalidate any other decision, award or rule made pursuant to this chapter.

**G. Notice of Hearing.** The City Administrator shall notify the applicant of the time and place of any hearing on the application at least five business days before the hearing. The City Administrator shall publish notice of the hearing in the official newspaper of the city at least five days before the bearing date, shall post a notice of the hearing on the bulletin board near the Council Chambers and, where applicable, post a notice of the hearing on the premises to be primarily affected by the granting of the permit. The notice shall set forth the fact that such application has

been filed, the name of the applicant, the nature permit requested and the time and place of the application hearing.

**H. Written Decision.** Any hearing on an application shall be recorded and following the hearing, within sixty (60) days of making a determination, the City Administrator shall provide the applicant with a written decision on the application.

**I. City Clerk to be Notified of Actions on Permits.** The City Administrator shall notify the City Clerk of any action taken on a permit application under this chapter and shall make copies of all communications, findings and records that pertain to such applications and permits available for public review.

(Ord. 12675 § 4 (part), 2005)

which does not subject patrons of the enterprise to risk of harm or criminal, deceitful, or otherwise unethical practices.

**B. Conditions.** The City Administrator may impose specific conditions of operation on any permit issued pursuant to this chapter to protect the safety and general welfare of the public, to reduce the incidence of, detect the commission of, or identify perpetrators of crime, or to enforce the provisions of this chapter. Any condition imposed pursuant to the provisions of this section shall be stated in writing, together with the reasons therefore, and served upon the applicant or permittee.

If conditions are imposed pursuant to this section during the permit term, the condition(s) shall become effective fifteen (15) days following the date of service of the notice thereof.

(Ord. 12675 § 4 (part), 2005)

### **5.36.270      Permit issuance and conditions.**

**A. Issuance.** Within sixty (60) days of completing the background investigation and receipt of information from the Chief of Police, the Hearing Officer shall issue a permit under this chapter unless the City Administrator finds and states in writing that:

1. The applicant failed to provide information in connection with the application requested by the City Administrator as a basis for enabling the City Administrator to make his or her determination;

2. Any statement made in the application or any information submitted supplementary thereto is incorrect or untrue; or

3. The Applicant. Owner(s) or any persons to be directly or indirectly interested in the permit if granted have committed a disqualifying offense or has violated any of the provisions of Sections 5.36.100, 5.36.160, 5.36.190 or 5.36.250 and the City Administrator concludes that by reason of the crime or act the applicant, owner(s) or any persons to be directly or indirectly interested in the permit if granted would not conduct the enterprise in a law abiding manner or in a manner

### **5.36.280      Violations.**

**A. Misdemeanor.** Any person who intentionally or willfully violates any provision of this chapter or recklessly disregards the provisions of this chapter, and that violation threatens the public health, safety or welfare, is guilty of a misdemeanor. Any person convicted of a misdemeanor under the provisions of this chapter shall be punishable by imprisonment in the county jail not exceeding six month or by fine not exceeding one thousand (\$1,000) or by both. For purposes of this section the term person means any firm, association, corporation, limited partnership, limited liability company or other business or corporate entity.

**B. Separate Offenses for Each Day.** Any person in violation of this chapter shall be liable and guilty of a separate offense for each day a violation occurs, continues or is permitted.

**C. Public Nuisance.** A public nuisance may be summarily abated by the city as such.

**D. Civil Penalties.** Any violation under this chapter is subject to civil penalties and administrative citations pursuant to Sections 1.08 and 1.12 of this code.

E. Liability for Expenses. Violators of this chapter shall be liable for such costs, expenses, and disbursements paid or incurred by the city or any of its contractors in correction, abatement, and prosecution of the violation(s). Reinspection fees to ascertain compliance with previously noticed or cited violations shall be charged against the holder of the massage establishment permit. Fees shall be in the amount specified in the city's master fee schedule. The inspection official shall give the massage establishment owner(s), massage therapist(s) or massage therapist trainee(s) written notice showing the itemized cost of such chargeable service and request payment thereof. If the bill is not paid within the time specified, the charges shall be placed as a lien against the property, if applicable, and must be paid in full before a massage establishment permit, massage therapist permit or massage therapist trainee permit is issued or renewed.

F. Prohibition from applying for or obtaining permits. Any person, firm, association, corporation, limited partnership, limited liability company or other entity that violates, or causes or permits another to violate, any provision of this chapter or that commits a disqualifying offense is prohibited from applying for or obtaining any permit under this chapter for five years from the date of the violation(s).

(Ord. 12675 § 4 (part), 2005)

#### **5.36.290 Prohibited massage areas.**

It is unlawful for any massage therapist, massage therapist trainee, manager, employee, operator, owner or any other person to touch, with any part of his or her body or with any object, a patron's clothed or unclothed erogenous area before, after or during any massage service.

(Ord. 12675 § 4 (part), 2005)

#### **5.36.300 Process and grounds for revocation and suspension.**

Any permit granted pursuant to this chapter may be revoked or suspended by the City Administrator pursuant to the procedures set forth in

Section 5.02.080 upon a finding by the City Administrator that any one of the following conditions exists:

- A. That any of the requirements for the issuance of such permit do not exist;
- B. That a violation of any of the permitting or operating requirements, including a violation of a permit condition, has occurred;
- C. That any massage establishment permittee has allowed a massage therapist who does not have a valid permit to perform services on the premises;
- D. That any massage therapist or massage therapist trainee performed a massage without a valid permit or in violation of this chapter;
- E. That any permittee has committed a disqualifying offense, as defined in Section 5.36.020;
- F. That more than two persons working as home occupation solo practitioners engaged in, performed or gave massage in one residence; or
- G. That issuance of a permit under this chapter has resulted in a public nuisance.

(Ord. 12675 § 4 (part), 2005)

#### **5.36.310 Appeals.**

Any person may appeal the denial, revocation or suspension of a permit under this chapter pursuant to the procedures and requirements of Section 5.02.100 of this code.

(Ord. 12675 § 4 (part), 2005)

## Chapter 5.38

### MATTRESSES

**Sections:**

- 5.38.010 Mattress defined.**
- 5.38.020 Certificate of Health Department.**
- 5.38.030 Materials used.**
- 5.38.040 Sterilization—Tag.**
- 5.38.050 Used material—Sterilization.**
- 5.38.060 Statement of materials.**
- 5.38.070 Mattress materials defined.**
- 5.38.080 Defacing tags.**
- 5.38.090 Regulations.**
- 5.38.100 Separate offenses.**

**5.38.010 Mattress defined.**

The term "mattress" as used in this chapter shall be construed to mean and include any quilted pad, comforter, mattress, mattress pad, bunk quilt or cushion, stuffed and filled with wool, hair or other soft material, to be used on a couch or other bed for sleeping or reclining purposes.

(Prior code § 5-13.05)

**5.38.020 Certificate of Health Department.**

It is unlawful for any person to maintain or operate, or engage in, the business of making or remaking, and the sale of, mattresses within any building, room, apartment, dwelling, basement or cellar or any other premises within the city, without having first obtained a certificate issued by the Health Department after duly inspecting such premises, and signed by the Health Officer of the city, that the premises are in a sanitary condition and that all arrangements for carrying on the business without injury to public health have been complied with in accordance with the provisions of this code and other ordinances of the city, and that all provisions of law pertaining to the conduct of such establishments have been complied with. Said certificate, when issued, shall be kept displayed in a prominent place on the said premises and shall

be varied for a period of one year from the date of issue, at the end of which time a new certificate must be procured as herein provided.

Such certificate may at any time be revoked, for cause, upon recommendation of the Health Officer and in accordance with the provisions set forth in Section 5.02.080.

(Prior code § 5-13.06)

**5.38.030 Materials used.**

It is unlawful for any person to employ or use, or permit to be used, in the making, remaking or renovating of any mattresses, or to sell, offer to sell, deliver or consign, or have in his or her possession with the intent to sell, deliver or consign, any mattress in which there has been used in making, remaking, or renovating the same, any material of any kind that has been used in, or has formed a part of, any mattress used in or about any public or private hospital or institution for the treatment of persons suffering from disease, or for or about any person having any infectious or contagious disease, or any material known as "shoddy" and made in whole or in part from old or worn-out clothing, carpets or other fabric or material from which "shoddy" is constructed, or any material whatsoever of which prior use has been made, unless all of the said material has been thoroughly sterilized and disinfected by a process approved by the Health Department of the city.

(Prior code § 5-13.07)

**5.38.040 Sterilization—Tag.**

It is unlawful for any person to cause or permit to be renovated or remade, bought, sold or offered for sale, or to have in his or her possession with intent to sell, any renovated or remade or used or secondhand mattress unless the same has been sterilized and has thereto attached, or upon a muslin or linen tag not smaller than three inches square, permanently attached to the covering thereof, a statement, in the English language, setting forth, in type not smaller than twenty (20) point, the following facts:



This is a (renovated) (used) mattress and has been sterilized with \_\_\_\_\_ (material used) on \_\_\_\_\_  
 (day)                    (month)                    (year)  
 BY \_\_\_\_\_ Health  
 (firm's name)  
 Department's Certificate No. \_\_\_\_\_  
 (Prior code § 5-13.08)

#### **5.38.050 Used material—Sterilization.**

It is unlawful for any person to sell, or offer for sale, or deliver or consign, or to permit to be sold or offered for sale or delivered or consigned, or to have in his or her possession with intent to sell, deliver or consign, any material which has been previously used as, or formed a part of, any mattress unless the same has been sterilized in a manner satisfactory to the Health Department. (Prior code § 5-13.09)

#### **5.38.060 Statement of materials.**

It is unlawful for any person to directly or indirectly, at wholesale or retail, or by public auction or otherwise, sell, offer for sale, deliver or consign or auction, or cause or permit the same to be done, or have in his or her possession with intent to sell, deliver or consign, any mattress that shall not have plainly and indelibly stamped or printed thereon, or upon a muslin or linen tag not smaller than three inches square, permanently attached to the covering thereof, a statement, in the English language, setting forth the kind or kinds of materials used in filling the said mattress, and whether the same are, in whole or in part, new or old, or secondhand or shoddy, and the name and address of the manufacturer and/or the vendor thereof, together with the tag required by the provisions of Section 5.38.040, which statement of materials shall be in substantially the following form:

#### **MATERIALS USED IN FILLING**

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Vendor \_\_\_\_\_  
 Address \_\_\_\_\_

This Article is made in compliance with the Oakland Municipal Code.

(Prior code § 5-13.10)

#### **5.38.070 Mattress materials defined.**

In making the statement required by Section 5.38.060 relative to the use of materials in mattresses, or in otherwise representing or defining materials used in any mattress offered for sale in the city, it is unlawful to use the word "felt" as applied to cotton unless it shall be designated whether said "felt" is "felting cotton" or "felting linters"; or to use the word "floss" or words of like import, if there has been used in filling said mattress any materials which are not termed as "Kapok"; or to use the word "hair" unless said mattress is entirely manufactured of animals' hair; or to use any misleading terms or designation; or any term or designation likely to mislead.

Any mattress made from more than one new material shall have stamped upon the tag attached thereto the percentage of each material so used. Any mattress made from any material of which prior use has been made shall have stamped or printed upon the tag attached thereto, in type not smaller than twenty (20) point, the words "second-hand material." Any mattress made from material known as "shoddy" shall have stamped or printed upon the tag attached thereto, in type not smaller than twenty point, the words "shoddy material." (Prior code § 5-13.11)

#### **5.38.080 Defacing tags.**

Any person who shall remove, deface or alter, or in any manner attempt the same, or shall cause to be removed, defaced or altered, any mark or statement placed upon any mattress under the provisions of this chapter, shall be guilty of a misdemeanor. (Prior code § 5-13.12)

**5.38.090**

**5.38.090      Regulations.**

The Health Department of the city shall from time to time adopt such rules and regulations governing the sanitation, disinfection and sterilization of mattresses as it may deem necessary and proper to give effect to the provisions of this chapter relative to the manufacture and sale of mattresses, and said department shall have the power to enforce such rules and regulations so made. (Prior code § 5-13.13)

**5.38.100      Separate offenses.**

The unit for a separate and distinct offense in violation of any of the provisions of this chapter, shall be each and every mattress made, remade, renovated, sold, offered for sale, delivered, consigned, or possessed with intent to sell, deliver or consign, contrary to the provisions of this chapter. (Prior code § 5-13.14)

## Chapter 5.40

### MECHANICAL AND ELECTRONIC GAMES

#### **Sections:**

<b>5.40.010</b>	<b>Definitions.</b>
<b>5.40.020</b>	<b>Exemptions.</b>
<b>5.40.030</b>	<b>Existing business.</b>
<b>5.40.040</b>	<b>Permit required of proprietor.</b>
<b>5.40.050</b>	<b>Additional posting requirements.</b>
<b>5.40.060</b>	<b>Obligations of operators.</b>
<b>5.40.070</b>	<b>Applications.</b>
<b>5.40.080</b>	<b>Posting of permit.</b>
<b>5.40.090</b>	<b>Transfer of permits.</b>
<b>5.40.100</b>	<b>Revocation and suspension of permit.</b>
<b>5.40.110</b>	<b>Hours of operation for minors under eighteen years of age.</b>
<b>5.40.120</b>	<b>Operating requirements.</b>
<b>5.40.130</b>	<b>Compliance with other laws.</b>
<b>5.40.140</b>	<b>Public nuisance.</b>

#### **5.40.010      Definitions.**

As used in this chapter, the following words shall have the following respective meanings:

“Mechanical or electronic games” means any machine, apparatus, contrivance, appliance, or device which may be operated or played upon the placing or depositing therein of any coin, check, slug, ball, or any other article or device, or by paying therefor either in advance of or after use, involving in its use either skill or chance, including, but not limited to tape machine, card machine, pinball machine, bowling game machine, shuffleboard machine, marble game machine, horse racing machine, basketball game machine, baseball game machine, football game machine, electronic video game, or any other similar machine or device.

“Operator” means any owner or lessee of such mechanical or electronic games who installs or maintains the same in any place of business which is not his or her own or under his or her direct control where the same can be played or operated by persons in the same place.

“Person” means any corporation, association, syndicate, joint stock company, partnership, club, society or individual.

“Proprietor” means the person in whose place of business any such mechanical amusement device is placed for the use, amusement, patronage or recreation of the public or of persons in or about said place.

“School” means any educational institution, public, private, secular, or parochial which offers instruction of high school grade or below.

“Street” means any street, alley, way, boulevard, or road, either public or private, that is used or to be used for ingress or egress. (Prior code § 3-14.01)

#### **5.40.020      Exemptions.**

This chapter shall not apply to the following:

A. Any operation involving fewer than three mechanical or electronic games, except where said games provide the main or primary source of income for the proprietor thereof;

B. The operation or maintenance of such games in a poolroom or bowling alley for which a permit is required pursuant to Section 5.50.010, provided that the owner or operator of such poolroom or bowling alley excludes minors at all times;

C. Premises or operations licensed by the State Department of Alcoholic Beverage Control for on-sale consumption of alcoholic beverages excepting therefrom any such premises or operations which lawfully permit minors, such as bona fide public eating places. (Prior code § 3-14.02)

#### **5.40.030      Existing business.**

Any proprietor owning or operating a business lawfully in existence upon the effective date of this chapter shall be deemed to have been issued a permit hereunder, provided that such proprietor within thirty (30) days after said effective date submits on a form prescribed by the City Manager a record of information on such existing business. No filing fee or permit fee shall be payable therefor. The provisions of this section shall apply to subsequent proprietors at the same location. (Prior code § 3-14.03)

## **5.40.040**

### **5.40.040 Permit required of proprietor.**

It is unlawful for any proprietor to install, operate or maintain to be operated, any mechanical or electronic game without first having obtained a permit from the City Manager in accordance with the provisions of and pursuant to Chapter 5.02. The permit shall be for the number of games therein specified. The use of additional devices shall require a new permit. The Chief of Police shall be the investigating official for the purpose of this chapter. (Prior code § 3-14.04)

### **5.40.050 Additional posting requirements.**

In addition to the notices provided for in Section 5.02.050, a "Notice of Intent to Apply for a Permit for Mechanical or Electronic Games" must be posted on the premises in question, and on every utility, telephone, or other public pole or stanchion for a distance of two blocks in each direction within five days of the filing of an application for a permit hereunder. (Prior code § 3-14.041)

### **5.40.060 Obligations of operators.**

No operator shall install or allow any mechanical or electronic games to be installed in any proprietor's place of business which requires a permit as provided for in this chapter unless said proprietor has been issued such permit. (Prior code § 3-14.05)

### **5.40.070 Applications.**

The application for a permit required hereunder shall be on a form prescribed by the City Manager. Fingerprinting of all applicants is required for purposes of enabling the investigating official to conduct his or her investigation. (Prior code § 3-14.06)

### **5.40.080 Posting of permit.**

The permit shall be permanently and conspicuously posted at the location of the games in the premises wherein said games are to be operated or maintained to be operated, and shall not be removed from said location during the period for which said license was issued. (Prior code § 3-14.07)

### **5.40.090 Transfer of permits.**

No permit in this chapter required shall be transferable, nor apply to any premises other than originally specified as the location of the thing permitted, except upon written permission of the City Manager granted upon written application by the transferee, made in the same manner as may be required in the instance of the original application for such permit. (Prior code § 3-14.08)

### **5.40.100 Revocation and suspension of permit.**

The permit provided for in this chapter may be revoked or suspended as provided for in Chapter 5.02. In addition, violation of any provision of this chapter shall be grounds for revocation or suspension. (Prior code § 3-14.09)

### **5.40.110 Hours of operation for minors under eighteen years of age.**

No proprietor, employee thereof, or person in charge, shall allow any minor under eighteen (18) years of age to play or use any such game during the academic year for Oakland public schools between the hours of seven a.m. and three p.m., except during school holidays and on Saturday and Sunday, nor between the hours of ten p.m. and seven a.m. on all days preceding school days, and between midnight and seven a.m. on all other days. (Prior code § 3-14.11)

### **5.40.120 Operating requirements.**

All mechanical and electronic games must be visible from the entrance, and the entrance must be unlocked during all times that the premises in question are open for business. (Prior code § 3-14.12)

### **5.40.130 Compliance with other laws.**

Neither this chapter nor any provision therein contained shall include or apply to any act which is made a public offense by the Penal Code of the state of California, or by any other law of the state of California, or of the United States government; nor shall this chapter or any provision therein contained authorize or permit or be construed as autho-

rizing or permitting the keeping, maintaining, possessing, using or operating in the city of any contrivance or device otherwise prohibited by law.  
(Prior code § 3-14.13)

**5.40.140 Public nuisance.**

In addition to the criminal penalties provided for in this code, a violation of any provision of this chapter, or any condition caused or permitted to exist in violation of any of the provisions of this chapter shall, and is deemed and declared to be a public nuisance and may by the city be abated as such. (Prior code § 3-14.15)

## Chapter 5.42

### MINIATURE GOLF COURSES

**Sections:**

- |                 |                             |
|-----------------|-----------------------------|
| <b>5.42.010</b> | <b>Permits.</b>             |
| <b>5.42.020</b> | <b>Regulations.</b>         |
| <b>5.42.030</b> | <b>Sanitary facilities.</b> |

**5.42.010 Permits.**

It is unlawful for any person to conduct, maintain or cause or permit to be conducted or maintained, or to participate in the conduct or maintenance of any miniature, pee-wee, or Tom Thumb, golf course, or any other golf course of such nature, within the city, unless there exists a valid permit therefor, granted and existing in compliance with the provisions of Chapter 5.02. The investigating official referred to in Section 5.02.030, to whom the application shall be referred, shall be the Chief of Police. (Prior code § 5-4.14)

**5.42.020 Regulations.**

It is unlawful for any person to operate or maintain, or cause or permit to be operated or maintained, any miniature golf course referred to in Section 5.42.010 between the hours of one-thirty a.m. and seven a.m., or to permit any lights or other illumination thereof to be on during said hours, or any work to be done on such course during said hours, if such golf course is located within two hundred fifty (250) feet of any residence, apartment house, flat, hotel or other dwelling which is occupied during the night, or for any such person to permit the electric lights or other illumination of such golf course to be so arranged or constructed as to permit a glare of light to be thrown directly upon any window of any such place of dwelling which is occupied during the night, or for any such person to play, or cause or permit to be played, any piano or other musical instrument, or any radio or phonograph, or any voice or sound amplifier, so that the same is audible in any such place of dwelling between the hours of ten p.m. and seven a.m. next ensuing; provided, however, that the provisions in

this section contained requiring all lights to be extinguished and that no work be done during certain hours of the night shall not apply to such golf courses as may be housed in buildings constructed in accordance with the building requirements of the city applicable to places of public assemblage. (Prior code § 5-4.15)

**5.42.030 Sanitary facilities.**

It is unlawful for any person to operate or maintain, or cause or permit to be operated or maintained, any miniature golf course referred to in Section 5.42.010, unless there is maintained upon the premises thereof, adequate lavatories, water-closets and all usual incidental sanitary facilities for the use of whomsoever shall be lawfully upon the premises. There shall be not less than one separate unit of said sanitary facilities for men and not less than one separate unit of said sanitary facilities for women. (Prior code § 5-4.16)

## Chapter 5.43

### OAKLAND ARTISAN MARKETPLACE

#### Sections:

- 5.43.010      Purpose.**
- 5.43.020      Definitions.**
- 5.43.030      Oakland Artisan Marketplace certificate application.**
- 5.43.040      Issuance of certification—Fee—I.D. card—Period—Requirement.**
- 5.43.050      Regulations for artisans.**
- 5.43.060      Cleanup responsibility and liability for damages.**
- 5.43.070      Lottery.**
- 5.43.080      Violations and penalty.**
- 5.43.090      Suspensions, revocation or denial of certificate.**

#### **5.43.010      Purpose.**

The City Council evidences its intent to establish the Oakland Artisan Marketplace Project for the purpose of regulating the vending of arts and crafts on public sidewalks and designated areas, days and times in Oakland. (Ord. 12291 § 3, 2000)

#### **5.43.020      Definitions.**

For the purpose of this chapter the following words or phrases mean or include:

“Artisan” is a person (fine artist or skilled craftsperson) who is in the business of vending their own art or craft product.

“Certificate” is a revocable approval from the city that enables the holder to vend arts and crafts items at authorized locations, days and times.

“Identification card or I.D. card” is issued by the city this chapter to identify persons authorized to vend.

“Pedestrian” means a person who is walking or otherwise travelling in the public way.

“Vending” is the business of selling or causing to be sold any of the following items: crafts, handiwork, artifacts and art or artwork of any kind permitted by this chapter.

“Vending equipment” includes but is not limited to any materials, merchandise, tools, carts, tables, or other items owned by, in the possession of, or associated with both the city and licensed vendor. (Ord. 12291 § 4, 2000)

#### **5.43.030      Oakland Artisan Marketplace certificate application.**

Every person desiring an artisan certificate pursuant to this chapter shall file an application with the Craft and Cultural Arts Department upon a form to be provided by said department. Fees as hereinafter set forth in this chapter shall accompany said application. The application shall contain the following information:

- A. The name, resident address, phone number and Social Security number of the applicant;
- B. The federal and state employer’s identification number; the state sales tax identification number if sales tax is chargeable to the items sold; city of Oakland business tax certificate verification;
- C. A description of the art or craft item for which the applicant seeks to license;
- D. Four photographs or slides of the artisan’s arts or craft items, including one of vending equipment;
- E. A brief description on how the art and craft item was made;
- F. A declaration under penalty of perjury that the art or craft item for which the applicant seeks a license to sell is of the applicant’s own creation and was created or produced in his or her presence and under his or her own direct and personal supervision. (Ord. 12291 § 5, 2000)

#### **5.43.040      Issuance of certification—Fee—I.D. card—Period—Requirement.**

If the application is satisfactory and complete, the applicant will be required to pay the certificate fee and obtain a certificate card.

- A. The fee amount for a certificate shall be determined by the City Manager on an annual basis or until a set amount is determined.

B. The I.D. card shall contain a photograph of the Oakland artisan and the certificate number. The Craft and Cultural Arts Department shall determine the manner and form of any other information that may be placed upon this I.D. card. The I.D. card shall be displayed by the artisan at all times when the artisan is selling or soliciting offers to purchase any art or craft work. The photograph shall be furnished by the artisan.

C. Any certificate issued will be valid for the period of six months or a year from the date of issuance depending on the amount of fee paid.

D. No person under the age of sixteen (16) is eligible for certification as an artisan.

E. No person may hold or be issued more than one valid certificate.

F. It is unlawful for any person to sell, offer for sale, expose for sale or solicit offers to purchase any art or craft item of his or her own creation on any public area where such activities are permitted pursuant to this chapter, unless such person has been duly certified and issued an I.D. card in accordance with the provisions of this chapter.

G. The city will notify the artisan in writing of the decision to issue or deny the certificate and, if denied, the reason for denial. In the event that an artisan is denied certification, either upon application or renewal, the artisan shall have the opportunity to appeal the denial to the Cultural Affairs Commission. (Ord. 12291 § 6, 2000)

#### **5.43.050      Regulations for artisans.**

A. Artisans shall sell, offer for sale or solicit offers to purchase only for those specific handcrafted art or craft items created personally by the artisan.

B. Artisans shall sell, offer for sale or solicit offers to purchase only in the area(s) designated by the City Manager. The designation of any area in a public place under jurisdiction is subject to approval of and to any rules and regulations imposed by such office.

C. Days and hours when vending shall be allowed are determined and are specific to the designated site.

D. All artisans must adhere to designated time and day requirements and shall be allotted one hour set-up and one hour breakdown time before and after stated selling hours.

E. No artisan shall sell, offer for sale, or solicit offers to purchase, from any vehicle.

F. Artisans shall engage in their activities in designated areas of the city in such a specific manner to cause no impairment to any handicapped person or other pedestrian or other life safety activity and that at all times there shall remain open passage for pedestrians of a space of at least ten feet in width, as measured on a line perpendicular to the artisan activities and end to walkway.

G. Vending equipment shall be regulated in the following manner:

1. Vending equipment, merchandise offered for sale or otherwise associated with the artisan shall not block, impede or in any way hamper pedestrian movement or cause or allow to cause any hazard to pedestrians.

2. Vending equipment shall be easily moved and shall be self-supporting; at no time shall vending equipment be attached, tied or locked to trees, hydrants or any other permanent vertical structure or bench.

3. Any vending equipment shall have the maximum length of eight feet, maximum depth of six feet and a maximum height of eight feet. (Ord. 12291 § 7, 2000)

#### **5.43.060      Cleanup responsibility and liability for damages.**

A. Artisans shall maintain their sales location in a clean hazard-free condition; failure to so maintain and failure to clean the vending location of waste shall be cause for revocation or suspension of certificate.

B. Artisans shall agree to defend, indemnify and hold harmless the city, its officers and employees from any and all damages or injury to persons or property proximately caused by any act or omission of the artisan or any hazardous or negligent conditions maintained at their sales location. (Ord. 12291 § 8, 2000)

**5.43.070 Lottery.**

A. The Craft and Cultural Arts Department shall establish and supervise a lottery system whereby those persons certified as Oakland Artisans who possess a valid State Board of Equalization Resale Permit and Oakland business tax certificate shall be chosen by lottery for the available designated selling area.

B. The Craft and Cultural Arts Department shall make such reasonable rules and regulations as are necessary to effectuate the lottery.

C. The Craft and Cultural Arts Department shall design and distribute to those chosen in the lottery on each day the lottery is held, a document identifying the person chosen, the craft of the person chosen and the location where the person chosen will be allowed to sell, offer for sale or solicit offers to purchase.

D. The lottery document shall be in possession of the artisan at all times and shall be displayed to a monitor or police officer upon request.

E. It is unlawful to sell, offer for sale, or solicit offers to purchase arts and crafts in designated area without first obtaining a document from the Craft and Cultural Arts Department indicating the seller has been chosen for the specified space and time period. (Ord. 12291 § 9, 2000)

**5.43.080 Violations and penalty.**

A. The City Manager or his or her designated representative may issue or cause to have issued citations for violations of this chapter.

B. Any person vending without a duly issued certificate and I.D. card or found in violation of any of the regulatory provisions of this chapter shall be guilty of an infraction.

C. Any person found guilty of an infraction, of which the person has been given notice, shall not be punished by imprisonment but may be fined. (Ord. 12291 § 10, 2000)

**5.43.090 Suspensions, revocation or denial of certificate.**

A. Any certificate issued pursuant to this chapter

may be revoked or suspended for good cause or upon violation of any provisions of this chapter. Any person whose certificate has been revoked or suspended shall receive in writing as explanation of such action by the certificate inspector. The reasons for denial, suspension and revocation include:

1. Fraud or misrepresentation in the application for the certificate; or
2. Fraud or misrepresentation in the course of conducting the business of vending; or
3. Conducting the business of vending contrary to the conditions of the certificate and/or regulations; or
4. Conducting the business of vending in such a manner as to create a public nuisance or to constitute a danger to the public.

B. The following factors will be considered in determining whether a permit should be suspended or revoked:

1. The number of citations for violation of this chapter previously received by the artisan; and
2. The number of previous suspensions and/or revocations imposed upon the artisan; and
3. The number of occasions for which the artisan's certificate was subject to suspension or revocation and was not suspended or revoked; and
4. The seriousness of the violation or misrepresentation and the danger to the health and/or safety of the public presented by the artisan's misrepresentation, noncompliance and/or misconduct; and
5. Whether or not the condition subjecting the artisan to suspension or revocation is a nature that has been or can be corrected.

C. Any certificate holder or applicant whose permit is suspended or revoked or whose application for a permit is denied may within fifteen (15) days of the date of action notify the Craft and Cultural Arts Department that the certificate holder or applicant desires reconsideration of that decision. A hearing before the Cultural Affairs Commission of the request shall be scheduled for the next regular meeting. The suspension or revocation will remain in effect pending the hearing. At the hearing, the certificate holder or applicant will be afforded an opportunity to be heard and present facts and wit-

**5.43.090**

nesses on his or her behalf At that time a decision will be made which shall be final. (Ord. 12291 § 11, 2000)

**Chapter 5.44****OUTDOOR AMUSEMENT CENTERS****Sections:**

- 5.44.010      Defined.**
- 5.44.020      Permit.**
- 5.44.030      Permit requirements.**
- 5.44.040      Sanitary facilities.**
- 5.44.050      Insurance.**

**5.44.010      Defined.**

“Outdoor amusement center” means any establishment intended to operate for more than two weeks which maintains one or more amusement devices such as rides, merchandise booths, games of skill, exhibitions or similar devices, located wholly or partly in the open air; excepting, however, any such establishment consisting of not more than two coin-operated mechanically actuated rides designed for and used exclusively by preschool children. (Prior code § 5-4.23)

**5.44.020      Permit.**

It is unlawful for any person to establish, maintain, conduct, carry on or engage in the business of an outdoor amusement center in the city unless there exists a valid permit therefor granted and existing in compliance with the provisions of Chapter 5.02. The investigating official referred to in Section 5.02.030, to whom the application shall be referred, shall be the Chief of Police and he or she shall have the power to grant or deny the permit applied for without referring the same to the City Manager. The Chief of Police is empowered to make inspections and enforce the regulations prescribed by the provisions of this chapter and shall have the power to make and enforce such rules and regulations as may in his or her discretion be necessary to protect the person and property of patrons of said outdoor amusement centers, including trampoline centers, and the safety and welfare of the general public. Any permit granted shall be on condition that the

applicant shall within thirty (30) days after the site shall have ceased to be used as an outdoor amusement center, including outdoor trampoline center, restore said site to a safe and level condition, and shall execute to the city and deliver to the City Clerk, a bond, approved by the City Attorney, in the amount of five hundred dollars (\$500.00) for the faithful performance of said condition, or applicant may, in lieu of said bond, deposit with the city cash, or a certified check in the amount of said bond. Existing outdoor amusement centers, including outdoor trampoline centers, shall comply with all of the provisions of this Ordinance within thirty (30) days from the date of its final adoption. (Prior code § 5-4.24)

**5.44.030      Permit requirements.**

In addition to the requirements of Section 5.02.020 the applicant for an outdoor amusement center permit shall furnish the Chief of Police, to such extent as he or she may require, letters of recommendation and other evidence of the good reputation of the applicant and his or her proposed outdoor amusement center based upon the conduct thereof in cities in which he or she has conducted similar centers during the preceding five years. An application for such permit shall be denied if any applicant shall be found to have a record of prior conviction of any public offense involving juveniles, morals, liquor, or narcotics. (Prior code § 5-4.25)

**5.44.040      Sanitary facilities.**

It is unlawful for any person to operate or maintain, or cause or permit to be operated or maintained, any outdoor amusement center referred to in Section 5.44.020, unless there is maintained upon the premises thereof adequate lavatories, water closets and all usual incidental sanitary facilities for the use of whomsoever shall be lawfully upon the premises. There shall not be less than one separate unit of said sanitary facilities for men and not less than one separate unit of said sanitary facilities for women. (Prior code § 5-4.26)

**5.44.050 Insurance.**

No permit shall be issued to establish, maintain, conduct, carry on or engage in the business of an outdoor amusement center until the applicant therefor has placed on file with the City Clerk a certificate, or certificates, of an insurance carrier duly authorized to do business within the state of California, that it has issued and there is in effect for the benefit of the person conducting such amusement center, public liability insurance covering all claims for damages arising out of the use and operation of any and all devices operated in connection with such center and resulting in personal injury or death, which insurance shall be in the minimum amount of three hundred thousand dollars (\$300,000.00) for the injury or death of any one person, and five hundred thousand dollars (\$500,000.00) for injury or death to two or more persons in any one accident. Such certificate, or certificates, of said insurance shall provide that no cancellation or reduction in coverage thereof shall be effective except upon ten days' written notice thereof to the City Clerk and shall be subject to the approval of the City Attorney as to form and legality. (Prior code § 5-4.27)

## Chapter 5.46

### **PAWBROKERS, SECONDHAND DEALERS, SCRAP DEALERS AND SCRAP COLLECTORS**

**Sections:**

- 5.46.010 Definitions.**
- 5.46.020 Pawnbrokers—Permits.**
- 5.46.030 Secondhand dealers, exchange dealers—Permits.**
- 5.46.031 Secondhand jewelry dealers.**
- 5.46.040 No permit to minor.**
- 5.46.050 Record of transactions.**
- 5.46.060 Inspections and reports.**
- 5.46.070 Identification of customers in certain establishments.**
- 5.46.080 Suspension or revocation of permit for violation of Section 5.46.070.**
- 5.46.090 Merchandise to be held.**
- 5.46.100 Hold-order.**
- 5.46.110 Purchase from minors and servants.**
- 5.46.120 Declaration of legal status.**
- 5.46.130 Hours.**
- 5.46.140 Secondhand automobile dealers, secondhand automobile parts dealers, and automobile wreckers and wrecking establishments—Records and reports.**
- 5.46.150 Storage of secondhand building material—Permit.**
- 5.46.160 Storage of secondhand building material—Regulation.**
- 5.46.170 Scrap dealers and scrap collectors—Permits.**
- 5.46.180 Scrap dealer's and scrap collector's application.**
- 5.46.190 Scrap dealers and scrap collectors—Records.**

- 5.46.200 Scrap dealer's records.**
- 5.46.210 Scrap dealers and scrap collectors—Regulations.**
- 5.46.220 Pawnbroker's receipt books.**
- 5.46.230 Pawnbrokers' customer receipts.**

**5.46.010 Definitions.**

For the purposes of this chapter, certain words and phrases are defined, and certain provisions shall be construed as herein set out, unless it shall be apparent from their context that a different meaning is intended:

"Automobile wrecking establishment" means and includes any establishment, building or other place where the business is carried on of wrecking old or used automobiles or other motor vehicles, and adding or employing the accessories and parts thereof in equipping, repairing, or rebuilding motor vehicles, or storing, selling, or otherwise disposing of, such accessories or parts.

"Exchange dealer" means and includes every person who engages in or conducts the business of accepting secondhand articles in full or partial payment for any other article or articles carried as stock in trade by such person, and shall include the acceptance of any article in full or partial payment for any rebuilt or remanufactured article of similar or different nature. This definition shall not apply to dealers whose principal or primary business is retailing or wholesaling new merchandise.

"Pawnbroker" means and includes every person, firm or corporation, other than banks, trust companies or bond brokers who may otherwise be regulated by law and authorized to deal in commercial papers, shares of stock, bonds and other certificates of value, who keeps a loan or pawn office or engages in or carries on the business of receiving jewelry, precious stones, valuables, firearms, clothing, or personal property, or any other article or articles in pledge for loans or as security, or in pawn for the repayment of moneys, and exacts an interest for such loans.

"Scrap collector" means and includes any person who goes from place to place for the purpose

of engaging in or carrying on the business of collecting, buying or selling, either at wholesale or retail, any old rags, bottles, sacks, cans, papers, metals, or any other worn out or discarded material. All such materials are hereinafter referred to as "scrap."

"Scrap dealer" means and includes any person having a fixed place of business and who is engaged in carrying on the business of buying or selling, either at wholesale or retail, any old rags, bottles, sacks, cans, papers, metals, or any other worn out or discarded material. All such materials are hereinafter referred to as "scrap."

"Secondhand automobile or aircraft parts dealer" means and includes any person operating, maintaining or carrying on the business of buying and selling or exchanging secondhand, used, government surplus, salvaged, reclaimed, or renewed automobile, or aircraft parts or accessories.

"Secondhand dealer" means and includes every person who engages in, or conducts the business of buying, selling or exchanging, whether as a separate business or in connection with other businesses, secondhand or rebuilt typewriters, adding and calculating machines, secondhand bicycles, bicycle accessories, motorcycles, motorcycle accessories, scales, clothing, tools, harnesses, surgical, dental or drawing instruments, firearms, pianos or other musical instruments, furniture, household furnishings, books, used and reclaimed army goods, merchandise, or any other secondhand article or articles or things, excepting, however, secondhand jewelry dealers, secondhand automobile or aircraft parts dealers, scrap collectors and secondhand automobile or aircraft parts dealers, scrap collectors and scrap dealers as herein defined, nor shall it pertain to automobile wrecking establishments as herein defined; and provided, further, that nothing in this chapter shall be understood to include as secondhand dealers persons who engage in the business of selling no other secondhand goods or articles than those used and reclaimed, rebuilt or remanufactured, articles or goods which are purchased by such dealer direct

from bona fide wholesale dealers, jobbers or manufacturers, or from distributing agents of the United States Army or Navy.

(Ord. No. 13136, § 1, 10-16-2012; Prior code §§ 5-9.01, 5-9.01(a)—5-9.01(f), 5-9.01(i), 5-9.01(j))

#### **5.46.020      Pawnbrokers—Permits.**

It is unlawful for any person to engage in, or carry on, or conduct, or to permit to be carried on, engaged in or conducted, within the city, the business of any pawnbroker, whether as a separate business or in connection with any other business, or to advertise the same by means of signs or notices on buildings or windows, or by distribution of printed circulars or by public display, or otherwise in any manner whatsoever, unless there exists a valid permit therefor, granted and existing in compliance with the provisions of Chapter 5.02. Both the application for such a permit and the issued permit shall set forth the exact nature of the business to be carried on. In addition, the application shall set forth the requirements specified in Section 5.02.020, and such application shall be accompanied by the signatures of three resident freeholders, certifying to the good moral character and reputation of the person or persons making such application. At the time of filing such application, the applicant and all persons to be directly or indirectly interested in the permit if granted, including all members of any firm or partnership, shall be fingerprinted at the request of the Police Department, and if any such person has been convicted of a felony or any crime involving theft, obtaining money or property by false pretenses, receiving stolen property, extortion, embezzlement, or has violated any provision of this chapter or any other law regulating pawnbrokers, the application for such permit may be denied. Normally, approximately thirty (30) days are required to process the application subsequent to the taking of fingerprints. The investigating official referred to in Section 5.02.030, to whom the application shall be referred, shall be the Chief of Police. In addition to the grounds set forth in Section 5.02.080, any permit may be revoked upon the

recommendation of the Chief of Police establishing the fact that such permittee has, or has had, in his or her possession any stolen article without there having been made a record of such article as hereinafter in this chapter provided.

(Prior code § 5-9.02)

#### **5.46.030 Secondhand dealers, exchange dealers—Permits.**

It is unlawful for any person to engage in, or carry on or conduct, or to permit to be carried on, engaged in or conducted, within the city, the business of any secondhand dealer or exchange dealer, whether as a separate business or in connection with any other business, or to advertise the same by means of signs or notices on buildings or windows, or by distribution of printed circulars, or by public display, or otherwise in any manner whatsoever, unless there exists a valid permit therefor, granted and existing in compliance with the provisions of Chapter 5.02. Both the application for such a permit and the issued permit shall set forth the exact nature of the business to be carried on. In addition, the application shall set forth the requirements specified in Section 5.02.020, and such application shall be accompanied by the signatures of three resident freeholders, certifying to the good moral character and reputation of the person or persons making such application. At the time of filing such application, the applicant and all persons to be directly or indirectly interested in the permit if granted, including all members of any firm or partnership, shall be fingerprinted at the request of the Police Department, and if any such person has been convicted of a felony or any crime involving theft, obtaining money or property by false pretenses, receiving stolen property, extortion, embezzlement, or has violated any provision of this chapter or any other law regulating secondhand dealers and exchange dealers, the application for such permit may be denied. Normally, approximately thirty (30) days are required to process the application subsequent to the taking of fingerprints. The investigating official referred to in Section 5.02.030, to whom the appli-

cation shall be referred, shall be the Chief of Police. In addition to the grounds set forth in Section 5.02.080, any permit may be revoked upon the recommendation of the Chief of Police establishing the fact that such permittee has, or has had in his or her possession any stolen article without there having been made a record of such article as hereinafter in this chapter provided.

(Ord. No. 13136, § 1, 10-16-2012; Prior code § 5-9.021)

**Editor's note**—Ord. No. 13136, § 1, adopted October 16, 2012, changed the title of Section 5.46.030 from "Secondhand jewelry dealers, secondhand dealers, exchange dealers—Permits" to "Secondhand dealers, exchange dealers—Permits." The historical notation has been preserved for reference purposes.

#### **5.46.031 Secondhand jewelry dealers.**

**A. Definitions.** The following terms are defined for the purpose of interpreting and administering the regulations for secondhand jewelry dealers as provided in this section only (5.46.031) and are not relevant to other sections of Chapter 5.46:

"Applicant" means a person who has submitted an application for a permit to operate a secondhand jewelry dealer business in the City. This includes a person who applies for an initial permit to operate a secondhand jewelry dealer business as well as a person who applies to renew a preexisting permit.

"City Administrator" refers to the City Administrator for the City of Oakland.

"Crime involving moral turpitude" means a violation of law that involves any of the following: an intent to defraud, intentional dishonesty for personal gain, intentionally causing a serious injury to another, the sale of narcotics or possession of narcotics with intent to sell, or a sexual offense.

"Deceptive practices" means concealment of the actual facts, operations, business practices, records, or failure to keep and document required records that relate to the sale and purchase of secondhand jewelry or the procurement thereof.

"Operating standards" refers to all regulations in this section (5.46.031) providing for permissible

locations, premises requirements, and compliance and monitoring with local regulations for secondhand jewelry dealers.

"Permittee" means a person who has been granted a license, permit, or other document by the City to conduct and/or operate a secondhand jewelry dealer business.

"Person" means any natural person, partnership, cooperative association, corporation, limited liability company, personal representative, receiver, trustee, assignee, or any other legal entity.

"Precious metals" means gold, platinum, silver and their alloys.

"Proprietor" means a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a ten percent or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person can or does have or share ultimate control over the day-to-day operations of a business.

"Secondhand jewelry dealer" means and includes every person who engages in or conducts the business of buying, selling or exchanging old gold, old silver, platinum or articles of platinum, silverware, secondhand jewelry or other precious metals or stones. For the purposes of this section, "secondhand jewelry dealer" or "dealer" may be used interchangeably and shall have the same meaning. A secondhand jewelry dealer does not include a "pawnbroker" as that term defined is defined by either Section 21000 of the Financial Code or Section 5.46.010 of this Code.

#### B. Secondhand Jewelry Dealer Permit.

1. It is unlawful for any person to operate a secondhand jewelry dealer business, whether as a separate business or in connection with any business other than a jewelry or precious metals store, or to advertise the same by means of signs or notices on buildings or windows, or by distribution of printed circulars, or by public display, or otherwise in any manner whatsoever, unless the person has a secondhand jewelry dealer permit issued by the City pursuant to this section.

2. A permit to operate a secondhand jewelry dealer business may only be granted upon a determination that an applicant seeking to operate a secondhand jewelry dealer business can meet the following operating standards:

a. Permissible Locations and Limits on Permits Issued Per City Council District. No secondhand jewelry dealer business shall be located closer than 1,000 feet to any other secondhand jewelry dealer business. Further, the City Administrator shall issue no more than ten permits for the operation of a secondhand jewelry dealer business for each City Council district. The geographic and separation restrictions provided in this subsection B.2.a. do not apply to secondhand jewelry dealers operating lawfully pursuant to a properly issued permit as of the effective date of this section.

b. Premises where a proposed secondhand jewelry dealer business will be located or where an existing secondhand jewelry dealer business seeking a permit renewal is located shall have the following:

(1) Interior and Exterior Surveillance Cameras.

A. All surveillance cameras shall record to a "DVR" or hard drive device capable of storing, at a minimum, recorded footage for a 30-day time period.

B. Exterior cameras shall monitor the entrance of the premises and exterior perimeter abutting the premises, including any private parking areas adjacent to the premises that customers may use.

C. Interior cameras shall monitor the entire interior public area of the premises.

D. An applicant shall consult with the Oakland Police Department to obtain advice and feedback about the proposed plan for camera placement prior to installing any surveillance cameras.

E. A permittee shall make surveillance camera recordings available to the Oakland Police Department upon request and within a reasonable amount of time.

(2) Warning signs conspicuously placed on exterior walls abutting the premises in block letter-

ing at least two inches tall stating: "YOUR ACTIVITIES ARE BEING RECORDED." The number and exact placement of such signs will be set forth by the conditions of the permit.

(3) Storefronts shall have large glass windows and glass doors and no more than ten percent of any window or door area shall be covered by signs, banners, or opaque coverings of any kind so that law enforcement personnel will have a clear view of the entire public area of the premises from the public sidewalk abutting such premises.

(4) Exterior lighting shall be provided on all frontages. Such lighting shall be designed to illuminate persons standing outside such as to allow reasonable identification from 50 feet away. Exterior lighting shall be designed so as not to cast glare offsite. The lighting plan shall be reviewed and approved by the City Administrator, or his or her designee prior to issuing a secondhand jewelry dealer permit.

#### C. Applications for Permits.

1. General Requirements. Applications for secondhand jewelry dealers permits shall include the following information and documentation:

a. The business name, address, telephone number, and business hours of the proposed secondhand jewelry dealer business.

b. Name and mailing address of a person authorized by applicant for City to send communications and notices regarding secondhand jewelry dealer regulations and compliance.

c. If the proposed location for the secondhand jewelry dealer business will be leased, a copy of the lease and the name and mailing address of the property owner of the lease location.

d. A brief description of the proposed secondhand jewelry dealer business.

e. A summary of applicant's prior business activities, financial history and business associations in the ten years prior to filing the application;

f. The name, address, and job description of the applicant and all persons who will be engaged in the ownership and/or operation of the proposed secondhand jewelry dealer business.

g. Applicant's written agreement to accept the permit subject to all the terms and provisions of this section, and acknowledging that a permit is a privilege and does not extend or confer any rights or privileges in perpetuity or which run with the land.

h. Signed statements from three Oakland residents who will vouch for the good moral character and reputation of the applicant.

2. Business Operations Plan. Applicants must include a business operations plan describing how the applicant will comply the operating standards provided in Subsection B. as well as all applicable State laws, including, but not limited to Sections 21628, 21630, 21633, 21628.2, and 21636 of the California Business and Professions Code, as well as Section 21208 of the California Financial Code.

3. Investigations, Fingerprinting, and Background Checks.

a. Investigating Official. The Chief of Police or the designee shall be the "investigating official" in charge of the investigation of the applicant and verification of the information provided in the permit application as deemed relevant and necessary. The investigating official will prepare a written report based on the investigation, and will forward this report along with either a recommendation to deny or grant the permit application, to the City Administrator or his or her designee.

b. Fingerprinting Required. When filing an application, the applicant and all persons who will be involved in ownership and/or operation of the proposed secondhand jewelry dealer business, including all members of any firm or partnership, principals, agents, or employees, shall be fingerprinted at the request of the Police Department. If any such person has been convicted of a crime involving moral turpitude, the application may be denied. Normally, approximately 30 days are required to process the application subsequent to the taking of fingerprints.

c. Background Check: Authorization Required for City's Review of Criminal History Information and Financial History Information. The applicant and any others required to be finger-

printed pursuant to Subsection C.3. shall authorize the City in writing to obtain information from criminal justice agencies, financial institutions, Federal, State and local agencies, as permitted by law.

d. Supplemental Investigation by City Administrator. The applicant shall also provide other relevant and necessary information for the City Administrator to determine compliance with this chapter and/or any other applicable section of the Municipal Code or Planning Code.

e. Applicant's Release of Claims and Hold-Harmless Agreement. The applicant and any others required to be fingerprinted pursuant to Subsection C.3. shall sign a release of claims and hold-harmless agreement to the City for its use of the information provided or discovered during an application investigation.

4. Procedure for Filing Applications. Applications for a secondhand jewelry dealer permit shall be filed with the Special Business Permits Division of the City Administrator's Office and shall set forth the information required in Subsection C. and other such further information as the City Administrator, or her or his designee, may require.

5. Confidentiality. To the extent permissible by law, the City will keep all information obtained through background checks of the applicant and/or others required to be fingerprinted confidential. Such information will be used for the limited purposes of determining applicant's qualifications for a permit, whether persons required to be fingerprinted have been convicted of a crime of moral turpitude, to verify the information provided in the permit application, and to assist City in administering the requirements for secondhand jewelry dealers pursuant to this section. The City will not make public such information or disclose it to a third party unless the City is under a legal obligation to disclose such information pursuant to a court order, a valid subpoena, a valid public records' request, or upon the request of a duly authorized government agency. The City does not guarantee confidentiality of any information or documents provided in a permit application or proceeding related thereto.

D. Notice of Hearing on Application. The Special Business Permit Division of the City Administrator's Office shall set a hearing date, not more than 60 days from the date when a complete permit application is filed. After receiving a completed permit application, the Special Business Permit Division shall notify the applicant of the time and place of the application hearing. Such notice shall be given at least 30 days before the date of such hearing. At such hearing all persons interested shall be entitled to file objections, protests, or recommendations regarding the issuance of a secondhand jewelry dealer permit. Such hearing may, by the City Administrator's discretion, be continued to a future date as circumstances may require.

In the event that a public notice of the hearing on any permit application may be required, the Special Business Permit Division shall cause a notice to be published once in the official newspaper of the City at least 30 days before such hearing date, and cause a copy thereof to be posted upon the premises to where the proposed secondhand jewelry dealer business will be located, and a copy on the bulletin board near the City Council Chambers. Such notice shall set forth the fact that such application has been filed, the name of the applicant, the nature of the secondhand jewelry dealer business 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 notices thereof within 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 300 feet of the property involved and to all addresses within 300 feet of the property and to registered community groups. All such notices shall be given not less than 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.

**E. Procedure for Hearing on Application.** Any investigation, inquiry or hearing which the City Administrator has power to undertake or to hold may be undertaken or held by the City Administrator's designee 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 30 days after the conclusion of the investigation, inquiry or hearing his or her findings and recommendations to the City Administrator.

Within 60 days after the filing of the findings and recommendations of the Hearing Officer, the City Administrator 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 or the Hearing Officer, he or she shall not be bound in the conduct thereof by the common law or statutory rules of evidence and procedure. 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 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 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.

**F. Action on Permit Application.** The City Administrator, or his or her designee, shall not grant a secondhand jewelry dealer permit if it appears that the applicant is not qualified to conduct or maintain the proposed secondhand jewelry dealer business, either for moral, financial, or other relevant reasons. Among the relevant reasons that may be considered, are those factors and criteria set forth as "grounds for enforcement actions" in Subsection O.

**G. Relief From Permit Requirements and Operating Standards—Request for Relief.**

1. Any person who owns or operates, or who has applied to open, expand, modify or establish a secondhand jewelry dealer business which would be affected by the required application permit requirements and operating standards, and who contends that the permit application requirements and operating standards as applied to him or her would be unlawful under Federal, State, or local law or regulation, may submit a written request for relief. For purposes of this section, notice to a predecessor in interest shall constitute actual notice to subsequent owners or operators.

a. A new secondhand jewelry dealer business planning to open in an area of the City where such a business is not allowed, must include its request for relief from requirements and operating standards as part of the application for permit referenced in Subsection C.

b. An existing secondhand jewelry dealer business that can not comply with the operating standards and which is seeking a renewal shall submit its request for relief along with the permit renewal application materials referenced in Subsection S.

2. The request for relief must; (1) state the name of requestor and business address; (2) the affected application number; (3) specify how the permit application and/or operating standards as applied to the requestor would be unlawful under Federal, State, or local law(s) or regulation(s); and (4) include all appropriate legal and factual support for the request for relief.

3. **Decision on Request for Relief.** Within 30 days of receipt of the completed request for relief, the City Administrator, or his or her designee, shall mail to the requestor a written determination in response to the request for relief from operating standards.

4. **Appeal of Request for Relief.** The requestor may appeal such determination pursuant to the appeals process outlined in Section 5.02.100 of this Code.

5. Failure to timely submit the request for relief or failure to raise each and every issue that is

contested, along with all the arguments and evidence which supports the basis of the request for relief, will preclude the requestor from raising such issues during the appeal and/or in court.

**H. Changes and Modifications to Permits: Prior Approval Required.**

1. Prior approval must be obtained for a secondhand jewelry dealer permittee to do any of the following:

- a. Convey, give, or otherwise transfer the permit to another person;
- b. Transfer any ownership interest or voting control in a secondhand jewelry dealer business to another person;
- c. Expand the permitted business operations in terms of inventory or physical space of premises by more than 20 percent;
- d. Change the location of a permit;
- e. Change the name of the business operating under the permit.

2. The City Administrator or his or her designee may deny the types of changes specified in Subsection H.1. for good cause, which includes, but is not limited to, the criteria and factors set forth as "grounds for enforcement actions" in Subsection O.1.

3. Transfer of Ownership or Control—Financial Encumbrance. In addition to the requirement to obtain prior approval as provided in Subsection H.1., each permittee must notify the City Administrator or her or his designee at least 30 days prior to transferring an ownership interest equal to or greater than ten percent of the entire ownership in the secondhand jewelry dealer business.

**I. Compliance with Local and State Law Requirements. Cooperation with Compliance Investigations.** Upon written request and within a reasonable amount of time, the applicant shall provide all relevant and necessary information to the City Administrator or his or her designee for evaluation as to whether permittee is in compliance with this Section, and/or other applicable City or State regulations.

**J. Inspections.** The Oakland Police Department, or its designee shall be permitted to enter

and inspect the premises where a secondhand jewelry dealer is permitted to operate, in a reasonable manner and during regular business hours.

**K. Permit and Business Tax Certificate to be Exhibited.**

1. **Permit.** Business and establishments operating under a permit must exhibit the permit in accordance with the requirements of Section 5.02.120 of this Code.

2. **Business Tax Certificate.** The permittee shall post a copy of the business tax certificate in a conspicuous place on the premises which is open to the public. The business tax certificate shall contain the information required by Section 5.04.070 of this Code.

**L. Expiration of Permit.** The permit expiration provisions of Section 5.02.150 of this Code apply to secondhand jewelry dealers permits.

**M. Fees.** All required fees are payable to City as set forth in the master fee schedule for any permit issued or renewed. An application and permit fee and a fee for inspections, investigations and enforcement actions shall also be payable to City as set forth in the master fee schedule. All fees required for the processing of a permit application are due at the time the application is submitted.

**N. Violations.**

1. **Enforcement.** 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 section; and a copy of such rules of procedure and regulations shall be on file and available for public examination at the Oakland Police Department.

All officials, departments, and employees of the City vested with the authority to issue permits, certificates, or permits shall adhere to, and require conformance with this section.

2. **Forms of Enforcement Actions.** An enforcement action may take the form of a denial of a permit or permit renewal, permit revocation or suspension, emergency order, imposition of new

conditions, civil fines, criminal actions as infractions and/or misdemeanors, or any combination thereof.

**3. Permittee Liable for Acts of Principals, Agents, and Employees.** A permittee under [this chapter] shall be subject to disciplinary action not only for his or her own acts or omissions in violation of this section, but also for the acts or omissions of principals, agents, or employees.

**O. Grounds for Enforcement Actions and Procedure for Enforcement Actions.**

**1. Grounds for Enforcement Actions.** The City may take enforcement actions when a permittee or applicant, or the principal, agent, or employee of such permittee or applicant who is engaged in the ownership and/or operation of the proposed or existing secondhand jewelry dealer business, has committed any of the following acts or omissions or meets any of the following criteria;

a. Intentionally misrepresented information in a application for secondhand jewelry dealer permit or renewal of such permit;

b. Failed to comply with building, fire, electrical, zoning, plumbing, or health regulations in respect to the premises where the secondhand jewelry dealer business is located or is to be located;

c. Has been convicted of a crime involving moral turpitude or deceptive practices;

d. Fails to meet any requirement imposed by this chapter or any other applicable City ordinance;

e. Is or has engaged in a business, trade, or profession without a valid City permit, when such person should reasonably have known that such a permit was required;

f. When credible evidence exists that the person is dishonest;

g. The secondhand jewelry dealer business promotes, causes, allows, fosters, aids, or otherwise enables a nuisance, whether private or public;

h. Failure to cooperate with the City's efforts to enforce the provisions of this Code;

i. For the sole purpose of considering whether a denial of a permit or permit renewal is warranted, the secondhand jewelry dealer business

has demonstrated a pattern of conduct of violating any State law contained in Article 4 (commencing with Section 21625) or Article 5 (commencing with Section 21650) of the California Business and Professions Code.

**2. Notice and Hearing of Enforcement Action.** The City Administrator or his or her designee, in his or her discretion, may take enforcement action in response to the grounds set forth under Subsection O.2. Such enforcement action requires a due process hearing on the merits of the proposed disciplinary action. A notice shall be sent to the permittee informing him or her of the intent to take disciplinary action, the proposed remedy, and the date, time, and location of the due process hearing.

A hearing to show cause must be held within 60 business days from the date of the notice of intent to take disciplinary action, unless the parties and or the independent hearing officer have agreed in writing to waive such hearing or grant a longer period of time prior to conducting the hearing.

**P. Special Enforcement Action: Emergency Order Revocation, Suspension, and Imposition of Permit Conditions.**

**1. Police Chief's Emergency Order: Suspension, Special Conditions, and Revocation.** Consistent with the noticing, hearing and procedural provisions outlined in this subsection P.1., the Chief of Police or his or her designee may issue an emergency order. Such an emergency order may require the suspension and/or imposition of special conditions on a permit, or revocation of a permit. Such an emergency order shall be in addition to any other penalty or condition authorized by law. If an emergency order is issued, any certificate issued in connection with the permit shall be surrendered to the City Administrator.

**a. Grounds for Emergency Suspension of Permit and/or Imposition [of] Special Permit Conditions.** The Chief of Police may issue an emergency order which suspends and/or places special conditions on a permit upon a determination by the Chief of Police that: (1) there has been a violation of any provisions of Section 5.46.031; and (2) such

an order is necessary for the immediate preservation of the public peace, health, safety, morals, or general welfare within the City.

b. **Grounds for Emergency Revocation of Permit.** Any permit may be revoked upon the recommendation and determination of the Chief of Police that a permittee has demonstrated a pattern of conduct of violating any provision contained in Article 4 (commencing with Section 21625) or Article 5 (commencing with Section 21650) of the California Business and Professions Code.

c. **Content Requirements for Any Emergency Order.** Any emergency order issued pursuant to this subsection P. shall: (1) set forth the grounds upon which it is issued, including a statement of facts describing the emergency which necessitates such order, (2) stating the time and place where the hearing on the emergency order will be held, and (3) shall be effective immediately upon the issuance and service thereof on the permittee or permittee's representative, or upon the posting thereof upon the permitted premises, and (4) indicate the period of time for which it is effective, which shall be based upon the severity of the violation and the nature of the emergency as determined by the Chief of Police.

d. **Hearing on the Emergency Order.** Such emergency order shall be subject to a due process hearing on the merits of the revocation, suspension, and/or imposition of special conditions. The due hearing must be held before an Independent Hearing Officer five days after the issuance of the notice of the emergency order.

**Q. Criminal Violations, Civil Violations, Penalties, Cost of Enforcement, Remedies Cumulative.**

#### 1. Criminal Violations.

a. **Infractions.** Any person who violates, causes, or permits another person to violate any provision of this section is guilty of an infraction unless otherwise provided.

b. **Separate Offenses for Each Day.** Any violator shall be guilty of a separate offense for each and every day during any portion of which any

violation of any provision of this chapter is committed, continued, permitted, or caused by such violator.

c. **Public Nuisance.** In addition to the penalties provided in this section, any use or condition caused or permitted to exist in violation of any of the provisions of this chapter shall and is declared to be a public nuisance and may be summarily abated as such by the City.

d. **Penalties.** Any person convicted of an infraction under the provisions of this section shall be punishable by a fine to the maximum permitted under Chapter 1.28 of this Code. Any violation beyond the second conviction within a one-year period may be charged as a misdemeanor, and the penalty for conviction shall be punishable by a fine or imprisonment to the maximum permitted under Chapter 1.28 of this Code and/or California law.

e. **Liability for Expenses.** In addition to the punishment provided by law, a violator is liable for such costs, expenses, and disbursements paid or incurred by the City or any of its contractors in correction, abatement, and prosecution of the violation.

#### 2. Civil Violations and Penalties.

a. **Civil Penalties.** Any person found liable for violating any provision of this chapter shall be liable for a \$1,000.00 fine.

b. **Separate Offenses for Each Day.** Any violator shall be liable of a separate offense for each and every day during any portion of which any violation of any provision of this chapter is committed, continued, permitted, or caused by such violator.

c. **Injunction.** Any violation of any provision of this chapter shall be and is declared to be contrary to the public interest and shall, at the discretion of the City, create a cause of action for injunctive relief.

#### 3. Liability for Cost of Enforcement and Legal Expenses Incurred by City.

a. **Cost of Enforcement.** In addition to the civil and criminal penalty provisions provided by this chapter, a violator is liable for such costs,

expenses, and disbursements paid or incurred by the City or any of its contractors in the investigation, correction, and abatement of the violation.

b. Legal Expenses. The City may also impose against a permittee the administrative and legal costs incurred in the disciplinary action such as attorney's fees, expert witness or consultant fees, City Attorney time, staff time, expenses or costs.

4. Remedies Cumulative. The remedies provided for in this chapter shall be cumulative and not exclusive, and shall be in addition to any and all other remedies available to the City.

#### R. Liability, Indemnity and Hold Harmless.

1. To the fullest extent permitted by law, the City shall assume no liability whatsoever, and expressly does not waive any applicable immunities, with respect to the secondhand jewelry dealers permitting and operational standards established herein, or for the activities of any secondhand jewelry dealer.

2. To the maximum extent permitted by law, a permittee shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City, the City Council, and City agents, officers, and employees (hereafter collectively called City) from any liability (including legal costs, attorneys' fees, expert witness and consultant fees, City Attorney or staff time, expenses or costs), damages, claim, judgment, loss (direct or indirect), action, causes of action, or proceeding brought against the City in connection with City's decisions, application and implementation of this section and/or other applicable City or State regulations. 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.

3. Within ten calendar days of the filing of any action as specified in Subsection R.2. above, the permittee shall execute a letter 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 approval. Failure to timely execute the letter

agreement does not relieve the permittee of any of the obligations contained in this condition or other requirements or conditions of approval that may be imposed by the City.

#### S. Renewal and Expiration of Permit.

1. Application Requirements for Renewal of Permit. An application requesting a renewal of permit shall include the following:

a. Renewal Fee. A permit issued pursuant to this Chapter is invalid unless the appropriate renewal fee has been paid in full and the term of the permit has not expired.

b. Permit Expires After One Year. The permit issued pursuant to this chapter shall be for one year. Each permittee shall apply for the renewal of his or her permit and submit the permit fees no later than 30 days prior to expiration of the permit term.

c. A declaration signed under oath that the applicant has, within the last month prior to applying to renew a secondhand jewelry dealer permit, carefully reviewed the State law holding, reporting, and reporting requirements for tangible personal property as referenced in Subsection C.2.

2. Expiration of Permit. A permit issued pursuant to this chapter that is not timely renewed shall expire at the end of its term. To reinstate a permit that has expired, or to renew a permit not timely renewed pursuant to Subsection S.1.a., the proprietor must:

a. Submit the permit fee plus a reinstatement fee of ten percent of the permit fee.

b. Submit a signed declaration affirming that the proprietor has not sold and will not sell any merchandise regulated by the provisions of this section after the permit expiration date and before the permit is renewed.

3. Action on Permit Renewal Application. The procedure in Subsection F. sets forth how the City Administrator or his or her designee takes action on a permit renewal application.

T. Hearings. The provisions of Section 5.02.090 of this Code apply to all hearings on applications and reviews of secondhand jewelry dealer permits, except when stated otherwise in this section.

U. Appeals. The provisions of Section 5.02.100 apply to all appeals pertaining to the denial, suspension, imposition of conditions or revocation of secondhand jewelry dealer permits, except when stated otherwise in this section.

(Ord. No. 13136, § 1, 10-16-2012)

#### **5.46.040 No permit to minor.**

No permit shall be issued for any business enumerated in Section 5.46.020 or 5.46.030 if the applicant therefor is under eighteen (18) years of age, nor if the applicant is a firm, partnership or corporation, if any member of such firm or partnership is under eighteen (18) years of age.

(Prior code § 5-9.022)

#### **5.46.050 Record of transactions.**

Every person managing, maintaining or conducting the business of any pawnbroker, secondhand dealer or exchange dealer, in the city shall keep, or cause to be kept, at the store or place of business, a well-bound book containing a record in which shall be legibly entered in the English language, in ink, at the time of every purchase, sale, exchange, pledge, pawn, or other transfer of possession of any article, or loan thereon, a description of such article received or delivered in such transaction sufficient to identify the same including serial number and all particular or prominent marks of identification that may be found on such property, the signature, address, age, sex and description of the person receiving, delivering or transferring the property or who is otherwise dealt with, the amount of money paid or received in such transaction, and the rate of interest, if any, and the date and hour of the transaction.

(Ord. No. 13136, § 1, 10-16-2012; Prior code § 5-9.03)

#### **5.46.060 Inspections and reports.**

The record of transactions required by the provisions contained within Section 5.46.050 shall be open for inspection by the Police Department at any time during business hours, and the Police Department shall also have the right to thor-

oughly inspect the premises, store or place where the business so recorded is being conducted at any time in search of any lost or stolen property, or to compare the entries kept in such records with the articles located on such premises or place of business. All persons in charge of such business, and the agents and employees thereof, shall render to the Police Department such assistance as may be reasonably necessary to enable it in such inspection or search. The person in charge of such business shall provide the Chief of Police, or his or her designated representative, each day excepting holidays, a copy of said record of transactions.

Any alteration of any copies of transaction as set out in Section 5.46.050 shall be unlawful.

It is unlawful for any pawnbroker, secondhand dealer, jewelry dealer, or exchange dealer in the city to make any purchase, exchange, pledge, pawn or other transfer of possession of any article unless the same is recorded as set out in Section 5.46.050.

(Prior code § 5-9.04)

#### **5.46.070 Identification of customers in certain establishments.**

It is unlawful for any person in the city to pledge, pawn, sell, exchange or otherwise transfer property to a pawnbroker, secondhand dealer under any fictitious or assumed name or address or under any name other than his or her true name and address.

(Prior code § 5-9.041)

#### **5.46.080 Suspension or revocation of permit for violation of Section 5.46.070.**

In addition to the grounds set forth elsewhere in this title, the City Administrator, upon the written recommendation therefor by the Chief of Police, may, under the provisions of Chapter 5.02, suspend or revoke a pawnbroker's, secondhand dealer's or exchange dealer's permit upon conviction of said permittee of violating the provisions of Section 5.46.070.

(Ord. No. 13136, § 1, 10-16-2012; Prior code § 5-9.042)

**5.46.090      Merchandise to be held.**

All articles purchased, received, exchanged, pledged, pawned, or otherwise taken into possession by any person maintaining or operating the business of pawnbroker, secondhand dealer or exchange dealer, or the agent thereof, the retention of which is not otherwise provided for by law, shall, except as hereinafter otherwise provided, be held for a period of thirty (30) days before being placed on exhibition, sold, exchanged, removed from the place of business where it was received, or delivered to any person, or otherwise disposed of, provided, however, that any such article may be delivered or returned at any time to the true owner thereof or his or her authorized agent; provided, further, any furniture, household furnishings, files, desks, chairs, safes, or other office equipment need not be held for more than five days pursuant to the provisions of this section.

(Ord. No. 13136, § 1, 10-16-2012; Prior code § 5-9.05)

**5.46.100      Hold-order.**

The Police Department may place a hold-order upon property acquired by a pawnbroker, second-hand dealer or exchange dealer in the course of his or her business for a period of ninety (90) days and, upon release of such property, may require the dealer to keep a record of the disposition of such property. It is unlawful for any such dealer to dispose of any property contrary to any hold-order issued by a member of the Police Department.

(Ord. No. 13136, § 1, 10-16-2012; Prior code § 5-9.051)

**5.46.110      Purchase from minors and servants.**

It is unlawful for any person maintaining or conducting the business of any pawnbroker, or exchange dealer, or any agent or employee thereof, to purchase or take goods or articles or things offered to him or her by any minor, or knowingly purchase or take such goods, articles or things from any servant or apprentice without first ascertaining that such article or thing is the property of

the person delivering the same, or that such servant or apprentice has the authority from the owner to deliver or sell such property. The word "minor" shall mean any person described in Section 6500 of the Family Code who is not an emancipated minor as provided for in Section 7002 of the Family Code.

(Ord. No. 13136, § 1, 10-16-2012; Ord. 11931 § 1, 1996: prior code § 5-9.06)

**5.46.120      Declaration of legal status.**

It is unlawful for any person maintaining or conducting the business of pawnbroker or exchange dealer or any agent or employee thereof to purchase or take any goods or articles or things offered to him or her by any person under the age of eighteen (18) years who claims legal status as an emancipated minor pursuant to Family Code Section 7002, unless such person shall have executed and delivered to said pawnbroker, secondhand dealer, exchange dealer or any agent or employee thereof a certificate substantially as follows:

**Declaration of Legal Status**

I hereby declare under penalty of perjury that the following is true and correct: (1) I have entered into a valid marriage, whether or not the marriage has been dissolved; (2) I am on active duty with the armed forces of the United States; or (3) I have received a declaration of emancipation pursuant to Family Code Section 7122.

Executed at Oakland, California

Dated: \_\_\_\_\_

Signed: \_\_\_\_\_

(Ord. No. 13136, § 1, 10-16-2012; Ord. 11931 § 2, 1996: prior code § 5-9.061)

**5.46.130      Hours.**

It is unlawful for any person conducting or maintaining the business of pawnbroker, second-hand dealer, or exchange dealer, or any agent or employee thereof, to keep or cause to be kept, such

place of business open on the first day of January, the thirtieth day of May, the fourth day of July, the twenty-fifth day of December, of each year, or on any other day except between the hours of seven a.m. and seven p.m.; provided, however, that on Saturdays and days preceding the aforesaid holidays, such business may be kept open until eleven p.m.

Any person engaged in conducting any business other than those hereinabove mentioned on the same premises as such business, or in conjunction with the same, shall notwithstanding close the place of such other business at the same time and in the same manner as herein provided. No person shall be engaged in any occupation at such place of business or businesses, or remain therein, during any such time such place of business or businesses is by this section required to be closed.

(Ord. No. 13136, § 1, 10-16-2012; Prior code § 5-9.07)

**5.46.140      Secondhand automobile dealers,  
secondhand automobile parts  
dealers, and automobile wreckers  
and wrecking establishments—  
Records and reports.**

Every person operating, maintaining or carrying on, the business of a secondhand automobile dealer, secondhand automobile parts dealer, or an automobile wrecking establishment shall keep, or cause to be kept, a record of the purchase, sale, exchange or storage of any automobile, or part thereof or accessory thereto, which record shall at all times be open to the inspection of the Chief of Police, or any officer detailed by him or her, and such person shall, as often as the Chief of Police shall direct, make out and deliver to him or her, on a blank form to be furnished by the Chief of Police, a full and complete report of the purpose, sale, exchange, storage or other transaction of such property. The said report shall contain the name of the person from whom purchased, the make, state license number, motor number, body number, style and seating capacity of all secondhand automobiles purchased, sold, exchanged or

placed in storage; the make, size and number of secondhand automobile tires; and the make and number of every secondhand automobile part or accessory so purchased, sold, exchanged or otherwise dealt with, together with such other information concerning said property as may be necessary to prove ownership or identity of such secondhand automobiles or automobile parts and accessories. A violation of any provision of this section shall be a misdemeanor, and it shall further be unlawful for any such person engaged in any such business to dispose of any secondhand automobile or part thereof or accessory thereto, until a report has been made concerning the purchase, sale or exchange of said property to the Chief of Police and he or she, or an officer detailed by him or her, shall have had an opportunity of inspecting the same.

Provided, the foregoing provisions of this section are not intended to require the keeping of records and the making of reports of parts of any vehicle acquired for the purpose of wrecking or dismantling the acquisition of which must be reported to the Department of Motor Vehicles and to the local Police Department under the provisions of Section 11520 of the Vehicle Code of the state of California.

Provided further, every automobile wrecker licensed as such who obtains actual possession of a vehicle subject to registration pursuant to the California Vehicle Code for the purpose of wrecking or dismantling the same, shall within twenty-four (24) hours after the acquisition of such vehicle notify the Chief of Police of such acquisition. Said notice shall be a copy of the form prescribed for such purpose by the Division of Registration of the Department of Motor Vehicles of the state of California, and shall contain information required by said Department and as authorized by Section 11520 of the Vehicle Code of the state of California.

(Prior code § 5-9.09)

**5.46.150      Storage of secondhand building  
material—Permit.**

It is unlawful for any person to establish or maintain, or to cause or be established or main-

tained, any yard, place or premises for the storage of secondhand building material unless there exists a valid permit therefor, granted and existing in compliance with the provisions of Chapter 5.02. The investigating official referred to in Section 5.02.030, to whom the application shall be referred, shall be the Fire Marshal.

(Prior code § 5-9.11)

#### **5.46.160 Storage of secondhand building material—Regulation.**

It is unlawful for any person to establish or maintain, or cause to be established or maintained, any yard, place or premises for the storage of secondhand building material unless the same be continuously equipped with one one and one-half inch hose reel and one two and one-half gallon fire extinguisher, both in working condition, for each eight thousand (8,000) square feet of area of such premises or fraction thereof. All building material in such yards and premises shall be placed in piles, with aisles at least three feet in width between such piles.

(Prior code § 5-9.12)

#### **5.46.170 Scrap dealers and scrap collectors—Permits.**

It is unlawful for any person to engage in or carry on or conduct, or to permit to be carried on, engaged in, or conducted, within the city, the business of a scrap collector or a scrap dealer as defined in Section 5.46.010 unless there exists a valid permit therefor, granting and existing in compliance with the provisions of Chapter 5.02. The investigating official referred to in Section 5.02.030, to whom the application shall be referred, shall be the Chief of Police. This section shall not apply to the collecting, buying, or selling of aluminum cans for the sole purpose of recycling.

(Prior code § 5-9.13)

#### **5.46.180 Scrap dealer's and scrap collector's application.**

No permit shall be granted to a scrap dealer or to a scrap collector, as provided in Section 5.46.170,

unless the application for a permit is accompanied by the signatures and addresses of three resident freeholders certifying to the good moral character and reputation of the person making such application. At the time of filing such application, the applicant and all persons to be directly or indirectly interested in the business if the permit is granted, shall be fingerprinted at the request of the Oakland Police Department, and if any such person has been convicted of a felony or any crime involving theft, obtaining money or property by false pretenses, receiving stolen property, extortion, embezzlement, or has violated any provision of this chapter, or any law regulating scrap or secondhand personal property, the application for such permit may be denied. Normally, approximately thirty (30) days are required to process the application subsequent to the taking of fingerprints.

(Prior code § 5-9.131)

#### **5.46.190 Scrap dealers and scrap collectors—Records.**

Every person engaged in, carrying on, or conducting, the business of scrap dealer or scrap collector referred to in Section 5.46.170 shall keep, or cause to be kept, at such place of business a substantial well-bound book, and shall promptly enter therein an exact description of all personal property purchased by him or her, the date of purchase, the name and residence or place of business of the person from whom purchased, and all particular and prominent marks of identification that may be found on such property; said book shall be kept neat and clean, and all notes made therein shall be neatly and legibly written in ink and in the English language, and such book shall at all times during the ordinary hours of business, be open to the inspection of the Chief of Police or any officer designated by the Chief of Police.

(Prior code § 5-9.14)

#### **5.46.200 Scrap dealer's records.**

In addition to the records required in Section 5.46.190, a scrap dealer shall require, and it shall

be the duty of the person selling any article to such dealer to sign his or her true name in the book required to be kept by the above-mentioned section, opposite the description of the property sold by such person to such dealer. If the person selling such personal property is a licensed scrap collector in the city, such person shall, and it shall be the duty of such dealer to require such person to, affix after his or her signature the number of his or her scrap collector's permit. The person selling any personal property to a scrap dealer shall affix after his or her signature, as herein required, the number of the current license plates issued by the Department of Motor Vehicles of the state of California for the vehicle operated by such person, in which the property sold was transported, and it shall be the duty of the scrap dealer to verify the truthfulness of the number entered.

(Prior code § 5-9.141)

#### **5.46.210 Scrap dealers and scrap collectors—Regulations.**

It is unlawful for any scrap dealer to dispose of any scrap until at least five days have elapsed since he or she took possession of same; or to receive any personal property by way of a pledge or pawn, or to engage in the business of a pawnbroker on the same premises wherein the business of such scrap dealer is located; or for any scrap collector or scrap dealer to purchase, collect or acquire any property, or to keep, or cause to be kept, such place of business open on any Sunday or on the first day of January, the thirtieth day of May, the fourth day of July, or the twenty-fifth day of December, or upon any day appointed by the President of the United States or by the Governor of this state for a public fast, thanksgiving or holiday, or at any time except between the hours of eight-thirty a.m. and six p.m.

It is unlawful to store or keep any bones, or refuse food stuff, or any scrap intermingled with food materials or particles thereof, which may attract rats, mice or like rodents or serve as food for them, or to permit such materials to accumulate on the premises of any scrap dealer or scrap

collector, or in any scrap yard, junk yard or junk shop whatsoever, except such bones or other materials may be stored in a covered bin of metal, concrete, tile or other solid or impervious substance so constructed as to be entirely ratproof.

(Prior code § 5-9.15)

#### **5.46.220 Pawnbroker's receipt books.**

Every person managing, maintaining or conducting the business of a pawnbroker in the city shall keep or cause to be kept, at the store or place of business, receipt books as hereinafter described. Such books shall be kept in addition to the record of transactions required by Section 5.46.050, and shall consist of duplicate sheets of white paper not less than four by seven inches in size and bearing consecutive numbers. One of each of said duplicate pages shall be so perforated as to enable its removal. One of the aforesaid books shall be kept for the recording of, and the receipting for, sales, and there shall be printed at the top of the perforated sheet, in colored type, not less than three-eighths of an inch in height, the following words: "This is a sale and not a pledge." One of the aforesaid books shall be kept for the recording of, and the receipting for, pledges, and there shall be printed at the top of the perforated sheet, in colored type, not less than three-eighths of an inch in height, the following words: "This is a pledge and not a sale."

(Prior code § 5-9.27)

#### **5.46.230 Pawnbrokers' customer receipts.**

It is unlawful for pawnbrokers to make any purchase, exchange, pledge, pawn or other transfer of possession of any article, unless the same is recorded in one of the record and receipt books required by the provisions of Section 5.46.220, setting forth the name and address of the pawnbroker, a description in the English language of the article involved in such transaction, the date of the sale, the name of the customer with whom such transaction is made, the rate of interest charged, if any, the term of redemption, if any, and the same shall be signed by the pawnbroker or

his or her agent making such transaction. The perforated sheet, which shall be the original duplicate, shall, after being filled out as herein provided, be delivered to the person with whom the transaction is made. The duplicate thereof shall be kept by the pawnbroker for a period of at least two years next following the date of the transaction, and shall, during such time, be available at all times during business hours for inspection by the Oakland Police Department. Any alteration of such duplicate sheet shall constitute a misdemeanor.

(Prior code § 5-9.28)



**Chapter 5.48****PEDDLERS AND SOLICITORS****Sections:**

- 5.48.010      Definitions.**
- 5.48.020      Peddlers and solicitors—Police certificate.**
- 5.48.030      “No Peddler” signs.**
- 5.48.040      Peddlers—Certificate of accuracy.**
- 5.48.050      Peddling foodstuffs from vehicles.**
- 5.48.060      Peddling publications.**
- 5.48.070      Peddlers’ carts, stands.**
- 5.48.080      Peddling in certain district.**
- 5.48.090      Peddling in certain districts—Construction.**

**5.48.010      Definitions.**

For the purpose of this chapter, certain words and phrases are defined, and certain provisions shall be construed as herein set out, unless it shall be apparent from their context that a different meaning is intended:

“Peddler” means and includes every person who engages in the business of going from house to house, place to place, or in or along the streets, within the city, selling and making immediate delivery or offering for sale and immediate delivery, any goods, wares, merchandise, or anything of value, in possession of the peddler, but shall not include selling and delivering, and offering to sell and deliver, items of food and drink for immediate human consumption by a vendor to regular customers along established routes where such sales and deliveries and offers of sale and delivery are made only to such regular customers on the premises of their place of residence or their place of employment or business, in accordance with invitations previously made to such vendor to make regular calls at specific intervals at such premises for the purpose of making sales and deliveries and such items of food and drink for immediate human consumption.

“Solicitor” means and includes every person who engages in the business of going from house to house, place to place, or in or along the streets, within the city of Oakland, selling or taking orders for, or offering to sell or take orders for goods, wares, merchandise or other things of value for future delivery, or for services to be performed in the future. (Prior code §§ 5-10.01, 5-10.01(a), 5-10.01(b))

**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, 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 of the applicant, shall issue to him or her a police certificate to engage in the said business within the city, which certificate

## **5.48.020**

shall be effective for a period of one 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. (Prior code § 5-10.02)

### **5.48.030 “No Peddler” signs.**

It is unlawful for any person carrying on the business of peddling as referred to in Section 5.48.010, or any person pretending to be a peddler, or any solicitor as referred to in Section 5.48.010, or any person pretending to be a solicitor, to ring the bell or knock at the door of any residence or dwelling whereon a sign bearing the words “No Peddlers,” or words of similar import, are painted or affixed so as to be exposed to public view, or to peddle, or pretend to peddle, or to solicit or pretend to solicit, in any building wherein or whereon the words “No Peddlers,” or words of similar import, are painted or affixed so as to be exposed to public view. (Prior code § 5-10.03)

### **5.48.040 Peddlers—Certificate of accuracy.**

It is unlawful for any person to engage in, or carry on, the business of itinerant vendor as referred to in Section 5.48.010, or of peddling fruits, vegetables, meat, poultry, fish, game, or other edible foods of any kind, as peddling is referred to in Section 5.48.050, or of junk collector or junk dealer as referred to in Section 5.46.170, in the city, without first obtaining a certificate of accuracy, issued to such person and signed by the Sealer of Weights and Measures of Alameda County, certifying that the weights, measures, scales or other apparatus or appliances used, or to be used, for weighing or measuring any commodity or article sold, or to be sold, by such person in the city, and bought or sold by such person, to be accurate, and no license shall be granted to any

such person as provided in Chapter 5.02 unless such person, upon application for such license, exhibits to the Bureau of Permits and Licenses, for inspection, a certificate of accuracy, issued and dated not more than one hundred (100) days previous to the date of such application for a license, and upon issuing such license, the Bureau of Permits and Licenses shall write or stamp upon the face of the certificate of accuracy the license number and the date such license is issued. (Prior code § 5-10.04)

### **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; 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 by regulations elsewhere set forth in this title. However, within those areas of Oakland subject to the pushcart food vending program ordinance, pushcart food vending is regulated by Chapter 5.49 of the municipal code. (Ord. 12582 § 2(A) (part), 2004: Ord. 12310 § 2(A) (part), 2001: prior code § 5-10.05)

### **5.48.060 Peddling publications.**

It is unlawful for any person to sell, or offer for sale, any book, periodical or other publication, except newspapers, from any hand-cart or other vehicle upon the streets or sidewalks of the city, or to maintain any hand-cart or other vehicle for the sale or offering for sale of newspapers, or to sell or offer for sale any newspapers from any hand-cart or other vehicle upon the streets or sidewalks of said city, without first having obtained a permit therefor in compliance with the provisions of Chapter 5.02. The investigating official referred to in Section 5.02.030, to whom the application shall be referred, shall be the Chief of Police. (Prior code § 5-10.06)

**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. However, within those areas of Oakland subject to the pushcart food vending program ordinance, pushcart 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. (Ord. 12582 § 2(A) (part), 2004; Ord. 12310 § 2(A) (part), 2001; prior code § 5-10.08)

**5.48.080 Peddling in certain district.**

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.

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. (Prior code § 5-10.09)

**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. (Prior code § 5-10.10)

## Chapter 5.49

### PUSHCART FOOD VENDING PILOT PROGRAM

#### Sections:

- 5.49.010      Purpose.**
- 5.49.020      Definitions.**
- 5.49.030      Effective date.**
- 5.49.040      Permit required.**
- 5.49.050      Geographic area.**
- 5.49.060      Regulations for pushcart food vendors.**
- 5.49.070      Cleanup responsibility and liability for damages.**
- 5.49.080      Violation and penalty.**
- 5.49.090      Suspension, revocation or denial of permit.**

#### **5.49.010      Purpose.**

The general purpose of these regulations is to promote the health, safety, comfort, convenience, prosperity, and general welfare by requiring that new and existing pushcart food vendors provide residents and customers with a minimum level of cleanliness, quality and safety. (Ord. 12582 § 2(B) (part), 2004: Ord. 12310 § 2(B) (part), 2001)

#### **5.49.020      Definitions.**

For the purpose of this chapter, the following words or phrases shall mean or include:

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

“Pedestrian” is a person who is walking or otherwise travelling in the public right-of-way.

“Permit” is an approval that enables the holder to vend food items at authorized locations and times, for a specified period of time.

“Pushcart” is a piece of vending equipment with a maximum length of eight feet, maximum depth of six feet, and a maximum height of eight feet. Pushcarts are intended to store all materials and merchandise related to the vending activity, and are easily moved by a person or vehicle.

“Pushcart food vendor” or vendor is a person who owns and operates a business vending from a pushcart. No vendor shall be issued more than one city of Oakland Pushcart Food Vending Permit.

“Vending” is the business of selling or causing to be sold any of the following items: produce, prepared foods and beverages, prepackaged foods and non-alcoholic beverages.

“Vending equipment” includes but is not limited to any materials, merchandise, tools, carts, tables, or other items owned by, in the possession of, or associated with both the city of Oakland and the licensed pushcart food vendor. (Ord. 12582 § 2(B) (part), 2004: Ord. 12310 § 2(B) (part), 2001)

#### **5.49.030      Effective date.**

Permits issued under this chapter shall remain in effect for a period of twelve (12) months from the effective date, at the end of which time permit will expire unless renewed by the vendor. (Ord. 12582 § 2(B) (part), 2004: Ord. 12310 § 2(B) (part), 2001)

#### **5.49.040      Permit required.**

Any new or existing pushcart food vendor who desires to vend in the city of Oakland shall apply for and obtain a pushcart food vending permit prior to conducting pushcart food vending. It shall be unlawful to sell, offer for sale, or solicit offers to purchase food from a pushcart in the program area without first obtaining a pushcart food vending permit from the Building Division. All applicants shall be required to submit the following information in order to qualify for a pushcart food vending permit.

A. The applicant shall obtain a pushcart food vending permit application from the city of Oakland Building Services Division.

B. In order for the pushcart food vending permit application to be deemed complete, the applicant shall provide the Building Division with the following:

1. Completed pushcart food vending permit application;
2. Mailing address for notification;
3. Legal names of pushcart food vending business owner/operator;

4. Proof of valid city of Oakland Business Tax Certificate;
  5. Proof of valid county of Alameda Health Agency, Environmental Health Services Health Permit;
  6. Photocopy of valid California Drivers License for business owner/operator;
  7. Four photographs (showing different views) of the pushcart;
  8. Sample or rendering or photograph of advertising signs; and
  9. An application fee per the city of Oakland master fee schedule. A permit fee per the city of Oakland master fee schedule shall be paid prior to issuance of the permit. The application fee shall be credited toward payment of the permit fee. A late fee will be assessed per the city of Oakland master fee schedule if the annual renewal is not paid in a timely manner.
  10. If a vendor proposes to vend from a single location for more than four consecutive hours at a time, the vendor must identify the location and an available restroom to be used by the vendor, and written permission to use the bathroom from its owner.
- C. The building division shall issue up to sixty (60) permits. Permit issuance will be prioritized as follows:
1. Holders of Alameda Health Agency, Environmental Health Services Health Permits will be given priority for available permits.
  2. Permit applications shall be accepted and deemed complete on a first-come, first-served basis.
  3. Upon issuance of sixty (60) permits, the Building Division will accept applications on a first-come, first-served basis for entry onto a permit waiting list. Should a permit be revoked or otherwise become available, the first applicant on the permit waiting list shall be contacted immediately and offered the available permit.
  4. At no time shall more than sixty (60) permits be active.
  5. The permit applicant shall obtain the permit within fourteen (14) days of permit availability or said permit application shall expire.

D. The Building Division shall process permit applications at the time of receipt at the permit counter. (Ord. 12582 § 2(B) (part), 2004: Ord. 12310 § 2(B) (part), 2001)

#### **5.49.050 Geographic area.**

Pushcart food vending shall only occur in the following geographic areas of Oakland:

A. Sidewalks. Pushcart food vending shall be permitted on public sidewalks located on Fruitvale Avenue and High Street between Interstate 880 to the south and Foothill Boulevard to the east, Foothill Boulevard between 19th Avenue to the west and Macarthur Boulevard to the east, International Boulevard between First Avenue to the west and 105th Avenue to the east, San Leandro Street between Fruitvale Avenue to the north and 98th Avenue to the south, East 12th Street between 4th Avenue in the west and 23rd Avenue in the east, 14th Avenue between East 11th Street in the south and East 19th Street in the north. Vendors may transport pushcart vending equipment throughout the city of Oakland. However, vending, including selling, offering for sale, or soliciting offers to purchase food, is restricted outside of the streets and zones identified in this section.

B. Zones. Along the street sections described above, pushcart food vending shall be permitted in the C-20 Shopping Center Commercial, C-28 Commercial Shopping District, C-30 District Thoroughfare Commercial, C-40 Community Thoroughfare Commercial, M-20 Light Industrial, M-30 General Industrial, and M-40 Heavy Industrial zoning districts.

#### **C. Locations.**

1. Vendors may vend at any location within permitted zones and along permitted sidewalks. However, vendors shall maintain a one hundred (100)-foot distance between one another while selling, offering for sale, or soliciting offers to purchase food.

2. The pushcart food vendor shall not locate within two hundred (200) feet of any primary or middle school or public park.

3. Pushcart food vendors shall not vend or locate equipment adjacent to on-street parking spaces re-

served for disabled access, driveways, entries and exits from buildings or facilities, or adjacent to street intersections where equipment may obstruct vehicle and pedestrian sight distance.

4. Pushcart food vendors may vend at assemblies within two blocks of the permitted locations.

D. Travel. Pushcart food vendors may travel along any public right-of-way within the city of Oakland. However, vending shall be limited to the permitted locations. Pushcart food vendors shall not be allowed to vend, expose or otherwise advertise merchandise, solicit sales, or loiter outside of the permitted locations. (Ord. 12582 § 2(B) (part), 2004: Ord. 12310 § 2(B) (part), 2001)

#### **5.49.060      Regulations for pushcart food vendors.**

A. Pushcart food vendors shall sell, offer for sale or solicit offers to purchase only in the area(s) designated by the City Manager or his or her designee. The designation of any area in a public place under jurisdiction is subject to approval of and to any rules and regulations imposed by such office.

B. Vending shall only occur within the hours of seven a.m. to ten p.m. Monday through Friday, and eight a.m. to ten p.m. Saturday and Sunday. The city of Oakland may require additional restrictions to abate nuisances.

C. All pushcart food vendors shall adhere to designated time and day requirements and shall be allotted one hour set-up and one hour breakdown and travel time before and after stated selling hours.

D. No pushcart food vendor shall sell, offer for sale, or solicit offers to purchase from any automobile or truck.

E. Pushcart food vendors shall engage in their activities in designated areas of the city of Oakland in such a manner that at all times there shall remain an open pedestrian passage of at least six feet in width, as measured from the line perpendicular to the pushcart food vending activity and end of walkway, and consistent with the Americans with Disabilities Act.

F. Vending equipment and merchandise shall occupy the pushcart only and shall not be stored, dis-

played or otherwise placed in the public right-of-way or on public property.

G. Vending equipment shall be regulated in the following manner:

1. The pushcart food vending permit shall be affixed to the pushcart in a readily visible location at all times.

2. Vending equipment, merchandise offered for sale or otherwise associated with the pushcart food vendor shall not block, impede or in any way hamper ingress or egress for parked vehicles, pedestrian movement or cause or allow to cause any hazard to pedestrians.

3. Vending equipment shall be easily moved and shall be self-supporting; at no time shall vending equipment be attached, tied or locked to trees, hydrants or any other permanent vertical structure or bench.

4. Any vending equipment shall have the maximum length of eight feet, maximum depth of six feet and a maximum height of eight feet.

5. Up to two signs may be attached to the pushcart, with a maximum aggregate display surface of five square feet per sign.

6. The pushcart vending equipment shall be entirely self-sufficient in regards to gas, electricity, water, and telecommunications.

7. No tables, chairs, fences or other site furniture (temporary or otherwise) are permitted in conjunction with the pushcart vending equipment.

8. Vendors shall remove all equipment upon order of city of Oakland.

9. Vendors shall not locate or create a vending activity that will negatively impact adjacent businesses or residences. (Ord. 12582 § 2(B) (part), 2004: Ord. 12310 § 2(B) (part), 2001)

#### **5.49.070      Cleanup responsibility and liability for damages.**

A. Vendors shall maintain their sales location in a clean, hazard-free condition; failure to do so and failure to clean the vending location of waste shall be cause for revocation or suspension of permit;

B. Vendors shall agree to defend, indemnify and hold harmless city, its offices and employees from

any and all damages or injury to persons or property proximately caused by any act or omission of the vendor or any hazardous or negligent conditions maintained at their sales location.

C. Vendors shall not discharge materials onto the sidewalk, gutters, or storm drain. (Ord. 12582 § 2(B) (part), 2004; Ord. 12310 § 2(B) (part), 2001)

#### **5.49.080 Violation and penalty.**

A. The City Manager or his or her designated representative shall issue or cause to have issued citations for violations of this chapter. Vendors in violation of this chapter shall be subject to administrative citations per Chapter 1.12 of this code.

B. Any person vending without a duly issued permit and personal identification or found in violation of any of the regulatory provisions of this chapter shall be guilty of an infraction.

C. Any person found guilty of an infraction, of which person has been given notice, shall not be punished by imprisonment but may be fined.

D. If periodic inspections are necessary to monitor compliance, code enforcement reinspection fees per the master fee schedule shall be assessed. (Ord. 12310 § 2(B) (part), 2001)

#### **5.49.090 Suspension, revocation or denial of permit.**

A. Any permit issued pursuant to this chapter may be revoked or suspended for good cause or upon violation of any provision of this chapter. Any person whose permit has been revoked or suspended shall receive in writing an explanation of such action by the permit inspector. The reasons for denial, suspension and revocation include:

1. Fraud or misrepresentation in the application for the certificate; or
2. Fraud or misrepresentation in the course of conducting the business of vending; or
3. Conducting the business of vending contrary to the criteria for the permit and/or regulations; or
4. Conducting the business of vending in such a manner as to create a public nuisance or to constitute a danger to the public; or

5. Public use/repair of right-of-way.

B. The following factors shall be considered in determining whether a permit should be suspended or revoked upon noncompliance with these regulations:

1. The number of citations for violation of this chapter previously received by the vendor; and
2. The number of previous suspensions and/or revocations imposed upon the vendor; and
3. The number of occasions for which the vendor's permit was subject to suspension or revocation and was not suspended or revoked; and
4. The seriousness of the violation or misrepresentation and the danger to the health and/or safety of the public presented by the vendor's misrepresentation, noncompliance and/or misconduct; and
5. Whether or not the condition subjecting the vendor to suspension or revocation is of a nature that can be and/or has been corrected.

C. Any permit holder or applicant whose permit is suspended or revoked or whose application for a permit is denied may, within fifteen (15) days of the date of action, notify the building division that the permit holder desires reconsideration of that decision. A hearing before the City Manager of the request shall be scheduled. The suspension or revocation will remain in effect pending the hearing. At the hearing, the permit holder or applicant will be afforded the opportunity to be heard and present facts and witnesses on his or her behalf. At that time, the City Manager or his or her designee will make a final decision. (Ord. 12582 § 2(B) (part), 2004; Ord. 12310 § 2(B) (part), 2001)

## Chapter 5.50

### **POOL ROOMS AND BOWLING ALLEYS**

#### **Sections:**

**5.50.010 Pool rooms and bowling alleys—Permit.**

**5.50.020 Pool rooms and bowling alleys—No private rooms.**

**5.50.030 Pool rooms—Closing hours.**

**5.50.040 Recovery of costs for extraordinary police services.**

**5.50.010 Pool rooms and bowling alleys—Permit.**

It is unlawful for any person to open, conduct, maintain, or to participate in or permit the opening, conducting or maintaining of, any public pool room or billiard room or place having more than one pool table or billiard table and open to the public for playing pool or billiards, or any public bowling alley or place open to the public for bowling, in the city, unless there exists a valid permit therefor granted and existing in compliance with the provisions of Chapter 5.02. The investigating official referred to in Section 5.02.030, to whom the application shall be referred, shall be the Chief of Police.

(Prior code § 5-4.09)

**5.50.020 Pool rooms and bowling alleys—No private rooms.**

It is unlawful for any person conducting or maintaining any pool or billiard room or bowling alley under a permit authorized in Section 5.50.010, or otherwise, in the city, or for any servant or employee of such person, to have or maintain in connection with such pool or billiard room or bowling alley any private room or rooms, excepting rooms used exclusively as toilets or lavatories; and for the purposes of this section, private rooms shall be deemed to be those rooms the entire interiors of which are not exposed to view from the main entrance of such pool or billiard room or bowling alley, or from one of the main rooms

regularly and habitually used by the general public for the playing of pool or billiards, or of bowling. A copy of Section 9.12.010 of this code shall be at all times kept posted in a conspicuous place in every pool or billiard room in the city.

(Prior code § 5-4.10)

**5.50.030 Pool rooms—Closing hours.**

It is unlawful for any person conducting or maintaining any pool or billiard room under a permit authorized in Section 5.50.010, or otherwise, in the city, or for any servant or employee of such person, to keep open any such pool or billiard room, or permit the same to be kept open, between the hours of one a.m. and nine a.m. next ensuing.

(Prior code § 5-4.101)

**5.50.040 Recovery of costs for extraordinary police services.**

A. Permittee is liable for extraordinary police costs assessed by the Chief of Police or his or her representative pursuant to Title 9, Chapter 9.52 of the Oakland Municipal Code.

B. Permittee must comply with all applicable local, state, and federal laws or regulations pertaining to pool rooms and bowling alleys.

C. A violation of subsection A or B of this section by a permittee is an additional ground for suspension or revocation of his or her pool room or bowling alley permit.

(Ord. 12130 § 1, 1999)

## 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 interim 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 Notice to abate.**
- 5.51.190 Abatement procedure.**
- 5.51.200 Violations constituting infractions.**
- 5.51.210 Penalty for violation.**

\*Note—Section 7 of Ord. No. 13152, adopted February 5, 2013, provides for an effective date retroactive to December 31, 2012.

#### **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 spill-over 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.  
(Ord. No. 13152, § 1, 2-5-2013; Ord. No. 13098, § 1, 12-20-2011)

#### **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 this Code, or the vehicular food vending program set forth in Chapter 8.09 of this Code.

- B. To the extent that there is any express conflict between the interim regulations in this chap-

ter 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.

(Ord. No. 13152, § 1, 2-5-2013; Ord. No. 13098, § 1, 12-20-2011)

#### **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.

(Ord. No. 13152, § 1, 2-5-2013; Ord. No. 13098, § 1, 12-20-2011)

#### **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 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 dur-

ing 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 Heath 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.

(Ord. No. 13152, § 1, 2-5-2013; Ord. No. 13098, § 1, 12-20-2011)

#### **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 Subsection 5.51.020 A., 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 this Code, but only for a defined limited duration (generally four 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 this 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 opera-

tion 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 this Code.

#### **D. Permit Limitations.**

1. No applicant may hold more than two 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 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 dates per week.

4. The specific hours of operation shall be determined by the City, and shall not exceed more than four 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 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.

(Ord. No. 13152, § 1, 2-5-2013; Ord. No. 13098, § 1, 12-20-2011)

**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 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 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 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 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 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.

(Ord. No. 13152, § 1, 2-5-2013; Ord. No. 13098, § 1, 12-20-2011)

**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 consid-

eration 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 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 per-

mits, 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 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 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.

(Ord. No. 13152, § 1, 2-5-2013; Ord. No. 13098, § 1, 12-20-2011)

#### **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 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 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 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 days after the date of decision unless appealed to the City Administrator in writing within ten 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.

(Ord. No. 13152, § 1, 2-5-2013; Ord. No. 13098, § 1, 12-20-2011)

#### **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.

(Ord. No. 13152, § 1, 2-5-2013; Ord. No. 13098, § 1, 12-20-2011)

#### **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 conformance 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.

(Ord. No. 13152, § 1, 2-5-2013; Ord. No. 13098, § 1, 12-20-2011)

#### **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 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 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 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.

(Ord. No. 13152, § 1, 2-5-2013; Ord. No. 13098, § 1, 12-20-2011)

**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-year anniversary of the original permit issuance. Applicants who do not submit an annual renewal request on or before the one-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.

(Ord. No. 13152, § 1, 2-5-2013; Ord. No. 13098, § 1, 12-20-2011)

**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 Subsection 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 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 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 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 Title 17, 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 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 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 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 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 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 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 signs attached to the food vending unit, with a maximum aggregate display surface of 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 32-gallon litter receptacle within 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 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 hours of food vending operation on any day of permitted group site activity, unless specified otherwise at the discretion of the City Administrator.

(Ord. No. 13152, § 1, 2-5-2013; Ord. No. 13098, § 1, 12-20-2011)

#### **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 Section 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 Sections 5.02.090 and 5.02.100.

(Ord. No. 13152, § 1, 2-5-2013; Ord. No. 13098, § 1, 12-20-2011)

#### **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 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. In addition, nothing in this section shall be interpreted to preclude or limit the City from seeking injunctive or other judicial relief.

(Ord. No. 13152, § 1, 2-5-2013; Ord. No. 13098, § 1, 12-20-2011)

#### **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.

(Ord. No. 13152, § 1, 2-5-2013; Ord. No. 13098, § 1, 12-20-2011)

#### **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 this 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.

(Ord. No. 13152, § 1, 2-5-2013; Ord. No. 13098, § 1, 12-20-2011)

#### **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 days of notice to abate, as ordered by the enforcing official, the abatement procedure set forth in Section 5.51.190 may be undertaken.

(Ord. No. 13152, § 1, 2-5-2013; Ord. No. 13098, § 1, 12-20-2011)

#### **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 this Code.

(Ord. No. 13152, § 1, 2-5-2013; Ord. No. 13098, § 1, 12-20-2011)

#### **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.

(Ord. No. 13152, § 1, 2-5-2013; Ord. No. 13098, § 1, 12-20-2011)

#### **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 \$1,000.00 and, for a second conviction within a period of one year, by a fine of not more than \$2,000.00 and, for a third or any subsequent conviction within a one-year period, by a fine of not more than \$5,000.00. Any violation beyond the third conviction within a one-year period may be charged by the City Attorney or the District At-

torney 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 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.

(Ord. No. 13152, § 1, 2-5-2013; Ord. No. 13098, § 1, 12-20-2011)



## Chapter 5.52

### PRIVATE PATROL SERVICES AND PRIVATE WATCHMAN

**Sections:**

- |                 |   |
|-----------------|---|
| <b>5.52.010</b> | <b>Definitions.</b>   |
| <b>5.52.020</b> | <b>Registration of private patrol operators.</b>                      |
| <b>5.52.030</b> | <b>Regulation of private patrol services.</b>                         |
| <b>5.52.040</b> | <b>Private watchman permit—Application, issuance, and revocation.</b> |
| <b>5.52.050</b> | <b>Content of application for private watchman's permit.</b>          |
| <b>5.52.060</b> | <b>Grant or denial of private watchman's permit.</b>                  |
| <b>5.52.070</b> | <b>Revocation of private watchman's permit.</b>                       |
| <b>5.52.080</b> | <b>Uniform.</b>   |
| <b>5.52.090</b> | <b>Badges.</b>  |
| <b>5.52.100</b> | <b>Unlawful to manufacture certain badges.</b>                        |
| <b>5.52.110</b> | <b>Complaints by Chief of Police.</b>                                 |
| <b>5.52.120</b> | <b>Business license tax.</b>  |
| <b>5.52.130</b> | <b>Penalty for violation.</b>   |

**5.52.010      Definitions.**

For the purposes of this chapter, certain words and phrases are defined, and certain provisions shall be construed, as herein set out, unless it shall be apparent from their context that a different meaning is intended:

“Private patrol operator” means any person who operates a private patrol service.

“Private patrol service” means any business which purports to furnish or does furnish any private police officer, watchman or guard to patrol any territory, or to guard or watch property of another person, in the city of Oakland.

“Private security officer” means any individual who patrols any territory or grounds or who guards or watches property of another person or who acts to preserve the peace, within the city of Oakland,

and who is employed by a person holding a private patrol operator’s permit from the state of California or who himself or herself holds such a permit.

“Private watchman” means any individual who patrols any territory or grounds or who watches the property of another or who acts to preserve the peace, within the city of Oakland, and who is employed for this purpose by a person other than a person who holds a private patrol operator’s permit from the state of California. “Employed” for the purposes of this section means that the private security officer is a bona fide employee of the owner or operator of the property and is provided benefits, has records kept, and payroll deductions by the employer. (Prior code § 5-11.01)

**5.52.020      Registration of private patrol operators.**

Each private patrol operator doing business within the city shall register with the Chief of Police of the Oakland Police Department before commencing business within the city. Private patrol operators already doing business within the city at the time of final passage of the ordinance codified in this chapter shall register with the Chief of Police within thirty (30) days after the effective date of the ordinance codified in this chapter. No fee shall be charged for registration.

Each private patrol operator shall file the following documents at the time of registration:

A. A registration form, to be provided by the Chief of Police, which shall include the name, business address, and business telephone number of the private patrol service being registered; the name, residence address, and residence telephone number of the private patrol operator holding the license from the state of California for such private patrol service; the name, address, and telephone number of each establishment within the city served by the private patrol service; and the name, residence address, date of birth, and state guard registration card number of all persons employed as private security officers by the private patrol service; and

B. Copies of both the private patrol operator’s state of California identification card and private

patrol operator's license issued by the state of California; and

C. A copy of the private patrol service's city business license. (Prior code § 5-11.02)

#### **5.52.030 Regulation of private patrol services.**

Each private patrol operator doing business within the city shall comply with the following local regulations:

A. Each private patrol operator shall at all times hold a current valid license for such private patrol service for the state of California.

B. Each private patrol operator shall at all times hold a current valid business license from the city.

C. Each private security officer working as such within the city shall at all times be properly registered as a guard with the state of California.

D. Each private patrol operator shall and will require each private security officer employed by him or her to aid, assist, and cooperate with the Oakland Police Department in the detention, apprehension, or investigation of persons suspected of violating the law.

E. Each private patrol operator shall at all times have the business or personal residence identified in Section 5.52.020A connected with a telephone system operated by a public utility company in the city. Such telephone system shall be constantly attended, on a twenty-four (24) hour basis, by a person who is able and competent to receive and transmit telephone calls.

F. Each private patrol operator shall submit to the Chief of Police on a quarterly basis a report showing the name, address, and telephone number of each establishment with the city served by the operator, and the name, residence address, date of birth, and state guard registration card number of all private security officers employed by the operator. This report is to be used for the sole purpose of enforcing this chapter. It shall be deemed to be confidential, and no access shall be allowed to any person having an interest in a guard company.

G. In addition to the state-required guard card, each private security officer must, while working,

have in his or her possession another governmentally issued identification card with a current photograph, name, date of birth, and physical description. In the event that the private security officer has no such governmental card, the private patrol operator shall supply him or her with an identification card incorporating the employee's current photograph, name, date of birth, and physical description, and shall require each such employee to carry such card on his or her person while performing his or her duties.

H. Each private patrol operator shall ensure that uniforms worn by and equipment used by his or her employees identify the private patrol service by whom they are employed. Such uniforms shall conform to the requirements of Section 5.28.080. If a badge is to be worn, it shall conform to the requirements of Section 5.52.090. (Prior code § 5-11.03)

#### **5.52.040 Private watchman permit—Application, issuance, and revocation.**

It is unlawful for any person to act as a private watchman, or for any person to employ another as a private watchman, unless such person holds an unrevoked private watchman's permit issued by the Chief of Police, as provided in this chapter. The application for a private watchman's permit shall be made in the manner and form provided in Section 5.52.050, and shall be signed by the person to whom the permit is to be issued. Such application shall be endorsed thereon with the written approval thereof of the employer of the applicant, with the employer's request that such permit be granted. The permit, if granted, shall state the name of the employer of such private watchman and the address where such private watchman's services are to be rendered. The permit may be revoked in the manner and for any of the reasons provided in Section 5.52.070, and shall be automatically revoked upon the termination of the employment of the holder thereof with the employer whose name is set forth in such permit. (Prior code § 5-11.04)

**5.52.050      Content of application for private watchman's permit.**

Application for the private watchman's permit provided for in Section 5.52.040 shall be made under penalty of perjury by the person to whom the permit is to be issued on a form to be supplied by the Police Department. The application shall provide the following information:

- A. The full name and residence address of the applicant;
- B. The applicant's business or occupation for the previous five years, including the name and address of each employer, the dates of each commencement and termination of employment, and the nature of the services performed;
- C. Whether the applicant has ever been convicted of a crime; if so, then full details of each conviction shall be stated;
- D. Whether the applicant is able to read, write, speak, and understand the English language;
- E. Such other information as the Chief of Police may require.

The applicant shall be photographed and fingerprinted by the Police Department at the time application is made. A nonrefundable fee as established by the master fee schedule of the city shall be collected at the time application is made. (Prior code § 5-11.05)

**5.52.060      Grant or denial of private watchman's permit.**

Upon receipt of an application for a private watchman's permit pursuant to this chapter, the Chief of Police shall investigate both the truthfulness of the facts set forth in the application and the moral fitness and reputation, character, integrity, and competence of the applicant. If, upon completion of such investigation, it is determined that the statements in the application are true and that the applicant is qualified and fit to act as a private watchman, the Chief of Police shall issue the permit to the applicant. If, after investigation, it is determined that the permit shall be denied, the Chief of Police shall state the reasons for such denial to the applicant in writing. (Prior code § 5-11.06)

**5.52.070      Revocation of private watchman's permit.**

Any permit granted pursuant to this chapter for a private watchman may be revoked by the Chief of Police at any time, for any reason for which such permit might lawfully be denied; for conviction of a violation of any provision of this chapter or of any local, state, or federal law or regulation; or for any other good cause. Such revocation may be made only after the opportunity for a hearing before the Chief of Police has been provided to the private watchman in accordance with the provisions of Section 5.02.080. (Prior code § 5-11.07)

**5.52.080      Uniform.**

A. Each private patrol service shall adopt a distinctive and characteristic uniform, and all private security officers employed by such service shall wear such uniform at all times while engaged in the performance of their duties.

B. Any uniform proposed to be adopted by a private patrol service, pursuant to subsection A of this section, and any uniform proposed to be worn by any private watchman, shall be approved by the Chief of Police before such uniform may be adopted or worn. To be approved, a proposed uniform must conform to the restrictions of subsection C of this section.

C. It is unlawful for any person to wear, or to cause or permit to be worn, any uniform which is similar in design to any uniform used by the Oakland Police or Fire Departments. A uniform shall be considered to be similar in design to a uniform used by the Oakland Police or Fire Departments if it so resembles such official uniform as to cause an ordinary reasonable person to believe that the person wearing the uniform is a member of the Oakland Police or Fire Departments.

D. The provisions of this section shall not apply to any uniform being worn by any private watchman or private security officer at the time of adoption of this section as amended, but by any replacement of such uniform must conform in every respect with all of the provisions of this section. (Prior code § 5-11.08)

## **5.52.090**

### **5.52.090      Badges.**

It is unlawful for any person to wear or display, or cause to be worn or displayed, any badge or insignia similar in design to that used by the Oakland Police or Fire Departments, and no badge or insignia of any design shall be worn, displayed, or used in any manner unless the same has first been approved by the Chief of Police. Any badge or insignia worn by a private watchman or by a private security officer shall have imprinted thereon, in letters of a size approved by the Chief of Police, the name of the employer of the private watchman, or the name of the private patrol service by whom the private security officer is employed, as the case may be. In addition to such name, there may be imprinted thereon words such as "private security officer," "private watchman," "watchman," or "guard." (Prior code § 5-11.09)

### **5.52.100      Unlawful to manufacture certain badges.**

It is unlawful for any person to make or manufacture or sell any badge of a like or similar design to that used by the Oakland Police Department or Oakland Fire Department, or to make or manufacture or sell any badge to be used by a private security officer or private watchman, except with the written approval of the Chief of Police. (Prior code § 5-11.10)

### **5.52.110      Complaints by Chief of Police.**

The Chief of Police is authorized, empowered, and directed to file or to cause to be filed with the Bureau of Consumers Affairs of the state of California a complaint against any private patrol operator or private patrol service or any person employed as a private security officer by a private patrol operator or private patrol service, whenever he or she believes good cause exists therefor. A copy of each such complaint filed shall be furnished to the private patrol operator involved. (Prior code § 5-11.11)

### **5.52.120      Business license tax.**

Nothing in this chapter shall be construed to permit any person to act as a private patrol operator or to operate a private patrol service within the city unless such person shall first pay any license tax or fee that may be required by Chapter 5.04 or by other ordinance of the city. Nothing herein shall be construed as a waiver of any such license or fee. (Prior code § 5-11.12)

### **5.52.130      Penalty for violation.**

Violation of any provision of this chapter shall be a misdemeanor and shall be punished as provided in Section 1.28.010 of this code. (Prior code § 5-11.13)

**Chapter 5.54****RENDERING****Sections:**

**5.54.010 Reducing of animal, etc., substances—Regulations.**

**5.54.010 Reducing of animal, etc., substances—Regulations.**

It is unlawful for any person to maintain or operate, or permit to be maintained or operated, any establishment for the rendering or reducing of tallow, or other animal or vegetable substance, or to carry on or conduct the business of rendering or reducing the same, unless the rendering, reducing, heating or steaming of any animal or vegetable substance generating noisome or unwholesome odors or gaseous vapors be conducted in steam-tight kettles, tanks or boilers, and in such manner as shall entirely condense, decompose, deodorize or destroy the odors, vapors or gaseous products, or in any event unless the same was established prior to, and has been continuously maintained and conducted since July 1916, or unless the same be located within that certain tract of land bounded and described as follows:

Beginning at a point where the southeastern boundary line of lands conveyed by deed dated November 7, 1868, and recorded in Liber 36 of Deeds, at page 355, Alameda County Records, intersects the southwestern line of the one hundred (100) foot right of way of the Central Pacific Railroad situated in Brooklyn Township, now a part of said city, and running thence along said line of said railroad right of way South 42° 23' East 4.26 chains to the center of a ditch; thence along the center of said ditch South 64° 15' West 6.50 chains more or less to the center of a slough leading to the Bay of San Leandro; thence in a southwesterly direction following the center of said slough to the intersection of the centerline of said slough with the survey of the shore line of the Bay of San Leandro at midway between Stations 201 and 202 of the survey of said shore line in Section 17, Township 2 South,

Range 3 West, as shown upon Sale Map No. 10, issued by the Board of Tide Land Commissioners under an Act of the Legislature approved April 1st, 1870; thence along said shore line in a northwesterly direction to its intersection with the said southeastern boundary line of the land conveyed by said deed, so recorded in Liber 36 of Deeds at page 355 of Alameda County Records, as aforesaid; and thence along said boundary line North 47-1/2° East 14.50 chains; North 84-1/2° East 11.25 chains; North 66-3/4° East 16.46 chains; North 58-3/4° East 8.75 chains, and North 61° East 30 links to the point of beginning. (Prior code § 5-13.04)

**Chapter 5.56****RIDING ACADEMIES****Sections**

- 5.56.010      Riding academy defined.**  
**5.56.020      Permit required.**  
**5.56.030      Maintenance—Livery stables.**

**5.56.010      Riding academy defined.**

A “riding academy,” as referred to in this section, shall be construed to include any stable, barn or other building, or group of buildings, where more than three horses are kept or stables exclusively for the purpose of maintaining or conducting a school or club for equestrians and the general promotion of horsemanship, or for the furnishing of any instructions in riding horses, or for renting or letting out horses for riding purposes, whether under the constant direction of an instructor or in connection with the privileges of a club, society or school, or for hire, or otherwise. (Prior code § 5-4.12 (part))

**5.56.020      Permit required.**

It is unlawful for any person to conduct or maintain, or to permit to be conducted or maintained, or to participate in the conduct or maintenance of, a riding academy within the city, or to erect, maintain, enlarge or alter any building for the purpose of keeping horses therein for such purpose, whether the same be conducted or maintained as an independent business or in connection with a school, club or society, unless there exists a valid permit therefor, granted and existing in compliance with the provisions of Chapter 5.02. The application for such permit shall set forth, in addition to the requirements specified in Section 5.02.020, the number of horses to be kept, the dimensions and character of the site and buildings to be used, the manner in which such riding academy is to be managed or maintained, and a statement of the fact that the proposed location of such riding academy is not within seventy (70) feet of any residence, dwelling house, school, hospital or church. Public notice shall be given as provided in Section 5.02.050, and the investigating official

referred to in Section 5.03.050, to whom application shall be referred, shall be the Health Officer; provided, however, that no permit shall be granted as provided in said Chapter 5.02 until such application is also approved by the Fire Marshal of the city. (Prior code § 5-4.12 (part))

**5.56.030      Maintenance—Livery stables.**

It is unlawful for any person maintaining or conducting a riding academy as in Section 5.56.020 provided, to fail to keep the buildings, grounds and premises of such riding academy at all times in a clean, well ordered and sanitary condition, or to fail to keep the horses connected therewith well groomed and healthy. It shall be the duty of the Health Officer of the city to cause proper inspection to be made for the enforcement of this section.

Nothing in this section nor in Section 5.56.020 provided shall be construed to change or affect any provisions of this code regulating the establishment, or maintenance, or prohibiting, in certain residence zones, any boarding or livery stable. Any riding academy, as in Section 5.56.010 defined, wherein is also conducted or maintained the general business of letting out, boarding, feeding or grooming horses, for hire, or furnishing buggies or wagons for public use, or where mules, burros, dray or work horses are kept, shall be classified as a public livery stable and so regulated as in this code provided. (Prior code § 5-4.13)

**Chapter 5.58****SCHOOL STORES****Sections:**

- |                 |                                      |
|-----------------|--------------------------------------|
| <b>5.58.010</b> | <b>Purpose.</b>                      |
| <b>5.58.020</b> | <b>Definitions.</b>                  |
| <b>5.58.030</b> | <b>Permit required.</b>              |
| <b>5.58.040</b> | <b>Permit—Action on application.</b> |
| <b>5.58.050</b> | <b>Regulation.</b>                   |
| <b>5.58.060</b> | <b>Report on employees.</b>          |

**5.58.010 Purpose.**

The purpose of this chapter is to safeguard the health, safety and moral welfare of school children by the regulation of the operation of school stores so that in such stores school children will not be exposed to or associate with lawless, immoral or irresponsible persons who cause or tend to encourage delinquent behavior. (Prior code § 5-19.00)

**5.58.020 Definitions.**

For the purposes of this chapter:

“Employee” means and shall be construed as any and all persons engaged in the operation, conduct, or maintenance of any school store, whether as owner, any member of the owner’s family, partner, agent, manager, solicitor, and any and all other persons employed or working in said store or serving the patrons thereof, whether for hire or otherwise.

“School store” means and shall be construed as any store or premises in, or upon which, during the usual hours of daily school attendance, there is offered for sale or sold primarily to school children any goods, articles, merchandise, food, drink or other commodities, or in, or upon which, is provided or made available primarily for school children facilities or services, or which otherwise caters primarily to school children as clientele or patrons or customers. The phrase “usual hours of daily school attendance” shall be deemed to include the hours immediately before and after school. (Prior code §§ 5-19.01, 5-19.02)

**5.58.030 Permit required.**

It is unlawful for any person to own, conduct, operate or maintain or to participate therein, or to cause or permit to be conducted, operated or maintained, any school store in the city unless there exists a valid police permit therefor, granted and issued in compliance with the provisions of this chapter. The application for such permit shall set forth and meet the requirements specified in Section 5.02.020 and shall be made to the Chief of Police. (Prior code § 5-19.03)

**5.58.040 Permit—Action on application.**

The Chief of Police shall issue a school store permit if he or she is satisfied as to the moral character and fitness of the applicant and employees, if any. In the granting or denying of such permit, the Chief of Police shall give particular consideration to the health, safety and moral welfare of the school children of the community. Such permit shall be transferable only as permitted by the provisions of Section 5.02.070, and may be revoked or suspended by the Chief of Police as in his or her discretion may seem meet and just, for any reason for which the granting of such permit might be lawfully denied, or for any other reason specifically provided in this title. Such revocation or suspension shall be made only upon a hearing granted to the holder of the permit, held before the Chief of Police or his or her designated subordinate after five days’ notice to the permit holder, stating the time and place of the hearing, and in general terms the basis for the proposed revocation or suspension. An application for such permit must be denied if any applicant or employee shall be found to have a record of prior conviction of any public offense involving juveniles, morals, liquor, or narcotics; this mandatory denial for prior conviction of listed offenses shall not be construed to limit the authority of the Chief of Police to consider a prior conviction of other offenses by applicant or employees, if any, in making his or her determination of moral character or fitness in the issuance of a permit. (Prior code § 5-19.04)

**5.58.050**

**5.58.050 Regulation.**

The Chief of Police is authorized to supervise and regulate school stores as defined in Section 5.58.020. (Prior code § 5-19.05)

**5.58.060 Report on employees.**

Every person having a school store permit shall forthwith file with the Chief of Police a report of the name and address of each person employed by him or her and shall thereafter immediately notify the Chief of Police of the name and address of each person leaving his or her employ and each additional person hired or working in the store. (Prior code § 5-19.06)

**Chapter 5.60****SKATING RINKS****Sections:**

- 5.60.010      Skating rink defined.**  
**5.60.020      Permit required.**

**5.60.010      Skating rink defined.**

A “skating rink,” as in this section referred to, shall be construed as any building, structure or other place where either roller or ice skates are rented for use, or where the consideration is charged for the privilege of the use of skates, in such place. (Prior code § 5-4.11 (part))

**5.60.020      Permit required.**

It is unlawful for any person to conduct or maintain, or to permit or cause to be conducted or maintained, any skating rink, or to erect or reconstruct, or continue the erection of, or the reconstruction of, any building, or any part thereof, to be used as, or occupied for the purpose of a skating rink, or to alter, repair, or make additions to, any existing building for any such purpose within the city, unless there exists a valid permit therefor, granted and existing in compliance with the provisions of Chapter 5.02. The application for such permit shall set forth the requirements specified in Section 5.02.020. Public notice shall be given as provided in Section 5.02.050, and the investigating official referred to in Section 5.02.030, to whom the application shall be referred shall be the Fire Marshal. (Prior code § 5-4.11 (part))

**Chapter 5.62****STREET CARS****Sections:**

- 5.62.010      Operation without proper instruction.**
- 5.62.020      Employing street car operators who are not instructed.**
- 5.62.030      Employees carrying weapons.**
- 5.62.040      Two operators.**
- 5.62.050      Operators leaving station.**
- 5.62.060      Trolley guards.**
- 5.62.070      Wheel guards.**
- 5.62.080      Fenders required.**
- 5.62.090      Fender specifications.**
- 5.62.100      Children getting on and off, riding on top, etc.**
- 5.62.110      Alarms at crossings.**
- 5.62.120      Speed of trains and engines.**
- 5.62.130      Railroad tunnels and rights-of-way.**

**5.62.010      Operation without proper instruction.**

It is unlawful for any person to operate or control the operation of, or to in any manner work upon or be engaged in connection with the operation of, any street car propelled by any motive power upon any street railway in the city, unless he or she shall, prior to so doing, have spent at least ten days in learning the proper manner of so operating said car and in learning the route traveled by said car under the instruction and guidance of competent instructors; or for any person to act as such instructor until he or she has been instructed for a period of ten days in the proper operation of such car or unless he or she has been actually engaged in the operation of a street car upon a street railway in the city for a period of six months prior to giving the instructions, and is familiar with the route traveled by said car. (Prior code § 2-5.01)

**5.62.020      Employing street car operators who are not instructed.**

It is unlawful for any person owning any street railway or engaged in the business of operating a street railway in the city, or for any officer, manager or person in the employ of the aforesaid person owning or engaged in the business of operating a street railway, to employ or hire any person to operate, work upon or in anywise control the operation of any street car upon any street railway in the city, until such person has been instructed as required by the provisions of Section 5.62.010.

It shall be the duty of any person owning or engaged in the business of operating a street railway in the city to furnish the instructions herein required. (Prior code § 2-5.02)

**5.62.030      Employees carrying weapons.**

It is unlawful for any person owning or engaging in the business of operating a street railway in the city to allow any employee to carry or exhibit any club, pistol, revolver, gun, firearm, blackjack or sling shot while upon a street car traversing the streets of the city, unless such employee shall be a duly appointed and legally constituted officer authorized by law to carry such weapon. (Prior code § 2-5.03)

**5.62.040      Two operators.**

Every person owning or engaged in the business of operating street cars within the city by means of electricity shall provide and maintain upon each of such cars, while containing passengers, at least two employees: a motorman and a conductor, during all the time said car is in motion within said city, each of said employee to be an adult not less than eighteen (18) years of age, excepting as hereinafter provided.

The Council may grant, by ordinance, permission to operate one-person street cars over such lines and upon such conditions as it may prescribe, after application made therefor, filed with the Clerk of said Council setting forth specifically the routes and lines upon and over which it is desired to operate said one-person street car. Any person violating any

of the provisions of this section or permitting, ordering, authorizing or directing a violation thereof, shall be deemed guilty of an infraction. (Prior code § 2-5.04)

#### **5.62.050 Operators leaving station.**

It is unlawful for any motorman, driver or other person operating or controlling any street car within the city to leave the position occupied by such person in operating or controlling the machine, railway or other motive power of such car while said car is in motion. (Prior code § 2-5.05)

#### **5.62.060 Trolley guards.**

Any person owning or operating any street railroad using electricity as a motive power in the city, and moving cars thereon, and the current being conducted for such motive power by what are generally termed trolley wires or overhead conductors, are required to construct and maintain guard or safety wires over each trolley wire or overhead conductor so used. The said guard or safety wires shall be of galvanized iron, and not less than one hundred and sixty-five thousandth (165/1,000) of an inch in diameter, and shall be parallel to the said trolley wire, and not less than sixteen (16) inches above the said trolley wire, and not less than eight inches nor more than twelve (12) inches on each side of a line drawn from said trolley wire perpendicular to the plane passing through the two said guard wires. The said guard or safety wires shall be thoroughly insulated from all current-bearing conductors of the said railroad motor circuits, and shall be at such places as the Electrical Department of the city may direct and designate. Any person refusing or neglecting for the period of three months to construct and maintain such guard or safety wires as herein required, after receiving notice in writing so to do from the said Electrical Department, shall be deemed guilty of an infraction. (Prior code § 2-5.06)

#### **5.62.070 Wheel guards.**

It is unlawful for any person to run or operate or cause to be run or operated upon or along any street within the city, any street railway car carrying pas-

sengers unless such car is equipped with wheel guards which shall be attached to the truck beneath the outer or forward portion of wheels and the outer or forward end of the car. Such wheel guards shall be constructed in a thorough workmanlike manner, of steel and wire mesh, or of steel and hardwood, assembled in the form of a flat or spring scoop which shall extend across under the car body the full width of the truck measured from outside to outside of the car wheels, and it shall be of ample strength to support or sustain an adult human body, and shall be so attached to the truck that the forward edge of the guard shall be not more than four inches above the top of the rails while the guard is in normal position.

Said guard shall be inspected and kept in repair and maintained in a normal operative condition by the person operating the car to which said wheel guards are attached. (Prior code § 2-5.07)

#### **5.62.080 Fenders required.**

It is unlawful for any person to run or operate or cause to be run or operated upon or along any street within the city any street railway car unless such car is equipped with a projecting fender which shall be placed upon, and securely attached to, the front end of said car body or frame work, and not attached to the wheels or trucks thereof.

Said apron or cradle shall be so constructed and attached to said car that it will form an elastic or resilient cradle or scoop which will cushion or break the impact of a person falling into or struck by it.

Said apron or cradle shall be so attached to the car that its forward edge may be elevated or depressed by means of chains, rods or other devices and when not in service, may be folded back against the buffer or front of car.

Said apron or cradle shall be normally carried with the forward edge not more than five and one-half inches above the top of the rail when the car is upon the level.

Said fender shall conform substantially to the specifications set forth in Section 5.62.090. (Prior code § 2-5.08)

**5.62.090 Fender specifications.**

A buffer or shield of elastic or resilient material shall extend across the entire front of the car and be so placed and attached to the car as to prevent persons being struck by the rigid projecting portions of the front end of the car, such as bumpers, bumper beams and draw heads. Outside and forward of said elastic buffer or shield there shall be attached to said car body or the platform thereof, an adjustable, hinged or pivoted apron, or cradle, not less than sixty-six (66) inches in width at its extreme forward edge, and not less than thirty-six (36) inches in depth, measured from its forward edge toward its point of attachment to the car body.

Said apron or cradle, as well as the elastic shield or buffer, shall be constructed of steel or iron strips, or springs, or of wire mesh, and all materials shall be of ample strength for the purposes for which they are intended; and, so far as the proper function of the various parts will permit, all materials shall be assembled so as to form a yielding or elastic structure.

Said apron or cradle shall be substantially rectangular in outline and be so constructed that, either by reason of the shape or form of the materials of which it is constructed, or by reason of the movement or change in position of some portion of its structure, it will form a shallow scoop or receptacle capable of receiving and retaining a person struck by or falling upon such scoop, apron or cradle.

The forward edge of said apron or cradle shall be protected by rubber or other elastic material, so arranged as to cushion or relieve the impact resulting from any person falling on or being struck by such portion of apron or cradle. (Prior code § 2-5.081)

**5.62.100 Children getting on and off, riding on top, etc.**

It is unlawful for any person under the age of sixteen (16) years to get on or attempt to get on or to get off from any street railway car or railroad train propelled either by steam or electricity while such car or train is in motion, at any place in the city; or for any person to ride on the top or roof of

any street car or railroad train or to ride on the front or rear fenders of any such car or train while the same is being operated in the city. (Prior code § 2-5.09)

**5.62.110 Alarms at crossings.**

It is unlawful for any person operating or in charge of any interurban train to cause or permit the same to be propelled across any street in the city without having sounded an alarm, gong or bell while within a distance of from fifty (50) to twenty-five (25) feet of the street about to be crossed. (Prior code § 2-5.19)

**5.62.120 Speed of trains and engines.**

It is unlawful for any person owning, operating or controlling any interurban or other railway train or railway engine to cause or permit the same to attain a greater maximum rate of speed than fifteen (15) miles per hour in any of that portion of the city bounded on the north by the northerly line of Twenty-Second Street and Grand Avenue, on the east by the easterly line of Oak Street and said easterly line of Oak Street extended to Grand Avenue, on the south by the southerly charter line of the city and on the west by the westerly line of Market Street. (Prior code § 2-5.20)

**5.62.130 Railroad tunnels and rights-of-way.**

It is unlawful for any person to trespass in any railroad tunnel situated wholly or partly within the city or upon the railroad tracks or right-of-way within such tunnel. (Prior code § 2-5.21)

**Chapter 5.64****TAXICABS\*****Sections:**

- 5.64.010 Title.**
- 5.64.020 Findings and purpose.**
- 5.64.030 Definitions.**
- 5.64.040 Fleet management permit.**
- 5.64.050 Vehicle permit.**
- 5.64.055 Operating permit.**
- 5.64.057 Operation of a taxi business without a permit.**
- 5.64.060 Spare taxicabs.**
- 5.64.070 Driver permits.**
- 5.64.075 Temporary driver permit.**
- 5.64.080 Permit administration.**
- 5.64.090 Insurance requirements.**
- 5.64.095 Controlled substance and alcohol testing certification program.**
- 5.64.100 Fare structure.**
- 5.64.110 Public convenience and necessity.**
- 5.64.120 Taxicab stands.**
- 5.64.130 Taxicabs from other municipalities.**
- 5.64.135 Violations.**

**5.64.010 Title.**

This chapter shall be known as the taxicab standards ordinance.

(Ord. No. 13161, § 4, 5-21-2013)

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\*Editor's note—Ord. No. 13161, § 4, adopted May 21, 2013, amended Chapter 5.64 in its entirety to read as herein set out. Formerly, Chapter 5.64, §§ 5.64.010—5.64.140, pertained to similar subject matter, and derived from the prior code, §§ 5-29.1—5-29.11, 5-29.13, 5-29.14; Ord. No. 12034, § 1, adopted 1998; Ord. No. 12100, adopted 1998; Ord. No. 12027, § 1, adopted 1998; Ord. No. 12340, § 1, adopted 2001; Ord. No. 12881, § 4, adopted 2008; Ord. No. 12894, § 4, adopted 2008; Ord. No. 12901, § 4, adopted November 18, 2008; Ord. No. 12913, § 4, adopted February 3, 2009, and Ord. No. 12920, § 6, adopted March 17, 2009.

**5.64.020 Findings and purpose.**

The City Council of Oakland does find that:

A. Taxicabs provide an essential component of the public transit system which serves the City; and

B. Taxicabs are operated by private companies which utilize public rights-of-way in the delivery of their service; and

C. Appropriate efforts must be undertaken to ensure that taxicab companies, their employees, and drivers take all reasonable actions to ensure protection of the public health and safety when providing taxicab services; and

D. The City's administration of taxicab regulations should not unduly burden the taxicab industry; however, the protection of the public health and safety shall be deemed paramount in the enforcement and interpretation of taxicab regulations.

(Ord. No. 13161, § 4, 5-21-2013)

**5.64.030 Definitions.**

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

"Alternative fuel vehicles" shall mean vehicles powered by natural gas, propane, ethanol, methanol, gasoline (when used in hybrid electric vehicles only), hydrogen, electricity, fuel cells, or advanced technologies that do not rely on gasoline or diesel fuel or that are powered by a combination of two or more alternate fuels. Alternative fuel vehicles include "hybrid" or "bi-fuel" vehicles powered in part by petroleum gasoline and vehicles converted from one powered by petroleum gasoline.

"Chief of Police" shall mean the Chief of Police or his or her designee.

"City Administrator" means City Administrator or his or her designee.

"Driver" means every person driving a taxicab as defined by this chapter.

"Driver permit" means the annual permit issued by the City Administrator which authorizes the recipient to drive a taxicab for a specified fleet manager within the City.

"Fleet management permit" means the permit issued by the City Administrator which authorizes the overall operation and management of all taxicabs using the same name and vehicle color combinations.

"Fleet manager" means that person designated by the holder of the fleet management permit as the person responsible for all operations under the fleet management permit.

"Operating permit" means the permit, issued by the City Administrator, which evidences that a vehicle designated by the City Administrator to operate for a specific fleet has been inspected and certified to operate as a taxicab.

"Owner" means any person, partnership, cooperative, corporation, firm, or association who is named as the registered owner of a vehicle which is used as a taxicab in the City, including but not limited to, receivers or trustees appointed by any court.

"Public Works Agency" means the Director of Public Works or his or her designee.

"Ramped taxi" means a taxi, defined below, which is a minivan or similar vehicle specially adapted with ramp and/or lift access for wheelchair users, which is also equipped with a taximeter, and which prioritizes requests for service from wheelchair users for purposes of transportation over and along the public streets, not over a defined route but, as to the route and destination, in accordance with and under the direction of the passenger or person hiring such vehicle.

"Taxicab" means every passenger vehicle designed for carrying not more than eight persons, excluding the driver, used to carry passengers for hire, and which is operated at rates per mile or upon a waiting time basis or both.

"Taxicab" does not include ambulance vans ("ambuvans") or limousines.

"Taximeter" means a mechanical or electronic device by which the charge for the hire of a taxicab is automatically calculated, either for distance traveled or for waiting time, or both, and upon which

such charge is plainly registered by means of figures indicating dollars and cents and which is visible in the rear passenger compartment.

"Vehicle permit" means the permit issued by the City Administrator to qualified taxicab owners which authorizes them to operate taxicab vehicles meeting established standards within the City.  
(Ord. No. 13161, § 4, 5-21-2013)

#### **5.64.040      Fleet management permit.**

A. It is unlawful for any person, partnership, cooperative, corporation, firm, or association to engage in the business of operating or managing a taxicab company, fleet, or taxi service in the City without first obtaining a fleet management permit as specified by this section.

B. Application for a fleet management permit shall be filed with the City Administrator. The form and contents of such application shall be specified by the City Administrator; however, the following shall constitute the minimum requirements to qualify for a fleet management permit:

1. Proof that the fleet management permit applicant has insurance which satisfies the requirements of Section 5.64.090 and which is adequate to cover all vehicles permitted under the name and vehicle colors for which the applicant is responsible;

2. Designation of a manager to whom all correspondence and official notices may be directed and who is authorized to and is responsible for the conduct of all business with City officials charged with enforcing the provisions of this chapter. The fleet manager is subject to the approval of the City Administrator and shall be subject to the same requirements as permit holders under Subsections 5.64.080 E. and F.;

3. Disclosure of the names, residence, and business addresses of the designated manager, all directors, officers, partners, and associates directly or indirectly holding a financial interest in the applicant and the proposed fleet management permit. A copy of the current, valid fictitious business name certificate under which the applicant does, or intends to do, business;

4. A complete description of the fleet's proposed operations, including, for all fleets consisting of more than five vehicles, a radio-dispatching service provided either by the applicant or another party under contract, including all licenses for the operation of all radios whether directly or by contract. Failure to operate according to the proposed terms shall be considered a violation of this chapter;

a. In lieu of a dispatch radio system, the City Administrator's designee may accept an alternative method for dispatching vehicles if a fleet manager can provide a suitable communications system alternative to radios. Such system must be approved for use by the City Administrator's designee before implementation.

5. Authorization from the City Administrator to use a proposed color scheme for each vehicle in the fleet;

6. Proof that the fleet's operations are conducted in conformance with zoning laws;

7. A list of all vehicle permits that the fleet management permittee will manage.

C. Fleet management permittees are required to maintain for a period of not less than one year all records pertaining to the fleet manager's operation and management, including but not limited to all waybills completed by drivers or alternative waybill information approved in advance by the City Administrator, all dispatch logs for fleets consisting of more than five vehicles, all vehicle inspection records, driver training records, passenger complaints, citation records, leasing records, and insurance records. Fleet managers shall make available for inspection, Monday through Friday from 9:00 a.m. to 5:00 p.m., all such records. Fleet managers shall take reasonable efforts to ensure the completeness and accuracy of all records. Any records which are determined to be inadequate, inaccurate or any request which is not complied with may result in the suspension or revocation of the fleet management permit pursuant to Section 5.64.080.

D. Fleet management permittees shall be responsible for all aspects of the fleet management

and day-to-day management operations, including but not limited to drivers and vehicles operated under the fleet management permit. Any violation of any provision of this chapter by a driver or vehicle may be grounds for suspension or revocation of the fleet management permit pursuant to Section 5.64.080, and any violation by a driver or vehicle may also be imputed to the fleet management permittee for the purposes of prosecution of violations pursuant to Section 5.64.135.

1. Fleet managers shall provide to drivers receipts for all fees collected from said drivers.

2. Upon driver request, fleet managers shall provide all information and documentation on insurance claims filed or processed for accidents and/or other vehicle damage in which said driver was involved.

E. The City Administrator may deny the granting of any fleet management permit if the applicant has been convicted of any crime, taking into consideration the nature and circumstance of the conviction, the age of the applicant at the time of conviction, the time elapsed since the conviction, and any evidence of rehabilitation.

F. Fleet management permits issued under the provisions of this chapter shall be effective for the calendar year for which the permit is issued only. All fleet management permits shall expire on December 31st of the year for which the permit is issued. Fleet management permits must be renewed annually by the fleet management permittee by submitting a completed application with required documents as set forth in this section no later than November 15th.

G. Any person, partnership, cooperative, corporation, firm, or association in receipt of a fleet management permit shall designate one person as the fleet manager. The fleet manager shall be jointly and severally liable with the fleet management permittee for all acts and omissions arising from the operation of the fleet.

H. Fleets consisting of ten or more vehicles shall provide taxi coverage to all parts of the City 24 hours per day, seven days per week. The City Administrator shall divide the City into geo-

graphic areas and determine the required level of coverage for each area and time of day. In establishing these requirements the City Administrator, or authorized designee, shall consider the number of vehicle permits managed by each fleet and shall assign the required coverage levels proportionately.

As part of the annual renewal process, fleet managers of fleets consisting of ten or more vehicles shall submit a plan for meeting the required level of coverage, as determined by the City Administrator. Fleet managers shall maintain records demonstrating compliance with the coverage plan including but not limited to daily records for each permitted vehicle in the fleet showing the name of the driver(s), the time of day and the geographic area serviced by each vehicle. These records shall be maintained by the fleet management company for at least one year and shall be submitted to the City on a quarterly basis in January, April, July and October of each year.

Failure to operate the fleet according to the coverage plan, maintain accurate records of actual operation of each permitted vehicle in the fleet, or submit timely quarterly reports shall be a violation of this chapter and shall constitute a basis for revocation of the fleet management permit and/or any vehicle permits under the ownership, possession or control of the fleet management company.

(Ord. No. 13161, § 4, 5-21-2013)

#### **5.64.050      Vehicle permit.**

A. It is unlawful for any person, partnership, cooperative, corporation, firm, or association to operate or permit to be operated a taxicab within the City without first obtaining a vehicle permit as specified by this section. Application for a vehicle permit shall be made on a form specified by the City Administrator.

B. Upon approval of written application, the holder of a vehicle permit may permanently transfer the permit to a substitute vehicle provided that all provisions of this chapter are met to the satisfaction of the City Administrator.

C. Upon written application to the City Administrator, the holder of a vehicle permit may transfer operation of his or her permit to a different fleet management permittee provided that written consent is first obtained from the new fleet manager and the City Administrator. Vehicles transferring operations from one fleet management permittee to another are subject to inspection by the Public Works Agency before such transfer may be approved.

D. Vehicle permits issued by the City are the property of the City and shall not be sold, assigned, bequeathed, leased, or transferred, expressly or by operation of law, unless the City Administrator determines that such sale, assignment, or transfer is made to a proposed permittee who is in compliance with the taxicab operating requirements of this chapter. Vehicle permits may be assigned or transferred upon the payment of the vehicle permit transfer fee in the master fee schedule and incidental to the sale or devise of the taxicab business with no consideration being exchanged for the permits. A vehicle permit transfer will not be recognized by the City unless and until all other requirements of this chapter for operating the vehicle have been met. However, nothing contained in this section is intended to impair a valid contractual obligation regarding the temporary transfer of interest in a vehicle permit if such contractual obligation was entered into prior to the effective date of the ordinance codified in this section. Whenever at any time after the initial issuance of permits to a business entity, or at any time after the entity was last required to evidence compliance under this provision, there has been in the aggregate a transfer of 51 percent or more of the ownership interest in the entity, the entity may be required by the City Administrator to evidence compliance with the taxicab permittee requirement of this chapter. A complete copy of each contractual agreement in existence at the time of the effective date of the ordinance codified in this section shall be provided to the City Administrator within 30 days.

E. Prior to the issuance of a vehicle permit, every applicant for a vehicle permit shall file with

the City Administrator a statement, giving the name, address, and telephone number of the taxicab fleet management permittee through which taxicab service is to be made available to the public pursuant to the permit for which application has been made. No vehicle permit shall be registered to more than one fleet management permittee. All outstanding permittees must file such a statement with the Chief of Police within 30 days of the effective date of this chapter.

F. The City Administrator shall issue a metallic medallion for each vehicle permit issued pursuant to this chapter upon compliance with the insurance requirements of Section 5.64.090. During all hours of operation of a taxicab the medallion shall be secured as designated by the City Administrator and shall be clearly visible from the exterior of the taxicab. The medallion issued for any vehicle shall be surrendered to the City Administrator at any time that the insurance for that vehicle does not meet the requirements of Section 5.64.090, or at any time the vehicle permit is suspended, and shall be restored to the permittee when proof of insurance is provided to the City Administrator or evidence is provided to the City Administrator that the condition(s) giving rise to the suspension has been corrected. Every taxicab permit holder shall pay the City a sum to cover the cost of producing and processing each such metallic taxicab medallion as may be issued to him or her. Such fees shall be paid at once, upon issuance, in an amount set in the master fee schedule; provided, however, that such medallions may be transferred between vehicles in accordance with the provisions of this chapter. Any out-of-service taxicab or spare taxicab vehicle with a permit from the City which is driven on the City streets and ways shall display such sign or signs as shall be designated by the City Administrator indicating that such vehicle is out of service.

G. To ensure provision of taxi service to persons confined to wheelchairs, for vehicle permits issued after the adoption of this section, there shall be a ratio of at least one ramped taxi per 20 taxis vehicle permits issued. Notwithstanding the

transfer provisions of this chapter, vehicle permits issued for ramped taxis shall not be transferred to vehicles incapable of transporting passengers in wheelchairs. With respect to vehicle permits issued after the adoption of this section, ramped taxis shall be maintained in a ratio of at least one ramped taxi to 20 regular taxis.

(Ord. No. 13161, § 4, 5-21-2013)

#### **5.64.055      Operating permit.**

A. Application for an operating permit shall be filed with the City Administrator. The form and contents of the application shall be specified by the City Administrator; provided, however, the following standards constitute the minimum requirements to qualify for an operating permit:

1. Written acknowledgment by the manager of a fleet management permittee that the vehicle for which the operating permit is issued is authorized to operate using the color scheme and name of the fleet management permittee and that the fleet management permittee assumes responsibility for the operation of the vehicle;
2. Proof that the vehicle is covered by the insurance of the fleet management permittee;
3. Presentation of a City business tax certificate which demonstrates that such tax is not delinquent for the current year or any previous year;
4. Presentation of a valid certificate of registration for the vehicle issued by the California Department of Motor Vehicles. The permit applicant must be named as the registered owner of the vehicle;
5. Proof that a taximeter of a type approved by the City Administrator has been installed in the vehicle and has been certified by the County of Alameda Bureau of Weights and Measures subsequent to its installation in the vehicle;
6. Unless an alternative method for dispatching has been approved pursuant to OMC Subsection 5.64.040 B.4. proof that the vehicle is equipped with a two-way radio, in good working order, to be used for taxicab service dispatch purposes, and that the applicant has all applicable licenses for the operation thereof;

7. Disclosure of the names, residence, and business addresses of the owner(s), all partners, and associates directly or indirectly having a financial interest in the ownership of the vehicle or the operation authorized by the operating permit for which application has been made. A certified copy of any fictitious business name certificate, evidence of publication, and an affidavit of publication, under which the applicant does, or intends to do, business;

8. State of California Certificate of Compliance - Brake Adjustment which is valid at the time of the annual inspection;

9. State of California Certificate of Compliance - Motor Vehicle Pollution Control which is valid at the time of the annual inspection;

10. State of California Certificate of Adjustment - Lamp Adjustment which is valid at the time of the annual inspection;

11. The above certificates must be dated within 60 days of the date of the inspection by the Public Works Agency.

B. Applicants for an operating permit must demonstrate that the vehicle meets specified safety and equipment standards. The Public Works Agency shall publish safety and equipment standards and/or reference other standards with which each vehicle must comply. Such safety and equipment standards must include the installation of a protective partition of a type approved by the City Administrator in the vehicle. The protective partitions may be of a fixed or roll down design, and their installation applies only to taxicab companies with three or more vehicle permits, and must be installed in no less than 30 percent of that company's vehicles. Taxicab drivers may request to drive taxicabs that do not have safety shields therein. Employing taxicab companies shall provide taxicabs without safety shields to requesting taxicab drivers if such taxicabs are available.

1. Except for vehicles driven solely by the holder of the vehicle permit, taxicab companies with three or more vehicle permits shall install cameras capable of recording the passenger seating area and the area immediately outside the driver's window in

taxicabs without safety shields. Such cameras shall be installed within one year from the adoption of this chapter.

C. The Public Works Agency shall conduct, or cause to be conducted, an inspection of all vehicles for which permits are granted under the provisions of this chapter prior to the issuance of an operating permit and at regular annual intervals thereafter on a schedule to be determined by the City Administrator.

Such inspections shall determine compliance with all applicable laws and standards. Standards for such inspections as set by the City Administrator shall include the following:

1. Any door, window, hood, or trunk which fails to open or close securely;

2. Peeling, defaced, or improperly repaired exterior decals, lettering or numbering;

3. Exterior paint or color schemes which are different from those approved by the City Administrator pursuant to Subsection 5.64.040 B.5. or which are not maintained in the condition originally approved by the City Administrator;

4. Dirt, broken fixtures, or other conditions in the passenger compartments which could soil or tear a patron's clothes;

5. Rust, dents, or tips in the vehicle's exterior which are more than trivial, or missing components, including, but not limited to, chrome, rubber strips, or other component parts which might snag, tear, or injure a driver, pedestrian, or passenger. Any such damage will be considered to be more than trivial when single or multiple areas of damage affect an aggregate area of at least three linear feet of the cab exterior. The measurement of each damaged area will be taken between the two most widely spread points of the affected surface;

6. Dirty luggage compartments or luggage compartments which are maintained in condition which would soil or damage baggage;

7. Driver or passenger compartments which have litter or trash;

8. Torn or improperly repaired upholstery, headliners or floor covering;

9. Re-tread tires;

10. Safety standards as published pursuant to the provisions of Subsection B.

D. All taxicabs operating within the City shall have signs containing the following information permanently affixed to the vehicle:

1. On the exterior sides of the vehicle shall appear the name of the fleet management permittee, the insignia of such permittee, and the telephone number of the fleet management permittee. The size and location of vehicle numbers shall be designated by the City Administrator.

2. On the exterior and interior sides of the vehicle shall appear the vehicle permit number in a size specified by the City Administrator.

3. On the exterior sides of the vehicle, and within the interior of the vehicle in a location readily visible to the passenger, shall appear a sign which states "Driver carries only \$5.00 in change."

4. Within the interior of the vehicle, and in a location readily visible to the passenger, shall appear a sign which states the name of the fleet management permittee, such permittee's address and telephone number, and the vehicle number. The name of the driver shall be posted on a sign, readily visible to the passenger, following the words, "Your driver is". The fares authorized by this chapter shall be listed and the sign shall state, "Drivers may collect only these posted fares." In addition the sign shall state Oakland City Administrator's Office, Business Permits Unit, 1 Frank H. Ogawa Plaza, 11<sup>th</sup> Floor, Oakland, CA 94612 (510) 777-8527. Such sign shall be no smaller than eight by ten inches in size.

5. Within the interior of the vehicle, and in a location readily visible to the passenger, shall appear a sign titled Passenger's Bill of Rights. It shall include the following:

- a. You have the right to be treated courteously.
- b. You have the right to be taken to your destination by the most expeditious route.
- c. You have the right to be picked up and dropped off at a safe location.
- d. You have the right to have your baggage, not exceeding 50 pounds, placed in the trunk of the taxi.

e. You have the right to pay only the posted fare. Tipping for good service is encouraged.

f. Passengers with disabilities have the right, upon request, to be assisted entering and exiting the taxi.

g. Passengers with disabilities have the right to be accompanied by qualified service animals.

In addition the sign shall state, "Complaints and comments may be filed with the Oakland City Administrator. Please specify the vehicle number and driver name." The telephone numbers and email address of the City Administrator or designee shall be included on the signs.

6. All vehicles shall carry complete maps of Alameda County.

7. Within the interior of the vehicle shall appear a copy of the operating permit. The form, contents, and location of the operating permit shall be designated by the City Administrator. A vehicle permittee shall be issued a decal for each vehicle upon full completion of the annual vehicle permit renewal and vehicle inspection.

E. Vehicle Age and Alternative Fuel Requirements.

1. Vehicle Age. By December 31, 2017, each vehicle operating within the City shall be not more than seven years old (measured from the date of first manufacture) or less. Operating permit holder may, with the permission of the City Administrator's Office, which permission shall not be unreasonably withheld, temporarily substitute another vehicle; provided that any such temporary substitution shall comply with all other operating permit specification and inspection requirements set forth in Section 5.64.060.

2. Alternative Fuel. By January 1, 2015, each operating permit holder operating more than one vehicle shall ensure that no less than 30 percent of all the vehicles for which operating permits have been issued (or if an odd number, 30 percent of one less than the number of such vehicles) shall be alternative fuel vehicles. If a permit holder has 11 vehicles permitted to operate, no less than three of the vehicles shall be alternative fuel vehicles. By January 1, 2017, the percentages shall be increased to 50 percent.

F. In addition to the annual inspections provided for in Subsection C., and as authorized under the California Vehicle Code, the Chief of Police may cause spot inspections to be made of any taxicab vehicle, provided that at the time of such spot inspection the vehicle is in service and not transporting a paying customer. If the taxi vehicle fails to pass the spot inspection, the vehicle permit and operating permit may be suspended pursuant to Subsection 5.64.080 F.

G. Any individual who affixes or removes an operating permit without the permission of the City Administrator shall be in violation of this chapter. It is unlawful for any person to operate or permit to be operated a taxicab within the City without having an operating permit affixed to the vehicle. Any taxi driver permittee or fleet management permittee found in violation of this paragraph may have their permit suspended or revoked pursuant to Section 5.64.080.

H. All citations issued for violations of Subsections C.1. through C.9., inclusive, shall require the person to whom the notice to appear is issued to produce evidence which is satisfactory to the Chief of Police that the vehicle has been made to conform with the requirements of this chapter within 30 days.

I. Operating permits shall be renewed annually on a date to be set for each permit by the City Administrator; provided, however, that the renewal date so set shall be within 90 days from the calendar anniversary of the date on which the vehicle was last inspected and passed. Such renewal date shall also be within 30 days of the date the registration for that vehicle is renewed with the California Department of Motor Vehicles.

(Ord. No. 13161, § 4, 5-21-2013)

#### **5.64.057 Operation of a taxi business without a permit.**

A. Pursuant to California Government Code Section 53075.7, upon receipt of a complaint containing sufficient information to warrant conducting an investigation, either the City Administrator

or the Chief of Police shall investigate any business that advertises or operates taxicab transportation service for hire.

B. To warrant investigation, a complaint must meet the following criteria:

1. The complaint must be submitted to the City Administrator in writing;
2. The complaint must be signed by the complainant;
3. The complaint must specify the following information:

(a) The name of the taxi company that is operating without a permit, or, if no company name is provided, other information, such as an advertised telephone number or website or a vehicle license plate number, that will allow the identification of the operator;

(b) The date, time and place where the violation occurred;

(c) The nature of the unpermitted activity, including, but not limited to, advertising directed at Oakland customers and picking up customers in Oakland.

C. Upon receipt of a complaint that meets the required criteria and upon determination that the activity complained of alleges the operation or existence of unpermitted taxi(s), the City Administrator will authorize an investigation and will either conduct the investigation or request the Chief of Police to conduct the investigation.

D. If the investigation confirms that an unpermitted taxi business is being advertised and/or operated, the investigating agency shall:

1. Inform the business that they are in violation of the law;
2. Within 60 days of informing the business pursuant to paragraph 1, institute civil proceedings (e.g., pursuant to OMC Chapters 1.08 or 1.16) or criminal proceedings or both);
3. Notify the business, by regular first class mail, that, pursuant to Government Code Section 53075.8, the City intends to seek termination of the operator's telephone service.

E. If the City receives no timely protest of the intent to terminate telephone service or, if after a

protest hearing, the Hearing Officer determines that the allegations are sufficient to justify seeking termination of the telephone service of the unpermitted taxi operator, the City Administrator may seek termination as provided by Government Code Section 53075.8.

F. If, after a hearing, the Hearing Officer finds that any person or corporation is operating a taxicab service without a valid permit, the City Administrator may impose, in addition to any other penalties authorized by law, a fine pursuant to Government Code Section 53079.5, plus the reasonable expenses of the investigation, plus interest, as specified in the Master Fee Schedule, on any delinquent fine.

G. Operation of a taxi without a permit issued by the City constitutes a violation of this chapter and a public nuisance and is subject to all available remedies, including, but not limited to, the remedies provided in the prior Subsection, the provisions of OMC Chapters 1.08, 1.12, and 1.16, and civil and criminal prosecution.

(Ord. No. 13161, § 4, 5-21-2013)

#### **5.64.060 Spare taxicabs.**

A. Every taxicab fleet management permittee under this chapter shall be entitled to one spare taxicab permit for every five vehicle permits registered with the City Administrator as operated by or in association with such taxicab fleet management permittee as determined by the City Administrator annually commencing on January 1, 1988; provided, however, that every taxicab fleet management permittee shall be entitled to a minimum of one spare taxicab permit. In determining the number of space taxicab permits to which a fleet management permittee is entitled, such permittee shall receive one additional spare taxicab permit if the number of vehicle permits registered for such permittee is three or four permits greater than any number evenly divisible by the number five. Each such permit may be utilized only with a taxicab vehicle registered with the City Administrator and operated under the provisions of this chapter. Such permits shall not be transferable or assignable either expressly or by operation of law.

B. Spare taxicab permits may be used only when:

1. A spare taxicab authorization order has been issued by the City Administrator based on a temporary public transportation need which justification shall be set forth specifically in the order, or

2. A fleet manager notifies the City Administrator in such form as the City Administrator may require that a specifically identified regularly permitted taxicab is out of service and that a specifically identified designated spare taxicab vehicle shall replace it.

C. Spare taxicab authorization orders issued by the City Administrator shall activate all spare taxicab permits and shall be given in writing and filed with the City Administrator. Holders of spare taxicab permits may be notified orally, by telephone, telegram, facsimile, or by any other convenient means of communication that such an order has been issued and filed. Such orders shall specify an effective time and date and a termination time and date, but shall remain in effect in no case for duration greater than ten consecutive days. Spare taxicab authorization orders may be extended beyond a ten consecutive day duration only with the written concurrence of the City Administrator.

D. Every spare taxicab vehicle for which a permit is issued shall be inspected at least once each year on a schedule determined by the City Administrator under the standards set forth in Section 5.64.055 and also shall be subject to spot inspections under the provisions of Subsection 5.64.055 E.

E. No spare taxicab shall be operated unless at the time such vehicle is placed in service, and at all times while such vehicle remains in service, it is covered by a policy of insurance in such amount(s) as shall satisfy the requirements of Section 5.64.090.

F. The medallion as described in Section 5.64.050 shall be placed in the spare taxicab when that spare taxicab is in operation as authorized by the City Administrator.

(Ord. No. 13161, § 4, 5-21-2013)

**5.64.070      Driver permits.**

- A. It is unlawful for any person to drive a taxicab for hire within the City without first obtaining a driver permit as specified in this section.
- B. Application for a driver permit shall be filed with the City Administrator. The form and contents of the application shall be specified by the City Administrator; however, the following constitute the minimum requirements to qualify for a driver permit:
  - 1. Presentation and maintenance of a valid California driver's license;
  - 2. Written acknowledgment by the manager of a permitted fleet management permittee that the applicant is authorized to drive vehicles operated and managed by that permittee;
  - 3. Proof of completion of a training course approved by the City Administrator including but not limited to training in knowledge of Oakland, safety, appearance, customer relations, and transporting passengers with disabilities;
  - 4. Satisfactory completion of an examination approved by the City Administrator demonstrating knowledge of the streets, ways and principal public places in Oakland, the traffic regulations of the City, and the provisions of this chapter. All taxicab drivers shall receive and provide proof of training annually on safety, appearance, customer relations, transporting passengers with disabilities, and promoting the City;
  - 5. Evidence that the driver is covered under the insurance policy covering the fleet management permittee under whom the driver operates;
  - 6. Evidence that the applicant will be an employee of a fleet management permittee and has an offer of employment from a fleet management permittee unless the applicant himself or herself is an individual holding a fleet management permit;
  - 7. Evidence that a person has tested negative for drugs and alcohol through an approved drug and alcohol testing provider within 30 days prior to submitting their driver permit application. A positive test result is grounds for denial or revocation of a driver permit;
- C. Drivers shall take the most direct route possible that will carry passengers safely, lawfully, and expeditiously to their desired destination.
- D. Drivers shall not refuse a reasonable request for service from any legitimate customer. Service may be refused when, in the opinion of the driver, accepting a passenger would threaten the safety of the driver.
- E. All persons driving taxicabs are required to post their driver permit within the taxicab as directed by the City Administrator and in full view of passengers.
- F. Unless an alternative method of maintaining waybill information has been presented by a fleet manager and approved by the City Administrator, drivers shall maintain waybills which fully and accurately report all fares paid and distances traveled while hired by a passenger. Waybills shall be deposited with the fleet manager for filing. Such waybills shall contain the following information:
  - 1. The driver's name;
  - 2. The correct date;
  - 3. The vehicle permit number;
  - 4. The time each paid trip is begun and completed, entered contemporaneously;
  - 5. The origin and destination of each paid trip, entered contemporaneously;
  - 6. The amount of fare paid for each trip.
- G. Fleet management permittees may require drivers to complete a vehicle inspection report in conjunction with other required waybill information.
- H. Upon request, drivers shall present their permits or waybills to City officials, the vehicle permit holder, or the fleet manager.

I. Upon request, drivers shall issue to any passenger a receipt for the fare paid for hiring the taxicab.

J. No driver shall permit any taxicab to be parked unattended in any taxi stand for a period of time in excess of five minutes.

K. Every driver shall operate the taximeter to correctly indicate whether or not the taxicab is available for hire, and shall turn the taximeter on at the beginning and off at the end of each trip. Persons operating a taxi vehicle shall not accept fees or compensation for taxi services in an amount other than that indicated on the taximeter at the end of a trip except for services rendered pursuant to the City's par transit program.

L. Drivers shall treat passengers and regulatory personnel courteously.

M. Driver permits shall be renewed on the birthday of the permit holder each year. Driver permit renewal applicants must show compliance with Subsections B.1., B.2., and B.4.—B.6., in order to renew his or her driver permit. If a driver permit is not renewed as set forth above, it shall be deemed to have lapsed. No driver shall operate a taxi while his or her driver permit is lapsed.

Any driver permit which has lapsed for 31 to 60 days may be renewed upon the payment of a fee specified in the master fee schedule. Any driver permit that has lapsed for 61 days or more shall not be renewed, but instead that driver must file for a new driver permit and will be considered a new driver permit applicant.

N. Test results pursuant to mandatory drug and alcohol testing set forth in Subsection B.6. shall be released directly to the City Administrator if the test results concern a taxi driver permittee or taxi driver applicant who is self-employed. The City Administrator shall notify any company leasing a taxi vehicle to any taxi driver permittee of any positive test results. If the test results concern any taxi driver permittee employed by any fleet management permittee, the test results shall be released to the fleet management permittee. The fleet management permittee shall notify the City Administrator of any positive test results.

O. If the taxi driver permittee or taxi driver permit applicant holds a fleet management permit in his or her name, then he or she shall pay the cost of the testing. If the taxi driver permittee or taxi driver applicant is or will be employed by any fleet management permittee, the fleet management permittee shall pay the cost of the testing, which cost shall not be passed on to the driver, except in the event of a positive test result, in which case the taxi driver permittee or applicant may be charged for the cost of the test by the fleet management permittee.

P. Test results shall not be released without the taxi driver permittee's or applicant's consent, except as set forth above or as authorized or required by law.

Q. Each driver permit issued pursuant to this section must state the fleet management permittee's name on the face of the permit. In the event the taxi driver's employment is terminated for any reason, such driver permit shall be void. The City Administrator shall be notified within ten days of the termination of employment of any permitted driver, and the driver permit must be returned to the City Administrator.

R. The City Administrator is authorized to promulgate regulations regarding driver conduct and comportment to promote professional conduct and appearance, to ensure the safety, health and wellbeing of passengers, other drivers, and the citizenry at large and to provide standards for rational and courteous behavior.

1. Upon receipt of credible allegations of violation of the regulations, the City Administrator shall provide drivers with written notice of the violation, of the driver's right to contest the allegation in writing, and of the potential for revocation and/or non-renewal of the driver permit on the basis of multiple uncontested or confirmed violations.

2. The City Administrator shall review contested violations and confirm or dismiss the violation on the basis of the preponderance of the evidence.

3. An uncontested or confirmed violation is the basis for the City Administrator to suspend the driver's permit for a period not to exceed ten days.

4. A second or greater uncontested or confirmed violation is the basis for the City Administrator to revoke and/or deny the renewal of the driver's permit, based upon the totality of the circumstances.

S. Denial of a driver permit application is a final decision and nonappealable. An applicant whose driver permit application is denied must wait 60 days from the date of a denial before he/she may reapply. Any application received prior to the 60-day expiration period will not be acted upon until expiration of the 60-day period.

(Ord. No. 13161, § 4, 5-21-2013)

#### **5.64.075      Temporary driver permit.**

The City Administrator may grant a 90-day temporary driver permit to an individual whose application for a permanent driver permit is pending. A temporary driver permit shall be in the possession of the applicant while operating a taxicab. Temporary driver permits may not be extended beyond the 90-day period.

(Ord. No. 13161, § 4, 5-21-2013)

#### **5.64.080      Permit administration.**

A. The City Administrator is designated as having responsibility for the administration of the City's taxicab regulations. The City Administrator is authorized to develop standards and procedures which are necessary to implement the requirements of this chapter. Because of the special requirements of the taxicab industry, the issuance of permits specified in this chapter shall not be subject, with the exception of Section 5.64.090, to the provisions of Chapter 5.02, unless specifically so provided in this chapter.

B. Any person, partnership, cooperative, corporation, firm, or association is entitled to apply for a fleet management permit, a vehicle permit, or a spare taxicab permit. Any natural person is entitled to apply for a driver permit. A separate

application is required for each permit specified in this chapter. Each permit application must be accompanied by the appropriate fee as specified in the master fee schedule and shall be payable to the City.

C. 1. Every fleet management permittee shall notify the City Administrator of any change in the information originally supplied on the permittee's permit application form within ten days of any such change.

2. Fleet management permits shall expire upon the failure to pay the annual City business tax.

3. Application for renewal of any permit issued under the provisions of this chapter shall be made in the conformity with, and shall contain such information as may be required by, rules prescribed by the City Administrator. Each renewal application must be accompanied by the appropriate fee specified in the master fee schedule and shall be payable to the City.

D. The City Administrator shall have the discretion to impose the penalties specified by this chapter or to revoke or suspend any permit issued under this chapter for good cause, after a hearing. "Good cause" shall include, but shall not be limited to, violations of this chapter or standards promulgated by the City Administrator pursuant to the provisions hereof, or violations of the California Vehicle Code, or violations of pertinent federal, state, or local laws. Such hearings shall be noticed and held pursuant to Sections 5.02.080, 5.02.090, and 5.02.100.

E. Vehicle, operating or fleet management permits issued under the provisions of this chapter may be revoked or suspended according to the provisions of Sections 5.02.080, 5.02.090, and 5.02.100. Any vehicle permit that is not used in Oakland for more than 15 days in any 30-day period may be revoked pursuant to the foregoing sections unless good cause for abandonment is shown. Any permit revoked under this provision may be reissued by the City Administrator, awarded upon criteria established by a request for proposals (RFP), after 120 days.

F. If, in the judgment of the Chief of Police or the Public Works Agency, suspension of any permit specified in this chapter is necessary to protect the public health and safety, including but not limited to compliance with the insurance requirements of this chapter, the Chief of Police is authorized to suspend permits peremptorily on an emergency basis. An appeal of an emergency suspension may be made informally to the Chief of Police, who shall hear such appeal within 24 hours. Emergency suspensions will expire when the conditions which forced the suspension are corrected to the satisfaction of the Chief of Police. An emergency suspension shall last no longer than 15 days. However, an emergency suspension may be renewed by the Chief of Police if the condition or conditions on which the suspension was made continues.

G. If, in the judgment of the Chief of Police or the City Administrator, the impoundment of a taxicab is necessary in association with the emergency suspension of a vehicle permit or of an operating permit, such impoundment is authorized.

H. All permit holders are required to maintain their current business and home address on file with the City Administrator's Office and to give written notification of any changes thereof to such within ten calendar days thereof.

I. The City Council may, upon finding that there is an urgent public need, waive or modify by ordinance any or all of the requirements of this chapter and authorize the City Administrator to issue temporary permits to operate taxicabs, without exacting any fee. Such permits will be revocable at any time for any reason by the City Administrator. Such temporary permits shall not be revoked in conformity with Subsections D. and E., but instead shall be revoked immediately on written notice to the holder of the temporary permit. Such revocations are final and nonappealable.

(Ord. No. 13161, § 4, 5-21-2013)

#### **5.64.090 Insurance requirements.**

A. It is unlawful for any fleet management permittee or any holder of a vehicle permit to

operate or allow to be operated any taxicab unless a valid insurance policy, indicating that a motor vehicle liability policy is in effect which covers such taxicab, has been filed with the City Administrator. The insurance policy must be issued by a company holding a certificate of authority to do insurance business in the State of California, or by a company doing business through an authorized surplus lines broker. Such insurance shall remain in full force and effect at all times for each taxicab permit; provided, however, that the fleet management permittee may temporarily suspend coverage for any covered vehicle not actually in service or being operated on public streets or ways provided that written notice to the Chief of Police has first been provided by the fleet management permittee.

B. An insurance policy evidencing motor vehicle liability insurance made by a company doing business through an authorized surplus lines broker shall have on it an endorsement substantially as follows:

It is agreed that in the event of a dispute as to the validity of any claim made by the insured under this insurance policy, or in the event of any suit instituted by the insured against the company upon this contract, the company hereon will submit to the jurisdiction of the courts of the State of California, and will comply with all legal requirements necessary to give such courts jurisdiction; and for this purpose said company hereby appoints \_\_\_\_\_ at \_\_\_\_\_ Street, \_\_\_\_\_ California, its agent for the purpose of service of process; and in any suit instituted against the company upon this contract, the company will abide by the final decision of the courts of said State and settle accordingly.

C. The motor vehicle liability policy required under the provisions of Subsection A. shall name and insure the registered vehicle owner, the fleet management permittee, any permitted taxi driver, and any other person using or responsible for the use of any such vehicle, with the consent, express or implied, of the owner or fleet management permittee, against loss from liability imposed upon

such owner or fleet management permittee by law for injury to, or death of, any person, or damage to property growing out of the maintenance, operation, or ownership of any taxicab, to the amount of limit of \$1,000,000.00 combined single limit per accident for bodily injury, death, and property damage.

D. Every insurance policy required under the provisions of Subsection A. shall certify that the motor vehicle liability policy shall not be canceled, nor the policy limits thereof changed, except upon 30 days' prior written notice to:

Business Permits Unit  
City Administrator's Office  
1 Frank H. Ogawa Plaza, 11<sup>th</sup> Floor  
Oakland, CA 94612

Such motor vehicle liability insurance shall be continuing liability up to the full amount thereof, notwithstanding any recovery thereon; and such insurance policy shall so certify. The City Administrator is authorized to impose additional requirements for the form or content of any insurance policy, provided the additional requirements are not inconsistent with or prohibited by the provisions of this chapter or with state law.

Each fleet management permittee shall be required to provide the City Administrator with written notice within 30 days of any changes or amendments to an insurance policy.

If at any time there arises a question as to the existence, continued validity, adequacy, or sufficiency of a motor vehicle liability policy, the City Administrator may temporarily suspend the fleet management permit or vehicle permit in accordance with Section 5.64.080 and/or may require the registered owner of the motor vehicle or the fleet management permittee named on the policy, or both, to replace such policies within ten days with other policies which meet the requirements established by this chapter. If the owner, fleet management company, or both fails to replace the insurance policy or policies within the said ten-day period with sufficient policies the City Administrator may then continue to suspend or revoke

the permits issued to the owner, fleet management permittee, or both in accordance with Section 5.64.080.

In the event that an insurer has amended or changed a policy four times from the date of its issuance, the fleet management permittee shall be required to file a new, reissued insurance policy with the City Administrator within 30 days after the effective date of any fourth amendment or change.

E. The following endorsement shall be made a part of the comprehensive motor vehicle liability policy in the exact language listed below:

The city, its Council members, officers, agents, and employees are hereby added as additional insureds.

F. Every fleet management permittee or holder of a vehicle permit shall provide to the City Administrator written notice within ten days of any final judgment being entered against him or her or against any taxicab company or vehicle under his or her control if that judgment arises from any accident or injury occurring within the limits of the City or if the person injured entered an Oakland permitted taxicab in the City regardless of where the accident occurred. Failure to provide such notice is grounds for revocation of the fleet management permit or vehicle permit in accordance with Section 5.64.080. Failure of a fleet management permittee or taxi vehicle permittee to satisfy a final judgment arising under the conditions heretofore set forth herein within six months of entry of such judgment shall be grounds for revoking the fleet management permit under which the vehicle permittee operated, revoking the vehicle permit, or both.

G. Failure to comply with the insurance requirements set forth in this section shall be grounds for revocation pursuant to Section 5.64.080.

(Ord. No. 13161, § 4, 5-21-2013)

#### **5.64.095 Controlled substance and alcohol testing certification program.**

Pursuant to California Government Code Section 53075.5(E)(3)(A), a mandatory controlled sub-

stance and alcohol testing certification program in compliance with the terms and procedures set forth in Title 49 of the Code of Federal Regulations Part 40, Section 40.1 through 40.111 is added to and incorporated in this chapter by reference as if fully set forth in this provision.

(Ord. No. 13161, § 4, 5-21-2013)

#### **5.64.100      Fare structure.**

A. Rates, fares, and charges for taxicabs and taxicab service shall be as set by the City Council by ordinance.

<b>Effective July 1, 2008:</b>	
Flag drop (excluding mileage)	\$3.20
Mileage	\$0.29 each 1/10 mile
Waiting time	\$29.00 per hour
Minimum fare	Greater of \$5.00 or taximeter calculated fare
Oakland Airport fee	Fee set by Oak-land Airport
Night surcharge	\$1.00—Trips commencing after 10:00 p.m. until 6:00 a.m.
Small animal (except service animal)	\$1.00
Additional stops requested	\$1.00
Obtaining change	\$0.50
Luggage that forces trunk open	\$1.00

B. Taxicabs may collect any fee that they are mandated by a governmental or regulatory body to pay. Taxicabs may also collect the applicable bridge toll for toll bridges crossed, regardless of whether the crossing is in the direction that charges the toll.

C. Passengers shall not be charged a fee for the use of credit cards, nor shall drivers be charged more than the fee charged by the credit card company for passengers' use of credit cards.

D. Upon a determination by the City Administrator that a gasoline surcharge is warranted due to the cost of gasoline, a surcharge of \$1.00 per trip will be put in effect for a 90-day period. A sign at least five inches by seven inches shall be posted in the interior of each taxicab, stating the amount

of the surcharge, the beginning and ending dates, the section of this Code upon which the surcharge is based, and a phone number to call to confirm the validity of the surcharge.

E. The City Administrator may approve lower fares from those heretofore established if such lower fares, including group rides and shared rides, are set forth in a written agreement entered into between any fleet management permittee and programs benefiting persons over the age of 65 or persons whose mobility is restricted as a result of a physical disability. Agreements must be able to be readily monitored by the City Administrator and must result in the reasonable reduction of taxicab fares from those heretofore established to be charged to senior citizens.

F. Except as authorized under Subsection E., no driver shall accept an additional passenger without the prior consent of any passenger who has already hired the taxicab.

G. It is unlawful for any person to hire any taxicab or to enter and obtain a ride in the same, and to thereafter depart from such taxicab without paying to the driver the legal fare.

(Ord. No. 13161, § 4, 5-21-2013)

#### **5.64.110      Public convenience and necessity.**

No permit to operate a taxicab in the City shall be granted unless there are not already issued and outstanding a number of permits equal to that for which the City Council shall declare that there exists public convenience and necessity. The City Administrator shall hold public hearings before November 1, 1998 on the number of taxicab permits for which public convenience and necessities exists, and hold hearings on each successive second anniversary thereafter. The City Administrator shall report the findings of the public hearing to the City Council. The City Council shall determine whether to accept or reject the recommendation of the City Administrator.

Taxicab vehicle permit applications for permits in addition to those previously authorized by the City Council, shall be accepted following a declaration of public convenience and necessity by the

City Council. All taxi vehicle permit applications, including those for previously authorized permits held by the City Administrator, shall be processed and granted or denied on the basis of criteria established by a request for proposals. Under no circumstances shall the number of vehicle permits issued per company or owner, including relatives to the tertiary degree of a company or owner, exceed 30 percent of the total number of permits authorized. However, this section shall not require the surrender of any permits already issued. Each taxicab vehicle permit application shall remain in effect only until the next scheduled hearing on public convenience and necessity, and shall then expire. Nothing in this section shall be deemed to limit or interfere in any way with permits issued and outstanding on the effective date of this provision.

(Ord. No. 13161, § 4, 5-21-2013)

#### **5.64.120 Taxicab stands.**

Upon their approval of the written application, the Traffic Engineer shall designate throughout the City open places to permit any taxicab to stand while awaiting employment. Such application shall state the number of taxicabs for which the permit is sought and the proposed location of such stands. Such application must be accompanied by the written consent of the person primarily affected by reason of the fact that the taxicabs shall stand in front of the premises either owned or occupied by him or her or in which he or she is otherwise interested. Not more than three taxicabs shall be permitted to stand upon either side of a street within the limits of any one block unless otherwise designated by the traffic engineer. No permit shall be issued for any stand to be located within 75 feet of another such stand on the same side of the street unless otherwise designated by the traffic engineer. No fleet manager shall permit any vehicle operated by him or her and no driver shall cause any such vehicle to stand while awaiting employment in any place other than a stand designated by the Traffic Engineer. It is unlawful for the driver of any vehicle, other than a driver of a

taxicab to park or leave standing such vehicle in any taxicab stand. The Traffic Engineer shall identify all such stands with a posted distinctive sign, identifying the space and shall have the curb adjacent to the stand painted white. The cost of taxi stand identification and maintenance shall be determined by Traffic Maintenance and established in the master fee schedule, prorated over the total number of vehicle permits, and collected in the annual vehicle permit process.

(Ord. No. 13161, § 4, 5-21-2013)

#### **5.64.130 Taxicabs from other municipalities.**

The driver of a taxicab authorized to operate in any municipality other than the City may transport passengers from such municipality to a destination within or beyond the City limits, provided that the driver of such taxicab shall not seek or accept passengers within the City.

(Ord. No. 13161, § 4, 5-21-2013)

#### **5.64.135 Violations.**

A. If the City Administrator or his/her designee determines that a violation of this chapter has occurred, he/she may issue an administrative citation, pursuant to Chapters 1.08, 1.12, and/or 1.16. Such citation may be issued in addition to any other applicable legal, injunctive, or equitable remedies.

B. The recipient of an administrative citation may request an administrative hearing to adjudicate any penalties issued under this chapter by filing a written request with the City Administrator, or his or her designee. The City Administrator, or his or her designee, will promulgate standards and procedures for requesting and conducting an administrative hearing under this chapter. Any determination from the administrative hearing on penalties issued under this chapter will be final and conclusive.

(Ord. No. 13161, § 4, 5-21-2013)

**Chapter 5.66****THEATERS****Sections:**

- 5.66.010      Exclusive regulation.**
- 5.66.020      Definitions.**
- 5.66.030      Permit required.**
- 5.66.040      Procedure application.**
- 5.66.050      Verification of application.**
- 5.66.060      Procedure on application.**
- 5.66.070      Notice of hearing on application.**
- 5.66.080      Issuance of permit.**
- 5.66.090      Suspension or revocation of permit.**
- 5.66.100      Notice of hearing on revocation.**
- 5.66.110      Hearings.**
- 5.66.120      Appeals.**
- 5.66.130      Inspection of premises.**
- 5.66.140      Permits to be exhibited.**
- 5.66.150      Transfer of permits.**
- 5.66.160      Regulation of pictorial material viewable outside premises.**
- 5.66.170      Sign removal.**
- 5.66.180      Visibility from the street.**
- 5.66.190      Violation—Penalty.**
- 5.66.200      Effect on existing permits or pending proceedings.**

**5.66.010      Exclusive regulation.**

Notwithstanding any other provision of this code to the contrary, the provisions of this chapter shall govern the regulation of theaters. (Prior code § 3-16.01)

**5.66.020      Definitions.**

For the purpose of this chapter, the following words and phrases shall mean and include:

“Admission charge” means any charge for the right or privilege to enter any theater including a minimum service charge, cover charge or a charge made for the use of seats and/or tables.

“Bona fide nonprofit club or organization” means any fraternal, charitable, religious or benevolent club or organization which is exempt from taxation under the Internal Revenue laws of the United States.

**Entertainment.**

1. “Entertainment” means any act, play, revue, pantomime, scene, song, dance, act, or song and dance act, conducted or participated in by one or more persons, whether or not such person or persons are compensated for such performance.

2. “Entertainment” also includes a fashion or style show, except when conducted by a bona fide nonprofit club or organization as a part of the social activities of such club or organization, and when conducted solely as a fund-raising activity for charitable purposes.

“Operator” means any person operating a theater in the city of Oakland including, but not limited to, the owner or proprietor of such premises, lessee, sublessee, mortgagee in possession, permittee or any other person operating such theater or motion picture theater.

“Person” means an individual, firm, partnership, joint adventure, association, social club, fraternal organization, joint stock company, corporation, estate, trust, receiver, trustee, syndicate, or any other group or combination acting as a unit excepting the United States of America, the state of California, and any political subdivision of either thereof.

“Theater” means a building or part of a building intended to be used for the specific purposes of presenting entertainment as defined herein, or displaying motion pictures, slides, or television pictures before an assemblage of persons whether such assemblage be of a public, restricted or private nature. (Prior code § 3-16.02)

**5.66.030      Permit required.**

It is unlawful for any person to own, conduct, operate, maintain or to participate therein, or to cause or permit to be conducted, operated or maintained, any theater in the city without first having obtained a permit from the City Manager as provided in this chapter.

It is unlawful for any person to conduct, hold, maintain or carry on, or to cause or permit to be conducted, held, maintained or carried on, or to participate therein, any public display, exhibition or showing of moving pictures within the city unless there exists a valid permit therefor, granted and existing in compliance with the provisions of Chapter 5.02. It being further provided that no permit shall be granted for a drive-in or open-air theater if any portion of the screen upon which pictures are projected shall be so located as to render such projection visible to motorists upon a freeway within a distance of one and one-half miles from said screen.

Any place or premises for which a permit to operate is sought must conform to all existing health, safety, zoning and fire ordinances of the city. (Prior code §§ 3-16.03, 5-4.01)

**5.66.040 Procedure application.**

Every person desiring a permit pursuant to this chapter shall file an application with the City Clerk upon a form provided by said Clerk. The application shall specify:

A. The address of the location for which the permit is required, together with the business name of such location;

B. The name and proposed business address of the applicant. If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation; and the applicant shall also set forth the date and place of incorporation, the names and residence addresses of each of the officers, directors, and each stockholder owning more than ten percent of the stock of the corporation. If the applicant is a partnership, the application shall set forth the name and residence address of each of the partners, including limited partners. If one or more of the partners is a corporation, the provisions of this section pertaining to a corporate applicant apply as to such partner or partners;

C. The names and addresses of the persons who have authority or control over the place for which the permit is requested, and a brief statement of the nature and extent of such authority and control;

D. Such information pertinent to the operation of the proposed activity, including information as to management, authority control, financial agreements, and lease agreements, as the City Manager may require of an applicant in addition to the other requirements of this section. The foregoing examples are in explanation and not in limitation of the information which the City Manager may require;

E. The address to which notice, when required, is to be sent or mailed, and the name and address of a person authorized to accept service of process, if not otherwise set forth herein;

F. Whether the application is for a new permit or for the renewal of an existing permit;

G. The City Manager may require further information as he or she deems necessary. (Prior code § 3-16.04)

**5.66.050 Verification of application.**

Every application for a permit under this chapter shall be verified as provided in the California Code of Civil Procedure for the verification of pleadings. (Prior code § 3-16.05)

**5.66.060 Procedure on application.**

When an application is filed for a permit under this chapter, the City Clerk shall place the verified copy in the permanent records of his or her office, refer one copy to the City Manager, and one copy to the following officials: Chief of Police, Fire Marshal, Electrical Inspector, Director of City Planning, Building and Housing Official and Plumbing Inspector. Each of the officials to whom the copy of the application is referred shall make such investigation of the application as he or she shall deem advisable and shall make a written report of such investigation, together with his or her recommendations relative to disposal of the application, to the City Manager who shall proceed to act upon said application after a hearing set by the City Clerk for a date certain not less than five nor more than thirty (30) days from the date of filing such application. At such hearing, all persons interested shall be entitled to file objections, protests or recommendations in the premises and be heard. Such hearing may, by

the City Manager, be continued over from time to time as circumstances may require, but for not more than sixty (60) days from the date of filing of the application. (Prior code § 3-16.06)

#### **5.66.070 Notice of hearing on application.**

The City Clerk shall in every case of application for a permit notify the applicant of the time and place of such hearing to be held thereon, and such notice shall be given at least three days before the date of such hearing. The City Clerk shall cause a notice to be published once in the official newspaper of the city at least three 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 in the office of the City Clerk. 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. (Prior code § 3-16.07)

#### **5.66.080 Issuance of permit.**

The City Manager shall issue permit if he or she finds:

A. That the operation of the motion picture theater by the applicant will be carried on in a building, structure, and location which complies with and meets all of the health, zoning, fire and safety requirements and standards of the laws of the state of California and ordinances of the city applicable to such business operation;

B. That the applicant, his or her employee, agent or manager has not allowed or permitted any of the following acts to be committed within any portion of the premises in question open to public view: masturbation, indecent exposure as defined in Section 314(1) of the State Penal Code, oral intercourse, sodomy, sexual intercourse, prostitution, solicitation for prostitution, as defined in Section 647(b) of the State Penal Code, or disorderly conduct, as defined in Section 647(a) of said Code;

C. That the applicant, his or her employee, agent, or any person connected or associated with applicant as partner, director, officer, stockholder,

associate, or manager, has not knowingly made any false, misleading or fraudulent statement of material fact in the application for a permit, or in any report or record to be filed with the City Clerk;

D. That the applicant has not had a similar type of permit previously revoked for good cause or, if such were the case, he has shown material change in circumstances, within a period of one year from the date of revocation. (Prior code § 3-16.08)

#### **5.66.090 Suspension or revocation of permit.**

The City Manager shall suspend or revoke an existing permit whenever one or more of the following conditions are found to exist:

A. The building structure, equipment or location of such business does not comply with or fails to meet all of the health, fire and safety requirements or standards of the laws of the state of California or ordinances of the city applicable to such theater;

B. The permittee, his or her employee, agent or manager has allowed or permitted any of the following acts to be committed within any portion of the premises in question open to public view: masturbation, indecent exposure as defined in Section 314(1) of the State Penal Code, oral intercourse, sodomy, sexual intercourse, prostitution or solicitation for prostitution, as defined in Section 647(b) of the State Penal Code, or disorderly conduct, as defined in Section 647(a) of said Code;

C. The permittee, his or her employee, agent, or any person connected or associated with permittee as partner, director, officer, stockholder, associate or manager has knowingly made any false, misleading or fraudulent statement of material fact in the application for a permit, or in any report or record required to be filed with the City Clerk;

D. The permittee, his or her employee, agent or manager has violated any provision of this chapter pertaining to the theater in question, or any other provision of this code, or any other code of the city pertaining thereto;

E. The permittee, his or her employee, agent or manager has allowed or permitted the premises in question or the activity conducted therein to become

a public nuisance. (Ord. 11913 § 1, 1996; prior code § 3-16.09)

#### **5.66.100 Notice of hearing on revocation.**

Such revocation or suspension shall be made only upon a hearing granted to the holder of the permit, held before the City Manager after five 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 Manager.

Such revocation or suspension of any permit shall be in addition to any other penalties more specifically provided in this chapter. (Prior code § 3-16.10)

#### **5.66.110 Hearings.**

Any investigation, inquiry or hearing which the City Manager has power to undertake or to hold may be undertaken or held by such member of the City 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 within thirty (30) days after the conclusion of the investigation, inquiry or hearing shall report his or her findings and recommendations to the City Manager.

Within sixty (60) days after the filing of the findings and recommendations of the Hearing Officer the City 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 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 and parties and carry out justly the spirit and provisions of this chapter.

No informality in any proceeding or the manner of taking testimony shall invalidate any order, decision, award or rule made as specified in this chapter. No order, decision, award or rule shall be invalidated because of the admission into the record and the use of any proof of any fact in dispute of any evidence not admissible under the common law or statutory rules of evidence and procedure. (Prior code § 3-16.11)

#### **5.66.120 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 chapter, 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 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 chapter, or issued to another by the City Manager pursuant to the provisions of this code, may appeal in writing to the City Council by filing with the City 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 Clerk shall cause notice thereof to be given (1) to the appellant and (2) to the adverse party or parties, or to the attorney, spokesperson, or representative of such party or parties, not less than five 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 hearings 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. (Prior code § 3-16.12)

**5.66.130      Inspection of premises.**

Any employee of the city charged with the enforcement or administration of any of the provisions of this code or state law pertaining to the premises in question shall be permitted to enter and inspect at any reasonable time, without charge or other restraint, such premises for the purpose of ascertaining whether or not any of the provisions of this code or state law applicable thereto are being violated. (Prior code § 3-16.13)

**5.66.140      Permits to be exhibited.**

Any permit required under the provisions of this chapter shall be exhibited in a conspicuous place in that part to which the public has access, of the premises to which such permit appertains. (Prior code § 3-16.14)

**5.66.150      Transfer of permits.**

No permit in this chapter required shall be transferable, nor apply to any premises other than originally specified as the location of the thing permitted, except upon written permission of the City Manager granted upon written application by the transferee, made in the same manner as may be required in the instance of the original application for such permit. (Prior code § 3-16.15)

**5.66.160      Regulation of pictorial material viewable outside premises.**

No operator, manager, or person in charge of a theater shall place or cause to be placed or maintained in such a location as can be viewed by persons on any public street and ways or on any portion of the theater premises to which the public has access without paying an admission charge any of the following photographic, pictorial or other graphic representations: sexual intercourse, sodomy or sadomasochism. The prohibition herein shall include simulation of such acts herein enumerated and shall include representations where the participants are clothed, partially clothed, or unclothed. Such prohibited representations include those where the genital or pubic areas are obliterated in whole or in part. (Prior code § 3-16.16)

**5.66.170      Sign removal.**

All prohibited photographic, pictorial or graphic representations shall be removed within ten days after the effective date of this chapter as to all theaters to which a permit has been issued prior to the effective date of this chapter. (Prior code § 3-16.17)

**5.66.180      Visibility from the street.**

No operator of a theater shall permit, or cause to be permitted, any entertainment or film to be viewed at any time from the street, sidewalk or highway. (Prior code § 3-16.18)

**5.66.190      Violation—Penalty.**

Any person violating any of the provisions or failing to comply with any legal requirements of this chapter shall be guilty of a misdemeanor. Each person shall be guilty of a separate offense for each and every day during which any portion of any violation of any provision of this chapter is committed, continued or permitted by such person, and shall be punished accordingly. In addition to the penalties hereinabove provided, any conditions caused or permitted to exist in violation of any of the provisions of this chapter shall be deemed a public nuisance and may by the city be abated as such. (Prior code § 3-16.20)

**5.66.200      Effect on existing permits or pending proceedings.**

Nothing contained in this chapter shall be construed as invalidating any permit issued prior to the enactment of this chapter or abating any action now pending under or by virtue of any provision of this code which no longer has any application to theaters; or as discontinuing, abating, modifying or altering any penalties accruing, or to accrue, or as waiving any right of the city under any provision of this code regulating the maintenance or operation of any theater in force at the time of passage of the ordinance codified in this chapter. (Prior code § 3-16.21)

## Chapter 5.68

### TRAMPOLINE CENTERS

**Sections:**

- 5.68.010      Definitions.**
- 5.68.020      Permit required—  
Requirements and regulations  
applicable.**

**5.68.010      Definitions.**

“Trampoline” means a device of canvas, fabric or other material attached to a framework by springs, rubber coils or other elastic material, upon which a person can jump, bounce or tumble, or otherwise perform tricks, stunts or acrobatics.

“Trampoline center” means any place of business open to the public and offering, as a substantial portion of its business, the use of a trampoline for a period of time at a price. (Prior code §§ 5-4.28, 5-4.29)

**5.68.020      Permit required—Requirements  
and regulations applicable.**

It is unlawful for any person to establish, maintain, conduct, carry on or engage in the business of a trampoline center in the city unless there exists a valid permit therefor granted and existing in compliance with all applicable provisions of Sections 5.44.020 through 5.44.050 relating to outdoor amusement centers. (Prior code § 5-4.30)

## Chapter 5.70

### MISCELLANEOUS BUSINESS REGULATIONS

**Sections:**

- |                 |   |
|-----------------|---|
| <b>5.70.010</b> | <b>Admittance of press within police lines—Issuance of press cards.</b> |
| <b>5.70.020</b> | <b>Police officers to report new businesses.</b>                        |
| <b>5.70.030</b> | <b>Pickle manufacturing.</b>  |
| <b>5.70.040</b> | <b>Sale of sand and gravel.</b>   |
| <b>5.70.050</b> | <b>Repossessing property—Notice.</b>                                    |
| <b>5.70.010</b> | <b>Admittance of press within police lines—Issuance of press cards.</b> |

The Chief of Police is authorized to issue press cards to newsgatherers, reporters, and photographers in the actual and bona fide employment of a newspaper of general circulation as defined in Section 6000 of the Government Code, or of a telegraphic press association, or of a radio or television station engaged in the dissemination of news, for the purpose of securing their admittance within all police lines in the city.

Applications for a press card shall be made in writing by a city editor of any newspaper of general circulation, or by an authorized representative of a telegraphic press association, or of a radio or television station engaged in the dissemination of news, on behalf of the newsgatherer, reporter, or photographer to whom the press card is to be issued, and filed with the Chief of Police. Each application must be accompanied by two recent photographs of the person to whom such press card is to be issued, of a size that may be easily attached to the press card, one of which shall be attached to the press card when issued, and the other shall be filed with the application with the Chief of Police. The photograph shall be so attached to the press card that it cannot be removed and another photograph substituted without detection.

All press cards issued under this section shall be issued on an annual basis, expiring on the last day of December.

A record of the issuance of such press cards shall be kept in the Office of the Chief of Police, with the date of issuance, the name of the person to whom issued and the number of the card. The Chief of Police may at any time, at his or her pleasure, revoke the privilege attached to any or all such cards. Unless revoked, the privilege attached to such cards shall automatically terminate on the date of expiration, such expiration date to be determined as hereinabove indicated.

Such cards shall not be transferable, and it is unlawful for any person to use or have in his or her possession any such card unless the same was issued to him or her by the Chief of Police; or to use any such card after the privilege attached thereto has terminated or been revoked. It shall likewise be unlawful for any person to use any such card while such person is not in the actual and bona fide employment of a newspaper of general circulation, or telegraphic press association, or radio or television station engaged in the dissemination of news, as a newsgatherer, reporter, or photographer. (Prior code § 2-1.821)

**5.70.020      Police officers to report new businesses.**

All patrol officers in the Police Department of the city shall render a full and complete report to the Chief of Police of all new stores opening for business on beats within their patrol, giving data as to the license number, date of opening, nature of the business, owner's name, former place of business, and such other information as may be required by the Chief of Police. (Prior code § 5-9.24)

**5.70.030      Pickle manufacturing.**

It is unlawful for any person to store within the limits of any one block in the city, more than one thousand (1,000) gallons of pickles or vegetables produced in the course of preparation therefor, unless the same be kept in water-tight casks, tanks, bottles or jars securely closed; or for any person to

engage in the business, or assist in the business, of manufacturing pickles within the limits of the city; provided, that the provisions of this section shall not apply to the storage or manufacture of pickles within the limits of that portion of the city bounded on the south and west by the southern and western boundary lines of the city, and on the north and east by a line running along the northern line of the Southern Pacific mole from the western boundary of the city to an intersection with the northern line of the lands of the Central Pacific Railroad Company; thence along the northern line of the lands of the Central Pacific Railroad Company to its intersection with the centerline of Third Street; thence along the centerline of Third Street to the centerline of Lewis Street; thence along the centerline of Lewis Street, extended southerly to the centerline of First Street extended westerly; thence easterly along the centerline of First Street extending westerly and along the centerline of First Street to the centerline of Oak Street; thence southerly along the centerline of Oak Street extended southerly to the southern boundary line of the city. (Prior code § 5-13.03)

**5.70.040 Sale of sand and gravel.**

It is unlawful for any person to engage in the business of selling rock, sand or gravel, or any admixture thereof, within the city, or to sell the same in any way other than any avoirdupois net weight and weighed on a scale that has been duly inspected and sealed by the Sealer of Weights and Measures, or to fail to furnish to the purchaser thereof, with each lot of said materials, a certificate showing the date of the weighing, gross weight, tare weight and the next weight of said materials, the name and address of the seller and purchaser of said materials, and the number of the conveyance in which said materials are delivered, if such conveyance be numbered, and the name of the person in charge of such conveyance. In case such conveyance contains or transports more than one kind of the aforementioned materials, said certificate shall show the next weight of each kind of material being sold, transported or carried. (Prior code § 5-15.02)

**5.70.050 Repossessing property—Notice.**

Every person repossessing a motor vehicle or other vehicle subject to registration under the laws of this state, or any aircraft, watercraft, or machinery or device mounted on wheels, and movable from place to place, hereinafter referred to as repossessed property, from the owner or custodian thereof shall forthwith report that fact to the Chief of Police. Immediate report shall be made by telephone, followed by a post card or letter containing the name and address of the person so repossessing, the name and address of the person in whose name the repossessed property is registered, the date and time of repossession, the make, model, year, and license number of the repossessed property, or engine number if no license number is available, the location from which the property was repossessed, and any other information required by the Chief of Police. (Prior code § 5-15.21)

## Chapter 5.80

### **MEDICAL CANNABIS DISPENSARY PERMITS\***

#### **Sections:**

- 5.80.010 Definitions.**
- 5.80.020 Business permit required and application for permit.**
- 5.80.030 Regulations.**
- 5.80.040 Performance standards.**
- 5.80.050 Regulatory fees; seller's permit.**
- 5.80.060 Profit.**
- 5.80.070 Revocation, suspension and appeals.**
- 5.80.080 Prohibited operations; nonconforming uses.**
- 5.80.090 Liability.**
- 5.80.100 Examination of books, records, witnesses—Penalty.**

#### **5.80.010 Definitions.**

The following words or phrases, whenever used in this chapter, shall be given the following definitions:

A. "Attorney General Guidelines" shall mean the California Attorney General Guidelines for the Security and Non-diversion of Marijuana Grown for Medical Use, issued by the Attorney General's Office in August 2008, as amended from time to time, which sets regulations intended to ensure the security and non-diversion of marijuana grown for medical use by qualified patients or primary caregivers.

B. "Cannabis" or "Marijuana" shall have the same definition as Health and Safety Code § 11018, as amended from time to time, which defines "cannabis" as all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and

\*Editor's note—Ord. No. 13086, § 1, adopted July 26, 2011, amended chapter 5 80 in its entirety to read as herein set out. Formerly, chapter 5.80 pertained to similar subject matter and derived from Ord. No. 13049, § 3, adopted December 7, 2010.

every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seeds of the plant are incapable of germination.

C. "Cannabis dispensary" or "Dispensary" shall mean a collective or cooperative that distributes, dispenses, stores, exchanges, processes, delivers, makes available, transmits and/or gives away marijuana in the City for medicinal purposes to four or more qualified patients and/or primary caregivers pursuant to California Health and Safety Code Sections 11362.5, 11362.7 et seq.

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

E. "Collective" means any association, affiliation, or establishment jointly owned and operated by its members that facilitates the collaborative efforts of qualified patients and primary caregivers, as described in the Attorney General Guidelines.

F. "Medical marijuana" means marijuana authorized in strict compliance with Health & Safety Code §§ 11362.5, 11362.7 et seq., as such sections may be amended from time to time.

G. "Parcel of land" means one piece of real property as identified by the county assessor's parcel number (APN) that is one contiguous parcel of real property, which is used to identify real property, its boundaries, and all the rights contained therein.

H. "Primary caregiver" shall have the same definition as California Health and Safety Code Section 11362.7, and as may be amended, and which defines "Primary Caregiver" as an individual designated by a qualified patient or by a person with an identification card who has consistently assumed responsibility for the housing, health, or safety of that patient or person, and may include any of the following:

1. In any case in which a qualified patient or person with an identification card receives medi-

cal care or supportive services, or both, from a clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2 of the California Health and Safety Code; a health care facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the California Health and Safety Code; a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with Section 1568.01) of Division 2 of the California Health and Safety Code; a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569) of Division 2 of the California Health and Safety Code; a hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2 of the California Health and Safety Code; the owner or operator, or no more than three employees who are designated by the owner or operator, of the clinic, facility, hospice, or home health agency, if designated as a primary caregiver by that qualified patient or person with an identification card.

2. An individual who has been designated as a primary caregiver by more than one qualified patient or person with an identification card, if every qualified patient or person with an identification card who has designated that individual as a primary caregiver resides in the same city or county as the primary caregiver.

3. An individual who has been designated as a primary caregiver by a qualified patient or person with an identification card who resides in a city or county other than that of the primary caregiver, if the individual has not been designated as a primary caregiver by any other qualified patient or person with an identification card.

I. "Qualified patient" shall have the same definition as California Health and Safety Code Section 11362.7 et seq., and as may be amended, and which means a person who is entitled to the protections of California Health & Safety Code Section 11362.5. For purposes of this ordinance, qualified patient shall include a person with an

identification card, as that term is defined by California Health and Safety Code Section 11362.7 et seq.

J. "Serious medical condition" shall have the same definition as California Health and Safety Code Section 11362.7 et seq., and as may be amended, and which means all of the following medical conditions:

1. Acquired immune deficiency syndrome (AIDS);
2. Anorexia;
3. Arthritis;
4. Cachexia;
5. Cancer;
6. Chronic pain;
7. Glaucoma;
8. Migraine;
9. Persistent muscle spasms, including, but not limited to, spasms associated with multiple sclerosis;
10. Seizures, including, but not limited to, seizures associated with epilepsy;
11. Severe nausea;
12. Any other chronic or persistent medical symptom that either:
  - a. Substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans with Disabilities Act of 1990 (Public Law 101-336).
  - b. If not alleviated, may cause serious harm to the patient's safety or physical or mental health.

K. "Written documentation" shall have the same definition as California Health and Safety Code Section 11362.7 et seq., and as may be amended, and which defines "written documentation" as accurate reproductions of those portions of a patient's medical records that have been created by the attending physician, that contain the information required by paragraph (2) of subdivision (a) of California Health and Safety Code Section 11362.715, and that the patient may submit to a county health department or the county's designee as part of an application for an identification card.

(Ord. No. 13086, § 1, 7-26-2011)

**5.80.020      Business permit required and application for permit.**

A. Except for hospitals, research facilities, or an entity authorized pursuant to Section 8.46.030, it is unlawful for any owner, operator, or association to own, conduct, operate or maintain, or to participate therein, or to cause or to allow to be conducted, operated, or maintained, any dispensary in the City unless there exists a valid business permit in compliance with the provisions of Chapter 5.02 and a permit issued under this chapter.

B. This Chapter, and the requirement to obtain a business permit, does not apply to the individual possession or cultivation of medical marijuana for personal use, nor does this chapter apply to the usage, distribution, cultivation or processing of medical marijuana by qualified patients or primary caregivers when such group is of three or less individuals, and distributing, cultivating or processing the marijuana from a residential unit or a single non-residential parcel of land. Associations of three or less qualified patients or primary caregivers shall not be required to obtain a permit under Chapter 5.80, but must comply with applicable State law and the Attorney General Guidelines.

C. The City Administrator shall issue no more than eight valid permits for the operation of dispensaries in the City.

D. In addition to the requirements specified in Section 5.02.020 for business permits, the permit application for a dispensary shall set forth the following information:

1. Unless the City Administrator in his/her discretion determines that the location will not impact the peace, order and welfare of the public, evidence that the proposed location of such dispensary is not within 600 feet of a public or private school, public library, youth center (serving youth age 18 and under), parks and recreation facilities, residential zone or another dispensary. The proposed dispensary must be located in a commercial or industrial zone, or its equivalent as may be amended, of the City.

2. A complete description of the type, nature and extent of the enterprise to be conducted, with evidence satisfactory to the City Administrator that the enterprise is either a collective or cooperative, as described in the Attorney General Guidelines.

3. A plan of operations that will describe how the dispensary will operate consistent with the intent of State law, the provisions of this Chapter and the Attorney General Guidelines, including but not limited to:

a. Controls to verify membership in collectives and cooperatives to ensure medical marijuana will be dispensed only to qualified patients and primary caregivers, and

b. Controls to acquire, possess, transport and distribute marijuana to and from members, and plans to ensure marijuana is acquired as part of a closed-circuit of marijuana cultivation and consumption.

4. A security plan, as a separate document, outlining the proposed security arrangements for ensuring the safety of persons and to protect the premises from theft. The security plan shall be reviewed by the Police Department and the Office of the City Administrator and shall be exempt from disclosure as a public record pursuant to Government Code Section 6255(a).

5. Such other information deemed necessary to conduct any investigation or background check of the applicant, and for the City Administrator to determine compliance with this Chapter, the City's Municipal Code and Zoning Code.

E. Public notice of the hearing on the application shall be given as provided in Section 5.02.050. The City Administrator shall be the investigating official referred to in Section 5.02.030 to whom the application shall be referred. In recommending the granting or denying of such permit and in granting or denying the same, the City Administrator shall give particular consideration to the capacity, capitalization, and complaint history of the applicant and any other factors that in the City Administrator's discretion he/she deems necessary to the peace, order and welfare of the public.

## **5.80.020**

All applicants shall pay an application fee, a permit fee, and all inspection fees that may be required as part of the application process.

F. At the time of submission of dispensary permit application, the applicant shall pay a dispensary permit application fee. The fee amount shall be set by City Council resolution.

(Ord. No. 13086, § 1, 7-26-2011)

### **5.80.030 Regulations.**

The City Administrator shall establish administrative regulations for the permitting of dispensaries and may set further standards for operation of dispensaries. The dispensary shall meet all the operating criteria for the dispensing of medical marijuana required pursuant to California Health and Safety Code Section 11362.7 et seq., the City Administrator's administrative regulations, and this Chapter.

(Ord. No. 13086, § 1, 7-26-2011)

### **5.80.040 Performance standards.**

The City Administrator shall develop and implement performance standards consistent with those set forth in Ordinance No. 12585 in the Office of the City Administrator Guidelines and shall modify such Guidelines from time to time as required by applicable law and consistent with public health, welfare and safety.

The following performance standards shall be included in the City Administrative regulations:

A. No cannabis shall be smoked, ingested or otherwise consumed on the premises of the dispensary.

B. The dispensary shall not hold or maintain a license from the State Department of Alcohol Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages.

(Ord. No. 13086, § 1, 7-26-2011)

### **5.80.050 Regulatory fees; seller's permit.**

A. In addition to the dispensary application fee, the dispensary shall pay an annual regulatory fee at the same as applying for the business tax certificate or renewal thereof. The dispensary shall

post a copy of the business tax certificate issued pursuant to Chapter 5.04, together with a copy of the dispensary permit issued pursuant to this chapter and Section 5.02.020, in a conspicuous place in the premises approved as a dispensary at all times.

B. The State Board of Equalization has determined that medical marijuana transactions are subject to sales tax, regardless of whether the individual or group makes a profit, and those engaging in transactions involving medical marijuana must obtain a seller's permit from the State Board of Equalization.

C. The fees referenced herein shall be set by Council resolution, as modified from time to time.

(Ord. No. 13086, § 1, 7-26-2011)

### **5.80.060 Profit.**

The dispensary shall not profit from the sale or distribution of marijuana. Any monetary reimbursement that members provide to the dispensary should only be an amount necessary to cover overhead costs and operating expenses.

Retail sales of medical marijuana that violate California law or this chapter are expressly prohibited.

(Ord. No. 13086, § 1, 7-26-2011)

### **5.80.070 Revocation, suspension and appeals.**

Notwithstanding Chapter 5.02, any decision by the City Administrator, except for the suspensions or revocations of permits, shall be final and conclusive, and there shall be no right of appeal to the City Council or any other appellate body.

For suspensions or revocations the City shall follow the procedures set forth in Section 5.02.080, except an independent hearing officer shall make the initial determination as to whether to suspend or revoke the permit. The appeal authorized in Section 5.02.100 shall be to the City Administrator, and such request for appeal must be made in writing within 14 days of the hearing officer's decision. The decision of the City Administrator shall be final and conclusive.

(Ord. No. 13086, § 1, 7-26-2011)

**5.80.080      Prohibited operations; nonconforming uses.**

A. All dispensaries in violation of California Health and Safety Code Section 11326.7 et seq. and 11362.5 and this chapter are expressly prohibited. It is unlawful for any dispensary in the City, or any agent, employee or representative of such dispensary, to permit any breach of peace therein or any disturbance of public order or decorum by any tumultuous, riotous or disorderly conduct on the premises of the dispensary.

B. Except for uses established pursuant to Chapter 8.46, no use which purports to have distributed marijuana prior to the enactment of this chapter shall be deemed to have been a legally established use under the provisions of the Oakland Planning Code, this Code, or any other local ordinance, rule or regulation, and such use shall not be entitled to claim legal nonconforming status.

(Ord. No. 13086, § 1, 7-26-2011)

C. The City Administrator is authorized to examine a person under oath, for the purpose of verifying the accuracy of any declaration made, or if no declaration was made, to ascertain the business tax, registration or permit fees due under this chapter. In order to ascertain the business tax, registration or permit fees due under this chapter, the City Administrator may compel, by administrative subpoena, the production of relevant books, papers and records and the attendance of all persons as parties or witnesses.

D. Every permittee is directed and required to furnish to the City Administrator, the means, facilities and opportunity for making such financial examinations and investigations.

E. Any permittee refusal to comply with this section shall be deemed a violation of this chapter, and administrative subpoenas shall be enforced pursuant to applicable law.

(Ord. No. 13086, § 1, 7-26-2011)

**5.80.090      Liability.**

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.

(Ord. No. 13086, § 1, 7-26-2011)

**5.80.100      Examination of books, records, witnesses—Penalty.**

A. The City Administrator shall be provided access to any and all financial information regarding the dispensary at any time, as needed to conduct an audit of the permittees under this chapter to verify tax compliance under Chapter 5.80 and/or gross receipts tax requirements.

B. The City Administrator is authorized to examine the books, papers, tax returns and records of any permittee for the purpose of verifying the accuracy of any declaration made, or if no declaration was made, to ascertain the business tax due.



## Chapter 5.81

### **MEDICAL CANNABIS CULTIVATION FACILITY PERMITS**

#### **Sections:**

- 5.81.010 Findings and purpose.**
- 5.81.020 Definitions.**
- 5.81.030 Permit required.**
- 5.81.040 Industrial cultivation of medical marijuana.**
- 5.81.050 Application for permit.**
- 5.81.070 Operating standards.**
- 5.81.080 Examination of books, records, witnesses—Information confidential—Penalty.**
- 5.81.100 Liability and indemnification.**
- 5.81.101 Residential and individual limits for non-licensed medical cannabis cultivation.**
- 5.81.110 Prohibited operations.**
- 5.81.120 Appeals.**

#### **5.81.010 Findings and purpose.**

A. The City Council, based on evidence presented to it in the proceedings leading to the adoption of this Chapter hereby finds that the cultivation and processing of medical cannabis in the City has caused and is causing ongoing impacts to the community. These impacts include damage to buildings containing indoor medical cannabis cultivation facilities, including improper and dangerous electrical alterations and use, inadequate ventilation leading to mold and mildew, increased frequency of home-invasion robberies and similar crimes, and that many of these impacts have fallen disproportionately on residential neighborhoods. These impacts have also created an increase in response costs, including code enforcement, building, fire, and police staff time and expenses.

B. The City acknowledges that the voters of the State have provided an exemption to prosecution for the cultivation, possession of cannabis for medical purposes under the Compassionate Use

Act (CUA), but that the CUA does not address land use or building code impacts or issues arising from the resulting increase in cannabis cultivation within the City.

C. The City acknowledges that sales of medical marijuana are subject to taxation by both the City and the State and that the California State Board of Equalization (BOE) is also requiring that businesses engaging in such retail transactions hold a seller's permit.

D. The purpose and intent of this Chapter is to regulate the cultivation and processing of medical cannabis in a manner that protects the public health, safety and welfare of the community.

(Ord. No. 13033, § 3, 7-27-2010)

#### **5.81.020 Definitions.**

The following words or phrases, whenever used in this Chapter, shall be given the following definitions:

A. "Applicant" as used only in this Chapter shall be any industrial cannabis cultivation, processing, manufacturing facility that applies for a permit required under this Chapter.

B. "Batch" as used only in this Chapter shall be defined by the City Administrator to mean a discrete quantity of dried cannabis produced and sold together.

C. "Cannabis" or "Marijuana" as used only in this Chapter shall be the same, and as may be amended, as is defined in Section 8.46.020.

D. "Cannabis Dispensary" as used only in this Chapter shall be the same, and as may be amended, as is defined in Section 5.80.010 and is also referred to herein as "dispensary."

E. "City Administrator" as used only in this Chapter shall mean the City Administrator for the City of Oakland and his or her designee.

F. "Cultivation Area" as used only in this Chapter hereinafter shall mean the actual area in use for the entire cultivation process of cannabis plants (including seedling production, vegetation, and maturation), as well as reasonable walking space, such that, for example, two trays used for matura-



tion, each measuring ten square feet and stacked vertically on top of each other shall be counted as 20 square feet of cultivation area.

G. "Industrial Cannabis Cultivation, Processing, Manufacturing Facility" hereinafter "cultivation and manufacturing facility" shall mean any facility used for cultivating, warehousing, storing, processing and/or manufacturing more than 48 ounces of dried cannabis, and/or cultivating or storing medical cannabis in an area greater than 96 square feet of total area within one parcel of land. Any establishment engaged in, permitted to be engaged in or carrying on any medical cannabis cultivation, processing, or manufacturing or other activity mentioned in this Chapter shall be deemed an industrial cannabis cultivation and manufacturing facility as described in Section 5.81.040.

H. "Medical Cannabis Collective" as used only in this Chapter shall be the same, and as may be amended, as if defined in Section 5.80.010.

I. "One Parcel of Land" as used only in this Chapter shall mean any single piece of real property as identified by the County Assessor's parcel number (APN) that is used to identify real property, its boundaries, and all the rights contained therein.

J. "Permittees" as used only in this Chapter are cultivation and manufacturing facilities that have obtained a permit under this Chapter.

K. "Primary Caregiver" as used only in this Chapter shall be the same, and as may be amended, as if defined in Section 5.80.010.

L. "Qualified Patient" as used only in this Chapter shall be the same, and as may be amended, as if defined in Section 5.80.010.

M. "Written Recommendation" as used only in this Chapter shall be the same, and as may be amended, as if defined in Section 5.80.010.

(Ord. No. 13033, § 3, 7-27-2010)

### **5.81.030      Permit required.**

A. Except for hospitals and research facilities that obtain written permission for cannabis cultivation under federal law, it is unlawful to establish any cultivation and manufacturing facility with-

out a valid business permit issued pursuant to the provisions of this Chapter. It is unlawful for any entity organized on a for-profit basis, except for hospitals and research facilities, to engage in any medical cannabis cultivation whatsoever.

B. The City Administrator shall issue, as detailed below, special business permits for the operation of industrial cannabis cultivation processing and manufacturing facilities. In recommending the granting or denying of such permit and in granting or denying the same, the City Administrator shall give particular consideration to the capacity, capitalization, complaint history of the proposed cultivation and manufacturing facility as detailed in Section 5.81.040, and any other factors that in her/his discretion she/he deems necessary to the peace and order and welfare of the public. All applicants shall pay any necessary fees including without limitation application fees, inspection fees and regulatory fees that may be required hereunder.

C. The City Administrator shall issue in the first year of this cultivation and manufacturing facility program no more than four permits. Two years after the first permit has been issued, the City Administrator shall return to the City Council to report on the development of this program, and determine how additional permits to meet the needs of medical cannabis dispensaries and other lawful cannabis providers shall be administered, if any.

D. All cultivation and manufacturing facility permits shall be special business permits and shall be issued for a term of two years, subject to annual review one year from the date of prior issuance. No vested right shall ever inure to the benefit of such permit holder as such permits are revocable at any time with or without cause by the City Administrator subject to Section 5.81.120.

E. Cultivation and manufacturing facility permits shall be granted to entities operating legally according to State law.

(Ord. No. 13033, § 3, 7-27-2010)

**5.81.040 Industrial cultivation of medical marijuana.**

A. Any use or activity that involves possessing, cultivating, processing and/or manufacturing and/or more than 96 square feet of cultivation area shall constitute industrial cultivation of medical cannabis and shall only be allowed upon the granting of a permit as prescribed in this Chapter. Possession of other types of State or City permits or licenses does not exempt an applicant from the requirement of obtaining a permit under this Chapter.

B. The proposed location of a cultivation and manufacturing facility shall be in areas where "light manufacturing industrial," or their equivalent use, is permitted under the Oakland Planning Code, as may be amended; provided, however, that no vested or other right shall inure to the benefit of any cultivation and manufacturing facility permittee. Public notice shall be given as provided in Section 5.02.050, and the investigating official referred to in Section 5.02.030 to whom the application shall be referred, shall be the City Administrator.

(Ord. No. 13033, § 3, 7-27-2010)

**5.81.050 Application for permit.**

A. All applicants shall pay an application fee as specified in the Master Fee Schedule.

B. All applicants shall submit written information to the City Administrator including, but not limited to, plans for security, waste disposal, pest management, product testing, worker safety and compensation, non diversion of product, facility location, capitalization, business plans, applicant complaint history, criminal background checks, and any additional information deemed necessary by the City Administrator.

C. All applicants shall be ranked by a point or similar system established by the City Administrator based on information submitted by each applicant and any additional information that may be submitted to or discovered by the City Administrator.

D. All applicants shall demonstrate compliance with State law, during the course of the per-

mit application procedure described under this Section, prior to issuing any permit, and upon the issuance of a permit, thereafter.

(Ord. No. 13033, § 3, 7-27-2010)

**5.81.070 Operating standards.**

The City Administrator shall establish operating standards for permittees. Noncompliance of such operating standards shall constitute a breach of the permit issued hereunder and may render such permit suspended or revoked based upon the City Administrator's determination.

(Ord. No. 13033, § 3, 7-27-2010)

**5.81.080 Examination of books, records, witnesses—Information confidential—Penalty.**

A. The City Administrator shall be provided access to any and all financial information at any time, as needed to conduct an audit of the permittees under this Chapter to verify tax compliance under Chapter 5.80 and/or gross receipts tax requirements.

B. The City Administrator is authorized to examine the books, papers, tax returns and records of any permittee for the purpose of verifying the accuracy of any declaration made, or if no declaration was made, to ascertain the business tax due.

The City Administrator is authorized to examine a person under oath, for the purpose of verifying the accuracy of any declaration made, or if no declaration was made, to ascertain the business tax, registration or permit fees due under this Chapter. In order to ascertain the business tax, registration or permit fees due under this Chapter, the City Administrator may compel, by administrative subpoena, the production of relevant books, papers and records and the attendance of all persons as parties or witnesses.

C. Every permittee is directed and required to furnish to the City Administrator, the means, facilities and opportunity for making such financial examinations and investigations.

D. Any permittee refusal to comply with this Section shall be deemed a violation of this Chapter, and administrative subpoenas shall be enforced pursuant to applicable law.

(Ord. No. 13033, § 3, 7-27-2010)

#### **5.81.100 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. The permittees under this Chapter hereby agree to save, defend, indemnify and keep harmless the City and its officials, officers, employees, representatives, agents and volunteers from all actions, claims, demands, litigation, or proceedings, including those for attorneys' fees, against the City in consequence of the granting of this permit, and will in all things strictly comply with the conditions under which this permit is granted, if any.

(Ord. No. 13033, § 3, 7-27-2010)

#### **5.81.101 Residential and individual limits for non-licensed medical cannabis cultivation.**

Notwithstanding State law regarding medical cannabis cultivation, no qualified patient or primary caregiver may cultivate medical cannabis in an area of more than 32 square feet on one parcel of land, unless they form a cooperative or collective.

A collective or cooperative of qualified patients or primary caregivers, may cultivate medical cannabis covering an area of no more than 32 square feet in a residential unit or if in a nonresidential building on one parcel of land per each member of the cooperative or collective, up to a maximum of 216 cannabis/marijuana plants within a maximum growing area of 96 square feet indoor or 60 outdoor cannabis/marijuana plants on one parcel of land.

In the absence of a permit under this Chapter, such cultivation shall be subject to the following operating standards:

A. Cultivation, processing, possession, and/or manufacturing of medical marijuana in any resi-

dential areas shall be limited to qualified patients, primary caregivers, and medical cannabis collectives or cooperatives comprised of no more than three qualified patients and/or their primary caregivers. Every member of the medical cannabis collective or cooperative shall possess an identification card issued by the County of Alameda, or the State of California, or another agency recognized by the City pursuant to California Health and Safety Code Section 11362.7 et seq.

B. Cultivation, processing, possessing, and/or manufacturing of medical cannabis in residential areas shall be in conformance with the following standards:

1. The residential facility shall remain at all times a residence with legal and functioning cooking, sleeping and sanitation facilities. Medical cannabis cultivation, processing, possession, and/or manufacturing shall remain at all times secondary to the residential use of the property;

2. Cultivation possession, processing and/or manufacturing of medical cannabis in residential areas shall occur only in a secured residences occupied by the qualified patient or primary caregiver;

3. No individual residential facility or other facility housing the cultivation, processing and/or manufacturing of medical cannabis shall contain more than 48 ounces of dried cannabis, and/or more than 96 square feet of cultivation area;

4. If required by the building or fire code, the wall(s) adjacent to the indoor cultivation area shall be constructed with  $\frac{5}{8}$ " Type X fire resistant drywall;

5. The cultivation area shall be in compliance with the current adopted edition of the California Building Code § 1203.4 natural ventilation or § 402.3 mechanical ventilation (or its equivalent(s));

6. The cultivation area shall not adversely affect the health or safety of the residence or nearby properties through creation of mold, mildew, dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous because of the use or storage of materials, processes, products or wastes;

7. All high amperage electrical equipment (exceeding six amps) used in the cultivation of medical cannabis, (e.g., lighting and ventilation) shall be plugged directly into a wall outlet or otherwise hardwired; the use of extension cords to supply power to high amperage electrical equipment (exceeding six amps) used in the cultivation of medical cannabis is prohibited;

8. Any electrical rewiring or remodeling shall first require an electrical permit from the City;

9. The use of butane gas products for personal use medical cannabis cultivation is prohibited; and

10. From a public right-of-way, there shall be no exterior evidence of medical cannabis cultivation occurring at the property.

C. If a qualified patient or primary caregiver who is cultivating, possessing, processing and/or manufacturing medical cannabis for personal use at the residence has a doctor's recommendation that the above allowable quantity does not meet the qualified patient's medical needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient's needs, as specified by such doctor.

(Ord. No. 13033, § 3, 7-27-2010)

other appellate body. For suspensions and/or revocations an independent hearing officer shall make an initial determination with an appeal to the City Administrator in writing within 14 days of the Administrative Hearing Officer's decision, in accordance with procedures set forth in Section 5.02.100. The decision of the City Administrator shall be final and conclusive.

(Ord. No. 13033, § 3, 7-27-2010)

### **5.81.110 Prohibited operations.**

All cultivation, processing, and manufacturing facilities that do not have a permit under this Chapter are expressly prohibited. No use that purports to have cultivated or processed marijuana shall be deemed to have been a legally established use under the provisions of the Oakland Planning Code, the Oakland Municipal Code, or any other local ordinance, rule or regulation, and such use shall not be entitled to claim a vested right, legal nonconforming or other similar status.

(Ord. No. 13033, § 3, 7-27-2010)

### **5.81.120 Appeals.**

Notwithstanding Section 5.02.100, any decision, except for suspension and or revocation, pursuant to this Chapter by the City Administrator or his/her designee shall be final and conclusive, with no appeal to the City Council or any

## Chapter 5.90

### SKATE PARK FACILITIES

#### **Sections:**

**5.90.010 Definitions.**

**5.90.020 Hours of operation.**

**5.90.030 Use regulations—Prohibited activities.**

**5.90.040 Violation as infractions.**

**5.90.010 Definitions.**

For purposes of this chapter, certain terms and words are defined as follows:

"Activities area" shall refer to the portion of a skate park reserved for the use of skateboards, in-line skates, roller skates and scooters;

"Audio equipment" shall refer to any radio, compact disc player, tape player, walkman, megaphone, or any other audio device utilized to transmit or amplify sound;

"Bicycle" shall refer to any two or three-wheeled bicycles, including BMX bicycles;

"Director" shall refer to either the Director of Public Works or the Director of Life Enrichment Agency-Office of Parks and Recreation (Parks), or his or her designees, agents or representatives;

"Protective gear" shall include helmets, elbow pads, and kneepads;

"Scooter" shall refer to manually propelled, non-motorized, two-wheeled scooters;

"Skate park" or "skate board park" shall refer to any property or facility owned, operated, maintained, provided or controlled by the city, or any city-controlled property or facility leased or subleased to private entities for use solely for skate boarding and skating purposes;

"Spectator area" shall refer to the portion of the skate park reserved for use by persons viewing the activities area;

"Sports equipment" shall refer to equipment utilized for athletic and/or recreational purposes, including but not limited to bicycles, mopeds, motorized cycles, skateboards, in-line skates, roller skates, shoe skates, scooters (both motorized and

manually propelled), luge skates, ramps, jumps and similar objects utilized for athletic stunts or tricks, footballs, baseballs, basketballs, soccer balls, and Frisbees.

(Ord. 12717 § 1 (part), 2005)

**5.90.020 Hours of operation.**

The hours of operation for the skate park shall be from 8:00 a.m. to official sunset daily, with the exception of posted hours for maintenance. The Director may shorten or extend the skate park hours when necessary to accommodate or regulate any permitted activity.

(Ord. 12717 § 1 (part), 2005)

**5.90.030 Use regulations—Prohibited activities.**

A. No sport equipment of any nature shall be used in the spectator area of the skate park.

B. Only skateboards, in-line skates, roller skates, and non-motorized scooters are permitted in the activities area of the skate park. The use of other sports equipment, including bicycles and motor-driven sports equipment, is expressly prohibited anywhere within the activities area.

C. Pursuant to the provisions of this chapter, and in conformity to California Health and Safety Code Section 115800, all persons using or riding a skateboard, in-line skates, roller skates or scooters at the skate park shall be required to wear protective gear, which includes wearing elbow pads, kneepads, and a helmet that meets the standards of either the American Society for testing and Materials (ASTM) or the United States Consumer Product Safety Commission (CPSC), or standards established by these entities subsequent to the adoption of this section. All protective gear and equipment shall be in good repair at all times during use.

D. No portion of the skate park shall be modified, altered, or added to in any manner without the permission of the Director.

E. No person under the age of fourteen (14) years old shall be permitted to utilize the activities area of the skate park unless accompanied by an adult.



F. No audio equipment or amplified sound equipment may be used or brought within the activities area or spectator area of the skate park, absent written approval from the Director. Audio equipment that is equipped and relies solely on earphones for sound amplification may be used or played in the spectator area of the skate park.

G. No glass bottles or any other breakable glass items, food or beverages shall be permitted within the activities area or spectator area of the skate park.

H. No drugs, alcohol, smoking or tobacco products shall be permitted or consumed in any portion of the skate park.

I. No knives, guns, air guns or weapons of any nature shall be permitted in any portion of the skate park.

J. No pets or other animals shall be permitted at the skate park.

K. No use of the skate park or its amenities may be used when their surfaces are wet or other conditions exist that would adversely affect the safety of skateboarders or skaters.

L. The Director shall post visible signs at each skate park, providing rules for use of the skate park consistent with the ordinance codified in this chapter. The Director is also authorized to post additional rules as necessary for operation of the skate park, the violation of which shall be punishable pursuant to Section 5.90.040.

M. Any person who fails or refuses to comply with the provisions of this section and who is injured while using the skate park shall be deemed negligent.

(Ord. 12717 § 1 (part), 2005)

#### **5.90.040      Violation as infractions.**

A. Any violation of this chapter is punishable as an infraction, including but not limited to the failure to wear protective gear. Violation of this chapter is punishable by (1) a fine of not more than one hundred dollars (\$100.00) for the first violation, (2) a fine of not more than two hundred dollars (\$200.00) for a second violation within a period of one-year, and (3) a fine of not more than

five hundred dollars (\$500.00), for a third violation within a one-year period. 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 on not more than one thousand dollars (\$1,000.00) or by imprisonment in the county jail for a period of not more than six months or by both.

B. Any person cited for three or more infractions of this chapter during a one-year period may be permanently barred from the use of, or entrance into, a city skate park facility, at the Director's discretion.

C. Citations for violations may be issued by the City Administrator, the Skate Park Director or and Oakland City Department Director.

(Ord. 12717 § 1 (part), 2005)

## Chapter 5.91

### LICENSURE OF TOBACCO RETAILERS

#### Sections:

- 5.91.010 Definitions.**
- 5.91.020 Tobacco retailer license required.**
- 5.91.030 Limits on tobacco retailer licenses.**
- 5.91.040 Application procedure.**
- 5.91.050 Issuance of license.**
- 5.91.060 License renewal and expiration.**
- 5.91.070 Licenses nontransferable.**
- 5.91.080 Fees for license.**
- 5.91.090 Other requirements and prohibitions.**
- 5.91.100 Compliance monitoring.**
- 5.91.110 Denial or revocation of license.**
- 5.91.120 Tobacco retailing without a license.**
- 5.91.130 Settlement in lieu of hearing.**
- 5.91.140 Enforcement.**

#### **5.91.010 Definitions.**

The following definitions apply to this chapter:

"Arm's length transaction" as used in this chapter shall mean a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of the violations of this chapter is not an arm's length transaction.

"City Administrator" as used in this chapter shall mean the City Administrator for the City of Oakland; further provided, that the use of the title of any officer or to any office shall refer to such officer or office of the City of Oakland.

"Department" as used in this chapter shall mean the Oakland Police Department.

"Drug paraphernalia" as used in this chapter shall have the same definition set forth under California Health and Safety Code section 11364.5, as amended from time to time.

"Person" as used in this chapter shall mean any natural person, partnership, cooperative association, corporation, limited liability company, personal representative, receiver, trustee, assignee, or any other legal entity.

"Proprietor" as used in this chapter shall mean a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a ten percent (10%) or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person can or does have or share ultimate control over the day-to-day operations of a business.

"Public nuisance" as used in this chapter shall have the same definition as set forth under California Civil Code Section 3490, as amended from time to time.

"Self-service display" as used in this chapter shall mean the open display of tobacco products or tobacco paraphernalia in a manner that is accessible to the general public without the assistance of the retailer or employee of the retailer. A vending machine is a form of self-service display.

"Smoking" as used in this chapter shall mean possessing a lighted tobacco product, lighted tobacco paraphernalia, or any other lighted weed or plant (including a lighted pipe, cigar, hookah pipe, or cigarette of any kind), the lighting of a tobacco product, tobacco paraphernalia, or any other weed or plant (including a pipe, cigar, hookah pipe, or cigarette of any kind).

"Tobacco paraphernalia" as used in this chapter shall mean cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the smoking, preparation, storing, or consumption of tobacco products.

"Tobacco product" as used in this chapter shall mean: (1) any substance containing tobacco leaf,

including, but not limited, to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco; and (2) any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, but does not include any product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco product dependence.

"Tobacco retailer" as used in this chapter shall mean any person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, tobacco products, or tobacco paraphernalia. "Tobacco retailing" shall mean the doing of any of these things. This definition is without regard to the quantity of tobacco, tobacco products, or tobacco paraphernalia sold, offered for sale, exchanged, or offered for exchange.

"Vending machine" as used in this chapter shall mean a machine, appliance, or other mechanical device operated by currency, token, debit card, credit card, or any other form of payment that is designed or used for vending purposes, including, but not limited to, machines or devices that use remote control locking mechanisms.

(Ord. 12867 § 2 (part), 2008)

#### **5.91.020 Tobacco retailer license required.**

A. It shall be unlawful for any person to act as a tobacco retailer without first obtaining and maintaining a valid tobacco retailer's license pursuant to this chapter for each location at which that activity is to occur. Tobacco retailing without a valid tobacco retailer's license is a public nuisance, as defined in the Oakland Municipal Code. This chapter applies to all existing and future tobacco retailers in the city. 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 provi-

sions 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.

B. A tobacco retailer or proprietor without a valid tobacco retailer license, including without limitation a person whose license has been suspended or revoked:

1. Shall keep all tobacco products and tobacco paraphernalia out of public view. The public display of tobacco products or tobacco paraphernalia in violation of this provision shall constitute tobacco retailing without a license under Section 5.91.120.

2. Shall not display any advertisement relating to tobacco products or tobacco paraphernalia that promotes the sale or distribution of such products from the tobacco retailer's location or that could lead a reasonable consumer to believe that such products can be obtained at that location.

C. Nothing in this chapter shall be construed to grant any person obtaining and maintaining a tobacco retailer's license any status or right other than the right to act as a tobacco retailer at the location in the city identified on the face of the license. For example, nothing in this chapter shall be construed to render inapplicable, supersede, or apply in lieu of, any other provision of applicable law, including but not limited to, any provision of this Code, the Oakland Planning Code, including the conditional use permit, if applicable, or any condition or limitation on smoking in an enclosed place of employment pursuant to California Labor Code section 6404.5. For example, obtaining a tobacco retailer license does not make the retailer a "retail or wholesale tobacco shop" for the purposes of California Labor Code section 6404.5.

(Ord. 12867 § 2 (part), 2008)

#### **5.91.030 Limits on tobacco retailer licenses.**

A. No license may be issued to authorize tobacco retailing at other than a fixed location. For example, tobacco retailing by persons on foot or from vehicles is prohibited.

B. No license may issue to authorize tobacco retailing at any location where drug paraphernalia is sold, offered for sale, or displayed for sale.  
 (Ord. 12867 § 2 (part), 2008)

#### **5.91.040 Application procedure.**

Application for a tobacco retailer's license shall be submitted in the name of each proprietor proposing to conduct retail tobacco sales and shall be signed by each proprietor or an authorized agent thereof, and shall include the license application fee set forth under Section 5.91.080.

It is the responsibility of each proprietor to be informed regarding all laws applicable to tobacco retailing, including those laws affecting the issuance of a tobacco retailer's license. No proprietor may rely on the issuance of a license as a determination by the city that the proprietor has complied with all laws applicable to tobacco retailing. A license issued contrary to this chapter, contrary to any other law, or on the basis of false or misleading information supplied by a proprietor shall be revoked pursuant to Section 5.91.110(D) of this chapter. Nothing in this chapter shall be construed to vest in any person obtaining and maintaining a tobacco retailer's license any status or right to act as a tobacco retailer in contravention of any provision of law.

All applications shall be submitted on a form supplied by the Department and shall contain, at a minimum, the following information:

A. The name, address, telephone number, driver's license or similar identification, including date of birth, of each proprietor of the business that is seeking a license.

B. The business name, address, telephone number and business hours of the single fixed location for which a license is sought.

C. If the single fixed location is leased, a copy of the lease and the name of the owner of the single fixed location.

D. A single name and mailing address authorized by each proprietor to receive all communications and notices (the "authorized address") required by, authorized by, or convenient to the

enforcement of this chapter. If an authorized address is not supplied, each proprietor shall be understood to consent to the provision of notice at the business address specified in subsection (B) above.

E. Proof that the location for which a tobacco retailer's license is sought has been issued a valid state tobacco retailer's license by the California Board of Equalization.

F. Whether or not any proprietor or prior proprietor, to the best of applicant's knowledge, has admitted violating, or has been found to have violated, this chapter or whose proprietorship has admitted violating, or has been found to have violated, this chapter, and, if so, the dates and locations of all such violations within the previous six years.

G. All criminal violations and any prior violations under this chapter of each proprietor or prior proprietor, to the best of applicant's knowledge.

H. Such other information as the Department deems necessary for the administration or enforcement of this chapter.

I. All information required to be submitted in order to apply for a tobacco retailer's license shall be updated with the Department whenever the information changes. A tobacco retailer shall provide the Department with any updates within ten (10) business days of a change.

J. A copy of the major conditional use permit, if applicable (or an explanation as to why such permit is not required).

K. A statement signed by each proprietor that no drug paraphernalia is or will be sold at the business seeking the license.

(Ord. 12867 § 2 (part), 2008)

#### **5.91.050 Issuance of license.**

Upon the receipt of an application for a tobacco retailer's license and the license fee required by this chapter, the Department shall issue a li-

cense unless substantial evidence demonstrates that one or more of the following bases for denial exists:

A. The information presented in the application is incomplete, inaccurate, or false. Intentionally supplying inaccurate or false information shall be a violation of this chapter.

B. The application seeks authorization for tobacco retailing at a location for which this chapter prohibits issuance of tobacco retailer licenses. However, this paragraph shall not constitute a basis for denial of a license if the applicant provides the city with documentation demonstrating by clear and convincing evidence that the applicant has acquired or is acquiring the location or business in an arm's length transaction.

C. The application seeks authorization for tobacco retailing for a proprietor to whom this chapter prohibits a license to be issued.

D. The application seeks authorization for tobacco retailing that is prohibited pursuant to this chapter (e.g., mobile vending), that is unlawful pursuant to any provision of this Code, or that is unlawful pursuant to any other law.

E. The Department, or the investigating official acting thereon, determines, in its reasonable discretion, 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 pertains; that the applicant has not complied with the provisions of this code which pertain directly 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 herein-after in this chapter more specifically set forth. In granting or denying the license, the Department shall consider the character of the applicant with respect to morality, honesty and integrity, and all pertinent acts which may concern the health, safety, and general welfare of the public.

F. A denial of a license application shall be in writing, citing the reasons for such denial and

shall be appealable to the City Administrator per the appeal provisions set forth in Section 5.91.110 of this chapter.

(Ord. 12867 § 2 (part), 2008)

#### **5.91.060 License renewal and expiration.**

A. **Renewal of License.** A tobacco retailer license is invalid unless the appropriate fee has been paid in full and the term of the license has not expired. The term of a tobacco retailer license is one year. Each tobacco retailer shall apply for the renewal of his or her tobacco retailer's license and submit the license fee no later than thirty (30) days prior to expiration of the license term.

B. **Expiration of License.** A tobacco retailer's license that is not timely renewed shall expire at the end of its term. To reinstate a license that has expired, or to renew a license not timely renewed pursuant to subsection (A), the proprietor must:

1. Submit the license fee plus a reinstatement fee of ten percent (10%) of the license fee.

2. Submit a signed affidavit affirming that the proprietor:

(i) has not sold and will not sell any tobacco product or tobacco paraphernalia after the license expiration date and before the license is renewed; or

(ii) has waited the appropriate ineligibility period established for tobacco retailing without a license, as set forth in Section 5.91.120(A) of this chapter, before seeking renewal of the license.

(Ord. 12867 § 2 (part), 2008)

#### **5.91.070 Licenses nontransferable.**

A. A tobacco retailer's license may not be transferred from one person to another or from one location to another. Whenever a tobacco retailing location has a change in proprietors, a new tobacco retailer's license is required.

B. Notwithstanding any other provision of this chapter, prior violations at a location shall continue to be counted against a location and license ineligibility periods shall continue to apply to a location unless:

1. The location has been fully transferred to a new proprietor or fully transferred to entirely new proprietors; and

2. The new proprietor(s) provide the city with clear and convincing evidence that the new proprietor(s) have acquired or is acquiring the location in an arm's length transaction.

(Ord. 12867 § 2 (part), 2008)

#### **5.91.080 Fees for license.**

A. Amount of Fees. The application fee shall be fifty dollars (\$50.00) and the licensing and renewal fee shall be one thousand five hundred dollars (\$1,500.00), or as the application, licensing and renewal fees may be amended in the city's master fee schedule. The fees shall be calculated so as to recover the total cost of both license administration and license enforcement, including, for example, issuing the license, administering the license program, retailer education, retailer inspection and compliance checks, documentation of violations, and prosecution of violators, but shall not exceed the cost of the regulatory program authorized by this chapter. All fees shall be used exclusively to fund the program, and shall be separately accounted for. Fees are nonrefundable except as may be required by law.

B. Fees Due and Payable. The application fee is due and payable at the time the application is submitted to the city. All licensing and renewal fees shall be due and payable to the city as determined by the Department. The amount of fees shall be deemed a debt to the city. An action may be commenced in the name of the city in any court of competent jurisdiction for the amount of any delinquent fees. An action to collect the fee must be commenced within three years of the date the fee becomes due. An action to collect the penalty for nonpayment of the fee must be commenced within three years of the date the penalty accrues.

C. Fees Assessed Against the Business Property. The amount of fee, penalty and interest imposed under the provisions of this chapter may be assessed against the business property on which the fee is imposed in those instances where the proprietor of the business and the business property are one and the same. If the fees are not paid when due, such fee, penalty and interest shall con-

stitute an assessment against such business property and shall be a lien on the property for the amount thereof, which lien shall continue until the amount thereof, including all penalties and interest, are paid or until it is discharged of record.

D. Tobacco Retailers Subject to Deemed Approved Alcoholic Beverage Sale Regulations. Any tobacco retailer subject to annual inspection fees for alcoholic beverage retail establishments as set forth in the master fee schedule shall not pay licensing and renewal fees under this chapter. Such tobacco retailer, however, shall apply for a tobacco retailer's license and pay the application fee set forth under subsection (A) of this section.

(Ord. 12867 § 2 (part), 2008)

#### **5.91.090 Other requirements and prohibitions.**

A. Lawful Business Operation. In the course of tobacco retailing or in the operation of the business or maintenance of the location for which a license issued, it shall be a violation of this chapter for a licensee, or any of the licensee's agents or employees, to:

1. Violate any local, state, or federal law applicable to tobacco products, tobacco paraphernalia, tobacco retailing, or smoking, including without limitation Oakland Municipal Code Chapter 8.30.
2. Violate any local, state, or federal law regulating exterior, storefront, window, or door signage.

3. Violate any local, state or federal law regulating the sale, offer for sale, or display for sale, of any drug paraphernalia.

4. Operate in any manner that adversely affects the health, safety or welfare of persons residing or working in the surrounding area, or in any manner that constitutes a public nuisance.

B. Display of License. Each tobacco retailer license shall be prominently displayed in a publicly visible location at the licensed location.

C. Positive Identification Required. No person engaged in tobacco retailing shall sell or transfer a tobacco product or tobacco paraphernalia to another person who appears to be under the age of twenty-seven (27) years without first examining

the identification of the recipient to confirm that the recipient is at least the minimum age under state law to purchase and possess the tobacco product or tobacco paraphernalia.

**D. Minimum Age for Persons Selling Tobacco.** No person who is younger than the minimum age established by state law for the purchase or possession of tobacco products shall engage in tobacco retailing.

**E. Self-Service Displays Prohibited.** No tobacco retailer shall display tobacco products or tobacco paraphernalia by means of a self-service display or engage in tobacco retailing by means of a self-service display.

(Ord. 12867 § 2 (part), 2008)

#### **5.91.100 Compliance monitoring.**

**A.** Compliance with this chapter shall be monitored by the Department. Any peace officer may enforce the penal provisions of this chapter.

**B.** Nothing in this chapter shall create a right of action in any tobacco retailer licensee or other person against the city or its agents.

**C.** Compliance checks shall determine, at a minimum, if the tobacco retailer is conducting business in a manner that complies with tobacco laws regulating youth access to tobacco. When appropriate, the compliance checks shall determine compliance with other laws applicable to tobacco retailing.

(Ord. 12867 § 2 (part), 2008)

#### **5.91.110 Denial or revocation of license.**

**A. Denial or Revocation of License.** In addition to any other penalty authorized by law or this chapter, a proprietor's application shall be denied by the Department or a tobacco retailer's license shall be revoked by the city administrator as in his or her discretion may seem just, for any reason for which a granting of such license might be lawfully denied, or for any other reason hereinafter in this chapter specifically provided including, but not limited to, any violation of law designated in Section 5.91.090 (A) of this chapter. An appeal of a denial or a revocation of a license under this chap-

ter shall be made only upon a hearing held before the city administrator after ten (10) days written notice by U.S. mail to such proprietor applying for the license or tobacco retailer's license holder, as applicable, 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 revocation of the license, any certificate issued in connection with the granting of such license shall, by the holder thereof, be forthwith surrendered to the City Administrator.

**B. Hearings on Revocation of License or Appeal of Denial.** Any investigation, inquiry or hearing which the City Administrator has power to undertake or to hold may be undertaken or held by such member of the City Administrator'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.

**1.** Within sixty (60) days after the filing of the findings and recommendations of the Hearing Officer, the City Administrator 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.

**2.** In such hearings, investigations, and inquiries by the City Administrator 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 chapter.

**3.** No informality in any proceeding or the manner of taking testimony shall invalidate any other decision, award or rule made as specified in this 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.

C. Appeals to City Council. Any proprietor excepting to any denial of a tobacco retailer license, or any tobacco retailer license holder excepting to any revocation of such license held by him or her pursuant to the provisions of this chapter, may appeal in writing to the City Council by filing with the City 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 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 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.

D. Revocation of License Issued in Error. A tobacco retailer's license shall be revoked if the Department or City Administrator finds, after the licensee is afforded reasonable notice and an opportunity to be heard, that one or more of the bases for denial of a license under Section 5.91.050 of this chapter existed at the time application was made or at any time before the license issued. The decision by the Department or the City Administrator shall be the final decision of the city. The revocation shall be without prejudice to the filing of a new license application.

#### E. New License After Revocation.

1. After revocation for a first violation of this chapter at a location within any sixty (60) month

period, no new license may issue for the location until ten (10) days have passed from the date of revocation.

2. After revocation for a second violation of this chapter at a location within any sixty (60) month period, no new license may issue for the location until thirty (30) days have passed from the date of revocation.

3. After revocation for a third violation of this chapter at a location within any sixty (60) month period, no new license may issue for the location until ninety (90) days have passed from the date of revocation.

4. After revocation for four or more violations of this chapter at a location within any sixty (60) month period, no new license may issue for the location until five (5) years have passed from the date of revocation.

(Ord. 12867 § 2 (part), 2008)

### **5.91.120 Tobacco retailing without a license.**

A. In addition to any other penalty authorized by law, if the Department finds or any court of competent jurisdiction determines, after notice and an opportunity to be heard, that any person has engaged in tobacco retailing at a location without a valid tobacco retailer's license, either directly or through the person's agents or employees, the person shall be ineligible to apply for or be issued a tobacco retailing license for that location as follows:

1. After a first violation of this section at a location within any sixty (60) month period, no new license may issue for the person at the location until thirty (30) days have passed from the date of the violation.

2. After a second violation of this section at a location within any sixty (60) month period, no new license may issue for the person at the location until ninety (90) days have passed from the date of the violation.

3. After of a third or subsequent violation of this section at a location within any sixty (60)

month period, no new license may issue for the person at the location until five (5) years have passed from the date of the violation.

B. Tobacco products and tobacco paraphernalia offered for sale or exchange in violation of this chapter are subject to seizure by the Department or any peace officer and shall be forfeited after the licensee and any other owner of the tobacco products or tobacco paraphernalia is given reasonable notice and an opportunity to demonstrate that the products were not offered for sale or exchange in violation of this chapter. The decision by the Department may be appealed pursuant to the procedures set forth in Section 5.91.110(C). Forfeited tobacco products and tobacco paraphernalia shall be destroyed by the Department.

C. For the purposes of the civil remedies provided in this chapter:

1. Each day on which a tobacco product, tobacco paraphernalia, or drug paraphernalia is offered for sale in violation of this chapter or
2. Each individual retail tobacco product, and each individual retail item of tobacco paraphernalia or drug paraphernalia that is distributed, sold, or offered for sale in violation of this chapter, whichever is greater, shall constitute a separate violation of this chapter.

(Ord. 12867 § 2 (part), 2008)

### **5.91.130 Settlement in lieu of hearing.**

For a first or second alleged violation of this chapter within any sixty (60) month period, the City Administrator or authorized designee may engage in settlement negotiations and may enter into a settlement agreement with a tobacco retailer alleged to have violated this chapter without approval from the City Council. Notice of any settlement shall be provided to the Department and no hearing shall be held. The tobacco retailer's license shall be suspended until adoption of this settlement agreement. After the settlement agreement has been adopted, the license shall continue under the same terms prior to the settlement,

unless otherwise stated. Settlements shall not be confidential and shall contain the following minimum terms:

A. After a first alleged violation of this chapter at a location within any sixty (60) month period:

1. An agreement to stop acting as a tobacco retailer for at least one day;
2. A settlement payment to the city of at least one thousand dollars (\$1,000.00); and
3. An admission that the violation occurred and a stipulation that the violation will be counted when considering what penalty will be assessed for any future violations.

B. After a second alleged violation of this chapter at a location within any sixty (60) month period:

1. An agreement to stop acting as a tobacco retailer for at least ten (10) days;
2. A settlement payment to the city of at least five thousand dollars (\$5,000.00); and
3. An admission that the violation occurred and a stipulation that the violation will be counted when considering what penalty will be assessed for any future violations.

(Ord. 12867 § 2 (part), 2008)

### **5.91.140 Enforcement.**

All officials, departments, and employees of the city vested with the authority to issue permits, certificates, or licenses shall adhere to, and require conformance with, this Tobacco Retail Licensing Ordinance.

#### **A. Violations and Penalties.**

1. Infractions. Any person who violates, causes, or permits another person to violate any provision of this chapter is guilty of an infraction unless otherwise provided.

2. Separate offenses for each day. Any violator shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this chapter is committed, continued, permitted, or caused by such violator and shall be punishable accordingly.

3. Any violation a public nuisance. In addition to the penalties provided in this section, any use or condition caused or permitted to exist in violation of any of the provisions of this chapter shall be and is declared to be a public nuisance and may be summarily abated as such by the city.

4. Injunction as additional remedy. Any violation of any provision of this chapter shall be and is declared to be contrary to the public interest and shall, at the discretion of the city, create a cause of action for injunctive relief.

5. Penalties. Any person convicted of an infraction under the provisions of this section shall be punishable by a fine to the maximum permitted under Oakland Municipal Code Chapter 1.28. Any violation beyond the second conviction within a one-year period may be charged by the District Attorney as a misdemeanor, and the penalty for conviction shall be punishable by a fine or imprisonment to the maximum permitted under Oakland Municipal Code Chapter 1.28.

6. Liability for expenses. In addition to the punishment provided by law, a violator is liable for such costs, expenses, and disbursements paid or incurred by the city or any of its contractors in correction, abatement, and prosecution of the violation. Reinspection fees to ascertain compliance with previously noticed or cited violations shall be charged against the owner of the tobacco retailer's license. Fees shall be in the amount described in Section 5.91.060(B)(1) for charged re inspections. The inspection official shall give the owner or other responsible party of such affected premises a written notice showing the itemized cost of such chargeable service and requesting payment thereof.

B. Enforcement. The city designates the Department to enforce the provisions of this chapter. 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. Inspection and Right of Entry. The Department, or their duly authorized representatives, may

enter on any site or into any structure for the purpose of investigation, provided they shall do so in a reasonable manner, whenever they have cause to suspect a violation of any provision of this chapter. An owner or occupant or agent thereof who refuses to permit such entry and investigation shall be guilty of infringing upon the violations and penalties as outlined in Section 5.91.140(A) and subject to related penalties thereof.

D. Remedies are Cumulative. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.

E. Youth Decoy Participation. Whenever evidence of a violation of this chapter is obtained in any part through the participation of a person under the age of eighteen (18) years old, such a person shall not be required to appear or give testimony in any civil or administrative process brought to enforce this chapter and the alleged violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented.

(Ord. 12867 § 2 (part), 2008)

**Title 6**

**ANIMALS**

**Chapters:**

- 6.04 Animal Control Regulations Generally**
- 6.08 Potentially Dangerous and Vicious Dogs**



<b>Chapter 6.04</b>			
<b>ANIMAL CONTROL REGULATIONS GENERALLY</b>			
<b>Sections:</b>			
<b>6.04.010</b>	<b>Short title.</b>	<b>6.04.241</b>	<b>Spaying/neutering impounded animals prior to release.</b>
<b>6.04.020</b>	<b>Definitions.</b>	<b>6.04.250</b>	<b>Care of animals by the Animal Control Center.</b>
<b>6.04.030</b>	<b>Dog license.</b>	<b>6.04.260</b>	<b>Burying of dead animals.</b>
<b>6.04.040</b>	<b>Veterinarian's responsibilities.</b>	<b>6.04.270</b>	<b>Taking up stray animals.</b>
<b>6.04.050</b>	<b>Anti-rabies vaccination and chipping required for license.</b>	<b>6.04.280</b>	<b>Reports of the Animal Control Center.</b>
<b>6.04.060</b>	<b>Keeping dogs not licensed, registered and tagged.</b>	<b>6.04.290</b>	<b>Keeping certain animals in apartment house, hotel and business district.</b>
<b>6.04.070</b>	<b>Dogs at large.</b>	<b>6.04.300</b>	<b>Sanitary keeping of animals.</b>
<b>6.04.080</b>	<b>Dogs at large in parks.</b>	<b>6.04.310</b>	<b>Keeping of certain animals as constituting public nuisance—Summary abatement—Impounding—Reclaiming.</b>
<b>6.04.090</b>	<b>Dogs excepted from license requirements.</b>	<b>6.04.320</b>	<b>Keeping of fowl.</b>
<b>6.04.100</b>	<b>Transferring, counterfeiting and removing dog tags.</b>	<b>6.04.330</b>	<b>Water fowl in Lake Merritt.</b>
<b>6.04.110</b>	<b>Surrendering of animal to Animal Control Center—Euthanasia or adoption.</b>	<b>6.04.340</b>	<b>Wild birds.</b>
<b>6.04.120</b>	<b>Sold animals to be spayed or neutered.</b>	<b>6.04.345</b>	<b>Feeding of feral pigeons.</b>
<b>6.04.130</b>	<b>Exemption from payment of dog license fees.</b>	<b>6.04.350</b>	<b>Squirrels.</b>
<b>6.04.140</b>	<b>Exemption from dog licenses and charges.</b>	<b>6.04.360</b>	<b>Sale of novelty small fowl and rabbits prohibited.</b>
<b>6.04.150</b>	<b>Examination and isolating of "Seeing Eye dogs" "service dogs" and "signal dogs" that bite.</b>	<b>6.04.370</b>	<b>Enforcement by citation method.</b>
<b>6.04.160</b>	<b>Examination and isolating of law enforcement dogs that bite.</b>	<b>6.04.380</b>	<b>Rules and regulations.</b>
<b>6.04.170</b>	<b>Rabies epidemic.</b>	<b>6.04.400</b>	<b>Number of dogs.</b>
<b>6.04.180</b>	<b>Interfering with employees.</b>	<b>6.04.410</b>	<b>Exemptions.</b>
<b>6.04.190</b>	<b>Dog kennels restricted.</b>	<b>6.04.420</b>	<b>Enforcement—Penalty.</b>
<b>6.04.200</b>	<b>Animal at large.</b>		
<b>6.04.210</b>	<b>Impounding animals.</b>	<b>6.04.010</b>	<b>Short title.</b>
<b>6.04.220</b>	<b>Reclaiming impounded animals.</b>		This title shall be known as the animal control ordinance. (Prior code § 3-9.01 (part))
<b>6.04.230</b>	<b>Adoption of impounded animals.</b>		
<b>6.04.240</b>	<b>Impoundment period—Determination of time.</b>	<b>6.04.020</b>	<b>Definitions.</b>
			For the purpose of this title, unless it is plainly evident from the context that a different meaning is intended, certain terms used herein are defined as follows:
			“Adoption group” means an organized, licensed, insured, non-profit organization whose primary function is the adoption and placement of shelter animals.
			“Animal” means any mammal, poultry, bird, reptile, fish, or any other dumb creature, including, but not limited to, horse, cow, goat, sheep, pig, pigeon,

chicken, goose, rabbit, dog, cat. Animals are classified by weight: large animal, over fifty (50) pounds; medium animal, between twenty-five (25) and fifty (50) pounds; small animal, under twenty-five (25) pounds.

“Animal quarters” means the premises and all buildings, hutches, pens, coops, yards, and their appurtenances used for the keeping of animals, commercial fur-bearing animals, poultry including pigeons, game and show birds, fowl and birds, or any other kind not specifically mentioned, and dogs, and cats not kept in kennels and pet shops as herein defined; including, but not limited to, stables, poultry farms, pigeon farms, and rabbit farms.

“At large” means a dog off the premises of its owner and not under restraint by leash, or chain, or not otherwise controlled by a competent person.

“Chipping” means the injection of a microchip below the skin of an animal by a veterinarian, registered vet technician or other qualified shelter staff.

“Dog” means and includes female as well as male dogs. Dogs are classified by weight: large dog: over fifty (50) pounds, medium dog: between twenty-five (25) and fifty (50) pounds, small dog: under twenty-five (25) pounds.

“Foster” means a person who is willing to temporarily take and care for an animal until the time that animal becomes suitable for adoption as recognized by an adoption group and/or animal shelter management.

“Horse” means and includes mule, burro, pony, jack hinny, or jenny.

“Kennel” means any person, firm or corporation engaged in breeding, buying, selling, distributing or boarding dogs and/or cats.

Owner.

1. “Owner” means any person, firm or corporation owning, having an interest in, or having control or custody or possession of, any animal.

2. Any person keeping or harboring a dog for fifteen (15) consecutive days shall be deemed to be the owner thereof, within the meaning of this title.

“Person” means and includes any person, partnership, corporation, trust, and association of persons.

“Pet shop” means any person, firm, or corporation operating an establishment where live animals and/or birds are kept for sale, for hire, or sold.

“Unlicensed dog” as used in this title means a dog for which the license for the current year has not been paid, or to which the tag provided for in this title is not attached.

“Wild animal” means any animal not ordinarily and customarily domesticated, including, but not limited to, skunk, raccoon, opossum, squirrel, fox.

Whenever any reference is made to any portion of this title, such reference applies to all amendments and additions thereto now or hereinafter made.

The present tense includes the past and future tenses and the future, the present. Each gender includes the other two genders.

The singular number includes the plural and the plural, the singular.

Whenever a power is granted to, or a duty is imposed upon the Animal Control Center, the power shall be exercised or the duty shall be performed by the Senior Animal Control Officer and/or the Animal Control Officer, or by any person or organization, its officers, agents, and employees, designated by contract or otherwise to enforce this title. (Ord. 12705 § 1, 2005: Prior code § 3-9.01 (part))

#### **6.04.030 Dog license.**

Except as herein provided, the owner of each dog four months old or older shall obtain a dog license from the city for the privilege of having and keeping such dog in the city. Each dog license issued shall expire on the expiration date of the anti-rabies vaccination and shall be issued upon payment of all required fees and penalties, and upon compliance with all conditions required for issuance of a dog license. Duplicate dog licenses may be issued upon the repayment of a fee. The city shall issue a metal tag plainly inscribed with words “Oakland Dog License” and bearing the license number. The city shall enter in a register kept for that purpose the name and address of the dog owner or person to whom the license is issued, a description of the dog, and the number and date of the license. If the owner or person having custody of the dog presents a certificate from a

licensed veterinarian which shows that the dog has been neutered or spayed, the fee for said dog license shall be less than the regular fee. If the owner or person having custody presents identification showing that he or she is sixty (60) years of age or older, the fee for said license shall be less than the regular fee. In the event the owner or person having custody of a dog fails to renew the license within thirty (30) days of the expiration date, he or she shall pay a penalty fee, which shall be the same for all owners or persons having custody.

A finding or determination made by the City Manager or his or her designee or by a court that a dog is potentially dangerous or vicious as defined in this title shall be included in the dog's license records. Further, all dogs found to be potentially dangerous or vicious pursuant to this title shall wear at all times a distinctive tag issued by the city. An annual potentially dangerous or vicious dog fee as established by the City Council, in addition to the regular licensing fee, shall be charged the dog's owner.

(Prior code § 3-9.02)

#### **6.04.040 Veterinarian's responsibilities.**

Every veterinarian who vaccinates or causes or directs to be vaccinated in the city any dog with anti-rabies vaccine shall:

A. Use a form provided by the licensing authority to certify that such animal has been vaccinated;

B. Notify the licensing authority when such animal is vaccinated.

(Prior code § 3-9.03(a))

#### **6.04.050 Anti-rabies vaccination and chipping required for license.**

As a condition for the issuance of a dog license, all applicants for such license shall procure and deliver a certificate issued by a duly licensed veterinarian, certifying that each dog to be licensed has been administered an anti-rabies vaccination and has had a micro-chip inserted prior to the issuance

of said license, or has received an anti-rabies vaccination sufficient to immunize said dog against rabies for the current license period.

Currently licensed dogs are exempt from the chipping procedure for up to one year after the adoption of the ordinance codified in this chapter. (Ord. 12705 § 2, 2005: Prior code § 3-9.05)

#### **6.04.060 Keeping dogs not licensed, registered and tagged.**

It is unlawful for any person to have, harbor or keep, or to cause or permit to be harbored or kept, any dog in the city unless such dog shall be registered and licensed as provided in this title and shall have a collar or leather band attached thereon, on which there shall be a tag inscribed as required by this title; provided, however, that such collar or leather band need not be attached to such dog while such dog remains in the dwelling house of the owner or other person having custody thereof, or in an enclosed yard adjacent thereto.

Every dog, under four months of age shall be confined to the premises of, or kept under physical restraint by, its owner or harborer. Nothing in this title shall be construed to prevent the sale or transportation of a dog under four months of age.

(Prior code § 3-9.06)

#### **6.04.070 Dogs at large.**

Except in the case of a "Seeing Eye dog" actually being used by a blind person, a "signal dog" actually being used by a hearing impaired person, or a "service dog" actually being used by a handicapped person, or a police dog being used by any federal, state, county, city or city and county law enforcement agency for any law enforcement purpose, it is unlawful for any person owning or having in charge, care, control, or custody any dog, hereinafter referred to as "dog guardian", to cause, allow or permit such dog, whether licensed or unlicensed, on or upon any public street, alley or other public place, except as expressly set forth below in this section.

A. Leashed. All dogs shall be leashed and securely and continuously held by a responsible per-

son when on public property. All dog guardians (owners, caretakers, dog walkers) must keep the dog securely on a leash no further than six feet away from a responsible dog guardian, and the leash must be securely attached to a collar or harness at all times when on sidewalks, streets, alleys, parks or other public property. Chain leashes or tethers are prohibited. Dogs may only be off leash on private property where permission from the property owner permits the dog to be off-leash, or in designated off-leash areas (See Section 6.04.080) Dogs left unattended and attached to any stationary object on public property for more than fifteen (15) minutes are considered at large dogs and are subject to impound. (See Section 6.04.210)

**B. Dogs in Vehicles.** In accordance with California law (Penal Code 597.7(a)), dog guardians are prohibited from leaving dogs unattended in vehicles under conditions that endanger the health or well being of the dog due to heat, cold, lack of adequate ventilation or lack of food or water, or other circumstances that could result in, or be expected to cause, suffering, disability or death to the dog.

**C. Nuisance.** Dog guardians shall maintain control at all times in order to prevent the dog from trespassing onto private property, from obstructing access to any public or private area, from committing any nuisance on public or private property, or from threatening, harming or damaging any person or other animal on public or private property.

**D. Picking-up.** All dog guardians shall pick up after their dogs. Dog guardians shall immediately remove their dog's feces on any public or private property, other than the dog guardian's private property, and then shall dispose of the waste matter in an appropriate trash receptacle. Any person who has custody or control of a dog in a public place is encouraged to carry disposable bags, or a device for picking up and removing dog feces. The City of Oakland encourages the use of biodegradable disposable bags for this purpose.

**E. Enforcement.** A violation of the above subsections (A—D) is an infraction as defined at Section 1.28.020(B). This subsection (E) is enforceable by the Oakland Police Department or other authorized city of Oakland employee. See Section 1.24.020(A). Offenders are subject to fines.

**F. Fine Schedule.** A first offense shall be punishable by a fine of fifty dollars (\$50.00), a second offense within a period of one year shall be punishable by a fine of one hundred dollars (\$100.00), and a third or subsequent offense within a one year period shall be punishable by a fine of five hundred dollars (\$500.00). As set forth at Section 1.28.020(B) "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 one thousand dollars (\$1,000.00) or by imprisonment in the county jail for a period of not more than six months or by both.

(Ord. 12835 § 1 (part), 2007; prior code § 3-9.07)

#### **6.04.080 Dogs at large in parks.**

**A.** It is unlawful for any person owning or having in charge, care, control or custody any dog, except a "Seeing Eye dog" actually being used by a blind person, a "signal dog" actually being used by hearing impaired person, a "service dog" actually being used by a handicapped person, or a police dog being used by any federal, State, county, City, City and county, or City and county enforcement agency for any law enforcement purpose, to permit or allow any such dog, whether leashed or unleashed, to be in a public park, school yard or public playground, or other place controlled by the Board of Education or the City Director of Parks and Recreation for special events or special occasions.

**1. Permitted On-Leash Areas.** Dogs are only allowed on-leash in the following designated parks: Joaquin Miller and Leona Parks east of Mountain Boulevard, Dimond Park east of El Centro Avenue, Knowland Park east of Golf Links Road, Glen Daniel/King Estate Park, north of Fontaine

Street, the Montclair Railroad Trail, and in Mosswood Park, on designated hardscape paths at the Broadway entrance nearest to I-580 overpass, the West MacArthur Boulevard entrance at Shafter Avenue and the Webster Street entrance at 36th Street, and hardscape paths in Grove Shafter Park, specifically in the northwest quadrant of the park, which is bordered by Martin Luther King Jr. Way, 37th Street, Grove Shafter Freeway and the MacArthur Freeway. Additional areas may be added as authorized in writing or resolution by the Parks and Recreation Advisory Commission and then as amended therein. Otherwise, dogs are not allowed in other Oakland parks at any time.

2. Service and Licensed Work Dogs. Service dogs and licensed work dogs authorized by City or other government personnel for special purposes are permitted in any City park when on official duty.

B. Nothing herein shall prevent or limit the duly authorized use of trained dogs for special purposes, by the City or other government personnel.

C. Dogs are permitted to be off-leash when authorized in a writing or resolution by the Parks and Recreation Advisory Commission and then as amended therein. Dogs are permitted to be off-leash in the areas set forth below.

1. Permitted Off-Leash Areas. Dogs are permitted off-leash only in the following designated off-leash areas: Hardy Park, Mosswood Park, Grove Shafter Park, and the Joaquin Miller, dog play areas. Additional areas may be added as authorized in writing or resolution by the Parks and Recreation Advisory Commission and then as amended herein.

(Ord. No. 12997, § 1, 2-16-2010; Ord. No. 12910, § 1, 1-6-2009; Ord. 12834 § 1, 2007; Ord. 12811 § 1, 2007; Ord. 12748, 2006; Ord. 12296, 2000; Ord. 12032, 1998; prior code § 3-9.07(b))

#### **6.04.090 Dogs excepted from license requirements.**

The provisions of this title requiring dog license shall not apply to any dog owned by or in the

charge or care of a nonresident of the city, traveling through the city, or temporarily sojourning therein for a period not exceeding thirty (30) days; nor to any dog brought to the city exclusively for the purpose of entering the same in a dog show or dog exhibition and entered for and kept at any dog show or dog exhibition; nor to any dog owned by a non-resident of the city, when such dog has been regularly licensed in accordance with the laws of the place of residence of such owner and shall have a collar or leather band attached thereon on which there shall be a tag evidencing the existence of an unexpired license for such dog in the place of residence of such owner; nor to dogs less than four months old which are kept confined in or upon the owner's premises.

(Prior code § 3-9.08)

#### **6.04.100 Transferring, counterfeiting and removing dog tags.**

It is unlawful for any person to attach to or keep upon, or to cause or permit to be attached to or kept upon, any dog any tag provided for in Section 6.04.030 except a tag issued to him or her for such dog under the provisions of this title, or to attach to or keep upon, or to cause or permit to be attached to or kept upon, any dog, or to make or to have in possession any counterfeit or imitation of any tag provided for in said Section 6.04.030 or to take from any dog any collar or leather band or tag attached thereto, except as provided in Section 6.04.060.

(Prior code § 3-9.09)

#### **6.04.110 Surrendering of animal to Animal Control Center—Euthanasia or adoption.**

The owner or possessor of any animal may surrender said animal to the Animal Control Center for the purpose of euthanasia or placement for adoption and, upon payment of the current service fee, the Animal Control Center shall accept such animal.

(Prior code § 3-9.091)

**6.04.120      Sold animals to be spayed or  
neutered.**

Each female dog and each female cat sold by the Animal Control Center shall be spayed, and each male dog and each male cat sold by the Animal Control Center shall be neutered within thirty (30) days after said sale or within thirty (30) days after attaining the age of six months, whichever is earlier. The purchaser of such dog or cat shall provide the Animal Control Shelter with written evidence of compliance herewith from a licensed veterinarian.

Failure to so comply shall void said sale. (Prior code § 3-9.101)

**6.04.130      Exemption from payment of dog license fees.**

A. The provisions of this title requiring payment of dog license fees shall not apply to a "Seeing Eye dog" actually being used by a blind person, a "signal dog" actually being used by a hearing impaired person, or a "service dog" actually being used by a handicapped person.

B. Upon the recommendation of the Associated Charities, the City Auditor and the City Treasurer, and upon the majority vote of the whole Council by resolution, the city shall waive the payment of any such fees or charges of any person who shall have furnished evidence satisfactory to the Associated Charities that such person by reason of unavoidable poverty, merits exemption from the payment of any fees or charges provided for by this title. Such application for exemption from payment must be presented within three days after such fees or charges, or any part thereof, have accrued. Upon such exemption from payment, if the Animal Control Center has any such dogs in custody, the dogs shall be released in the manner as though such fees or charges had been regularly paid by such person so exempted from the payment thereof. (Prior code § 3-9.11)

**6.04.140      Exemption from dog licenses and charges.**

If any person shall furnish evidence satisfactory to the Associated Charities that such person, by reason of unavoidable poverty, merits exemption from the payment of any fees or charges provided for by this title, upon the recommendation of the Associated Charities, the City Auditor and City Treasurer, and upon the majority vote of the whole Council by resolution, the city shall waive the payment of any such fees or charges, provided that such application for exemption from payment shall be presented within three days after such fees or charges, or any part thereof, have accrued, and, provided further, that upon such exemption from payment, the

Animal Control Center shall dispose of any such dogs in custody, an account of which such fees or charges had accrued and had been waived, in the manner as though such fees or charges had been regularly paid by such person so exempted from the payment thereof. (Prior code § 3-9.12)

**6.04.150      Examination and isolating of "Seeing Eye dogs" "service dogs" and "signal dogs" that bite.**

Notwithstanding any other provision of this title, a guide dog serving a blind master, "Seeing Eye dog," a "signal dog," serving a hearing impaired person, or a "service dog," serving a handicapped person shall not be quarantined in the absence of evidence that the dog has been exposed to rabies unless the dog's master fails to; (A) keep the dog safely confined to the premises of the master; and (B) make the dog available for examination at all reasonable times. (Prior code § 3-9.12(a))

**6.04.160      Examination and isolating of law enforcement dogs that bite.**

Notwithstanding any other provision of this title, a dog used by any federal, state, county, city or city and county law enforcement agency shall not be quarantined after biting any person if such bite occurred while the dog was being used for any law enforcement purpose. The law enforcement agency shall make the dog available for examination at any reasonable time. The law enforcement agency shall notify the local health office if the dog exhibits any abnormal behavior. (Prior code § 3-9.12(b))

**6.04.170      Rabies epidemic.**

Notwithstanding the provisions of Section 6.04.130, whenever in the judgment of the City Council of the city, upon the recommendation of the Health Officer and the City Manager of said city, it shall determine and declare that any disease epidemic exists within the city by reason of rabies, or for any other disease or cause, or reason, and that it is necessary to protect and preserve the public health and safety, the Council of the city shall by resolution declare and determine the existence of an

epidemic of such disease, and thereupon it shall be the duty of the Chief of Police of the city when so directed by the City Manager, and until such time as it may be determined by said Council that such disease epidemic no longer exists, to immediately destroy or cause to be destroyed, in the event such epidemic is one of rabies, any dog or dogs which may have bitten any person or persons, dog or dogs, or other animal or animals, or which in the judgment of the Health Officer is suffering from the disease of rabies, and to immediately destroy, or cause to be immediately destroyed, the dog or dogs, and such other animal or animals, during the existence of such epidemic, which are declared to be an imminent menace to the public health and safety. During the continuance of such epidemic any person or persons owning any dog or dogs within the city shall keep such dog muzzled at all times while it is at large, and any dog or dogs unmuzzled and running at large upon any of the public streets, lane, alleys, or other public place of the city during the epidemic shall be impounded and destroyed whether or not such dog or dogs be suffering from rabies. Any member of the Police Department is authorized to enforce the provisions thereof. (Prior code § 3-9.13)

**6.04.180 Interfering with employees.**

Any person or persons in any manner interfering with any officer of the city in the discharge of the duties prescribed in this title shall be deemed guilty of an infraction. (Prior code § 3-9.14)

**6.04.190 Dog kennels restricted.**

It is unlawful for any persons to establish or maintain any institution or place where more than five dogs are kept for sale or boarded within one hundred (100) feet of any residence, dwelling, church, school, or public building. (Prior code § 3-9.15)

**6.04.200 Animal at large.**

It is unlawful for any owner of any animal to allow or permit the same to run at large in the city, or to pasture or herd or stake or tie the same for the

purpose of grazing, in any public street, lane, alley, court or other public place or grounds belonging to, or under the control of, the city, or upon any private property within the city, unless with the consent of the owner or occupant of such property. (Prior code § 3-9.16)

**6.04.210 Impounding animals.**

A. Owner Unknown. Any animal whose owner is unknown that is found at large or otherwise contrary to the provisions of Section 6.04.180 shall be taken into the custody of the Animal Control Shelter of the city. An animal taken into custody pursuant to this provision shall be held for a minimum of three days to include one full Saturday. During this holding period an animal may be redeemed by the owner or possessor thereof on the payment to the city of such sum or amount as may be the current redemption fee.

B. Owner Known. Any animal whose owner is known that is found running at large or otherwise contrary to the provisions of Section 6.04.180 shall be taken into the custody of the Animal Control Shelter of the city, and the Shelter shall notify the owner or possessor thereof. An animal taken into custody pursuant to this provision shall be held for a minimum of seven days to include one full Saturday. During this period an animal may be redeemed by the owner or possessor thereof on the payment to the city of such sum or amount as may be the current redemption fee.

C. Minimum Holding Period. The holding periods provided for herein shall be considered minimum holding periods. To permit the public as much time as possible to retrieve or adopt animals taken into custody, the shelter shall extend the holding periods for individual animals to the extent that kennel space is available and the overall health and safety of impounded animals is not affected. (Prior code § 3-9.17)

**6.04.220 Reclaiming impounded animals.**

The owner of any animal impounded under this title shall have the right to reclaim the same at any time prior to its sale or destruction, upon payment

of the redemption fee and payment of the costs and charges of the city for impounding and keeping such animal, or, if such impounded animal has been sold, the owner shall have the right to payment of the proceeds of such sale less the fee, costs and charges as aforesaid, provided claim therefor is made and proof of ownership established within thirty (30) days after such sale. (Prior code § 3-9.18)

#### **6.04.230 Adoption of impounded animals.**

Any animal described in Section 6.04.190 A and B which is not redeemed by the owner or possessor thereof within the time provided therefor, and any animal which has been surrendered to the Animal Control Shelter pursuant to Section 6.04.090, shall be placed for adoption for the sum or amount as may be the current purchase fee, unless such animal is dangerous or unfit by reason of age, disease or other infirmity, in which case it may be destroyed, and if so, shall be destroyed in a humane manner. (Prior code § 3-9.181)

#### **6.04.240 Impoundment period— Determination of time.**

The holding periods provided for under this title are to be computed by excluding the intake day and any day upon which the shelter is closed. No animal shall be euthanized, unless such animal is dangerous, or unfit by reason of age, disease or other infirmity, until the day following the expiration of the holding period. No animal shall be adopted out until the day following the expiration of the holding period. (Prior code § 3-9.182)

#### **6.04.241 Spaying/neutering impounded animals prior to release.**

A. Unlicensed Dogs. Any dog taken into custody by the animal control shelter that is not licensed pursuant to Section 6.04.030 must be spayed or neutered prior to release from the animal control shelter unless such dog is excepted from the license requirements pursuant to Section 6.04.090.

B. Repeat Offenders. After the first violation of any provision of Title 6, Chapter 6.04 or 6.08, pending an appropriate appeals process, animals taken

into custody by the animal control shelter will be subject to a mandatory spay/neuter prior to release from the animal control shelter. (Ord. 12069, 1998)

#### **6.04.250 Care of animals by the Animal Control Center.**

All impounded animals are to be provided with sufficient food and water suitable for such animals. (Prior code § 3-9.19)

#### **6.04.260 Burying of dead animals.**

It shall be the duty of all persons having dead animals upon premises, or who shall be the owners or possessors of any dead animal which died within the city, to bury the same under at least four feet packed earth cover, except cats, dogs, or fowl and birds, which shall be buried under at least three feet of packed earth cover, either upon the premises of the owner or upon the premises where such animal is found, or in other approved burial places for dead animals, or to have such dead animal cremated within forty-eight (48) hours after the animal shall die. If any person fails or neglects to bury any dead animal as provided for in this section, then in such case it will be the duty of the Animal Control Center to proceed forthwith to bury or cremate same, and any such person so refusing or neglecting to bury or cause to be buried any such dead animal as herein provided shall be deemed guilty of an infraction. The owner or possessor of any dead animal may submit said dead animal to the Animal Control Center for cremation and, upon payment of the current service fee for destroying animals, the Animal Control Center shall destroy such animal. (Prior code § 3-9.21)

#### **6.04.270 Taking up stray animals.**

Every person taking up any animal liable to be impounded under the provisions of this title shall within twelve (12) hours after taking up such animal, or, if the same be attached to a vehicle, within four hours, give notice thereof to the city, or to any incorporated Society for Prevention of Cruelty to Animals in the city, the Animal Control Center or such Society shall thereupon take such animal into

custody, and every person to whom such animal may be delivered, or who shall receive the same, shall forthwith, upon demand, deliver such animal to the Animal Control Center, or to such incorporated Society for Prevention of Cruelty to Animals. Every person taking up such animal and failing or neglecting to give such notice, or refusing or neglecting to deliver such animal to the Animal Control Center or such incorporated Society for Prevention of Cruelty to Animals upon demand, shall be deemed guilty of an infraction.

Any incorporated Society for Prevention of Cruelty to Animals, upon receiving any animal liable to be impounded, shall thereupon notify the Animal Control Center thereof and said incorporated Society for Prevention of Cruelty to Animals shall have the right after four days to dispose of any stray animal if not reclaimed. In the case of licensed animals, the disposition of such animals shall be in accordance with Sections 6.04.210, 6.04.230 and 6.04.240. No charge greater than those asked by the City Pound as herein provided shall be asked by any such incorporated Society for Prevention of Cruelty to Animals. (Amended during 1997 codification; prior code § 3-9.22)

#### **6.04.280 Reports of the Animal Control Center.**

The Animal Control Center shall make a true and correct report to the City Manager on the fifth day of each month of the animals of each kind impounded during the previous month; of the number of each kind redeemed and sold and the amount received for each therefor; and of the number destroyed in a humane manner of each kind, with the number and kind buried, and the amount received for each therefor. (Prior code § 3-9.23)

#### **6.04.290 Keeping certain animals in apartment house, hotel and business district.**

It is unlawful for any person to raise, or keep, live chickens, ducks, geese or other fowl, or pigeons, rabbits, guinea pigs or goats, in any enclosure or yard on property occupied by an apartment

house or hotel or in a business district in the city, except when such fowl or animals are kept within a bona fide produce market, commission house or store for purposes of trade and, while so kept, are confined in small coops, boxes or cages. (Amended during 1997 codification; prior code § 3-9.25)

#### **6.04.300 Sanitary keeping of animals.**

No person shall establish or operate a pet shop, kennel, or animal hospital without first obtaining a permit therefor from the City Manager authorizing him or her to do so. It is unlawful for any person in the city to keep any animal in any animal quarters, kennel, animal hospital, or yard which is not at all times kept reasonably clean and sanitary to the satisfaction of the County Health Officer. (Prior code § 3-9.26)

#### **6.04.310 Keeping of certain animals as constituting public nuisance—Summary abatement—Impounding—Reclaiming.**

It is unlawful and shall constitute a public nuisance for any person to keep within the limits of the city any animal which unreasonably disturbs the peace and comfort of the inhabitants of the neighborhood in which such animal is kept, or interferes with any person in the reasonable and comfortable enjoyment of life or property, or creates a significant risk of injury to life or property.

The person who in any instance under the authorization of this title is engaged in enforcing the provisions of this title shall utilize the citation method of enforcement provided in this title if that procedure is reasonably and practicably available to abate the nuisance in preference to the summary abatement procedure of enforcement provided in this title.

If any nuisance described in this section is of a continuing nature, and if no person owning or having custody of the animal is present, any person who is authorized to enforce the provisions of this title and who himself or herself perceives the nuisance may enter any premises where such animal is kept, other than a place of residence or closed ga-

rage or out-building, and summarily abate the nuisance in a reasonable and humane manner. If the nuisance cannot be abated in any other manner, the animal may be impounded and, if a clear and present substantial danger to human life or safety exists, the animal may be destroyed in the absence of other available means of restraint.

A notice of impounding shall be affixed to the premises from which an animal is removed and a similar notice shall be sent to the owner of the animal. If the owner is unknown, a notice of impounding shall be mailed to the owner of the property on which such animal was kept, at the address given on the last completed assessment roll of Alameda County. The owner or person having the right to custody of any animal impounded pursuant to this section may reclaim the animal in accordance with the provisions of Section 6.04.200. If the animal is not reclaimed within seven days after it is impounded, the animal may be sold or destroyed in a humane manner. (Prior code § 3-9.27)

#### **6.04.320 Keeping of fowl.**

It is unlawful for any person to keep any ducks, geese, chickens or other fowls in any enclosure in the city unless the exterior boundaries of said enclosures are more than twenty (20) feet from any dwelling, church or school.

It is unlawful for any person to keep, harbor or maintain roosters within the city limit.

This section shall not prohibit the activity authorized under Section 6.04.290 of this code.

This section shall also not apply to and is not intended to regulate any commercial activity that is already regulated by the Oakland Planning Code. (Ord. 12705 § 3, 2005: Prior code § 3-9.28)

#### **6.04.330 Water fowl in Lake Merritt.**

It is unlawful for any person to throw missiles of any kind at, or disturb in any way, water fowl on Lake Merritt. (Prior code § 3-9.29)

#### **6.04.340 Wild birds.**

It is unlawful for any person to trap, snare or otherwise capture or kill any wild birds in the city ex-

cept water fowl and birds of prey. (Prior code § 3-9.30)

#### **6.04.345 Feeding of feral pigeons.**

##### **A. Definitions.**

“Commercial Zone”, for the purposes of this section, means: The Laurel shopping area is defined as that area of Oakland generally bounded by Midvale at MacArthur to the north, east on Midvale to Kansas, south on Kansas to 38th Avenue, west on 38th Avenue to Masterson, south on Masterson to the south side of High, west on High to MacArthur, south on MacArthur to Greenacre, returning on MacArthur to High, west on High to Virginia including the shopping center, across High to the north side of High, east on High to the 580 Freeway, north on a straight line to the south end of Redding, north on Redding to MacArthur, west on MacArthur to Quigley, north on Quigley to Midvale, east on Midvale returning to MacArthur.

The Dimond shopping area is defined as that area of Oakland generally bounded by Excelsior Avenue at MacArthur on the northwest, southeast on both sides of MacArthur to Dimond, northeast on Dimond to Dimond Park, continuing southeast on both sides of MacArthur to Fruitvale, northeast on both sides of Fruitvale to Coloma, continuing southeast on both sides of Macarthur and including May Court to Coolidge, returning on both sides of MacArthur to Lincoln, west on Lincoln to Champion, southwest on Champion to Montana, northwest on Montana to MacArthur, southeast on MacArthur returning to Excelsior Avenue.

This area prohibiting the feeding of feral pigeons will also include both sides of MacArthur from Midvale to Coolidge

“Feed” means purposely providing food, including but not limited to grain, seeds, greens, bread crumbs, and other miscellaneous food scraps intended for pigeon on.

“Feral pigeon” means the common pigeon, *Columba livia*, also known as the Rock Dove, in its wild state. Privately raised pigeons used for recreational purposes are not feral pigeons and are exempt from this section.

“Public Property” means any real property owned by any State, County or local governmental entity within the city.

“Street” See Section 1.04.010 for definition of “Street” as well as other related definitions.

**B. Pigeon Feeding Prohibited.**

No person shall feed any feral pigeons on any public street, or on public or private property in any portion of the city zoned as a commercial zone.

**C. Enforcement.**

A violation of the above is an infraction as defined at Section 1.28.020A.2.d. The above section is enforceable by the Oakland Police Department or other authorized City of Oakland employees. See Section 1.24.020A. Offenders are subject to fines.

**D. Fine Schedule.**

A first offense shall be punishable by a fine of twenty five dollars (\$25), and a second offense within a period of one year, shall be punishable by a fine of fifty dollars (\$50), and a third or subsequent offense within a one year period, shall be punishable by a fine of one hundred dollars (\$100). (Ord. 12817 § 1 (part), 2007)

**6.04.350 Squirrels.**

It is unlawful for any person to import into the city, or to sell or expose for sale or exchange or deliver or distribute, within the city, any ground squirrel or other squirrels. (Prior code § 3-9.31)

**6.04.360 Sale of novelty small fowl and rabbits prohibited.**

It is unlawful for any person to display, sell, offer for sale, barter or give away in the city, any live baby chicks, rabbits, ducklings or other fowl as pets or novelties, whether or not dyed, colored, or otherwise artificially treated; provided, however, this section shall not be construed to prohibit the display or sale of natural chicks, rabbits, ducklings or other fowl in proper facilities by dealers, hatcheries or stores engaged in the business of selling the same to be raised for food purposes. (Prior code § 3-9.33)

**6.04.370 Enforcement by citation method.**

Pursuant to Section 836.5 of the California Penal Code, members of the Oakland Police Department, the Senior Animal Control Officer and the Animal Control Officers and any Health Officer of the county of Alameda are authorized to enforce this title and arrest violators thereof. (Prior code § 3-9.34)

**6.04.380 Rules and regulations.**

The Chief of Police shall have the power to adopt rules and regulations for the purpose of implementing and enforcing the provisions of this title. (Prior code § 3-9.35)

**6.04.400 Number of dogs.**

It is unlawful for any person to keep on any one premises more than three dogs if said dogs are more than four months old.

In calculating the permitted number of dogs allowed on any premises, dogs that were licensed in the city of Oakland prior to the effective date of the ordinance codified in this chapter shall be exempt. However, no additional dogs shall be permitted on any premises following the effective date of the ordinance codified in this chapter when the number of dogs lawfully kept on the premises exceeds three until such time as the number of dogs on the premises drops below three. Nothing in this exemption shall be construed to allow any person who lawfully kept more than three dogs on any premises on the effective date of the ordinance codified in this chapter to continue to keep more than three dogs in the event that any of said dogs originally kept on the property on the effective date of the ordinance codified in this chapter are no longer kept for any reason. (Ord. 12705 § 4, 2005)

**6.04.410 Exemptions.**

Licensed dog kennels, licensed boarding facilities, licensed breeders, veterinary hospitals, licensed pet shops, the Oakland Animal Control Services Shelter, the Oakland Society for the Prevention of Cruelty to Animals (SPCA) and Fosters whose applications have been approved by Oakland Animal Services are exempt from the provisions of this section.

The restrictions set forth in Sections 6.04.320, 6.04.390, and 6.04.400 also shall not apply to any property where such activity is permitted by any other provision of the Oakland Municipal Code or Oakland Planning Code and for which all necessary land use permits have been issued or where no use permits are required because the activity qualifies as a legal non-conforming use as defined in Section 17.114.020 of the Oakland Planning Code. (Ord. 12705 § 5 (part), 2005)

**6.04.420 Enforcement—Penalty.**

In addition to any other penalties authorized by law, violations of this chapter may be charged as either an infraction or a misdemeanor. (Ord. 12705 § 5 (part), 2005)



	<b>Chapter 6.08</b>	
	<b>POTENTIALLY DANGEROUS AND VICIOUS DOGS</b>	
<b>Sections:</b>		
<b>6.08.010</b>	<b>Definitions.</b>	<b>6.08.160</b> <b>Owners of potentially dangerous or vicious dogs to permit compliance inspections.</b>
<b>6.08.020</b>	<b>Administrative hearing to determine if dog potentially dangerous or vicious, or if owner of a dog previously determined potentially dangerous or vicious in violation of this title, or if dog a significant public threat.</b>	<b>6.08.170</b> <b>Insurance requirements for vicious dogs.</b>
<b>6.08.030</b>	<b>Notice to owner of hearing.</b>	<b>6.08.180</b> <b>Microchip and sterilization requirement for potentially dangerous and vicious dogs.</b>
<b>6.08.040</b>	<b>Time of hearing.</b>	<b>6.08.190</b> <b>Keeping of vicious dogs by minors prohibited.</b>
<b>6.08.050</b>	<b>Hearing open to public.</b>	<b>6.08.200</b> <b>Muzzling of vicious dog.</b>
<b>6.08.060</b>	<b>Evidence at hearing.</b>	<b>6.08.210</b> <b>Penalties for wilful violation of provisions regulating vicious dogs.</b>
<b>6.08.070</b>	<b>Findings, determinations, declarations and orders.</b>	<b>6.08.220</b> <b>Civil penalties for violations of provisions regulating potentially dangerous dogs or vicious dogs.</b>
<b>6.08.080</b>	<b>Exceptions to determination that dog is potentially dangerous or vicious.</b>	<b>6.08.230</b> <b>Exemption for police dogs.</b>
<b>6.08.090</b>	<b>Seizure, impoundment and destruction of dogs which are significant public threat.</b>	<b>6.08.240</b> <b>Severability.</b>
<b>6.08.100</b>	<b>Alternative impoundment.</b>	<b>6.08.250</b> <b>Removal from list of potentially dangerous dogs.</b>
<b>6.08.110</b>	<b>Release of impounded dogs determined potentially dangerous or vicious.</b>	
<b>6.08.120</b>	<b>Restraint or enclosure of potentially dangerous or vicious dogs.</b>	
<b>6.08.130</b>	<b>Notice of disposal or escape of potentially dangerous or vicious dogs.</b>	<b>6.08.010      Definitions.</b>
<b>6.08.140</b>	<b>Unlawful to own, harbor or keep dog found by another jurisdiction to be potentially dangerous or vicious.</b>	For the purpose of this chapter, unless it is plainly evident from the context that a different meaning is intended, certain terms used in this chapter are defined as follows:
<b>6.08.150</b>	<b>Posting of premises where potentially dangerous or vicious dogs are maintained.</b>	“Animal Control Section” means that Section of the Oakland Police Department designated by the Chief of Police as being responsible for animal control within the city of Oakland.
		“Enclosure” means a fence or structure suitable to prevent the entry of young children, and which is suitable to confine a potentially dangerous dog or vicious dog. The enclosure shall be securely locked, shall have secure sides and bottom sufficient to prevent the dog from escaping, and shall be of sufficient size to provide the dog with an adequate exercise area. A top may be required for the enclosure if necessary to assure the dog’s containment.



**"Impoundment"** means taken into custody by a police officer or an Animal Control Officer.

**"Potentially dangerous dog"** means:

1. Any dog which, when unprovoked, on two separate occasions within the prior thirty-six (36) month period, engages in any behavior that requires a defensive action by any person to prevent bodily injury when the person and the dog are off the property of the owner or keeper of the dog; or

2. Any dog which, when unprovoked, bites a person causing a transitory or short-lived bodily distress or incapacity without need for multiple sutures or corrective or cosmetic surgery; or

3. Any dog which, when unprovoked, has killed, seriously bitten, inflicted injury, or otherwise caused injury attacking a "guide dog for the blind," a "service dog for the disabled," or a "hearing dog for the deaf" while off the property of the owner or keeper of the dog; or

4. Any dog which, when unprovoked, has killed, seriously bitten, inflicted injury, or otherwise caused injury while attacking a domestic animal off the property of the owner or keeper of the dog.

**"Severe injury"** means any physical injury to a human being that results in muscle tears or disfiguring lacerations or requires multiple sutures or corrective or cosmetic surgery.

**"Unprovoked"** means without being intentionally incited to aggressive action.

**"Vicious dog"** means:

1. Any dog which, when unprovoked, in an aggressive manner, inflicts severe injury on or kills a human being; or

2. Any dog previously determined to be and currently listed as a potentially dangerous dog which, after its owner or keeper has been notified of this determination, continues the behavior described in the definition of "potentially dangerous dog"; or

3. Any dog that is associated with conduct which results in the dog's owner or keeper being convicted under Penal Code Section 597.5(a). (Ord. 12155 (part), 1999; prior code § 3-9.01 (part))

#### 6.08.020

**Administrative hearing to determine if dog potentially dangerous or vicious, or if owner of a dog previously determined potentially dangerous or vicious in violation of this title, or if dog a significant public threat.**

A. If an investigation conducted by any Oakland peace officer or Animal Control Officer results in a determination that there is probable cause to believe that (1) a dog is potentially dangerous or vicious; or (2) that the owner of a dog previously determined potentially dangerous or vicious is in violation of any of the provisions of this title or orders of the City Manager issued pursuant thereto; or (3) if any dog is a significant threat to the public health, safety, and welfare, the officer in charge of the Animal Control Section shall file with the City Manager a verified complaint setting forth facts that establish probable cause to believe the dog in question is potentially dangerous or vicious, that the owner of a previously determined potentially dangerous or vicious dog is in violation of any of the provisions of this title or orders issued pursuant thereto, or that a dog is a significant threat to the public health, safety, and welfare.

B. The City Manager or his or her designee shall conduct a hearing for the purpose of determining whether or not the dog in question should be declared potentially dangerous or vicious, or if the owner of a dog previously determined potentially dangerous or vicious is in violation of this title and if so, what orders or penalties should apply, or if a dog poses a significant threat to public health, safety and welfare and, if so, what orders should apply. (Prior code § 3-9.37)

#### 6.08.030 Notice to owner of hearing.

The owner or keeper of the dog shall be served a copy of the verified complaint, a court petition if filed, and a notice of hearing date, time and place, either personally or by first-class mail with return receipt requested. (Prior code § 3-9.38)

**6.08.040 Time of hearing.**

A hearing conducted pursuant to this title shall be held promptly within no less than five working days nor more than ten working days after service of notice upon the owner or keeper of the dog. (Prior code § 3-9.39)

**6.08.050 Hearing open to public.**

The hearing shall be open to the public. (Prior code § 3-9.40)

**6.08.060 Evidence at hearing.**

The City Manager or his or her designee may receive at the hearing all relevant evidence from both the Animal Control Section and the owner or keeper of the dog. Such evidence may include incident reports and affidavits of witnesses. (Prior code § 3-9.41)

**6.08.070 Findings, determinations, declarations and orders.**

The findings, determinations, declarations and orders of the City Manager or his or her designee shall be in writing based upon whether, by a preponderance of the evidence, the dog is proven potentially dangerous or vicious, or the owner of previously determined potentially dangerous or vicious dog is proven in violation of this title or orders issued pursuant thereto, or a dog is proven to pose a significant threat to public health, safety and welfare. Service of the findings, determination and any orders issued pursuant thereto shall be made upon the owner or keeper of the dog either personally or by first-class mail return receipt requested. The findings, determination and orders of the City Manager or his or her designee are final. (Prior code § 3-9.42)

**6.08.080 Exceptions to determination that dog is potentially dangerous or vicious.**

No dog may be declared potentially dangerous or vicious or a threat to public health, safety and welfare solely because any of the following conditions result:

A. Injury or damage is sustained by any person who at the time of the injury or damage was physically abusing, tormenting, teasing, or assaulting the dog;

B. Injury or damage is sustained by a person while committing a wilful trespass or other tort upon premises occupied by the owner or keeper of the dog, or while committing or attempting to commit a crime;

C. Injury or damage is sustained by a person acting in concert with a person who, at the time the injury or damage was sustained, was committing a wilful trespass or other tort upon premises occupied by the owner or keeper of the dog, or was teasing, tormenting, abusing or assaulting the dog, or was committing or attempting to commit a crime;

D. An injury or damage is sustained by a domestic animal which at the time the injury or damage was sustained was teasing, tormenting, abusing, or attacking the dog;

E. An injury is sustained by a person who has gained uninvited and unauthorized entry onto fenced or indoor property of the dog's owner or keeper, except that as used in this section, "unauthorized entry" shall not include entry into a fenced residential front yard unless such yard is either locked or posted to prohibit entry;

F. The dog acts to protect or defend a person within the immediate vicinity of the dog from an unjustified attack or assault. (Prior code § 3-9.43)

**6.08.090 Seizure, impoundment and destruction of dogs which are significant public threat.**

If upon investigation it is determined by a police officer or Animal Control Officer that probable cause exists to believe any dog poses an immediate threat to public safety, then the police officer or Animal Control Officer may enter any premises where the dog is kept, other than a place of residence or closed garage, to seize and impound the dog pending any hearing to be held pursuant to this title. Subsequent to such hearing, if the dog is determined to be vicious and its release would create a significant threat to the public health, safety, and

welfare, the City Manager or his or her designee may issue an order that the Animal Control Section destroy the dog. No such order shall take effect until at least two working days after the personal service of the order upon the known owner or keeper of the dog or seven working days after the date of mailing if the order is sent by first class mail to the known owner or keeper. If the owner or keeper is unknown, no such order shall take effect until the dog has been impounded at least seven days.

The owner or keeper of the dog shall pay a fine not to exceed one thousand dollars (\$1,000.00) and shall be liable to the city for all costs and expenses of keeping a dog impounded pursuant to any provision of this chapter. (Ord. 12155 (part), 1999: prior code § 3-9.44)

#### **6.08.100 Alternative impoundment.**

When not contrary to public safety, a police officer or an Animal Control Officer shall, at the request of an owner or keeper, permit a dog which might otherwise be impounded pursuant to this title, to be confined at the owner's expense in a mutually agreed upon and approved animal shelter, kennel or veterinary facility within the city. (Prior code § 3-9.45)

#### **6.08.110 Release of impounded dogs determined potentially dangerous or vicious.**

No impounded dog declared by the City Manager or his or her designee to be potentially dangerous or vicious shall be released to the custody of its owner or keeper unless all fees and penalties assessed pursuant to this title have been paid. Additionally, no dog declared vicious shall be released to the custody of its owner or keeper unless such person demonstrates compliance with Section 6.08.170, the capability to immediately leash and muzzle the dog, and possession of an enclosure to contain the dog in satisfaction of Section 6.08.120.

A rebuttable presumption shall arise that a dog has been abandoned if any owner or keeper of an impounded dog, declared potentially dangerous or vicious, has not met conditions for release of the

dog within ten days after notice mailed by first class mail return receipt requested by the Animal Control Section that the dog is available for release. The City Manager, after notice to the last known owner or keeper and after a hearing conducted pursuant to the hearing provisions of this title, may order the abandoned dog destroyed. Such order shall take effect in accordance with the time and notice provisions established in Section 6.08.090. (Prior code § 3-9.46)

#### **6.08.120 Restraint or enclosure of potentially dangerous or vicious dogs.**

A dog found to be potentially dangerous pursuant to this title shall at all times while not securely confined indoors:

- A. Be confined in an area which is securely fenced and locked so as to prevent trespass by children and from which the dog cannot escape; and
- B. When off the property of its owner or keeper humanely muzzled and leashed with a substantial leash not to exceed two feet in length and under the control of a responsible adult who is familiar with and in control of the dog; or
- C. Humanely confined in a vehicle so that it can neither escape nor inflict injury on passersby.

For the purposes of this section, a dog which is humanely muzzled and/or confined in a vehicle shall be able to drink, breathe and pant freely under conditions which do not subject the animal to needless suffering.

When circumstances warrant, the Officer-In-Charge of the Animal Control Section may modify conditions of restraint to accommodate the special needs of the dog.

A dog found vicious pursuant to this title shall be kept in an outdoor enclosure on the property where the vicious dog is kept and maintained. The enclosure shall be designed in order to prevent the dog from escaping and shall afford the dog with an adequate exercise area as well as permit the animal adequate shelter from the elements, food, and water. While confined within the enclosure the dog shall not be tethered. A vicious dog shall at all times be

kept in said outdoor enclosure unless the dog is securely confined inside the dwelling of the owner or keeper or the dog is removed for the purposes of obtaining veterinary care, being sold or given away, complying with any provision of law or with a directive of the City Manager or his or her designee or the Animal Control Section. (Prior code § 3-9.47)

**6.08.130 Notice of disposal or escape of potentially dangerous or vicious dogs.**

A. The owner or keeper of any dog found to be potentially dangerous or vicious, pursuant to this title, shall notify the Animal Control Section immediately if the dog has escaped, is unconfined, has attacked another animal, has bitten a human being or has died.

B. The owner or keeper of a dog found to be potentially dangerous pursuant to this title, shall notify the Animal Control Section within forty-eight (48) hours if the dog is sold, transferred, or permanently removed from the place where the owner or keeper resided or kept the dog at the time the dog was determined to be potentially dangerous. The owner or keeper shall also inform the Animal Control Section of any new address where the dog is to be kept and of the name, address and telephone number of any new owner.

C. The owner or keeper of a dog found to be vicious shall notify the Animal Control Section at least forty-eight (48) hours prior to selling, transferring, or permanently removing the dog to a new location and shall also provide the Animal Control Section with the name, address and telephone number of the new owner of the dog and with the address of any new permanent location of the dog. (Prior code § 3-9.48)

**6.08.140 Unlawful to own, harbor or keep dog found by another jurisdiction to be potentially dangerous or vicious.**

No dog, which has previously been determined to be potentially dangerous or vicious after an administrative hearing by another jurisdiction, will be

allowed to be kept, owned or harbored in the city. Any notice by the Animal Control Section to remove, abate or destroy any dog owned, harbored, or maintained in violation of this section may be appealed to the City Manager or his or her designee by filing with the City Manager a written statement of the factual basis for the appeal within five working days of the receipt of said notice. (Prior code § 3-9.49)

**6.08.150 Posting of premises where potentially dangerous or vicious dogs are maintained.**

The owner or keeper of a dog which has been determined to be potentially dangerous or vicious pursuant to this title shall display on the property where the dog is kept a sign containing a visual and verbal warning that there is a potentially dangerous or vicious dog on the premises. The dimensions, colors, lettering, and graphics of the sign shall be established by the Animal Control Section. The sign shall be visible to the general public. The Animal Control Section shall make sure signs are available for purchase. (Prior code § 3-9.50)

**6.08.160 Owners of potentially dangerous or vicious dogs to permit compliance inspections.**

The owner or keeper of any dog determined to be potentially dangerous or vicious pursuant to this title shall consent to inspection of the property where the dog is kept and of the dog upon twenty-four (24) hours' written notice by the Officer-In-Charge of the Animal Control Section or his or her designee. Said inspection shall be set at a reasonable time and in a reasonable manner to verify full compliance with the requirements of Sections 6.08.120 and 6.08.150. (Prior code § 3-9.51)

**6.08.170 Insurance requirements for vicious dogs.**

The owner or keeper of any dog found to be vicious pursuant to this title shall present to the Animal Control Section proof that the owner or keeper has procured liability insurance in the

amount of at least one hundred thousand dollars (\$100,000.00) covering any damage or injury which may be caused by the vicious dog. Such liability insurance shall not be cancelled, unless the owner or keeper shall cease to own or keep the dog prior to expiration of that license. Coverage shall be evidenced by a certificate issued by the insurer. The owner shall also provide documentation from the insurer warranting that the insurer will provide the city with at least thirty (30) days' advance notice of cancellation. (Prior code § 3-9.52)

**6.08.180 Microchip and sterilization requirement for potentially dangerous and vicious dogs.**

The owner or keeper of any dog found potentially dangerous or vicious pursuant to this chapter shall, at his or her expense, have a microchip, assigned by the Animal Control Section, inserted into the dog for identification purposes. The identifying information listed on the microchip shall be noted in the city licensing files for that dog. A dog that has been found to be potentially dangerous or vicious pursuant to this chapter shall be sterilized at the owner's expense. (Ord. 12155 (part), 1999: prior code § 3-9.53)

**6.08.190 Keeping of vicious dogs by minors prohibited.**

No dog found to be potentially dangerous or vicious pursuant to this title shall be kept by an owner or keeper who is a minor. (Prior code § 3-9.54)

**6.08.200 Muzzling of vicious dog.**

In any case where a dog determined to be vicious pursuant to this title is outside an enclosure, except in cases where it is inside the dwelling of its owner or keeper, which dwelling is sufficient to contain the dog, or in custody of a veterinarian, the dog shall be securely and humanely muzzled and restrained with a harness and nylon leash sufficient to restrain the dog, having a minimum tensile strength of three hundred (300) pounds and not exceeding two feet in length, and shall be under the direct charge and

control of its owner or keeper. For the purposes of this section, a dog which is humanely muzzled shall be able to drink, breathe and pant freely. (Prior code § 3-9.55)

**6.08.210 Penalties for wilful violation of provisions regulating vicious dogs.**

It shall be a misdemeanor for any owner or keeper of a previously determined vicious dog to intentionally fail to comply with Sections 6.08.120, 6.08.130, 6.08.150, 6.08.160, 6.08.170, 6.08.180 and 6.08.200. Conviction of said offense shall be punished by a fine of one thousand dollars (\$1,000.00) and imprisonment in the county jail not to exceed one year. Upon conviction of said misdemeanor, the court shall order the vicious dog seized, declared a nuisance and destroyed unless the Animal Control Section sets forth cause why the dog should not be destroyed. Any person convicted in violation of this section shall be prohibited from owning, harboring or keeping any dog within the city for a minimum of three years. (Prior code § 3-9.56)

**6.08.220 Civil penalties for violations of provisions regulating potentially dangerous dogs or vicious dogs.**

A. Any violation of this chapter involving a potentially dangerous dog shall be punishable by a fine not to exceed five hundred dollars (\$500.00). Such fine may be assessed by the City Manager after a hearing conducted pursuant to this chapter or by a court of competent jurisdiction and shall be paid to the city for the purpose of defraying the cost of implementation of this chapter as it pertains to potentially dangerous or vicious dogs.

B. Any violation of this chapter involving a vicious dog shall be punishable by a fine not to exceed one thousand dollars (\$1,000.00). Such fine may be assessed by the City Manager after a hearing conducted pursuant to this chapter or by a court of competent jurisdiction and shall be paid to the city for the purpose of defraying the cost of implementation of this chapter as it pertains to potentially dangerous or vicious dogs. (Ord. 12155 (part), 1999: prior code § 3-9.57)

**6.08.230      Exemption for police dogs.**

This chapter does not apply to any dog owned by any government agency which is used in the performance of law enforcement duties. (Prior code § 3-9.58)

**6.08.240      Severability.**

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not effect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. (Prior code § 3-9.59)

**6.08.250      Removal from list of potentially dangerous dogs.**

If there are no additional instances of the behavior described in Section 6.08.010 within a thirty-six (36) month period from the date of designation as a potentially dangerous dog, the dog shall be removed from the list of potentially dangerous dogs. (Ord. 12155 (part), 1999)

**Title 7**

**(Reserved)**



## Title 8

### HEALTH AND SAFETY

#### Chapters:

- 8.02      Burglar Alarm Systems**
- 8.03      Hotel, Motel and Rooming House  
Operating Standards**
- 8.04      Commercial Building Security  
Requirements**
- 8.06      Explosives and Fireworks**
- 8.07      Polystyrene Foam Food Service Ware**
- 8.08      Food Handling Establishments**
- 8.09      Vehicular Food Vending**
- 8.10      Vandalism by Defacement of Property  
(Graffiti)**
- 8.12      Hazardous Materials**
- 8.14      Meat**
- 8.16      Milk and Milk Products**
- 8.18      Nuisances**
- 8.19      Wood-Burning Appliances**
- 8.20      Pay Telephones**
- 8.22      Residential Rent Adjustment Program**
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- 8.24      Property Blight**
- 8.26      Scrap Yard Abatement Procedures**
- 8.28      Solid Waste Collection and Disposal and  
Recycling**
- 8.30      Smoking**
- 8.32      Tobacco Product Distribution  
Restrictions**
- 8.34      Tobacco Product Vending Machines**
- 8.36      Swimming Pools**
- 8.38      Sanitation**
- 8.40      Miscellaneous Health and Safety  
Regulations**
- 8.42      Certified Unified Program Agency  
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- 8.44      Security for Events at the**

<b>Oakland-Alameda County Coliseum Complex</b>	
<b>8.46</b>	<b>Medical Cannabis</b>
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## Chapter 8.02

### **BURGLAR ALARM SYSTEMS\***

#### **Sections:**

- 8.02.000 Purpose.**
- 8.02.010 Definitions.**
- 8.02.020 Alarm registration and permits.**
- 8.02.030 Alarm system standards.**
- 8.02.040 Alarm users responsibilities.**
- 8.02.050 Alarm business responsibilities.**
- 8.02.055 Security alarm business licensing of alarm businesses and alarm installation companies.**
- 8.02.060 Administration.**
- 8.02.070 Alarm dispatch requests.**
- 8.02.071 Alarm dispatch cancellation requests.**
- 8.02.080 Appropriating public police services for private purposes subject to cost recovery fees.**
- 8.02.090 Appeals.**
- 8.02.100 Scope of police duty—Immunities preserved.**
- 8.02.110 Severability.**

#### **8.02.000 Purpose.**

The City regulates security alarm businesses to assure that responses to false alarms do not diminish the availability of police services to the general public, and to assure that residents who cannot afford or choose to not operate security alarm systems are not penalized for their condition or choice.

The intent of this Chapter is to encourage alarm businesses and alarm users to maintain the operational viability of security alarm systems, and to

\*Editor's note—Ord. No. 12969, §§ 3, 4, repealed and reenacted Chapter 8.02 in its entirety to read as herein set out. Formerly, Chapter 8.02, §§ 8 02 000 8 02 140 pertained to similar subject matter, and derived from prior code, § 5-21.00; Ord. No. 12501, adopted 2003, and Ord. No. 12509, adopted 2003.

significantly reduce or eliminate false alarm dispatch requests made to the Oakland Police Department.

The purpose of this Chapter is to provide for and promote the health, safety and welfare of the general public; not to protect individuals, or create (or otherwise establish or designate) any particular class or group of persons who will or should be especially benefited by the terms of this Chapter. This Chapter does not impose or create duties on the part of the City or any of its departments. The obligation of complying with the requirements of this Chapter, and any liability for failing to do so, is placed solely upon the parties responsible for owning, operating, monitoring, installing or maintaining security alarm systems.

(Ord. No. 12969, § 4, 7-28-2009)

#### **8.02.010 Definitions.**

"Alarm Administrator" means a person or persons designated by the Oakland Chief of Police to administer the City's security alarm program to issue citations and levy fees pursuant to this Chapter.

"Alarm Appeals Officer" means a person or persons designated by the Oakland Chief of Police to provide impartial judgment and determine whether fees that have been levied for false alarms are justified when a person appeals the assessment of those fees.

"Alarm business" means the business by an individual, partnership, corporation or other entity of selling, leasing, maintaining, servicing, repairing, altering, replacing, moving, installing, or monitoring an alarm system in an alarm site. Alarm businesses do not include persons doing installation or repair work solely on premises they own, lease, or rent where such work is performed without compensation of any kind (i.e., "do-it-yourselfers".)

"Alarm dispatch request" means communication to the police has been initiated by an alarm business (via police dispatch) indicating a security

alarm system has been activated at a particular alarm site and Police Department response is requested to that alarm site.

"Alarm installation company" means a person in the business of selling, providing, maintaining, servicing, repairing, altering, replacing, moving, or installing an alarm system at an alarm site.

"Alarm response manager (ARM)" means a person designated by an alarm business or installation company to act as a primary point of contact for the jurisdiction's Alarm Administrator.

"Alarm site" means a single fixed premises or location served by an alarm system or systems. Each unit, if served by a separate alarm system in a multi-unit building or complex, shall be considered a separate alarm site.

"Alarm system" means a device or series of interconnected devices, including but not limited to, systems interconnected with hard wiring or radio frequency signals, which are designed to emit and/or transmit a remote or local audible, visual or electronic signal indicating that an intrusion may either be in progress or being attempted at the alarm site. Alarm system does not include an alarm installed in a vehicle or someone's person unless the vehicle or the personal alarm is permanently located at a site.

"Alarm user" means any person, firm, partnership, corporation, or other entity who (which) uses an alarm system at a particular alarm site.

"Automatic voice dialer" means any electrical, electronic, mechanical, or other device capable of being programmed to send a prerecorded voice message (when activated or if self activated) over a telephone line, radio or other communication system, to the police department.

"Duress alarm" means a silent alarm signal generated by the manual activation of a device intended to signal a crisis requesting a police response.

"False alarm" means response to an alarm dispatch request where the responding police officer finds no reasonable evidence of the commission or attempted commission of a crime, or determines

the alarm activation is the result of mechanical failure, improper installation or maintenance, or alarm user negligence.

"Hold up alarm." See "Robbery alarm."

"Notice of non-compliance" is a formal notification by the alarm administrator to the alarm business of any violations of this Chapter.

"Oakland security alarm business license" is a license required to provide installation and/or monitoring services to alarm users in the City issued by the Police Department to an alarm business or installation company.

"OPD" means the City of Oakland Police Department.

"Panic alarm." See "Duress alarm."

"Person" means an individual, corporation, partnership, association, organization or similar entity.

"Robbery alarm" or "hold-up alarm" means a silent alarm signal generated by the manual activation of a device intended to signal a robbery is in progress or has just occurred.

"Subscriber" means an alarm user who is a customer of an alarm business.

"Unmonitored alarm system" means an alarm system that is not actively monitored by an alarm business and whose function it is to evoke police response solely by means of a generally audible and/or visible signal.

(Ord. No. 13015, § 3, 5-18-2010; Ord. No. 12969, § 4, 7-28-2009)

## **8.02.020      Alarm registration and permits.**

A. Police response to private alarm sites in the City is a privilege available only to those alarm users who have a current City alarm permit.

B. No alarm business providing monitoring service to security alarm sites in the City shall activate alarm monitoring service or initiate alarm dispatch requests relative to any alarm site in the City that is not properly registered in accordance with this Chapter.

C. Alarm permits are valid for one year.

D. Alarm permits are issued to a person or persons ("alarm user") having bona fide owner-

ship or control of an alarm site (i.e., home owner, business owner, renter, leaseholder, etc.) specifically for that alarm site or address. Alarm permits remain in the name(s) of the alarm user of record until a change of ownership or control of the alarm site occurs.

E. Alarm permits are valid only to the alarm site and alarm user; alarm permits are not transferable. No refund of a permit or permit renewal fee will be made. A new alarm site permit must be obtained whenever there is a change of ownership or control of an alarm site.

F. The initial permit application shall be given to the alarm user by the alarm installation company at the time of alarm installation. The application and fees shall be submitted by the alarm installation company to the alarm administrator (or designee) within 30 days of the installation date.

G. Registration information is determined by the alarm administrator and shall include, but not be limited to, the following:

1. Name and address of the alarm user (i.e., the person financially responsible for operation of the alarm system being registered).

2. Home, business, and cellular telephone number(s) of the alarm user.

3. Name, address, and telephone number of the alarm business providing monitoring service to the system.

4. Alternate telephone number for verification (i.e., secondary cell phone or other telephone designated by the alarm user).

5. Signature of the alarm user verifying that the information on the permit is factual, and agreement to pay the fees associated with false alarms.

H. Upon receipt of a completed application and fees, the alarm administrator (or designee) shall issue a security alarm permit number to the alarm user.

I. The security alarm permit number assigned to an alarm user remains the same for as long as the alarm user continuously maintains registration for the alarm site.

J. The alarm permit may be renewed under the following conditions:

1. The alarm site has no past-due fees.

2. The alarm user either updates his/her registration information or verifies that the current registration information is still correct.

3. The appropriate annual permit fee is paid.

K. The fee for a new alarm permit shall be collected by the alarm installation company and an alarm permit renewal fee shall be collected by the alarm administrator.

L. Renewal information and fees are submitted to the alarm administrator (or designee) on or before the initial permit anniversary date each year.

M. The rates for security alarm permit fees are listed in the City master fee schedule.

N. Any fee required to be paid by an alarm user under the provisions of this Chapter shall be deemed a debt owed by the alarm user to the City until it has been paid to the City.

O. Any fee required to be collected by an alarm business under the provisions of this Chapter shall be deemed a debt owed to the City by the business required to collect and remit such fee, if the alarm business has failed to take reasonable steps to collect the fee.

(Ord. No. 13015, § 3, 5-18-2010; Ord. No. 12969, § 4, 7-28-2009)

## **8.02.030      Alarm system standards.**

A. It shall be unlawful for any person to install or sell an alarm system which upon activation emits a sound similar to sirens in use on emergency vehicles or for civil defense purposes. This action shall not apply to sirens mounted inside a building which cannot be clearly heard from outside the building.

B. Operating an audible alarm system that does not shut off (by manual or automatic operation) within 15 minutes from the time of activation is unlawful. If the alarm system has an automatic shutoff with a rearming phase, the rearming phase

must be able to distinguish between an open and a closed circuit, and if the circuit is broken the system shall not rearm.

C. No automatic voice dialing device shall be used to initiate an alarm dispatch request.

D. All alarm systems shall have a standby backup power supply that will automatically power the operation of the alarm system for a minimum of four hours, should any interruption occur in power to the alarm system. The transfer of power from the primary source to the backup source must occur in a manner which does not activate the alarm.

E. Alarm businesses shall not install a device for activating duress, hold-up, or panic alarms in commercial sites that have a single action, non-recessed button.

(Ord. No. 12969, § 4, 7-28-2009)

#### **8.02.040      Alarm users responsibilities.**

A. Each alarm user is annually responsible for:

1. Registering the alarm system by obtaining an alarm permit;
2. Paying the permit fee; and
3. Providing current registration information.

B. Alarm users who operate an alarm without a permit shall be charged a non-compliance remediation fee (listed in the master fee schedule.)

C. Each alarm user is responsible for assuring that the alarm system is used properly and in accordance with the manufacturer's directions and the law. Inherent in this responsibility is:

1. Assuring that all persons with access to the alarm system are properly trained on correct use of the system and are authorized to cancel accidental activations, and

2. Assuring that procedures and practices are followed that minimize the risk of false alarms.

D. Each alarm user is responsible for keeping the alarm system properly maintained and in good working order.

E. Each alarm user is financially responsible for paying service fees when police respond to false alarms from the alarm site (see Section 8.02.080).

F. Each alarm user is responsible for providing the Police Department with access to the structure or premises, within 45 minutes of the alarm dispatch request so that the alarm may be verified. Access may be granted by the alarm user or designated responder.

G. Failure to meet the responsibilities listed in this Section may lead to revocation of an alarm permit and loss of the privileges associated with that permit.

(Ord. No. 13015, § 3, 5-18-2010; Ord. No. 12969, § 4, 7-28-2009)

#### **8.02.050      Alarm business responsibilities.**

The duties of the alarm business shall be to:

A. Designate one individual as the Alarm Response Manager (ARM) for the business. The individual designated as the ARM must be knowledgeable of the provisions of this Chapter and respond to requests from the Alarm Administrator. The name, contact number, and e-mail address of the ARM shall be provided to the Alarm Administrator.

B. Provide the alarm administrator (or designee) with an electronic data file and hard copy file with name, complete address and account number of each new alarm user in the City no later than the last day of each month.

C. Notify the alarm administrator by the 15th day of each month of all their alarm users within the City that have discontinued their alarm service with the business in the previous month. For each discontinued alarm user that is not listed on the notification, the alarm business shall pay a fee as set forth in the master fee schedule. Fees shall be waived when the alarm business provides credible evidence that it has a valid contract with the respective alarm user, or that the alarm user discontinued service without formal termination.

D. Comply with California licensing requirements, and maintain a valid copy of the State of California Department of Consumer Affairs alarm company and/or alarm company employee permit with the alarm administrator.

E. Ensure that installation of all new alarm components adhere to manufacturer's installation guidelines.

F. Install alarm systems and alarm system components appropriate for the location; be available to maintain the system in good working order, and take reasonable measures to prevent the occurrence of false alarms.

G. Submit an alarm permit form, the correct fee and required documentation on behalf of the alarm user to the alarm administrator (or designee) within 30 days of the installation date of a new alarm system. Alarm businesses and alarm installation companies shall hold fee revenues received from customers in trust for the City.

H. Provide alarm users with alarm ordinance and false alarm fee information, with each new installation.

I. Provide accurate and complete instruction to the alarm user on the proper use of its alarm system. Specific emphasis shall be placed on the avoidance of false alarms. Each business that sells alarm systems, whether or not it is an alarm business as defined in this Chapter, is similarly responsible for instructing the buyer of the alarm system on the proper use of their system.

J. Institute quality control procedures to track and prevent the occurrence of false alarms for the first 30 calendar days after installing a new alarm system.

K. Obtain written documentation (with newly installed alarm systems) from alarm users that they have been trained to operate the new system.

L. Provide group training to commercial users for installations, including false alarm prevention.

M. Not sell or transfer an alarm contract during the warranty period, without transfer of the existing warranty or insuring the warranty remains in force for the warranty period.

(Ord. No. 13015, § 3, 5-18-2010; Ord. No. 12969, § 4, 7-28-2009)

#### **8.02.055 Security alarm business licensing of alarm businesses and alarm installation companies.**

Security alarm business licenses are independent and only affect police response to alarm re-

quests. Alarm businesses and installation companies are also required to possess a valid City business permit and tax license in accordance with Chapters 5.02 and 5.04. The requirements imposed by this Section are in addition to the business license fee and all other fees levied by the City. The issuance of a security alarm business license does not create a contract between the City and an alarm business or alarm installation company, nor does it create any duty or obligation, either expressed or implied, on the Police Department to respond to any alarm activation.

A. Every alarm business and alarm installation company shall obtain an Oakland Security Alarm Business License from the Police Department. Only alarm businesses and installation companies in complete compliance with the provisions of this Chapter will be issued a license. There is no fee to obtain this license.

B. The alarm installation company shall provide the name, address and phone number of any alarm business they are using to monitor their alarm sites within the City, and alarm businesses shall do the same for alarm installation companies that use their monitoring services within the City.

C. The Police Department may not respond to any alarm dispatch request from any alarm business that does not possess a current, valid Oakland security alarm business license issued pursuant to this Section.

D. The Alarm Administrator shall notify all known alarm users subscribing to an unlicensed alarm business that the company is unlicensed and the Police Department will no longer respond to the user's alarms.

(Ord. No. 12969, § 4, 7-28-2009)

#### **8.02.060 Administration.**

A. The Alarm Administrator reserves the right to conduct an evaluation and analysis of the effectiveness of this Chapter and identify and implement system improvements as warranted.

B. Alarm business and alarm user proprietary information furnished and secured pursuant to the ordinance codified in this Chapter shall be

confidential and shall not be subject to public inspection. It is hereby declared that this information is critical to the safety and security of the alarm user and law enforcement personnel, and that the public interest served by not disclosing said information to the public significantly outweighs the public interest served by disclosing said information.

C. The alarm administrator shall consider an alarm business in non-compliance failure when the business has failed to comply with the provisions of this Chapter.

D. When an alarm business is deemed to be in noncompliance by the alarm administrator, the alarm administrator shall send the alarm business a "notice of noncompliance" with the following information:

1. The Section(s) of the ordinance from which this Chapter derives to which the alarm business has failed to comply;

a. The specific remedy for the compliance failure;

b. The date by which the alarm business must come into compliance; and

c. The specific action that will be taken by the department, including the date action shall be taken.

2. Unless otherwise specified in this Chapter, the notice of noncompliance shall give the alarm business 30 days to come into compliance with the specified Section(s).

3. Failure to come into compliance, within the time specified in the notice of noncompliance, will immediately invoke any applicable fees or penalties.

(Ord. No. 12969, § 4, 7-28-2009)

#### **8.02.070      Alarm dispatch requests.**

A. Alarm dispatch requests shall be made only after the alarm business has attempted to make two calls to different phone numbers where the alarm user or their designee can be reached to verify whether police or medical personnel response is needed.

B. Alarm dispatch requests may include, but are not limited to, the following information:

1. Alarm site permit number.
2. Location of the alarm activation.
3. Type of alarm activation.

C. Alarm dispatch requests made to the police department must accurately indicate the type of alarm activation that is the proximate cause for the alarm dispatch request.

D. Any person who violates the provisions of this Section is subject to cost recovery fees for the improper activation of the security alarm system.  
(Ord. No. 12969, § 4, 7-28-2009)

**8.02.071      Alarm dispatch cancellation requests.**

- A. An alarm dispatch request may be canceled only by the alarm business initiating the request prior to the point the responding police officer reports arrival at the alarm site.
- B. Alarm dispatch requests may be canceled in accordance with the procedures established by OPD.
- C. Alarm dispatch requests canceled prior to the police officer's arrival on scene are not subject to false alarm service fees.

Dispatch requests and subsequent police response to a robbery alarm (as defined in this Chapter) may not be canceled by the alarm user. In every case, at least one officer shall respond to affirm that the alarm user is not under duress of any kind.

(Ord. No. 12969, § 4, 7-28-2009)

**8.02.080      Appropriating public police services for private purposes subject to cost recovery fees.**

- A. Causing police to engage in a false alarm response constitutes an appropriation of public police services for private purposes and is subject to a cost recovery fee.
- B. The alarm user is responsible for payment of his permit and cost recovery fees.
- C. When, in the opinion of the responding police officer(s), an alarm dispatch request can be reasonably associated with an actual or attempted criminal offense at the involved alarm site, the alarm is valid and the response is considered a basic police service not subject to cost recovery fees.
  - 1. The following actions constitute use of an alarm system that improperly appropriates police services for private purposes and are subject to cost recover fees:
    - 2. Activating an alarm system with the intent to report:
      - a. Suspicious circumstances;
      - b. Any non-criminal incident; or

c. A need for fire, medical or other non-police services; or

D. When, in the opinion of the responding police officer(s), an alarm dispatch request can be reasonably attributed to an earthquake, hurricane, tornado or other unusually violent act of nature, a cost recovery fee shall be not assessed.

E. When, in the opinion of the responding police officer(s), an alarm dispatch request cannot be reasonably attributed to the conditions described in Subsections C. or D. of this Section, the incident is a false alarm and the police officer response is considered an appropriation of public police services for private purposes that is subject to cost recovery.

F. When the responding officer(s) is (are) unable to determine if an alarm is valid or false because of inaccessibility of the alarm site, the response is presumed to be a false alarm response, and is subject to cost recovery fees (see Section 8.02.010).

G. The cost recovery fees for appropriating public police services for private purposes are listed in the City master fee schedule.

H. Cost recovery fees are assessed based on the response requested. For example, an alarm dispatch request reporting a robbery alarm is subject to the false alarm penalty fee applicable to robbery false alarm responses, even if the alarm activation should properly have been reported as a burglary alarm.

I. All fees are due and payable upon receipt of invoice.

(Ord. No. 12969, § 4, 7-28-2009)

**8.02.090      Appeals.**

Cost recovery fees may be appealed to the alarm appeals officer, as follows:

A. The appeal process is initiated by the alarm user sending a letter to the alarm appeals officer requesting that the cost recovery fee be waived (an appeal conference,) specifying the reasons for the appeal, and submitting the scheduled appeal fee. This letter and appeal fee must be received by the alarm appeals officer within 30 calendar days after mailing of the initial invoice to the alarm user.

B. Service fees may be appealed only on the grounds that the incident cited as the basis for the service fee was, in fact, not a false alarm response. The alarm user must (in his or her letter requesting an appeal) describe detailed, credible evidence in his/her possession that supports the contention that the involved incident was a valid alarm, as described in Subsections 8.02.080 C. or D.

C. The alarm appeals officer may reject requests for appeals that are not supported by detailed, credible evidence of criminal activity or for one of the listed reasons in the City false alarm appeal guideline form by the appellant. Notice of rejection of a request for this initial appeal shall be sent to the appellant in writing within ten working days following receipt of the appeal request by the alarm appeals officer.

D. Whenever the first appeal is denied, the alarm user may then file a second written appeal requesting an in-person hearing.

1. This request must be received within 30 calendar days from the mailing of the denial of the first level of appeal.

2. All hearings shall be heard by an appeals officer appointed by the Chief of Police.

3. The alarm administrator shall serve as the City's representative in these hearings.

E. The filing of a request for an appeal conference with an alarm appeals officer sets aside the pending service fee or related service suspension/revocation in appeal until the alarm appeals officer either rejects the appeal request, as described in Subsection A. of this Section, or renders a final decision.

F. The alarm appeals officer, on receipt of a request for a hearing, shall conduct an appeal conference within 30 working days after receiving the appeal request. The alarm administrator may also contact the appellant and offer a resolution or modification of the cost recovery fees prior to the scheduled hearing.

G. At the conference, the alarm administrator shall present evidence on the City's behalf supporting the case that the applicable cost recovery fees are based on police response to an actual false

alarm. The alarm appeals officer shall consider this evidence and any information presented by any interested person(s).

1. Because false alarm responses are based on the professional judgment of the responding police officer using the facts known to the officer at the time of the incident, the burden of proof in appeals is on the appellant.

2. The appellant must establish with credible evidence that facts known to, but not considered by the police officer, existed at the time of the incident, that would have lead a reasonable police officer to the conclusion that the incident involved was a valid alarm, as described in Subsections 8.02.080 C. or D.

3. The alarm appeals officer shall make his/her decision based on the presence of such facts and conclusions.

H. The alarm appeals officer shall render a decision and notify the appellant and the alarm administrator thereof in writing within 20 working days after the appeal conference is held. The alarm appeals officer may:

1. Affirm,
2. Waive (in whole or in part),
3. Cancel, or
4. Modify

the penalty fees or actions that are the subject of the appeal.

I. If the alarm appeals officer affirms or modifies the amount of a service fee due, that amount becomes immediately due and payable.

J. Appeal decisions are reviewed and approved by the City Administrator prior to becoming official. The official decision of the alarm appeals officer is final, and no further appeals or remedies are available.

(Ord. No. 12969, § 4, 7-28-2009)

## **8.02.100 Scope of police duty—Immunities preserved.**

- A. The issuance of an alarm permit does not create a contract between the City and any alarm user, alarm business, or alarm installation com-

pany, nor does it create any duty or obligation, either expressed or implied, on the police department to respond to any alarm activation.

B. Any and all liability and/or consequential damage or loss resulting from the failure of the police department to respond to an alarm dispatch request is hereby disclaimed and governmental immunity as provided by law if fully retained.

By applying for an alarm permit, the alarm user acknowledges that police response to alarm activation is influenced by the availability of officers, priority of current calls for service, traffic and/or weather conditions, and staffing levels.

(Ord. No. 12969, § 4, 7-28-2009)

#### **8.02.110      Severability.**

If any section, subsection, clause sentence, or phrase of the ordinance codified in this Chapter is for any reasons held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance codified in this Chapter. The City Council hereby declares that it would have passed the ordinance codified in this Chapter, any section, subsection, sentence, clause or phrase thereof without said sections, subsections, sentences, clauses, or phrases.

(Ord. No. 12969, § 4, 7-28-2009)

## Chapter 8.03

### **HOTEL, MOTEL AND ROOMING HOUSE OPERATING STANDARDS**

#### **Sections:**

- 8.03.010 Title.**
- 8.03.020 Purpose.**
- 8.03.030 Scope.**
- 8.03.040 Definitions.**
- 8.03.050 Management practices.**
- 8.03.060 Inspection of records and facilities.**
- 8.03.070 Property security.**
- 8.03.080 Housekeeping conditions in excess of normal "wear and tear."**
- 8.03.090 Room furnishings.**
- 8.03.100 Exterior of property.**
- 8.03.110 Common areas.**
- 8.03.120 Criminal and nuisance activity.**
- 8.03.130 Duplicated regulation.**
- 8.03.140 Separate offenses.**
- 8.03.150 Enforcement by alternative methods of code enforcement.**
- 8.03.160 Abatement—Imminent danger.**
- 8.03.170 Recovery of abatement costs.**

#### **8.03.010 Title.**

These regulations shall be known as hotel, motel and rooming house operating standards.  
(Ord. 12136 § 2 (part), 1999)

#### **8.03.020 Purpose.**

The general purpose of these regulations are to promote the health, safety, comfort, convenience, prosperity, and general welfare by requiring that businesses that offer shelter to visitors, transient guests, and other residents provide a minimum level of cleanliness, quality, and security.  
(Ord. 12136 § 2 (part), 1999)

#### **8.03.030 Scope.**

These provisions shall apply to businesses such as hotels, motels, and rooming houses which provide shelter, furniture, linens, and housekeeping services, etc. within the guest room(s) and throughout the property. These provisions shall not apply to permanent residential facilities wherein the owner is responsible for providing the shelter, but does not provide furniture, linens, or housekeeping services or with residential care facilities as defined in Oakland Planning Code (OPC) Section 17.10.210.

(Ord. 12136 § 2 (part), 1999)

#### **8.03.040 Definitions.**

For the purposes of this chapter certain words and phrases are defined, and certain provisions shall be construed, as herein set out unless it shall be apparent from the context that they have a different meaning:

"Hotel" means any facility as defined in Oakland Municipal Code (OMC) Section 4.24.020. "Rooming house" means any rooming house residential facility as defined in Section 17.10.690 that houses a permanent residential activity (OPC Section 17.10.110) or semi-transient residential activity (OPC Section 17.10.120)  
(Ord. 12136 § 2 (part), 1999)

#### **8.03.050 Management Practices.**

A. Room Rates. Room rates shall be posted in a prominent location in the guest rooms. Posting room rates in the reception area is strongly encouraged. Guests shall not be charged in excess of posted rates. A range of rates is acceptable.

B. Management Accessibility. A property management representative shall be accessible, in person or by telephone, on a twenty-four (24) hour basis. (Also see OMC Section 5.34.051.)

C. Guest Complaints. The telephone number and address for the City Building Official shall be posted in a prominent location in the guest rooms. Posting in the reception area is strongly encouraged.

(Ord. 12136 § 2 (part), 1999)

**8.03.060     Inspection of records and facilities.**

A. Other Records and Hotel Facilities Subject to Inspection, Review and Audit. Upon a showing of probable cause therefor by the Director of Finance or his or her designee, or by any police officer, code compliance, fire or zoning inspector of the City, the City Attorney shall issue an administrative subpoena compelling the inspection of rooms and facilities, and/or the production of guest registers and other records necessary to determine compliance with all applicable regulations, including but not limited to building, fire, health, occupancy, and blight codes, and to verify collection and payment to the City of all taxes owed.

B. Independent Agency Inspections. The City shall conduct annual or bi-annual inspections of all businesses subject to the regulations specified in this chapter. The City Manager or designee is authorized to promulgate administrative regulations to allow the acceptance of satisfactory ratings conferred by recognized, independent agencies in lieu of a City inspection, provided that the independent inspection is based upon performance and facility standards equal to or in excess of the standards commemorated in this chapter. (Ord. 12136 § 2 (part), 1999)

**8.03.070     Property security.**

A. Guest Room Locks. On or after September 10, 1999, the following is required:

Install and maintain an operable dead bolt lock on each main swinging entry door of a dwelling unit. The dead bolt lock shall be installed in accordance with the manufacturer's specifications and shall comply with applicable state and local codes including, but not limited to, those provisions relating to fire and life safety and accessibility for the disabled. When in the locked position, the bolt shall extend a minimum of  $\frac{13}{16}$  of an inch in length beyond the strike edge of the door and protrude into the doorjamb.

This section shall not apply to horizontal sliding doors. Existing dead bolts of at least one-half inch in length shall satisfy the requirements of this section.

Existing locks with a thumb-turn deadlock that have a strike plate attached to the doorjamb and a latch bolt that is held in a vertical position by a guard bolt, a plunger, or an auxiliary mechanism shall also satisfy the requirements of this section. These locks, however, shall be replaced with a dead bolt at least  $\frac{13}{16}$  of an inch in length the first time after July 1, 1999 that the lock requires repair or replacement.

B. Viewports. Each door shall have a viewport or window convenient to the door. Properties with fire resistive construction rated ("fire rated") doors, at the time of the adoption of the ordinance codified in this chapter, are exempt from this provision to the extent that installing a viewport would negatively affect the fire rating.

C. Connecting Doors. Each door connecting two guest units that share a common wall shall be equipped with a functional deadbolt lock.

D. Window Locks. All windows designed to be opened shall have an operable window security or locking device. Louvered windows, casement windows, and all windows more than twelve (12) feet vertically from the ground are excluded from this subdivision, except where the window is within eight (8) feet horizontally of a roof or any other platform area.

E. Exit Doors. See Section 15.08.240 of the Oakland Municipal Code.  
(Ord. 12136 § 2 (part), 1999)

**8.03.080     Housekeeping conditions in excess of normal "wear and tear."**

(Also see Chapter 15.08 "Housing Code")

A. Mattress Condition/Cleanliness. Mattresses shall be free of stains, holes, rips or odors in excess of normal wear and tear, and maintained in a sanitary, nondefective condition (e.g., without broken springs, indentations, sags, etc.).

B. Linen Condition/Cleanliness. Where provided by management, linens shall be free of stains, holes, rips or odors in excess of normal wear and tear and shall be cleaned at change of occupancy or at least once a week when occupancy does not

change. Linens shall be cleaned in hot water at least 43°C (110°F) for a minimum of twenty-five (25) minutes.

C. Bathroom Condition/Cleanliness. Bathroom fixtures (e.g., toilet, bathtub, sink, mirror) shall be maintained without significant cracks, chips, or stains. Floors shall be washed with hot water and a sanitizer at change of occupancy or at least once a week when occupancy does not change. Daily cleaning schedules shall be maintained in the manager's office.

D. Carpet Condition/Cleanliness. Carpeting shall be free of stains, holes, rips or odors in excess of normal wear and tear, and maintained in a sanitary, nondefective condition.

B. Floor Condition/Cleanliness. Floor surfaces shall be made of nonabsorbent material. All surfaces and tile grouting shall be maintained without cracks, rips or missing elements.

F. Wall Condition/Cleanliness. Wall surfaces shall be maintained without spots, stains, flakes, chips, holes, etc. and maintained in a clean and sanitary condition.

G. Mold/Mildew. All surfaces, including carpeting and flooring, and fixtures shall be free from mold, mildew or bubbling conditions.

H. Plumbing. See OMC Chapter 15.04.

I. Electrical Equipment. For the purposes of this section, electrical equipment shall include furniture items installed by management, including televisions, lamps, etc. See OMC Section 15.08.270.

J. Water Leakage/Water Stains. All fixtures shall be maintained without leaks or drips. Water damage shall be immediately repaired.

K. Furniture Condition. All furniture items provided by management shall be maintained in proper working order.

L. Condition of Shades/Drapery/Blinds. Shades, draperies, blinds, etc. shall be free of stains, holes, rips or odors in excess of normal wear and tear, and maintained in a sanitary, nondefective condition.

M. Vector Control. The premises shall be kept clean in every part and free from garbage, rubbish, rodents, vermin and other offensive matter.

(Ord. 12136 § 2 (part), 1999)

### **8.03.090 Room furnishings.**

A. Privacy. Privacy coverings such as shades, draperies or blinds shall be appropriately hung to cover all windows.

B. Room Light. An active, fully functional light switch shall be located at the train entry to the guest unit.

C. Bathroom Fixtures. Private bathrooms shall have a functioning water closet (e.g., toilet), lavatory (e.g., sink), shower receptor and/or bathtub. This should not be construed to prevent a sink from being placed in a guest room that does not have full bathroom facilities.

D. Shared Bathroom Facilities. Guests in facilities with shared bathrooms shall have access to a functioning water closet (e.g., toilet), lavatory (e.g., sink), shower receptor and/or bathtub. Showering or bathing areas shall be able to be securely locked from the inside. Separate facilities shall be provided for men and women or the facilities shall be able to be locked for individual use. Signs shall be posted indicating that "Children under 12 years of age who use this shared bathroom should be accompanied by an adult at all times."

E. Hot/Cold Water. Hot and cold running water shall be provided for all plumbing facilities.

F. Telephone Rates. Telephone rates shall be posted in every room that has a private phone and be adhered to by management.

G. Emergency Telephone Access. Guests shall have twenty-four (24) hour emergency access to a telephone (a payphone is adequate) on the property. However, such telephone shall not be made generally available to the public so as to become a public nuisance.

H. Clothes Storage. Space shall be provided in good working order for hanging clothes and/or storing personal belongings.

(Ord. 12136 § 2 (part), 1999)

### **8.03.100 Exterior of property.**

A. Windows. Exterior window glass shall be without cracks, chips or holes.

B. Exterior Lighting. The exterior of the property, including adjacent public sidewalks and park-

ing lots under the control of the operator, shall be illuminated during all hours of darkness during which the property is open for business in a manner so that persons standing in those areas at night are identifiable from the street. However, the required illumination shall be placed so as to minimize interference with the quiet enjoyment of nearby residents of their property.

C. Painting. See OMC Chapter 8.24 "Property Blight."

D. Landscaping. All areas on the property designated for landscaping, i.e., lawns, planter beds, and other unsurfaced locations, shall be maintained with properly trimmed living plant materials and without collecting litter or debris.

E. Directional Signs. Directional signs shall be posted as appropriate to ensure that emergency personnel can find guest rooms in a timely manner.

F. Exterior Trash/Garbage Storage. All containers used for the storage of trash, garbage, or recycled materials and placed on the exterior of the building(s) shall be maintained in a locked and screened enclosure. Also See OMC Chapter 8.24 "Property Blight" and OMC Section 15.08.230.  
(Ord. 12136 § 2 (part), 1999)

#### **8.03.110 Common areas.**

A. Elevators. Guest service elevators need to be fully functional and pass appropriate agency inspections. The name and telephone of the inspection agency shall be posted in all of the elevators. Elevators shall be operational on a twenty-four (24) hour-a-day basis (as of January 1, 2000).

B. Hallway Lighting. Any lobby area or other public space shall be maintained in a sanitary condition, free of garbage or debris.

(Ord. 12136 § 2 (part), 1999)

#### **8.03.120 Criminal and nuisance activity.**

A. Nuisance Activity. The operation of the property shall not result in repeated nuisance activities on the property or contribute to nuisance activities in close proximity to the property, including but not limited to disturbance of the peace,

illegal drug activity, prostitution, public drunkenness, drinking in public other than at a licensed facility, harassment of passers by, gambling, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, illegal parking, excessive loud noises, especially in the late night or early morning hours, traffic violations, curfew violations, lewd conduct, or police detentions and arrests.

B. Graffiti. All graffiti shall be removed on a continuous basis within forty-eight (48) hours of application.

C. Litter. Litter shall be removed daily from the premises, including adjacent public sidewalks and all parking lots under control of the operator. These areas shall be swept or cleaned, either mechanically or manually, on a weekly basis to control debris.

(Ord. 12136 § 2 (part), 1999)

#### **8.03.130 Duplicated regulation.**

Whenever any provisions of this chapter and any other provision of law, whether set forth in this code, or in any other law, ordinance, or resolution of any kind, imposes overlapping or contradictory regulations, or contains restrictions covering any same subject matter, that provision which is more restrictive or imposes higher standards shall control, except as otherwise expressly provided in these regulations.

(Ord. 12136 § 2 (part), 1999)

#### **8.03.140 Separate offenses.**

Each violation of this chapter shall constitute a separate offense.

(Ord. 12136 § 2 (part), 1999)

#### **8.03.150 Enforcement by alternative methods of code enforcement.**

Any violation of this article may be prosecuted as a misdemeanor, may be charged as a civil penalty or an infraction, or may be pursued as a violation of the Chapter 17.157 Deemed Approved Hotel Regulations. Additionally, the use of the property may be encumbered, as authorized

by the Oakland Municipal Code, Chapter 1, Articles 6, 7 and 8. Enforcement action specifically authorized by this article may be utilized in conjunction with, or in addition to, any other statutory, code, administrative or regulatory procedure applicable to the regulation of buildings, structures, or property. In addition, nothing in this article shall be interpreted to preclude or limit the City from seeking injunctive or other judicial relief.

(Ord. 12136 § 2 (part), 1999)

**8.03.160 Abatement—Imminent danger.**

A. Any condition which is reasonably believed to be imminently dangerous to the life, limb, health or safety of the occupants of the property or to the public, upon reasonable notice provided the owner or responsible person, may be immediately abated by the Fire Marshal and/or the Building Official or their designees.

B. Actions taken to abate imminently dangerous conditions may include, but are not limited to, repair or removal of the condition creating the danger and/or the restriction from use of occupancy of the property on which the dangerous condition exists or any other abatement action determined by the Fire Marshal or Building Official to be necessary. In the event use of occupancy is restricted, the owner or his or her agent shall discontinue the use within the time prescribed by the Fire Marshal or Building Official after receipt of such notice.

C. If entry onto property and access to rooms or units constituting an imminently dangerous condition in violation of this article is denied the Building Official and/or the Fire Marshal by the owner of the property or his or her agent, the Building Official and/or the Fire Marshal may seek a court order and/or inspection and abatement warrant from a court of competent jurisdiction to authorize the immediate abatement of the imminently dangerous conditions.

(Ord. 12136 § 2 (part), 1999)

**8.03.170 Recovery of abatement costs.**

Costs for any abatement performed by, or on behalf of, the City, including the cost of extraordinary police services provided, shall be recoverable by the City.

Costs incurred in relocating occupants of the property shall be recovered by the City pursuant to the provisions of Chapter 15.08 Oakland Housing Code and the provisions of the City's relocation assistance program.

(Ord. 12136 § 2 (part), 1999)

## Chapter 8.04

### COMMERCIAL BUILDING SECURITY REQUIREMENTS

#### Sections:

- 8.04.010 Enclosing car lots.**
  - 8.04.011 Enclosing off street parking when businesses are closed.**
  - 8.04.020 Commercial building—Security requirements—Exemptions.**
  - 8.04.030 Commercial building—Security enforcement.**
  - 8.04.040 Commercial building—Responsibility for security.**
  - 8.04.050 Notification to person responsible.**
  - 8.04.060 Right of entry.**
  - 8.04.070 Burglary prevention—Exterior accessible openings.**
  - 8.04.080 Front doors—Security measures—Locking devices.**
  - 8.04.090 Rear, side and basement doors—Security measures—Locking devices.**
  - 8.04.100 Roof doors—Security measures—Locking devices.**
  - 8.04.110 Glass windows, side or rear—Security measures—Locking devices.**
  - 8.04.120 Accessible transoms—Security measures—Locking devices.**
  - 8.04.130 Roof openings—Security measures—Locking devices.**
  - 8.04.140 Burglary prevention—Intrusion detection devices.**
  - 8.04.150 Appeal from intrusion detection device requirements.**
  - 8.04.160 Enforcement by citation method.**
- 8.04.010 Enclosing car lots.**

It is unlawful for any person to establish, operate or maintain, or cause to be established, oper-

ated or maintained, any new or used car lot, or rent-a-car or lease-a-car lot, unless the same shall conform to the following:

A. On all sides not contiguous to a building or other barrier, the lot shall be surrounded by a metal chain or by a fence or barricade approved by the Police Department.

B. Any chain so installed shall be of standard metal links. The metal shall be not less than three-sixteenths inch in diameter. The chain shall run through, or be securely attached to, substantial posts of metal, concrete or wood, embedded in the ground with concrete and placed at such intervals from one another as to adequately support the chain. The height of the chain shall be not less than eighteen (18) inches nor more than thirty-six (36) inches above the ground level.

C. Each opening in the chain or fence which is used for the ingress or egress of motor vehicles shall be secured by a substantial padlock or other approved locking device whenever the lot is unattended.

Provided, however, any violation of the provisions of this section shall not mitigate the offense of stealing a vehicle from such lot; nor shall such violation be used to effect a recovery in any civil action for the theft of such vehicle, or the issuance thereon, or have any other bearing upon any civil action.

(Prior code § 3-12.07)

**8.04.011 Enclosing off street parking when businesses are closed.**

It is unlawful for any person to establish, operate or maintain, or cause to be established, operated or maintained, any off street private or public parking lot or parking facility having more than ten allotted parking spaces, in the areas identified in subparagraph G below, unless the same shall conform to the following:

A. Each opening to the lot used for the ingress or egress of motor vehicles shall be secured by a chain or other approved barricade and a substantial padlock or other approved locking device within

one hour after the close of business and shall remain secured until one hour prior to the opening of business;

B. Any chain so installed shall be of standard metal links. The metal shall be not less than three-sixteenths inch in diameter. The chain shall run through, or be securely attached to, substantial posts of metal, concrete or wood, embedded in the ground with concrete and placed at such intervals from one another as to adequately support the chain. The height of the chain shall be not less than eighteen (18) inches nor more than thirty-six (36) inches above the ground level;

C. If an alternate type of barricade is installed, it shall be situated in such a manner as to prevent the ingress and egress of vehicles. Such barriers include, but are not limited to, "hole and post" constructions, metal gates, and swinging metal bars;

D. The perimeter of the off street private or public parking area shall also be secured in such a fashion as to prohibit vehicles from gaining access to the property. However, pedestrian access points meeting Americans with Disabilities Act (ADA) criteria shall be located at convenient access points;

E. A parking lot owner may extend the lot's operating hours to permit use by a nearby business (subletting business) when said business has entered into a valid, written contract for use of the lot after the owner's closing hours. Such contracts shall include language requiring the authorized subletting business to secure the parking lot within one hour after the close of the subletting business. All such contracts shall be filed with the Traffic Operations Section of the Oakland Police Department (455—7th Street, 1st floor, Oakland, CA 94607-3985). Owners of such parking lots shall post and maintain clearly visible and legible signs stating the name(s) of the businesses authorized to use the lot after the owner's business hours:

F. Any violation of this section shall be enforced by the citation method provided in Section 8.04.160 of this code;

G. This section shall apply in the following areas: In eastern Oakland the area located be-

tween the City of San Leandro border and Fruitvale Avenue; north up to and including MacArthur Boulevard; and south to the estuary. All areas below (south of) Interstate 880 for the length of the City of Oakland and those portions of the western section of the City bounded by San Francisco Bay and the estuary to the west, the City of Emeryville and West MacArthur Boulevard to the north, and Harrison Street, transitioning to and including Lakeside Drive, and finally transitioning to Peralta Creek as the eastern boundary, and Interstate 880 as the southern boundary.

(Ord. 12390 § 1, 2001)

#### **8.04.020 Commercial building—Security requirements—Exemptions.**

All existing and future buildings in the City used by any person for the purpose of conducting, managing, or carrying on any business, with the exception of those hereinafter described, shall, when unattended, be so secured as to prevent unauthorized entry, in accordance with specifications for physical security of exterior accessible openings as provided in Sections 8.04.070 through 8.04.140. A commercial building shall be considered unattended when not occupied by a watchman, maintenance personnel, or other authorized persons during the period that premises are closed to business. Any building used for Group "A" public assembly occupancy, as defined in the Oakland Building Code, as well as those buildings used for Group "H" occupancy of the type requiring exit doors to be equipped with

panic hardware locks, shall be exempt from the provisions hereof relating to exterior doors. Those buildings used for Group "E," "I," "R-1," "R-3," and "U" occupancy shall be exempt from the provisions hereof. (Ord. 11937, 1996: prior code § 3-12.08)

#### **8.04.030 Commercial building—Security enforcement.**

The Chief of Police is authorized and directed to administer and enforce the provisions of this code relating to physical security requirements for commercial buildings in the city. (Prior code § 3-12.09)

#### **8.04.040 Commercial building—Responsibility for security.**

The responsibility for compliance with the specifications set forth in Sections 8.04.070 through 8.04.140 concerning physical security for exterior openings of buildings used for business purposes and subject to the provisions hereof shall be as follows:

A. When said commercial business does not share the use of exterior openings with any other business establishment, the person operating said business shall be responsible.

B. When two or more businesses share the use of the same exterior openings of any commercial building, the owner of said building or his or her designated agent shall be responsible. (Prior code § 3-12.10)

#### **8.04.050 Notification to person responsible.**

The Chief of Police shall examine, or cause to be examined, the accessible exterior openings of every commercial building, or part thereof, which is subject to the provisions hereof. Where accessible exterior openings exist which do not meet the requirements hereof, notice in writing shall be given to the responsible person setting forth the deficiencies which are to be corrected, and the period within which same shall be completed. Failure to complete corrective action in the period of time specified shall result in enforcement action, as provided in Section 8.04.160. (Prior code § 3-12.11)

#### **8.04.060 Right of entry.**

Members of the Police Department designated by the Chief of Police shall have the right, and they are authorized and empowered, to enter or go upon or about any building or premises used for business purposes at any reasonable hour for the purpose of inspecting the physical security of exterior accessible openings of such building or premises, or for any other purposes consistent herewith. Such members shall be given prompt access to any area of the building or premises upon oral notification to the responsible person, and upon exhibiting a badge or other evidence of their identity and authority; provided, however, that except in an emergency situation, an inspection warrant issued pursuant to Title 13, Part 3 of the Code of Civil Procedure (Sections 1822.50 to 1822.57, inclusive) shall first be secured when entry or access thereto is refused. Refusal to admit such members when an inspection warrant is not required shall be a misdemeanor. (Prior code § 3-12.12)

#### **8.04.070 Burglary prevention—Exterior accessible openings.**

All exterior accessible openings of any building used for business subject to the provisions hereof and which are not otherwise protected by approved photoelectric, ultrasonic, or other intrusion detection devices, shall be secured as herein, and in Sections 8.04.080 through 8.04.140, provided.

Provided, however, exit doors serving an occupant load of more than ten, and serving hazardous rooms or areas, shall be openable from the inside without the use of a key or any special knowledge or effort; and any additional locking device on such doors shall be required only after the approval of the Fire Marshal has been first had and obtained. (Prior code § 3-12.13)

#### **8.04.080 Front doors—Security measures—Locking devices.**

All front doors of any building or premises used for business purposes and subject to the provisions hereof shall comply with the following requirements:

A. Tempered glass doors, wood or metal doors with tempered glass panel, solid wood or metal doors shall be secured as follows:

1. A single door shall be equipped with either double cylinder dead lock that unlocks from both the outside and inside by key, or with cylinder dead lock that unlocks from the outside by key and inside by turnpiece, handle, or knob, or with dead locking latch having guarded bolt that unlocks from the outside by key and inside by turnpiece, handle, or knob.

2. On double doors the active leaf shall be equipped with a type of lock as prescribed for single doors above and the inactive leaf shall be equipped with flush bolts at head and foot.

B. Doors with glass panels not of tempered glass and doors that have nontempered glass panels adjacent to the door frame, shall be secured as follows:

1. A single door shall be equipped with cylinder dead lock that unlocks from both the outside and inside by a key.

2. On double doors the active leaf shall be equipped with cylinder dead lock that unlocks from both the outside and inside by a key and the inactive leaf shall be equipped with flush bolts at head and foot.

C. Rolling overhead doors that are not controlled or locked by electric power operation shall be equipped on the inside with the following protective devices:

1. Manually operated doors shall be provided with slide bolts on the bottom bar.

2. Chain operated doors shall be provided with a cast iron keeper and pin for securing the hand chain.

3. Crank operated doors shall be provided with a means for securing the operating shaft.

D. A solid overhead, swinging, sliding, or accordion garage-type door shall be secured with a cylinder lock, padlock, and/or metal slide bar, bolt or crossbar on the inside when not otherwise controlled or locked by electric power operation. If padlock is used, it shall be of hardened steel shackle, with minimum four pin tumbler operation. In the event that this type of door provides the only entrance to

the front of the building, a cylinder lock or padlock may be used on the outside.

E. Metal accordion grate or grill-type doors shall be equipped with metal guide track at top and bottom and a cylinder lock and/or padlock with hardened steel shackle and minimum four pin tumbler operation.

F. Outside hinges on all front doors shall be provided with nonremovable pins. Such hinge pins may be either welded, flanged, or secured by a screw. (Prior code § 3-12.14)

#### **8.04.090      Rear, side and basement doors— Security measures—Locking devices.**

All accessible rear, side and basement doors of any building or premises used for business purposes and subject to the provisions hereof, shall comply with the following requirements:

A. All doors of the types listed below shall comply with the requirements of Section 8.04.080 for front doors.

1. Tempered glass doors, wood or metal doors, with tempered glass panel;
2. Metal doors;
3. Rolling overhead doors;
4. Solid overhead, swinging, sliding, or accordion garage-type doors;
5. Metal accordion grate or grill-type doors.

B. Doors with glass panels and doors that have glass panels adjacent to the door frame shall be secured as follows:

1. The glass panel shall be covered with iron bars of at least one-half inch round or one inch by one-fourth inch flat steel material, spaced not more than five inches apart; or

2. Iron or steel grills of at least one-eighths-inch material of two-inch mesh.

3. If the door or glass panel barrier is on the outside, it shall be secured with rounded head flush bolt on the outside.

4. If the remaining portion of a door panel exceeds eight inches by twelve (12) inches (excluding door frame), is of wood, but not of solid core construction, or is less than one and three-eighths inch-

es thick, said portion shall be covered on the inside with at least sixteen (16) gauge sheet steel attached with screws.

C. Wood doors, not of solid core construction, or with panels therein less than one and three-eighths inches thick, shall be covered on the inside with at least sixteen (16) gauge sheet steel attached with screws.

**D. Locking Devices.**

1. A single door shall be equipped with either double cylinder dead lock that unlocks from both the outside and inside by key, with cylinder dead lock that unlocks from the outside by key and inside by turnpiece, handle, or knob, with dead locking latch having guarded bolt that unlocks from outside by key and inside by turnpiece, handle, or knob, or with approved slide bar bolt, crossbar, and/or padlock. If padlock is used, it shall be of hardened steel shackle, with minimum four pin tumbler operation.

2. On double door the active leaf shall be equipped with a type of lock as prescribed for single doors above and the inactive leaf shall be equipped with flush bolts at head and feet.

E. Outside hinges on all rear, side and basement doors shall be provided with nonremovable pins. Such hinge pins may be either welded, flanged, or secured by a screw. (Prior code § 3-12.15)

**8.04.100      Roof doors—Security measures—Locking devices.**

All doors that exit onto the roof of any building or premises used for business purposes and subject to the provisions hereof shall comply with the following requirements:

A. Doors with glass panels and any glass panels that are adjacent to the door frame shall be protected as follows:

1. The glass portion shall be covered with iron or steel grills of at least one-eighth-inch material of no more than two-inch mesh securely fastened.

2. If the door or glass panel barrier is on the outside, it shall be secured with rounded head flush bolt on the outside.

3. If the remaining portion of a door panel exceeds eight inches by twelve (12) inches (excluding

door frame) and is of wood, but not of solid core construction, or is less than one and three-eighths inches thick, said portion shall be covered on the inside with at least sixteen (16) gauge sheet steel attached with screws.

B. Wood doors not of solid core construction, or with panels therein less than one and three-eighths inches thick, shall be covered on the inside with at least sixteen (16) gauge sheet steel attached with screws.

C. All roof doors shall be provided with a lock that will permit the door to be opened from the inside without the use of a key or any special knowledge or effort.

D. Outside hinges on all roof doors shall be provided with nonremovable pins. Such hinge pins may be either welded, flanged, or secured by a screw. (Prior code § 3-12.16)

**8.04.110      Glass windows, side or rear—Security measures—Locking devices.**

The Chief of Police shall, with the approval of the Fire Marshal, determine the extent of protection, if any, that will be required for accessible glass windows at the side or rear of building. Glass windows shall be deemed accessible if less than eighteen (18) feet above ground. In making his or her determination he or she shall consider whether the side of the building fronts on a street, the area, location and contents thereof, and whether such openings are protected by intrusion detection devices.

A. The Chief of Police may require side and rear glass windows with a pane exceeding ninety-six (96) square inches in area, with its smallest dimension exceeding six inches, to be protected in the following manner:

1. Inside or outside iron bars of at least one-half inch round or one inch by one-fourth inch flat steel material, spaced not more than five inches apart, securely fastened; or

2. Inside or outside iron or steel grills of at least one-eighth-inch material of two-inch mesh securely fastened.

## **8.04.110**

3. If window barrier is on the outside, it shall be secured with rounded head flush bolt on the outside.

B. If the side or rear window is of the type that can be opened, it shall, where applicable, be secured on the inside with either a glide bar, bolt, crossbar, and/or padlock with hardened steel shackle, and minimum four pin tumbler operation.

C. Outside hinges on all side and rear glass windows shall be provided with nonremovable pins. Such hinge pins may be either welded, flanged, or secured by a screw. (Prior code § 3-12.17)

### **8.04.120 Accessible transoms—Security measures—Locking devices.**

All exterior transoms exceeding eight inches by twelve (12) inches on the side and rear of any building or premises used for business purposes and subject to the provisions hereof shall be protected by either of the following:

A. Outside iron bars of at least one-half inch round or one inch by one-fourth inch flat steel material, spaced no more than five inches apart; or

B. Outside iron or steel grills of at least one-eighth-inch material but not more than two-inch mesh.

C. The window barrier shall be secured with rounded head flush bolts on the outside. (Prior code § 3-12.18)

### **8.04.130 Roof openings—Security measures—Locking devices.**

A. All glass skylights on the roof of any building or premises used for business purposes and subject to the provisions hereof shall be provided with:

1. Iron bars of at least one-half inch round or one inch by one-fourth inch flat steel material under the skylight and securely fastened; or

2. A steel grill of at least one-eighth-inch material of two-inch mesh under the skylight and securely fastened.

B. All hatchway openings on the roof of any building or premises used for business purposes and

subject to the provisions hereof shall be secured as follows:

1. If the hatchway is of wooden material, it shall be covered on the inside with at least sixteen (16) gauge sheet steel attached with screws.

2. The hatchway shall be secured from the inside with a slide bar or slide bolts. The use of crossbar or padlock is unauthorized, unless approved by the Fire Marshal.

3. Outside hinges on all hatchway openings shall be provided with nonremovable pins. Such hinge pins may be either welded, flanged, or secured by a screw.

C. All air duct or air vent openings exceeding eight inches by twelve (12) inches on the roof of any building or premises used for business purposes and subject to the provisions hereof shall be secured by covering the same with either of the following:

1. Iron bars of at least one-half inch round or one inch by one-fourth inch flat steel material, spaced no more than five inches apart and securely fastened; or

2. A steel grill of at least one-eighth-inch material of two-inch mesh and securely fastened.

3. If the barrier is on the outside it shall be secured with rounded head flush bolts on the outside. (Prior code § 3-12.19)

### **8.04.140 Burglary prevention—Intrusion detection devices.**

If it is determined by the Chief of Police that the security measures and locking devices prescribed in Sections 8.04.070 through 8.04.130 do not adequately secure the building, he or she may require the installation and maintenance of photoelectric, ultrasonic, or other intrusion detection device. In exercising his or her discretion he or she shall consider whether:

A. The business establishment has experienced a high incidence of burglary in the past; or

B. The type of merchandise and its inventory value require added security protection.

If he or she determines that such installation is required, notice in writing shall be given to the responsible person setting forth the installation to be

made and the period within which same shall be completed. Failure to complete the installation in the time specified shall result in enforcement action as provided in Section 8.04.160. (Prior code § 3-12.20)

**8.04.150      Appeal from intrusion detection device requirements.**

Within ten days after the receipt of written notice from the Chief of Police requiring the installation and maintenance of photoelectric, ultrasonic, or other intrusion detection device, the person responsible for compliance therewith may appeal in writing to the City Manager. In filing such notice of appeal, the appellant shall set forth the specific grounds wherein it is claimed there was an error or abuse of discretion by the Chief of Police, or wherein the issuance of said written notice was not supported by proper evidence.

Upon receipt of such appeal, the City Manager shall set said matter for hearing and cause notice thereof to be given to the appellant and to the Chief of Police, or his or her authorized representative, not less than five days prior to the date set for said 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 affirmed.

The City Manager may affirm, reverse, or modify the decision of the Chief of Police requiring the installation and maintenance of a photoelectric, ultrasonic, or other intrusion detection device. If said decision is affirmed or modified by the City Manager, the appellant shall be given written notice thereof by the Chief of Police setting forth the installation to be made and the period of time within which the same shall be completed. In no event shall the period be less than that originally granted appellant. Failure to comply with the City Manager's decision shall be deemed an infraction and enforceable as in Section 8.04.160 provided.

Provided, however, any person excepting to the decision of the City Manager may, within ten days after the date of such decision, appeal in writing to the City Council by filing with the City Clerk a written notice of appeal, setting forth the specific grounds thereof. The City Clerk shall forthwith set said matter

for hearing before the City Council and cause notice thereof to be given to the appellant, to the City Manager, and to the Chief of Police, or his or her authorized representative, not less than five days prior to date set for said hearing. At such hearing before the City Council the appellant shall show cause on the grounds specified in the notice of appeal why the decision of the City Manager should not be affirmed.

If the City Council affirms or modifies the decision of the City Manager, the appellant shall be notified in writing by the Chief of Police of the installation to be made and the period of time within which the same shall be completed. In no event shall the new period of time be less than that granted originally. Failure to comply with the decision of the Council, on appeal, shall be deemed an infraction, and enforceable as provided in Section 8.04.160. (Prior code § 3-12.21)

**8.04.160      Enforcement by citation method.**

Sections 8.04.011 and 8.04.070 through 8.04.150 may be enforced by the method provided for in Chapter 1.24 of this code, and by Sections 853.5 through 853.8 of the Penal Code of the state of California. Said sections shall be enforced by members of the Police Department, Deputy Directors of Public Works Manager, Inspectional Services, and Office of Community Development, Housing Conservation, Supervising Housing Representatives. (Ord. 12390 §2, 2001: Ord. 11928, 1996: prior code § 3-12.22)

## **Chapter 8.06**

### **EXPLOSIVES AND FIREWORKS**

**Sections:**

- |                 |   |
|-----------------|---|
| <b>8.06.020</b> | <b>Posey Tube—Webster Street<br/>Tube—Transportation of<br/>flammable liquids, explosives<br/>and other dangerous articles.</b> |
| <b>8.06.030</b> | <b>Sale, transfer, possession and<br/>use of fireworks—Prohibited.</b>  |
| <b>8.06.020</b> | <b>Posey Tube—Webster Street<br/>Tube—Transportation of<br/>flammable liquids, explosives and<br/>other dangerous articles.</b> |

When appropriate signs are in place giving notice thereof, it is unlawful for any person to transport or carry into or through the Posey or the Webster Street Tube any flammable liquids as defined in, determined by or referenced in Section 34003(c) of the Vehicle Code of the state of California, or any explosives or other dangerous articles. The term “explosives or other dangerous articles” as used herein shall be construed to mean and include all of those explosives, flammable solids, oxidizing materials, corrosive liquids, flammable compressed gases, and poisonous substances listed in Section 72.5 of Part 72 (“Commodity List of Explosives and other Dangerous Articles Containing the Shipping Name or Description of All Articles Subject to Parts 71-78”) of the Regulations of the Interstate/Commerce Commission for the transportation of explosives and other dangerous articles adopted pursuant to the provisions of Title 18, Chapter 39, Section 835 of the United States Code, and any subsequent amendments thereto. (Ord. 11933, 1996: prior code § 2-5.22)

**8.06.030      Sale, Transfer, Possession and Use  
                  of Fireworks—Prohibited.**

A. Prohibitions.

1. It is unlawful for any person at any time to sell, or advertise for sale, any firework or pyrotechnical device as defined under state law, including but not limited to, California Health and Safety Code

Sections 12505, 12508, 12511, 12512, 12526 and 12529, within the city limits.

2. It is unlawful for any person to at any time to transfer to another any firework or pyrotechnical device as defined under state law, including but not limited to, California Health and Safety Code Sections 12505, 12508, 12511, 12512, 12526 and 12529, within the city limits.

3. It is unlawful for any person at any time to possess any firework or pyrotechnical device as defined under state law, including but not limited to, California Health and Safety Code Sections 12505, 12508, 12511, 12512, 12526 and 12529, within the city limits.

4. It is unlawful for any person at any time to use or cause to be detonated any firework or pyrotechnical device as defined under state law, including, but not limited to, California Health and Safety Code Sections 12505, 12508, 12511, 12512, 12526 and 12529, within the city limits.

5. Any person found in violation of any provision of Section 8.06.030, and sixteen (16) years of age or older may be issued a citation in accordance with the provisions of this section.

6. In addition to the actions authorized pursuant to the above, every parent, guardian or other person, having the legal care, custody or control of any person under the age of eighteen years, who knows or reasonably should know that a minor is in violation of this chapter, may be issued a citation in accordance with the provisions of this section.

7. Any person in violation of the provisions of Section 8.06.030, involving any firework or pyrotechnical device designated as “Dangerous fireworks” within California Health and Safety Code Section 12505, or involving any fireworks designated “Exempt fireworks” within California Health and Safety Code Section 12508 shall be subject to a fine of no less three hundred and fifty dollars (\$350.00) and no more than one thousand dollars (\$1000.00).

8. Any person in violation of the provision of Section 8.06.030, involving any firework or pyrotechnical device designated “Safe and Sane” within California Health and Safety Code Section 12529 shall be subject to a fine of no less than two hundred

and seventy dollars (\$270.00) and no more than three hundred and fifty dollars (\$350.00).

B. Exceptions.

1. The City Administrator may issue permits for professional displays of fireworks and the use, but not sale of fireworks for purposes of cultural celebrations or business promotion. The City Administrator shall promulgate a separate set of regulations and fees governing the issuance of such permits for: (1) large public fireworks displays; and (2) small fireworks displays for cultural celebrations and business promotions; provided however, that the City Administrator may issue permits prior to promulgating regulations and establishing fees, until the end of the year of 2004.

2. Further, if any display of fireworks is to be held within any public park or other property under the jurisdiction of the city, the City Administrator shall have the right to require the posting of any bond, or taking out of any insurance, that he or she may deem necessary.

3. The provisions of this ordinance relating to the sale, use, and/or detonation of fireworks set forth herein at subsections (A)(1) and (A)(4), apply to all persons within the city limits, including any person authorized to possess or transport fireworks, by means of a valid permit, license or other authorization by a state or federal agency specifically authorized to regulate fireworks as defined by state law, including, but not limited to, California Health and Safety Code Sections 12505, 12508, 12511, 12512, 12526 and 12529. The ordinance codified in this section shall not limit, expand, or otherwise affect the rights or obligations of any person authorized to possess or transport fireworks, by means of a valid permit, license or other authorization by a state or federal agency specifically authorized to regulate fireworks as defined by state law, including, but not limited to, California Health and Safety Code Sections 12505, 12508, 12511, 12512, 12526 and 12529.

(Ord. 12601 § 2, 2004)

## Chapter 8.07

### **POLYSTYRENE FOAM FOOD SERVICE WARE**

**Sections:**

- 8.07.010      Definitions.**
- 8.07.020      Prohibited food service ware.**
- 8.07.030      Required biodegradable and  
compostable disposable food  
service ware.**
- 8.07.040      Exemptions.**
- 8.07.050      Liability and enforcement.**
- 8.07.060      Violations—Penalties.**
- 8.07.070      Study.**

**8.07.010      Definitions.**

“Affordable” means purchasable by the Food Vendor for same or less purchase cost than the non-biodegradable, non-polystyrene foam alternative.

“ASTM Standard” means meeting the standards of the American Society for Testing and Materials (ASTM) International Standards D6400 or D6868 for biodegradable and compostable plastics.

“Biodegradable” means the entire product or package will completely break down and return to nature, i.e., decompose into elements found in nature within a reasonably short period of time after customary disposal.

“Compostable” means all materials in the product or package will break down into, or otherwise become part of, usable compost (e.g., soil-conditioning material, mulch) in a safe and timely manner in an appropriate composting program or facility, or in a home compost pile or device. Compostable disposable food service ware includes ASTM-Standard BioPlastics (plastic-like products) that are clearly labeled, preferably with a color symbol, such that any compost collector and processor can easily distinguish the ASTM Standard Compostable plastic from non-ASTM Standard Compostable plastic.

“City Facilities” means any building, structure or vehicles owned or operated by the city of Oakland, its agent, agencies, departments and franchisees.

“Customer” means any person obtaining prepared food from a restaurant or retail food vendor.

“Disposable Food Service Ware” means all containers, bowls, plates, trays, cartons, cups, lids, straws, forks, spoons, knives and other items that are designed for one-time use and on, or in, which any restaurant or retail food vendor directly places or packages prepared foods or which are used to consume foods. This includes, but is not limited to, service ware for takeout foods and/or leftovers from partially consumed meals prepared at restaurants or retail food vendors.

“Food Vendor” means any restaurant or retail food vendor located or operating within the city of Oakland.

“Polystyrene Foam” means and includes blown polystyrene and expanded and extruded foams (sometimes called Styrofoam, a Dow Chemical Co. trademarked form of polystyrene foam insulation) which are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blown molding (extruded foam polystyrene). Polystyrene foam is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons.

“Prepared Food” means food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared on the food vendor’s premises or within the city of Oakland. For the purposes of this ordinance, “prepared food” does not include raw, butchered meats, fish and/or poultry sold from a butcher case or similar retail appliance. Prepared food may be eaten either on or off the premises, also known as “takeout food”.

“Restaurant” means any establishment located within the city of Oakland that sells prepared food for consumption on, near, or off its premises by customers. “Restaurant,” for purposes of this Chapter, includes itinerant restaurants, pushcarts and vehicular food vendors as those terms are defined in chapters

5.49, 8.08, and 8.09 of the City of Oakland Municipal Code.

“Retail Food Vendor” means any store, shop, sales outlet, or other establishment, including a grocery store or a delicatessen, other than a restaurant, located within the city of Oakland that sells prepared food. (Ord. 12747 (part), 2006)

#### **8.07.020 Prohibited food service ware.**

A. Except as provided in Section 8.07.040 of this Chapter, food vendors are prohibited from providing prepared food to customers in disposable food service ware that uses polystyrene foam.

B. All city facilities are prohibited from using polystyrene foam disposable food service ware and all city departments and agencies will not purchase or acquire polystyrene foam disposable food service ware for use at city facilities.

C. City franchises, contractors and vendors doing business with the city shall be prohibited from using polystyrene foam disposable food service ware in city facilities or on city projects within the city of Oakland. (Ord. 12747 (part), 2006)

#### **8.07.030 Required biodegradable and compostable disposable food service ware.**

A. All food vendors using any disposable food service ware will use biodegradable or compostable disposable food service ware unless they can show an affordable biodegradable or compostable product is not available for a specific application. Food vendors are strongly encouraged to reuse food service ware in place of using disposable food service ware. In instances that food vendors wish to use a biodegradable or compostable disposable food service ware product that is not affordable, a food vendor may charge a “take out fee” to customers to cover the cost difference.

B. All city facilities will use biodegradable or compostable disposable food service ware unless they can show an affordable biodegradable or compostable product is not available for a specific application.

C. City franchises, contractors and vendors doing business with the city will use biodegradable or compostable disposable food service ware unless they can show an affordable biodegradable or compostable product is not available for a specific application. (Ord. 12747 (part), 2006)

#### **8.07.040 Exemptions.**

A. Prepared foods prepared or packaged outside the city of Oakland are exempt from the provisions of this Chapter. Purveyors of food prepared or packaged outside the City of Oakland are encouraged to follow the provisions of this Chapter.

B. Food vendors will be exempted from the provisions of this Chapter for specific items or types of disposable food service ware if the City Administrator or his/her designee finds that a suitable affordable biodegradable or compostable alternative does not exist and/or that imposing the requirements of this Chapter on that item or type of disposable food service ware would cause undue hardship.

C. Polystyrene foam coolers and ice chests that are intended for reuse are exempt from the provisions of this Chapter.

D. Disposable food service ware composed entirely of aluminum is exempt from the provisions of this Chapter.

E. Emergency Supply and Services Procurement: In a situation deemed by the City Administrator to be an emergency for the immediate preservation of the public peace, health or safety, city facilities, food vendors, city franchises, contractors and vendors doing business with the city shall be exempt from the provisions of this Chapter. (Ord. 12747 (part), 2006)

#### **8.07.050 Liability and enforcement.**

A. The City Administrator or his/her designee will have primary responsibility for enforcement of this Chapter. The City Administrator or his/her designee is authorized to promulgate regulations and to take any and all other actions reasonable and necessary to enforce this Chapter, including, but not limited to, entering the premises of any food vendor to verify compliance.

B. Anyone violating or failing to comply with any of the requirements of this Chapter will be guilty of an infraction pursuant to Chapter 1.28, Oakland Municipal Code.

C. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this Chapter. (Ord. 12747 (part), 2006)

**8.07.060 Violations—Penalties.**

1. If the City Administrator or his/her designee determines that a violation of this Chapter occurred, he/she will issue a written warning notice to the food vendor that a violation has occurred.

2. If the food vendor has subsequent violations of this Chapter, the following penalties will apply:

a. A fine not exceeding one hundred dollars (\$100.00) for the first violation after the warning notice is given.

b. A fine not exceeding two hundred dollars (\$200.00) for the second violation after the warning notice is given.

c. A fine not exceeding five hundred dollars (\$500.00) for the third and any future violations after the warning notice is given.

3. Food vendors may request an administrative hearing to adjudicate any penalties issued under this Chapter by filing a written request with the City Administrator, or his or her designee. The City Administrator, or his or her designee, will promulgate standards and procedures for requesting and conducting an administrative hearing under this Chapter. Any determination from the administrative hearing on penalties issued under this Chapter will be final and conclusive. (Ord. 12747 (part), 2006)

**8.07.070 Study.**

One year after the effective date of this Chapter, the City Administrator will conduct a study on the effectiveness of this Chapter. (Ord. 12747 (part), 2006)

## Chapter 8.08

### FOOD HANDLING ESTABLISHMENTS

**Sections:**

- 8.08.010      Definitions.**
- 8.08.020      Permit required.**
- 8.08.030      Toilets.**

**8.08.010      Definitions.**

For the purposes of this chapter certain words and phrases are defined, and certain provisions shall be construed, as herein set out, unless it shall be apparent from the context that they have a different meaning:

“Employee” means any person who handles food or drink during processing, manufacture, preparation or serving, or who comes in contact with any eating or cooking utensils, or who is employed in a room in which food or drink is prepared or served, with or without pay.

“Food” and “beverage” mean and include all articles used for food, drink, confectionery or condiment, whether simple or compound, and all substances and ingredients used in the preparation thereof for human consumption.

“Food handling establishment” means any restaurant, itinerant restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, tavern, sandwich stand, soda fountain, delicatessen, bakery, grocery, confectionery, meat market, and any other establishment which manufactures, processes, caters, stores, displays, sells or offers for sale to the public, food or drink, wholesale or retail, simple or compound, as well as rooms in which food or drink is prepared for sale or distribution elsewhere.

“Health Officer” means the Health Officer of the city of Oakland, or his or her authorized representatives.

“Itinerant restaurant” means one operating for a temporary period in connection with a fair, carnival, circus, public assembly or other similar gatherings.

“Restaurant” means any coffee shop, cafeteria, short-order cafe, luncheonette, tavern, caterer, sandwich stand, soda fountain, any other eating and

drinking establishment which sells or offers for sale, serves or caters food to the public, as well as rooms in which food or drink is prepared for sale or distribution elsewhere.

“Vehicle” means every vehicle used for delivery or distribution of any meat, fish, shellfish, poultry, fruit, vegetable, bakery goods, candy or any other food or drink, as well as vehicles in or upon which food or drink is displayed, sold or offered for sale to the public. (Prior code §§ 4-4.01, 4-4.01(a)—4-4.01(f), 4-4.01(i))

**8.08.020      Permit required.**

It is unlawful for any person to own, conduct, operate, maintain or to participate therein, or to cause or permit to be conducted, operated or maintained any food handling establishment, restaurant, itinerant restaurant or any vehicle used to peddle, distribute or cater food or drink to the public in the city unless there exists a valid permit therefor, granted and existing in compliance with the provisions of Chapter 5.02 of this code, excepting, however, that application for such permit shall be made to, and such permit shall be issued by the Health Officer and no hearing shall be required thereon except in cases of denial, suspension or revocation of such permit. (Prior code § 4-4.02)

**8.08.030      Toilets.**

Every food handling establishment, excepting vehicles, shall be provided with adequate and conveniently located toilet facilities on the premises for all employees.

A. Where there are five or more persons of different sex, a sufficient number of separate toilets and lavatories shall be provided. No person shall be allowed to use any toilet assigned to persons of the other sex. Every person managing, conducting, or operating any place of business where any beverage containing more than one-half of one percent of alcohol by volume is sold or served for consumption upon the premises shall provide for the use of its patrons separate toilet facilities for each sex.

1. Exception. Food handling establishments with less than thirty-five (35) patrons may be permitted to have one unisex restroom.

B. Toilet room floors shall be constructed of cement, wood covered with mastic, or other impervious material, and the angle formed by the floor and wall shall be cove construction, sealed, and so constructed as to be easily cleaned. Surfaces of walls, partitions, doors, fixtures, toilet seats, bowls, and other equipment shall be smooth and nonabsorbent, and all painted surfaces shall be a light color.

C. Toilet rooms shall be kept clean and in good repair, well lighted, ventilated to the outside air, and effectively screened against insects. Toilet room doors shall be self-closing and shall not open directly into any room in which food, drinks, or utensils are handled, prepared or stored.

D. All sewer drains shall be connected to an approved sanitary sewer and shall be properly trapped and vented.

E. In new construction, all toilet rooms shall have floor drains properly trapped and connected to the sanitary sewer.

F. Toilet rooms shall be not less than eighteen (18) square feet in area.

G. The ceiling height in toilet rooms, measured from the finished floor to the lowest projection from the ceiling, shall be not less than seven feet.

H. In new construction the toilet facilities intended for the use of the public shall be so situated that patrons may not pass through the food-preparation rooms. (Prior code § 4-4.13)

## Chapter 8.09

### VEHICULAR FOOD VENDING

**Sections:**

- 8.09.010      Purpose.**
- 8.09.020      Definitions.**
- 8.09.030      Permitted area.**
- 8.09.040      Permit application.**
- 8.09.050      Permit conditions and issuance.**
- 8.09.060      Permit expiration and revocation.**
- 8.09.070      Public nuisance.**
- 8.09.080      Enforcement.**
- 8.09.090      Abatement generally.**
- 8.09.100      Order to abate.**
- 8.09.110      Notice, administrative hearing and abatement.**
- 8.09.120      Abatement procedure.**
- 8.09.130      Notice of special assessment lien.**
- 8.09.140      Replacement prohibited.**
- 8.09.150      List of abated locations.**
- 8.09.160      Violations constituting infractions.**
- 8.09.170      Penalty for violation.**
- 8.09.180      Continuing violation.**
- 8.09.190      Civil actions.**
- 8.09.200      Remedies not exclusive.**
- 8.09.210      Joint and several liability.**

**8.09.010      Purpose.**

The general purpose of these regulations is to promote the health, safety, comfort, convenience, prosperity, and general welfare by requiring that new and existing vehicular food vendors provide the community and customers with a minimum level of cleanliness, quality and security. (Ord. 12579 § 2 (part), 2004: Ord. 12312 § 2 (part), 2001)

**8.09.020      Definitions.**

For the purposes of this chapter, certain words and phrases are defined, and certain provisions shall be construed, as herein set out unless it shall be apparent from the context that they have a different meaning:

“Loitering” means remaining on any property under such circumstances that a reasonable person would conclude that the person who remains on the property does not have a purpose connected with the usual and ordinary use to which such property is put, does not have bona fide intent to exercise a constitutional right, and is causing public inconvenience or annoyance.

“Vehicular food vending” means the sale of ready-to-consume prepared foods from trucks located on private property on a semi-permanent basis during hours of operation. Vehicular food vending generally has the following characteristics:

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

“Vehicular food vendor” (vendor herein) means a person who is engaged in “vehicular food vending.” (Ord. 12579 § 2 (part), 2004: Ord. 12312 § 2 (part), 2001)

**8.09.030      Permitted area.**

Streets: Vehicular food vending shall be permitted on private property located on Fruitvale Avenue and High Street between Interstate 880 to the west and Foothill Boulevard to the east, Foothill Boulevard between 19th Avenue to the north and MacArthur Boulevard to the south, International Boulevard between First Avenue to the north and 105th Avenue to the south, and San Leandro Street between Fruitvale Avenue to the north and 98th Avenue to the south. East 12th Street between 4th Avenue to the west and 23rd Avenue to the east, 14th Avenue between East 11th Street in the south and East 19th Street in the north. Within the program permitted area, vehicular food vendors shall be required to locate on private property with an address on and visible from the above-listed public streets.

**Zoning Districts:** On the streets listed above, vehicular food vending shall be permitted only in the C-20 Shopping Center Commercial, C-28 Commercial Shopping District, C-30 District Thoroughfare Commercial, C-40 Community Thoroughfare Commercial, M-20 Light Industrial, M-30 General Industrial, and M-40 Heavy Industrial zoning districts.<sup>1</sup> Vehicular food vending shall not be permitted in any other zoning district.

No vehicular food vending use shall be located or maintained on public property inconsistent with any other city of Oakland regulations. (Ord. 12579 § 2 (part), 2004; Ord. 12312 § 2 (part), 2001)

<sup>1</sup>Consistent with existing regulations related to fast food restaurant activities and with Section 5 48 080 of the Municipal Code, vehicular food vending will continue to be conditionally permitted outside of the pilot program area in the following zoning districts C-20 Shopping Center Commercial, C-25 Office Commercial, C-27 Village Commercial, C-28 Commercial Shopping District, C-30 District Thoroughfare Commercial, C-31 Special Retail Commercial, C-35 District Shopping Commercial, C-36 Gateway Boulevard Service Commercial, C-40 Community Thoroughfare Commercial, C-45 Community Shopping Commercial, C-51 Central Business Service Commercial, C-55 Central Core Commercial, C-60 City Service Commercial, M-10 Special Industrial, M-20 Light Industrial, M-30 General Industrial, M-40 Heavy Industrial, S-1 Medical Center, and S-2 Civic Center

#### **8.09.040 Permit application.**

New and existing vehicular food vendors shall possess a valid vehicular food vending permit issued by the Building Services Division of the Community and Economic Development Agency (CEDA).

A. Vehicular food vendors shall submit the following information in order to qualify for a vehicular food vending permit:

1. The applicant shall obtain a vehicular food vending permit application from the city of Oakland building services counter (building counter), located at 250 Frank H. Ogawa Plaza, Second Floor. The completed application shall be submitted to the Building Division.

2. In order for the vehicular food vending permit application to be deemed complete, the applicant shall provide the building division with the following:

a. Completed vehicular food vending permit application;

- b. Mailing address for notification;
- c. Address or assessor parcel number (APN) for the proposed vehicular food vending site;
- d. Signed and notarized affidavit in a form approved by the city of Oakland from the property owner (if other than self) permitting the vehicular food vendor to locate on the site;
- e. Legal names of vehicular food vending business owner(s);
- f. Proof of valid city of Oakland business tax certificate;
- g. Proof of valid county of Alameda Health Agency, Environmental Health Services Health Permit;
- h. Photocopy of valid California Drivers License for business owner and all employees;
- i. Scaled or dimensioned site plan depicting location of vehicular food vending vehicle and any existing structures on proposed site;
- j. Six photographs (showing different views) of the proposed site;
- k. Four photographs (showing different exterior views) of the vehicular food vending vehicle;
- l. Sample, photograph or rendering of advertising signs;
- m. Facsimile of logo to be applied to all disposable paper products to be provided to customers;
- n. If the vehicular food vendor is not able to provide employee access to restrooms, affidavit from property owner within two hundred (200) feet of the vehicular food vending vehicle permitting use of restroom facilities by the vehicular food vendor; and
- o. Nonrefundable application fee per the city of Oakland master fee schedule. The application fee shall be applied to the permit fee upon application approval.

3. The Building Division shall process the vehicular food vending permit application (application) within ten business days from the date on which the application is deemed complete. (Ord. 12579 § 2 (part), 2004; Ord. 12312 § 2 (part), 2001)

#### **8.09.050 Permit conditions and issuance.**

A permit issued pursuant to the provisions of this chapter shall be subject to the following conditions:

A. Applications approved for issuance shall expire in thirty (30) days if unclaimed.

B. A permit fee of per the city of Oakland master fee schedule, shall be paid prior to issuance of the permit. The application fee shall be applied to the permit fee upon application approval. A late fee per the city of Oakland master fee schedule will be assessed if the annual renewal is not paid in a timely manner.

C. Upon issuance of the permit, the applicant shall not commence business activities until the building services division has inspected and approved all conditions of the permit.

D. Location:

1. The vehicular food vendor shall be located within the vehicular food vending program area as identified on the attached map (see Attachment A).

2. The vehicular food vendor shall locate on private property, and must receive written consent from the property owner (if not self) to occupy the property and conform to the conditions of the permit.

3. The vehicular food vendor shall submit the written consent with the application.

4. The vehicular food vendor shall not locate within two hundred (200) feet (as measured from the parcel boundary) of any fast food restaurant<sup>2</sup> or other vehicular food vendor<sup>3</sup>, full-service restaurant<sup>4</sup> or delicatessen<sup>5</sup>, or within five hundred (500) feet of any public park or primary or secondary school.

5. The vehicular food vendor shall not locate in the public right-of-way.

6. The vehicular food vendor shall not locate in parking spaces required to meet minimum parking requirements for any other business.

7. The vehicular food vendor shall be located within two hundred (200) feet of a restroom facility and shall demonstrate legal access for employees.

8. The vehicle shall not block any parking required to adequately serve other businesses, driveways or drive aisles, and shall be visible from the street.

9. The vehicular food vending vehicle shall be set back a minimum of ten feet from any public sidewalk or right-of-way when the service window faces the street. Less obstructive orientations shall

insure that the queue does not encroach upon the public right-of-way.

E. Condition/Appearance of Vehicle.

1. The vehicular food vendor shall display current business tax certificate, health department permit (and decal) and vehicular food vending permit in plain view and at all times on the exterior of the food vending vehicle.

2. The vehicular food vending permit and business tax certificate shall be displayed on or immediately adjacent to the front, passenger-side window.

3. The health decal shall be located on the left rear of the vehicle.

4. The vehicular food vendor shall maintain a valid health permit at all times. If the permit expires, or is suspended or revoked, then all food sales shall cease until the permit is reinstated.

5. The applicant shall display no more than three signs attached to the vehicle (including the signage pertaining to loitering), with a maximum aggregate display surface of thirty (30) square feet per sign.

6. The vehicular food vending vehicle and use shall be entirely self-sufficient in regards to gas, water, and telecommunications. Should any utility hook-ups or connections to on-site utilities be required, the vehicular food vendor shall be required to apply for appropriate permits to ensure building and public safety and consistency with applicable building codes.

7. Electrical service to vehicular food vending vehicles shall be reviewed and approved on a case-by-case basis by the building division.

8. The vehicular food vending vehicle shall be a self-propelled vehicle maintained in operating condition at all times.

9. The vehicle shall not become a fixture of the site and shall not be considered an improvement to real property.

10. The vendor shall not discharge items onto the sidewalk, gutter or storm inlets.

F. Condition/Appearance of Site.

1. The site shall be maintained in a safe and clean manner at all times.

2. Exterior storage of refuse, equipment or materials associated with the vehicular food vending enterprise is prohibited.

3. The lot shall be paved.

4. The vehicular food vendor shall maintain site circulation and access consistent with the Americans with Disabilities Act.

5. Up to four tall stand-up cocktail-type tables however, no chairs, no fences or other site furniture (permanent or otherwise) shall be permitted in conjunction with vehicular food vending establishments.

G. Lighting. The vehicular food vendor shall provide adequate lighting to ensure customer safety. Lighting shall be directed downwards and away from public streets and adjacent properties.

H. Noise Control. Noise levels measured at the property line shall not exceed the city's noise ordinance standards.

I. Litter Control.

1. The vehicular food vendor shall provide a minimum of two thirty-two (32)-gallon litter receptacles within fifteen (15) feet of the vehicular food vending vehicle. The receptacles will serve both employees and customers.

2. The vehicular food vendor shall maintain the subject property and adjacent right-of-way free of litter on and within two hundred (200) feet of the subject vending site.

3. All refuse shall be removed from the site and properly disposed of on a daily basis.

J. Security.

1. The vehicular food vendor shall install signage indicating that loitering is not permitted and customers may only remain on the lot for up to fifteen (15) minutes after receiving their food.

2. The vehicular food vendor shall enforce the no-loitering rule.

3. The serving or consumption of alcohol shall be prohibited at vehicular food vending sites.

K. Hours of Operation. Hours of operation shall be determined by the city but shall not exceed: seven a.m. to three a.m., everyday. (Ord. 12579 § 2 (part), 2004: Ord. 12312 § 2 (part), 2001)

<sup>2</sup>As an exception, vehicular food vendors may locate within two hundred (200) feet of a restaurant of which the owner has provided the vehicular food vendor with permission to locate on the same lot

<sup>3</sup>See Footnote 2, above

<sup>4</sup>See Footnote 2, above

<sup>5</sup>See Footnote 2, above

#### **8.09.060 Permit expiration and revocation.**

Vehicular food vending shall be permitted only while the permit is valid pursuant to the provisions of this chapter.

A. Permit Revocation. The city of Oakland reserves the right to revoke this permit at any time if it is found that the approved activity is violating any of the provisions of the city of Oakland Planning Code, any provision of this chapter, or causing a public nuisance. Should a vehicular food vending permit be revoked, the vendor shall be required to cease operation immediately or be subject to police action which may include impounding of vehicle, ticketing and/or arrest.

B. Site Improvements. All applicable site improvements shall be installed no later than thirty (30) days from the date of issuance of the permit for this approval to be valid. If improvements have not been made within the thirty (30) days, the permit shall be revoked.

C. Permit Limitations. The vehicular food vending permit shall be valid for twelve (12) months from the date of issuance. The permit must be renewed on or before its expiration date. (Ord. 12579 § 2 (part), 2004: Ord. 12312 § 2 (part), 2001)

#### **8.09.070 Public nuisance.**

A. Prohibited Locations. Any vehicular food vending use located, maintained, or operated in violation of this section shall be declared a public nuisance. Any existing vehicular food vending use that is located or maintained in violation of this subsection shall be removed within thirty (30) days after the effective date of the ordinance codified in this chapter.

B. Public Nuisance. Any vehicular food vending use that is used as an instrumentality for or contributes substantially by its presence to any of the following conditions is declared to be a public nuisance:

1. The selling or giving away of controlled substances (as defined in Division 10 of the California Health and Safety Code); or, the soliciting, agreeing to engage in, or engaging in any act of prostitution; or, the conduct of any other criminal activity;

2. The consumption of alcoholic beverages on nearby outdoor public or private property, except where outdoor consumption of alcoholic beverages is specifically authorized pursuant to a license issued by the Department of Alcoholic Beverage Control;

3. Loitering on nearby public or private property;

4. Disturbing the peace; or

5. Any acts that threaten the public health and safety including, but not limited to, public urination. (Ord. 12579 § 2 (part), 2004: Ord. 12312 § 2 (part), 2001)

- A. Comply with the requirement;
- B. Comply with a time schedule for compliance; and
- C. Take appropriate remedial or preventive action to prevent the violation from recurring. (Ord. 12579 § 2 (part), 2004: Ord. 12312 § 2 (part), 2001)

#### **8.09.100 Order to abate.**

Upon declaring and deeming a violation of this chapter a *nuisance*, the City Manager, or his or her designee, shall send a notice of abatement to the property owner and to the vehicular food vendor. The notice of abatement shall contain the following:

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

Service of said notice may be made by delivery to the property owner and to the vehicular food vendor or person in possession personally or by enclosing the same in a sealed envelope, addressed to the occupant at such premises, or to the property owner at the address provided in the vehicular food vending permit application, postage prepaid, registered or certified mail, return receipt requested, and depositing same in the United States mail. Service shall be deemed complete at the time of the deposit in the United States mail.

It is unlawful for the property owner and/or business owner/operator to fail or neglect to comply with such order or notice of abatement. In the event that the property owner and/or the vehicular food vendor shall not promptly proceed to abate said nuisance condition(s), that is to say within seven days of no-

#### **8.09.080 Enforcement.**

The City Manager, or his or her designee, shall be responsible for enforcement of this chapter. If periodic inspections are necessary to monitor compliance, code enforcement reinspection fees per the master fee schedule shall be assessed. (Ord. 12579 § 2 (part), 2004: Ord. 12312 § 2 (part), 2001)

#### **8.09.090 Abatement generally.**

Failure to permanently remove a vehicle used for vehicular food vending, and failure to cease operation as a vehicular food vendor after the termination, revocation, expiration, or suspension of any permit issued pursuant to the provisions of this chapter shall constitute a public nuisance, and shall be subject to enforcement and abatement procedures set forth in Chapter 1.16 of the Oakland Municipal Code and Chapter 17.152 of the Oakland Planning Code.

When the City Manager, or his or her designee, finds that a vehicular food vending use has been used as an instrument for or has contributed substantially to any of the conditions stated in Section 8.09.040, in violation of this chapter, he or she, or his or her designee, may declare and deem the violation of a public nuisance and issue an order to abate operation of the vehicular food vending use and direct that these persons not complying shall:

## **8.09.100**

tice to abate, as ordered by the enforcing official, the abatement procedure set forth in Section 8.09.060 may be undertaken. (Ord. 12579 § 2 (part), 2004; Ord. 12312 § 2 (part), 2001)

### **8.09.110      Notice, administrative hearing and abatement.**

A. Notice of Administrative Hearing. The City Manager, or his or her designee, upon failure of the property owner and/or the business owner/operator to promptly proceed to abate said nuisance condition(s) as ordered, and or/upon receipt of a written notice from the subject property owner and/or the business owner/operator stating that they wish to appeal the determination of violation by the City Manager, or his or her designee, may forthwith fix a time and place for an administrative hearing of the matter. In all such cases, the City Manager, or his or her designee, shall serve, or cause to be served, notice of said hearing upon the person in possession of such premises, the property owner and the business owner/operator thereof, not less than seven days prior to the time fixed for such hearing stating the nuisance condition(s) that is the subject of the hearing. Service of said notice may be made by delivery to the property owner and to the vehicular food vendor or person in possession personally or by enclosing the same in a sealed envelope, addressed to the occupant at such premises, or to the last equalized assessment rolls of the city, postage prepaid, registered or certified mail, return receipt requested, and depositing same in the United States mail. Service shall be deemed complete at the time of the deposit in the United States mail.

B. Administrative Hearing. At the time and place set for the hearing, a Hearing Officer, designated by the City Manager, shall hear such evidence as may be presented by said property owner and/or said business owner/operator, person in possession or their representative. Such hearing may be continued from time to time by the Hearing Officer, provided that notice is given to said property owner and to said vehicular food vendor or person in possession. Service of said notice shall be deemed complete at the time of deposit in the United States mail. The find-

ings of the Hearing Officer shall be rendered at the time of such hearing and thereupon shall be announced to such property owner and vehicular food vendor.

Upon a determination that a nuisance condition(s) exists, the Hearing Officer shall give written notice, in the manner provided in subsection (A) of this section, to the property owner and to the business owner/operator to abate such condition forthwith. Service of said notice shall be deemed complete at the time of deposit in the United States mail. If such abatement is not commenced within seven days thereafter and is not completed within fourteen (14) days of noticing, the City Manager, or his or her designee, shall cause the same to be abated at the property owner's expense. (Ord. 12579 § 2 (part), 2004; Ord. 12312 § 2 (part), 2001)

### **8.09.120      Abatement procedure.**

A. Failure to Appear and Untimely Appeals. In those cases where the property owner and/or the vehicular food vendor or person in possession does not appear for the administrative hearing or appears for the administrative hearing but does not give timely notice of an intent to appeal, and there is no good cause shown, the City Manager, or his or her designee, may direct that the condition causing the public nuisance be abated.

Thereafter, the City Manager, or his or her designee, shall give or cause to be given written notice, in the manner provided in Section 8.09.080(A), to the property owner and to the vehicular food vendor or person in possession of said premises to abate such condition forthwith. Service of said notice shall be deemed complete at the time of deposit in the United States mail. If such abatement is not commenced within seven days thereafter and diligently prosecuted to completion, the City Manager, or his or her designee, shall at the property owner's and/or business owner's/operator's expense, cause the same to be abated.

B. Abatement. The City Manager, or his or her designee, may order to be paid by property owner and the business owner/operator of said premises all sums that may be necessarily expended by the city in

abating such condition, including but not limited to the abatement work cost, abatement contract administering costs, storage and abatement work supervising costs. In lieu of employing a contractor or other person to abate such condition, the City Manager, or his or her designee, may call upon the Building Division or other departments of the city to abate such condition. Upon completion of the abatement work said abatement costs shall be secured by a special assessment lien recorded against the subject property in the Office of County Recorder, Alameda County. Said special assessment lien shall substantially comply with the form outlined in Section 8.09.110.

At the time that the city elects to perform the abatement work, the City Manager, or his or her designee, may record a notice of prospective special assessment lien against the subject property. Such notice shall include a description of the proposed abatement work and an estimate of its costs. The notice shall indicate that the actual costs may exceed the city's estimate. (Ord. 12579 § 2 (part), 2004: Ord. 12312 § 2 (part), 2001)

#### **8.09.130 Notice of special assessment lien.**

The special assessment lien mentioned in Sections 8.20.080(C) and 8.20.090 shall substantially comply with the following form:

##### **NOTICE OF SPECIAL ASSESSMENT LIEN**

Pursuant to authority vested in me, and the provisions of Chapter 8.09, of the Oakland Municipal Code, I did, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, cause a condition or chargeable action upon the hereinafter described real property to be abated at the expense of the property owners thereof, in the amount of \$\_\_\_\_\_, and that said amount has not been paid nor any part thereof, and the City of Oakland does hereby claim a special assessment lien upon the hereinafter described real property in said amount; the same shall be a special assessment lien upon the said real property until said sum with interest thereon at the legally allowable rate from the date of the recordation of this special

assessment lien in the office of the County Recorder of the County of Alameda, State of California, has been paid in full. The real property herein above mentioned and upon which a special assessment lien is claimed is that certain parcel of land lying and being in the City of Oakland, County of Alameda, State of California, and particularly described as follows, to wit:

[INSERT DESCRIPTION OF PROPERTY]

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.  
\_\_\_\_\_  
(City Manager, or his designee)  
City of Oakland

(Ord. 12579 § 2 (part), 2004: Ord. 12312 § 2 (part), 2001)

#### **8.09.140 Replacement prohibited.**

If the public nuisance to be abated is one defined in Section 8.09.040:

A. The hearing notice required by Section 8.09.070(A) shall specify that abatement shall consist of removal of the vehicular food vending vehicle, and that no vehicular food vending vehicle shall be located on the same parcel, or on any contiguous parcel owned by the same property owner, to replace the removed vehicular food vending vehicle for a period of one year from the date of removal; and

B. Any decision of the Hearing Officer ordering abatement shall specify that no vehicular food vending use shall be installed on the same parcel, or on any contiguous parcel owned by the same property owner, to replace the removed vehicular food vending use for a period of one year from the date of removal. (Ord. 12579 § 2 (part), 2004: Ord. 12312 § 2 (part), 2001)

#### **8.09.150 List of abated locations.**

The City Manager, or his or her designee, shall maintain, and make available upon request, a list of locations where vehicular food vending is prohibited pursuant to Section 8.20.030. (Ord. 12579 § 2 (part), 2004: Ord. 12312 § 2 (part), 2001)

**8.09.160 Violations constituting infractions.**

Any person violating or failing to comply with any of the provisions of this chapter shall be guilty of an infraction. (Ord. 12579 § 2 (part), 2004: Ord. 12312 § 2 (part), 2001)

**8.09.170 Penalty for violation.**

Any person convicted of an infraction under the provision of this chapter shall be punished upon a first conviction by a fine of not more than one thousand dollars (\$1000.00) and, for a second conviction within a period of one year, by a fine of not more than two thousand dollars (\$2000.00) and, for a third or any subsequent conviction within a one-year period, by a fine of not more than five thousand dollars (\$5000.00). Any violation beyond the third conviction within a one-year period may be charged by the City Attorney or the District Attorney as a misdemeanor and the penalty for conviction of the same shall be punishable by a fine of not more than ten thousand dollars (\$10000.00) or by imprisonment in the county jail for a period of not more than six months or by both. Any person violating or failing to comply with any of the provisions of this chapter shall be subject to civil penalties and administrative citations per Sections 1.08 and 1.12 of the Oakland Municipal Code. (Ord. 12579 § 2 (part), 2004: Ord. 12312 § 2 (part), 2001)

**8.09.180 Continuing violation.**

Unless otherwise provided, a person shall be deemed guilty of a separate offense for each and every day during any portion of which a violation of this chapter is committed, continued or permitted by the person and shall be punishable accordingly as herein provided. (Ord. 12579 § 2 (part), 2004: Ord. 12312 § 2 (part), 2001)

**8.09.190 Civil actions.**

In addition to any other remedies provided in this chapter, any violation of this chapter may be enforced by civil action brought by the city. In any such action, the city may seek, and the court shall grant, as appropriate, any or all of the following remedies:

A. A temporary and/or permanent injunction;

B. Assessment of the violator for the costs of any investigation which led to the establishment of the violation, and for the reasonable costs of preparing and bringing legal action under this subsection, including but not limited to attorney compensation. (Ord. 12579 § 2 (part), 2004: Ord. 12312 § 2 (part), 2001)

**8.09.200 Remedies not exclusive.**

Remedies under this chapter are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive. (Ord. 12579 § 2 (part), 2004: Ord. 12312 § 2 (part), 2001)

**8.09.210 Joint and several liability.**

The property owner and the vehicular food vendor shall be jointly and severally liable for violations of this chapter. (Ord. 12579 § 2 (part), 2004: Ord. 12312 § 2 (part), 2001)

## **Chapter 8.10**

### **VANDALISM BY DEFACEMENT OF PROPERTY (GRAFFITI)\***

**Sections:**

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**8.10.010 Findings and Purpose.**

**8.10.020 Definitions.**

#### **Article II**

##### **Graffiti Public Nuisance And Unlawful**

**8.10.110 Graffiti As A Public Nuisance.**

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##### **Graffiti Abatement**

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**8.10.210 Abatement By Graffiti Violator.**

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##### **Municipal Code Liability, Remedies, And Penalties For Applying Graffiti On Public Or Private Property**

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**8.10.310 Power of Arrest and Citation.**

**8.10.320 Administrative Actions.**

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\*Editor's note—Ord. No. 13146, § 1, adopted January 22, 2013, amended Chapter 8.10 in its entirety to read as herein set out. Formerly, Chapter 8.10, §§ 8.10.010—8.10.090 pertained to graffiti, and derived from the prior code, §§ 16-1.01—16-1.07, 16-2.01, and 16-2.02.

**8.10.340 Authority of City Attorney to Bring Actions.**

**8.10.350 Liability of Parent or Guardian of a Minor.**

**8.10.360 Liability of Owner or Operator of Vehicle Used in the Facilitation of Graffiti.**

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##### **Sale Of Graffiti Implements To Minors**

**8.10.400 Sale of Graffiti Implements to Minors.**

**8.10.410 Sale of Graffiti Implements to Minors is Prohibited.**

**8.10.420 Signs Required.**

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##### **State Graffiti Laws**

**8.10.500 Adoption of California Graffiti Laws.**

**8.10.510 Summary Abatement and Responsibility.**

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**8.10.530 Graffiti Liens Alternative (California Government Code Section 38733.6).**

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## **Article VII**

### **Graffiti Abatement Funding And Rewards**

- 8.10.600 Establishment of Graffiti Abatement and Reward Fund.**
- 8.10.610 Rewards for Information.**
- 8.10.620 Funding for Properties Defaced by Graffiti Multiple Times.**
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## **Article VIII**

### **Administrative Appeals**

- 8.10.700 Administrative Appeals.**

## **Article IX**

### **Miscellaneous**

- 8.10.810 Remedies Not Exclusive.**
- 8.10.820 Amendments to State Laws Adopted Herein.**
- 8.10.830 City Administrator Regulations.**

## **Article I**

### **Purpose and Introductory Sections**

#### **8.10.010 Findings and Purpose.**

A. The City Council finds that the increase of graffiti on public and private property creates a condition of blight within the city that can result in the deterioration of property values, business opportunities, and enjoyment of life for persons using adjacent and surrounding properties as well as the entire community.

B. The City Council further finds that the presence of graffiti is inconsistent with the City of Oakland's goals of maintaining property, preventing crime, and preserving aesthetic standards. Often, unless graffiti is quickly removed, it encourages the creation of additional graffiti on nearby buildings and structures. The increase of graffiti promotes a perception that the laws protecting public and private property can be disregarded with impunity.

C. The remedies and penalties for graffiti are currently inadequate to compensate victims of such acts and to discourage acts of graffiti.

D. The purpose and intent of the City Council, through the amending and restating this Chapter, is to protect public and private property from acts of defacement by graffiti by increasing remedies for victims of such acts and penalties for those performing such acts in order to discourage such acts and to adequately compensate the victims of the graffiti and vandalism, including private parties and the City of Oakland.

E. A further purpose of this ordinance is to adopt state statutes permitting cities to provide for additional remedies and penalties against persons committing acts of graffiti.

F. A further purpose of this ordinance is to permit the use of restorative justice in lieu of monetary or criminal penalties against graffiti offenders, when appropriate.

G. For purposes of this ordinance, graffiti does not refer to a style of art. This ordinance is intended to address the application of graffiti that does not have the prior consent of the property owner, and is a form of vandalism. It is not intended to address the content or the artistic merit of the graffiti or other art or messaging on property. Through other policies and programs and as a graffiti deterrent, the City Council may wish to encourage permissive murals or art work on properties as a means of discouraging or abating unconsented to graffiti.

(Ord. No. 13146, § 1, 1-22-2013)

#### **8.10.020 Definitions.**

As used in this Chapter, unless otherwise provided for within and except for those sections that enact state law and for which other definitions apply, the following words shall be defined as follows:

"Adhesive Stickers" means any sheet of paper, fabric, plastic or other substance or material with an adhesive backing.

"Aerosol Paint Container" means any aerosol container, regardless of the material from which it

is made, which is adapted or made for the purpose of spraying paint or other substances capable of being applied on public or private property in a manner that defaces the property.

"Anti-graffiti Materials" means products or materials used to prevent the adhesion of unwanted coatings or applications or to facilitate the removal of graffiti. These products or materials are typically liquid-applied coatings or films applied over the surface to be protected, but can also include landscaping and other plantings. The term "anti-graffiti materials" also includes original products, structures or installations which are made from or which are composed of materials that prevent the adhesion of unwanted coatings or applications or which facilitate the removal of graffiti.

"Assists in Applying Graffiti" means a person who transports another for that person's applying Graffiti, assists in accessing a location upon which graffiti is applied, purchases Graffiti Implements knowing they might be used for applying Graffiti, or otherwise provides assistance in the act of applying Graffiti.

"Boat" means a boat of any kind, whether self-propelled or propelled by other means, including sailing vessels, and all other structures adapted to be navigated in water from place to place for recreational purposes or for the transportation of merchandise or persons.

"City" means City of Oakland.

"City Attorney" means the City Attorney of the City of Oakland or her or his designee.

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

"Committed" means that a person has engaged in prior acts of applying Graffiti which can be proven by prior citations, civil judgments, criminal convictions or equivalents, or proven at the proceeding in which the prior acts are alleged.

"Costs" means and includes, but is not limited to, court costs, all attorneys' fees, costs of removal of the graffiti or other inscribed materials, costs of repair and replacement of defaced property, costs

of investigating the incident, and law enforcement costs, including, but not limited to police, code enforcement, public works, city attorney, or other city departments, incurred by the City in identifying and apprehending persons who create, cause or commit the vandalism in violation of this Chapter.

"Etching Cream" means any caustic cream, gel, liquid, or solution capable, by means of a chemical action, of defacing, damaging, or destroying hard surfaces in a manner similar to acid.

"Etchers" or "Etching Tools" means any sharp or pointed instrument, device or other mechanism including, but not limited to, glass etchers, metal etchers, cutting and grinding instruments, awls, chisels, glass cutters, drill bits or any other instrument that is capable of scratching or otherwise marking any surface including, but not limited to, glass, mirrors, windows, steel, aluminum, brass, tin, fiberglass, wood, plastic, concrete or any other surface.

"Graffiti" means and includes, but is not limited to, vandalism by defacing property through the writing, defacing, tagging, marring, inscribing, etching, scratching, painting or affixing of other markings on buildings, improvements, fixtures, or structures including, but not limited to, walls, fences, signs, retaining walls, driveways, walkways, sidewalks, pavement, curbs, curbstones, street lamp posts, hydrants, trees, electric light or power or telephone or telegraph or trolley wire poles, fire alarms, drinking fountains, parking meters, boats, motor vehicles, trailers, statues and sculptures, newspaper stands, or garbage receptacles without the prior consent of the owner of the property on which the surface is located, regardless of the nature of the material. "Graffiti" shall not include: 1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the Oakland Municipal Code, 2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Reservation Act (CA Civil Code sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17

U.S.C. sections 101 et seq.), 3) any art work consented to in advance by the property owner, and does not refer to any particular style of art.

"Graffiti Implement" means an adhesive sticker/gum label, aerosol paint container, etching cream, etching tool, marking pen, a paint or graffiti sticker, spray actuators or other similar devices that may be used to scar or to deface property.

"Graffiti Violator" means a person who applies Graffiti or who Assists in Applying Graffiti.

"Guardian" means a minor's legal guardian who has custody and control of the minor.

"Gum Label" means any material such as, but not limited to, decals, stickers, posters or labels which contain a substance commonly known as adhesive or glue, which cannot be removed from the surface in an intact condition.

"Marker pen" means any marker pen or any similar implement containing a permanent ink, paint or other pigmented liquid with a marking tip of one-half inch or more at its largest dimension.

"Minor" means any person under the age of eighteen years who has not been emancipated by the court.

"Motor Vehicle" means a passenger vehicle, truck, recreational vehicle, motorcycle, motor scooter, golf cart, or other similar self-propelled vehicle. "Motor vehicle" does not mean a motorized wheelchair, bicycle, tricycle, or quadricycle.

"Property Owner" means any person, firm, corporation, partnership or other entity, owning property either public or private, who is the record titleholder, or whose name or title appears on the last equalized assessment role with the Alameda County Clerk-Recorder's Office, or the lessee or other person having control or possession of the property.

"Registered Owner" means the last registered owner of record of a Vehicle as shown on the records of the Department of Motor Vehicles or similar state or federal agency.

"Trailer" means a vehicle designed for carrying persons or property on its own structure, which may be drawn by a motor vehicle.

"Vehicle" means a vehicle as defined in California Vehicle Code Section 670, and a motor vehicle as defined in California Vehicle Code Section 415.  
(Ord. No. 13146, § 1, 1-22-2013)

## **Article II**

### **Graffiti Public Nuisance and Unlawful**

#### **8.10.110 Graffiti As A Public Nuisance.**

The City Council hereby declares and finds that Graffiti is a public nuisance subject to abatement according to the provisions and procedures contained in the Oakland Municipal Code and this Chapter.

(Ord. No. 13146, § 1, 1-22-2013)

#### **8.10.120 Graffiti Unlawful.**

A. It is unlawful and a violation of the Oakland Municipal Code and this Chapter for any person to write, paint, spray, chalk, etch, or otherwise apply Graffiti (as defined in Section 8.10.020) on public or privately owned buildings, signs, walls, permanent or temporary structures, places, or other surfaces located on public or privately owned property within the City (which, pursuant to the definition of Graffiti in this Chapter did not have the property owner's prior consent).

1. A violation of this subsection shall be subject to enforcement through criminal prosecution, civil action, administrative citation, or nuisance abatement lien as provided for herein.

B. It is unlawful and a violation of the Oakland Municipal Code for any person owning or otherwise in possession or control of any real property within the City to permit or allow any Graffiti (which, pursuant to the definition of Graffiti in this Chapter did not have the property owner's prior consent) to remain on any walls, temporary or permanent structures, places, or other surfaces located on such property when the Graffiti is visible from the street or other public or private property.

(Ord. No. 13146, § 1, 1-22-2013)

## **Article III**

### **Graffiti Abatement**

#### **8.10.200 Graffiti Abatement.**

This Article sets out the means and time frames for Graffiti Abatement.

(Ord. No. 13146, § 1, 1-22-2013)

#### **8.10.210 Abatement By Graffiti Violator.**

Any person applying Graffiti on public or privately owned real or personal property is required to remove the same within twenty-four (24) hours after notice by the City or private owner of the property involved. Such removal shall be done in a manner prescribed by the City. Removing Graffiti does not cure the Graffiti violation, but failure to remove Graffiti after notice is a violation separate from application of the Graffiti.

(Ord. No. 13146, § 1, 1-22-2013)

#### **8.10.220 Time for Removal by Property Owner or Person in Possession or Control.**

A. Whenever the City Administrator determines that Graffiti exists on any occupied real property or any personal property in the city which is visible from the street, right-of-way or other public or private property, the City Administrator or his or her designee shall promptly notify the owner(s) of such property, and may notify the person(s) in possession or control of such property if different from the owner(s), to remove or paint over the Graffiti. The removal must be accomplished within ten (10) days after receipt of such notification or within fifteen (15) days after the notice is deemed to have been received in the event notice is mailed.

B. When the real property is vacant and unoccupied, the removal shall be accomplished within fifteen (15) days after the notice is deemed to have been received by the person or company with dominion and control over the property.

C. Properties subject to California Business and Professions Code Section 25612.5(a)(6) (off-

sale alcohol) are required to abate the Graffiti within the time frames set forth in that statute (seventy-two (72) hours).

(Ord. No. 13146, § 1, 1-22-2013)

#### **8.10.230 Notice to Remove.**

A. Notice to Graffiti Violator. Notice to remove the Graffiti shall be in writing and personally delivered or by depositing such notice in the United States mail, postage paid, to the Graffiti Violator, or if the Graffiti Violator is a Minor, to the Minor's parent or guardian.

B. Notice to Property Owner. Notice to remove the Graffiti shall be in writing and personally delivered to the owner(s) or occupants(s) of the property upon which the Graffiti is located, or by depositing such notice in the United States mail, postage paid, and addressed to the Property Owner(s) at the owner(s) last known address as it appears on the last Alameda County equalized assessments roll, or, if the property is a Vehicle or Boat, to the last known address of the Registered Owner and Lien Holder pursuant to California Department of Motor Vehicles records. If a notice to remove is also given to the person(s) in possession or control of the property, such notice shall be given in either manner specified in this section with respect to giving notice to the owner of the property, and may be addressed to "occupant" or "to whom it may concern," if the name of such person(s) is not known.

(Ord. No. 13146, § 1, 1-22-2013)

#### **8.10.240 Failure to Remove by Property Owner or Person in Possession or Control.**

A. In addition to any citation for failure to remove Graffiti, the City may abate or remove Graffiti after a notice to the Property Owner or person in possession and charge the cost of such removal or abatement to the Property Owner.

B. Administrative Citations and Civil Penalties. The City may assess administration citations or civil penalties pursuant to O.M.C. Chapter 1.08 (Civil Penalties) or O.M.C. Chapter 1.12 (Admini-

istrative Citations) against a Property Owner or anyone in possession of real property who fails to timely remove or abate Graffiti after notice.

1. Administrative Citations. The City may issue administrative citations pursuant to O.M.C. Chapter 1.12:

- a. Not more than \$150 for the first citation issuance;
- b. Not more than \$250 for the second citation issuance;
- c. Not more than \$500 for a third issuance;
- d. All subsequent violations shall be assessed as civil penalties pursuant to O.M.C. Chapter 1.08.

2. Civil Penalties.

a. In instances when a Property Owner or person in possession of property has been administratively cited for failing to timely remove or abate Graffiti more than three (3) times, subsequent acts shall be considered a major violation and the violator shall be assessed a Civil Penalty.

b. A Property Owner or person in possession of property who fails to remove or abate Graffiti after receiving an administrative citation after further notice may be assessed a civil penalty.

C. Any Property Owner(s) or person(s) in possession or control of the real property where Graffiti exists who fails to timely remove the Graffiti is subject to civil penalties, administrative citations, costs of Graffiti removal by the City, costs of City inspections of the property, nuisance abatement liens to recover costs, fees and penalties, and any additional penalties available under the law.

D. In lieu of paying administrative citation or civil penalties, a Property Owner or person in possession or control of real property who is cited for failing to timely remove Graffiti may apply to the City to have the amount of the citation or penalty applied to a portion of the costs of improvements designed to discourage the application of Graffiti.

(Ord. No. 13146, § 1, 1-22-2013)

## **Article IV**

### **Municipal Code Liability, Remedies, and Penalties For Applying Graffiti on Public or Private Property**

#### **8.10.300 Purpose of Article IV.**

This Article sets out the administrative, civil, and criminal liabilities and penalties available under the Oakland Municipal Code for placing Graffiti on City or other public property and private property, including real and personal property. (Ord. No. 13146, § 1, 1-22-2013)

#### **8.10.310 Power of Arrest and Citation.**

Pursuant to O.M.C. Section 1.24.020B, the City Administrator shall have the power to designate, by written order, that particular officers or employees shall have the authority to arrest or cite persons in violation of this Chapter.

(Ord. No. 13146, § 1, 1-22-2013)

#### **8.10.320 Administrative Actions.**

A. The City may assess administration citations or civil penalties pursuant to O.M.C. Chapter 1.08 (Civil Penalties) or O.M.C. Chapter 1.12 (Administrative Citations) against a Graffiti Violator.

B. In instances where the estimated cost of Graffiti abatement is \$100 or less (based on the cost to the party removing the Graffiti), the Graffiti Violator shall be assessed an Administrative Citation in accordance with the following schedule:

1. Administrative Citations. The City may issue administrative citations pursuant to O.M.C. Chapter 1.12:

- a. Not more than \$750 for the first citation issuance;
- b. Not more than \$1,000 for the second citation issuance;
- c. Not more than \$1,500 for the a third issuance;
- d. All subsequent violations shall be assessed as civil penalties.

**2. Civil Penalties.**

a. In instances where the estimated cost of Graffiti abatement is greater than \$100 or the Graffiti Violator has Committed more than three (3) acts of placing Graffiti within a three (3) year period, the further acts shall be considered a major violation and the violator shall be assessed a Civil Penalty, pursuant to O.M.C. Chapter 1.08.

b. Determining the Amount. In determining the amount of the civil penalty, all relevant circumstances shall be considered, including but not limited to: Costs to the City relating to clean-up of Graffiti caused by the Graffiti Violator, special costs to the City in the form of the payment of any reward in, the degree of offense to the public as determined by the magnitude, form and visual prominence of the Graffiti, the history of previous violations by the Graffiti Violator, the assets, liabilities and net worth of the person, and any corrective action taken by Graffiti Violator.

3. Each act of Graffiti is subject to an administrative citation or civil penalty as appropriate. Each application of Graffiti on the same property, but at different times is considered a separate act subject to citation. Each act of Graffiti on a separate piece of real or personal property is a separate act subject to citation even if occurring on the same general time and day. Each person who participates in an act of Graffiti is subject to a separate administrative citation or civil penalty.

4. If a Graffiti Violator fails to remove Graffiti within twenty-four (24) hours after notice by the City or the property owner, such failure to timely remove the Graffiti constitutes a separate violation and is a major violation subject to civil penalties.

5. In addition to assessing administrative citations or civil penalties, a Graffiti Violator shall also be assessed Costs relating to the Graffiti. Each person who participates in an act of Graffiti is jointly and severally liable with all other persons who participated in that act of Graffiti for the Costs of that act of Graffiti.

(Ord. No. 13146, § 1, 1-22-2013)

**8.22.330 Civil Actions Against Graffiti Violators.**

A. Any person or entity, public or private, on whose property Graffiti has been placed, may bring a civil action against a Graffiti Violator. In addition, a duly established Business Improvement District, merchants' association, or business, community, or neighborhood association or organization that removes Graffiti on behalf of its members may bring an action against a Graffiti Violator to recover its costs of removal.

B. Costs and Damages Recoverable. The following damages may be assessed against a Graffiti violator:

1. The cost of abatement;
2. Any cost for loss of use of the property on which the Graffiti has been placed (for example, the loss of use of a vehicle that must be repainted to remove Graffiti);
3. Costs of investigation, including the cost of any code enforcement or police resources used to investigate each incident, as are set out in the Master Fee Schedule;
4. Reasonable attorney's fees for bringing the action;
5. Cost of suit;
6. Treble damages if the violator has been found to have Committed multiple acts of Graffiti within a three (3) year period.
7. Punitive damages if appropriate under applicable state law and under state law standards.

C. Joint and Several Liability. Each person who participates in an act of Graffiti is jointly and severally liable with any other person who participates for all Costs, damages, penalties, and attorneys' fees related to that act of Graffiti.

(Ord. No. 13146, § 1, 1-22-2013)

**8.10.340 Authority of City Attorney to Bring Actions.**

A. The City Attorney may bring an action to recover costs incurred by the City through the following methods:

1. Adult Defendant. The City Attorney may bring and maintain a civil action in the name of

the City of Oakland to obtain a money judgment against the defendant for any amount not ordered or collected by a criminal court, including, but not limited to, all Costs, attorney's fees, court costs, and/or other costs in addition to civil penalties incurred in connection with the civil prosecution of any claim for damages or reimbursement.

2. Minor Offender. The City Attorney may bring and maintain a civil action in the name of the City of Oakland to obtain a money judgment against the minor Graffiti Violator and/or his or her parent(s) or guardian(s) having custody and control of the minor for any amount not ordered or collected by the juvenile court, including, but not limited to, all Costs, attorney's fees, court costs, and/or other costs as defined in addition to civil penalties incurred in connection with the civil prosecution of any claim for damages or reimbursement.

B. The City Attorney may also seek to recover the City's Costs incurred relative to the Graffiti, or such other costs as the City may have. The City Attorney may do so in any of the following ways:

1. Bring an action on the City's behalf to recover such costs;
2. Join an action brought by a private party to recover damages and costs relating to a Graffiti incident;
3. Permit a private party who is the victim of Graffiti to bring the action on the City's behalf.

4. In the event the City Attorney brings an action to cover the City's costs of a Graffiti incident, at the City Attorney's sole election, and with the permission of the private party or other public entity victim of a Graffiti incident, the City Attorney may pursue the private party or other public entity victim's claims against the Graffiti Violator for damages and costs.

C. The City Attorney may also bring actions for injunctive or equitable relief against Graffiti Violators.

(Ord. No. 13146, § 1, 1-22-2013)

#### **8.10.350      Liability of Parent or Guardian of a Minor.**

Any parent or legal guardian of a Minor Graffiti Violator is personally liable for any and all

Costs incurred by the City or any person or business in connection with the removal of Graffiti caused by conduct of said minor, and for all attorney's fees, court costs, and other Costs and any administrative citations or civil penalties incurred in connection with the civil or administrative prosecution of any claim for damages to the maximum extent permitted by California Civil Code section 1714.1 or other applicable laws.

(Ord. No. 13146, § 1, 1-22-2013)

#### **8.10.360      Liability of Owner or Operator of Vehicle Used in the Facilitation of Graffiti.**

To the extent permitted by law, an owner or operator of a motor vehicle is liable and responsible for injury to property resulting from the vehicle's use in applying Graffiti and for all Costs relating to the Graffiti incident when the vehicle is used with the express or implied permission of the owner or operator, irrespective of whether the owner or operator knew or should have known of the intended use of the vehicle.

(Ord. No. 13146, § 1, 1-22-2013)

#### **8.10.370      Restorative Justice - Request to Perform Community Service or Parenting Classes in Lieu of Administrative Citation or Civil Penalty.**

A. A Graffiti Violator, or parent or guardian of a Minor Graffiti Violator cited with an administrative citation or civil penalty pursuant to this Chapter may request to participate in a restorative justice program; perform community service or attend parenting classes in lieu of payment of the administrative penalty. Community service and parenting classes must be in a program approved by the City Administrator.

1. Any Graffiti Violator or parent or guardian of a Minor Graffiti Violator cited with an administrative citation or civil penalty who requests permission to participate in a restorative justice program, perform community service or attend parenting classes in lieu of payment of the admin-

istrative penalty, as provided in this Subsection (A), must make the request in writing and file it with the issuing department no later than fifteen (15) calendar days, excluding weekends and holidays, after service of the citation. All requests made pursuant to Subsection (A) must include the address of the responsible person(s) for the purpose of correspondence by the issuing department.

2. The issuing department shall notify the Graffiti Violator or parent or guardian of a Minor Graffiti Violator by first class mail, postage prepaid, whether the request to participate in restorative justice, perform community service or attend parenting classes has been approved, and if approved, shall identify the program(s) that the responsible person must complete, and the date by which such program shall be completed.

3. Eligibility for restorative justice, community service, or parenting classes shall be based on factors including:

- a. The number of incidents of Graffiti the Graffiti Violator has engaged in;
- b. Whether the Graffiti Violator has previously participated in community service;
- c. The cost of the Graffiti damage;
- d. The Graffiti Violator's or parents ability to pay penalties;
- e. If the Property Owner victim requests the Graffiti Violator perform community service.

4. Granting or denying request for restorative justice, community service or parenting classes.

a. Restorative justice. The decision to grant or deny a restorative justice request shall be in the discretion of the victim property owner or possessor and the Graffiti Violator. If the City has a financial interest in the incident greater than that of the victim, then the City Administrator may also participate in the decision to permit restorative justice.

b. Community service or parenting classes. The decision to grant or deny a community service or parenting class request shall be in the sole discre-

tion the City Administrator. In granting or denying the request, the City Administrator may take into consideration the wishes of the victim.

c. In the event the request for participation in restorative justice, perform community service or parenting classes, is denied the administrative citation or civil penalty otherwise payable must be made by the date specified in the notice denying the request.

d. Even if the Graffiti Violator participates in restorative justice, community service, or his/her parents attend parenting classes, the City may still pursue other recovery of fines or Costs, taking into consideration Graffiti Violator's participation in one of the programs.

5. Community service may include removing Graffiti from public or private property. The amount of community service shall be in proportion to the amount of administrative citation or civil penalty.

6. The obligation to pay the administrative citation or civil penalty otherwise required shall be suspended during the time period provided for completion of the approved program as set forth in the written notification approving the request sent by the issuing department under O.M.C. 8.10.370 A2, above.

7. The Graffiti Violator must provide proof of completion of the approved program by submitting to the issuing department within five (5) calendar days following the date by which the program was to be completed, a certificate of completion issued by the program provider. Failure to present such proof within the required time period shall result in the reinstatement of the administrative penalty otherwise due as stated in the administrative citation without further notification by the issuing department. Payment of the amount due shall be made within seven (7) calendar days of the date by which the program was to be completed as specified in the notice provided under O.M.C. 8.10.370 A2, above.

B. Restorative Justice Program. The City Administrator shall develop a program for referring Graffiti Violators to a restorative justice program.

The restorative justice program shall be one that holds disputants and offenders accountable to recognize harm, repair damages as much as possible, in lieu of civil or criminal penalties. The City Administrator may develop a list of agencies, non-profits, or other entities that have such programs. To the extent a restorative justice program may seek to involve the victim as well as the offender, the City Administrator shall encourage, but not require the victim to participate.

C. In addition to any other remedy provided by law, if the responsible person fails to comply with the administrative citation or civil penalty, the City may use any other legal remedy available to gain compliance with the administrative citation or civil penalty.

D. Any notices of violations issued for circumstances in which restorative justice or community service is appropriate shall include clear language regarding the availability of restorative justice or community service.

E. The fact that a property owner victim may be an absentee owner, or does not respond to a request or elect to participate in restorative justice or community service for the Graffiti Violator does not preclude the Graffiti Violator from being eligible for such programs.

(Ord. No. 13146, § 1, 1-22-2013)

#### **8.10.380      Criminal Penalties Available for Applying Graffiti on Property.**

A. Graffiti as Misdemeanor. Application of Graffiti on any public or private property is a misdemeanor as a violation of the Oakland Municipal Code and this Chapter, in addition to any state law penal violations and any administrative or civil penalties.

B. Criminal Prosecution. A person who suffers a conviction for committing an act of Graffiti who is granted probation, or any minor who is found to be a person described in California Welfare and Institutions Code Section 602 as a result of committing an act of Graffiti shall make restitution to the victim, in addition to any other penalties prescribed by law.

1. Suspension of Driving Privileges. For every conviction of a person for a violation of Califor-

nia Penal Code Sections 594, 594.3, or 594.4 committed while the person was 13 years old or older, the City Attorney may petition the sentencing court to suspend existing driving privileges or delay issuance of driving privileges pursuant to California Vehicle Code Section 13202.6.

2. Community Service. Upon conviction of any person for defacing property with Graffiti or other inscribed materials, the City Attorney may petition the sentencing court to, in addition to any punishment imposed under California Penal Code Section 594, order the defendant to clean-up, repair, or replace the damaged property himself or herself, or order the defendant, and his or her parents or guardians if the defendant is a minor, to keep the damaged property or another specified property in the community free of Graffiti for up to one year as set forth in California Penal Code Section 594(c).

3. Administrative Hearing. An administrative order may be sought for violations relating to Graffiti offenses against the responsible person(s) and/or, if the responsible person is a minor, against the person(s) or guardian(s) having custody and control of the minor.

(Ord. No. 13146, § 1, 1-22-2013)

### **Article V**

#### **Sale of Graffiti Implements to Minors**

##### **8.10.400      Sale of Graffiti Implements to Minors.**

This Article states the City's restrictions on the sale of Graffiti Implements to Minors.

(Ord. No. 13146, § 1, 1-22-2013)

##### **8.10.410      Sale of Graffiti Implements to Minors is Prohibited.**

A. It is unlawful for any person, other than a parent or legal guardian, or for any firm, corporation or partnership doing business in the City to sell, give or in any way furnish, to a minor any aerosol paint containers, marker pens, and/or other Graffiti implements that are capable of defacing property without the consent of the minor's par-

ent or legal guardian, which shall be given in advance. This Article is intended to apply only to commercial entities and not to public entities or entities that are tax-exempt pursuant to applicable sections of the Internal Revenue Code that provide art implements at no or nominal charge.

B. It is unlawful for any minor to have in his or her possession any aerosol paint container, marker pen, and/or other graffiti implements while: (1) upon public property, unless the minor is using the aerosol paint container, marker pen, and or other graffiti implement under the supervision of a parent, legal guardian, instructor/teacher, or employer; or (2) upon private property without the consent of the owner of such private property.

(Ord. No. 13146, § 1, 1-22-2013)

#### **8.10.420 Signs Required.**

A. Any person engaged in the retail sale of aerosol paint containers and other liquid substances or markers capable of defacing property must display at the location of retail sale City-approved signs clearly visible and legible to employees and customers.

B. The City Administrator shall develop a form of sign that persons subject to this chapter may use for compliance with this Article. This is "safe harbor" form and its proper use complies with this Article. However, nothing herein precludes the use of a sign form, so long as it provides the information required by this Article.

(Ord. No. 13146, § 1, 1-22-2013)

#### **8.10.430 Display of Aerosol Paint Containers and Marker Pens.**

A. Every person who owns, conducts, operates or manages a retail commercial establishment selling aerosol paint containers of any size or weight, or any marker pen with a marking tip one-half inch or more at its largest dimension that is capable of defacing property with permanent, indelible or waterproof ink, paint or other liquid, shall store or cause such aerosol paint containers or marker pens to be stored in an area continuously

observable by employees of said retail commercial establishment during the regular course of business.

B. In the event a retail commercial establishment is unable to store such aerosol paint containers or marker pens in an area as provided in this section, as an alternative such aerosol paint containers or marker pens shall be stored in an area viewable by, but not accessible to, the public in the regular course of business without employee assistance, pending the lawful sale or disposition of such aerosol paint containers or marker pens.

(Ord. No. 13146, § 1, 1-22-2013)

#### **8.10.440 Penalty for Wrongful Sale, Display, and Storage.**

A. Any person, organization, company, firm or association who sells, displays or stores any graffiti implements in violation of the provisions of this section shall, to the extent permitted by law, be personally liable for any and all costs incurred by any party in connection with the removal of graffiti, or the repair of any property containing graffiti, caused by any person who used such graffiti implement in violation of this Article, and for all Costs, attorney's fees and court costs incurred in connection with the administrative or civil prosecution of any claim for damages or Costs.

B. Such person, organization, company, firm or association who sells, displays or stores any graffiti implements in violation of the provisions of this section shall be subject to administrative citation or civil penalty or cited for an infraction, for failing to comply with this Article irrespective of whether any of the violations are proven to have contributed to application of any Graffiti.

(Ord. No. 13146, § 1, 1-22-2013)

### **Article VI**

#### **State Graffiti Laws**

#### **8.10.500 Adoption of California Graffiti Laws.**

California Government Code Sections 38772, 38773.2, 38773.6, and 38773.7 are hereby adopted

as an additional remedy addressing graffiti. These sections can only be used for the circumstances and using the definitions set forth therein and as stated herein.

(Ord. No. 13146, § 1, 1-22-2013)

#### **8.10.510      Summary Abatement and Responsibility.**

A. This section O.M.C. 8.10.510 provides for the summary abatement of any nuisance resulting from the defacement of the property of another by graffiti or any other inscribed material at the expense of the minor or other person creating, causing, or committing the nuisance and by ordinance may make the expense of abatement of the nuisance a lien against property of the minor or other person and a personal obligation against the minor or other person pursuant to sections O.M.C. 8.10.520 or 530 (California Government Code Sections 38773.2 or 38773.6).

B. The parent or guardian having custody and control of the minor shall be jointly and severally liable with the minor. The expense of abatement of any nuisance, resulting from the defacement by a minor of the property of another by graffiti or any other inscribed material, a lien against the property of a parent or guardian, having custody and control of the minor, and a personal obligation against the parent or guardian having custody and control of the minor pursuant to O.M.C. 8.10.520 or 530 (California Government Code Section 38773.2 or 38773.6).

C. Notwithstanding any other provision of law, the names and addresses of the parent or guardian having custody and control of the minor, if known, shall be reported by the probation officer of the county to the City Administrator.

D. As used in this section O.M.C. 8.10.500, et seq., the following terms have the following meanings:

1. "Expense of abatement" includes, but is not limited to, court costs, attorney's fees, costs of removal of the graffiti or other inscribed material, costs of repair and replacement of defaced prop-

erty, and the law enforcement costs incurred by the City in identifying and apprehending the minor or other person.

2. "Graffiti or other inscribed material" means any unauthorized inscription, word, figure, mark, or design that is written, marked, etched, scratched, drawn, or painted on any real or personal property.

3. "Minor" or "other person" means a minor or other person who has confessed to, admitted to, or pled guilty or nolo contendere to a violation of Sections 594, 594.3, 640.5, 640.6, or 640.7 of the California Penal Code, or a minor convicted by final judgment of a violation of Sections 594, 594.3, 640.5, 640.6, or 640.7 of the California Penal Code, or a minor declared a ward of the Juvenile Court pursuant to Section 602 of the California Welfare and Institutions Code by reason of the commission of an act prohibited by Sections 594, 594.3, 640.5, 640.6, or 640.7 of the Penal Code.

(Ord. No. 13146, § 1, 1-22-2013)

#### **8.10.520      Recovery of Costs and Liens.**

A. If a property owner or other person in possession of a property or the City summarily abates a nuisance resulting from the defacement by a minor or other person of the property of another by graffiti or any other inscribed material by graffiti, the costs of abatement and related administrative costs incurred in the summary abatement of any nuisance may be recovered as set forth in this section.

B. The City may record a lien on the property of the minor or other person or the property of the minor's parent or guardian having custody and control of the minor committing the graffiti nuisance for the abatement and administrative costs incurred in summarily abating graffiti nuisance. The City shall provide notice to the minor or other person prior to the recordation of a lien on the parcel of land owned by the minor or other person. In addition to notice to the minor, the City shall provide notice to the parent or guardian having custody and control of the minor prior to

the recordation of a lien on the parcel of land owned by the parent or guardian having custody and control of the minor.

C. The notice shall be served in the same manner as a summons in a civil action pursuant to Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the California Code of Civil Procedure. If the minor or other person, after diligent search, cannot be found, the notice may be served by posting a copy of the notice upon the property owned by the minor or other person, in a conspicuous place, for a period of 10 days. The notice shall also be published pursuant to California Government Code Section 6062 in a newspaper of general circulation that is published in the county in which the property is located. If the parent or guardian having custody and control of the minor, after diligent search, cannot be found, the notice may be served by posting a copy of the notice upon the property owned by the parent or guardian having custody and control of the minor, in a conspicuous place, for a period of 10 days. The notice shall also be published pursuant to California Government Code Section 6062 in a newspaper of general circulation that is published in the county in which the property is located.

D. A graffiti nuisance abatement lien shall be recorded in the county recorder's office in the county in which the parcel of land is located. From the date of recording, the lien shall have the force, effect, and priority of a judgment lien.

E. A graffiti nuisance abatement lien authorized by California Government Code Section 38773.2 shall specify the amount of the lien; shall name the City of Oakland; the date of the abatement order; the street address, legal description, and assessor's parcel number of the parcel on which the lien is imposed; and the name and address of the recorded owner of the parcel.

F. If the lien is discharged, released, or satisfied, either through payment or foreclosure, notice of the discharge containing the information specified in subsection 5 above shall be recorded by the

City. A graffiti nuisance abatement lien and the release of the lien shall be indexed in the grantor-grantee index.

G. A graffiti nuisance abatement lien may be satisfied through foreclosure in an action brought by the City.

H. If the County Recorder imposes a fee on the City to reimburse the costs of processing and recording the lien and providing notice to the property owner, the City may recover from the property owner such any costs incurred as part of its foreclosure action to enforce the lien.

I. This section O.M.C. 8.10.520 "abatement and related administrative costs" include, but are not limited to, court costs, attorney's fees, costs of removal of the graffiti or other inscribed material, costs of repair and replacement of defaced property, and the law enforcement costs incurred by the City in identifying and apprehending the minor or other person.

J. The terms "graffiti or other inscribed material," "minor," and "other person" have the same meaning as specified in O.M.C. 8.10.510 (California Government Code Section 38772).

(Ord. No. 13146, § 1, 1-22-2013)

#### **8.10.530      Graffiti Liens Alternative (California Government Code Section 38733.6).**

A. As an alternative to the procedure specified O.M.C. 8.10.520 (California Government Code Section 38773.2), the City, at the City Administrator's discretion may make costs of abatement of a nuisance resulting from the defacement by a minor or other person of property of another by graffiti or other inscribed material and a special assessment against a parcel of land owned by the minor or other person or by the parent or guardian having custody and control of the minor. The assessment may be collected at the same time and in the same manner as ordinary municipal taxes are collected and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary municipal taxes. All laws applicable to the levy, collec-

tion, and enforcement of municipal taxes shall be applicable to the special assessment. However, if any real property to which the abatement and related administrative costs relate has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrancer for value has been created and attaches thereon prior to the date on which the first installment of the taxes would become delinquent, then the abatement and related administrative costs shall not result in a lien against the real property but shall instead be transferred to the unsecured roll for collection. Notices or instruments relating to the abatement proceeding or special assessment may be recorded.

B. The terms "abatement and related administrative costs," "graffiti or other inscribed material," "minor," and "other person" have the same meaning as specified in O.M.C. 8.10.510 and 520 (California Government Code Sections 38772 and 38773.2).

(Ord. No. 13146, § 1, 1-22-2013)

#### **8.10.540 Treble Damages (California Government Code Section 38773.7).**

Upon entry of a second or subsequent civil or criminal judgment within a two-year period finding that an owner of property or a person described in O.M.C. 8.10.510 D.3 (minor or other person) (California Government Code Section 38772, paragraph (3) of subdivision (d)) is responsible for a condition that may be abated in accordance with O.M.C. 8.10.530 (California Government Code Section 38773.6), except for conditions abated pursuant to California Health and Safety Code Section 17980 the court may order that person to pay treble the costs of the abatement.

(Ord. No. 13146, § 1, 1-22-2013)

### **Article VII**

#### **Graffiti Abatement Funding and Rewards**

##### **8.10.600 Establishment of Graffiti Abatement and Reward Fund.**

A. The City Council may by resolution establish a Graffiti Abatement and Reward Fund as set

out in this Article. The Fund has the purpose of assisting property owners or possessors who have been the victim of Graffiti multiple times with abatement and or with means of avoiding Graffiti and to provide for rewards for the identification and apprehension of Graffiti Violators.

B. The City Council may fund the Graffiti Abatement and Reward Fund from general purposes funds and funds recovered from administrative citations, civil penalties, or treble or punitive damages recovered from Graffiti Violators, or other sources.

(Ord. No. 13146, § 1, 1-22-2013)

##### **8.10.610 Rewards for Information.**

A. Pursuant to California Government Code Section 53069.5, the City may offer a reward in an amount to be established by resolution of the City Council for information leading to the identification and the apprehension of Graffiti Violator who commits the act on any City-owned real or personal property. In the event of damage to public property, the offender or the parent or legal guardian of any emancipated minor must reimburse the City for any reward paid. In the event of multiple contributors of information, the reward amount shall be divided by the City in the manner it shall deem appropriate. For the purposes of this Section, diversion of the offending violator to a community service program, or a plea bargain to a lesser offense, shall constitute a conviction.

B. Claims for rewards under this Section shall be filed with the City in the manner specified by the City Council in any legislation establishing the reward fund and any regulations promulgated by the City Administrator.

C. No claim for reward shall be allowed unless the City investigates and verifies the accuracy of the claim and determines that the requirements of this Section, the resolution authorizing the reward, or any regulations have been satisfied.

D. The City may also offer a reward for information leading to the identification and the apprehension of a Graffiti Violator who commits the act on private property.

(Ord. No. 13146, § 1, 1-22-2013)

**8.10.620      Funding for Properties Defaced by Graffiti Multiple Times.**

A. Graffiti Abatement Fund. The City Council may by resolution set up a Graffiti Abatement Fund ("Fund"). The purpose of the Fund is to partially reimburse victims of multiple acts of Graffiti.

B. Guidelines for eligibility for payment from the Fund shall generally be determined as follows and as more fully set forth in any funding resolution or by the City Administrator:

1. The property defaced by Graffiti must have been defaced more than three (3) times in a twelve (12) month period may be eligible for assistance from Fund.

2. The property owner(s) or person(s) in possession or control must demonstrate specific good faith efforts to reduce Graffiti on the property, including, but not limited to, the following:

- a. Removing Graffiti from the property at least three (3) times on three (3) separate occasions within seventy-two (72) hours of discovery and prior to notice by the City;

- b. Reporting the Graffiti incidents to the Police Department and assisting in any Police investigation;

- c. Having a Crime Prevention Through Environmental Design (CPTED) analysis performed on the property;

- d. Taking affirmative steps to reduce the likelihood of repeated graffiti based on CPTED recommendations or alternatives. Examples of graffiti prevention methods: use natural deterrents such as landscaping (scrubs, thorny plants, vines, etc.), increase lighting, decrease through foot traffic (e.g. use fences to control entrances and exits), limit access to roofs by moving dumpsters away from walls and covering drainpipes to prevent graffiti vandals from scaling them and/or use of anti-graffiti material on walls such as sacrificial coatings, textured walls, dark-colored walls, or artistic murals.

C. Victims of multiple Graffiti incidents may also be eligible to have Graffiti removed as part of community service by a Graffiti Violator.

D. The provisions of this section O.M.C. 8.10.620 are not available for Graffiti applied to a property that is subject to California Business and Professions Code Section 25612.5(a)(6) (liquor stores).

(Ord. No. 13146, § 1, 1-22-2013)

**8.10.630      Repair, Removal or Replacement of Defaced Public or Privately Owned Property.**

A. The purpose of this section is to adopt California Government Code Section 53069.3 (Repair, removal or replacement of defaced public or privately owned property).

B. City Council may, by resolution, authorize the Fund to be used to remove graffiti or other inscribed material from publicly or privately owned real or personal property located within the City and to replace or repair public or privately owned property within that City that has been defaced with graffiti or other inscribed material that cannot be removed cost effectively.

C. The Fund may only be used to the removal of the graffiti or other inscribed material itself, or, if the graffiti or other inscribed material cannot be removed cost effectively, the repair or replacement of the portion of the property that was defaced, and not the painting, repair, or replacement of other parts of the property that were not defaced.

D. The Police Department, through the City Administrator, may promulgate procedures for pre-removal preservation of sufficient evidence of the graffiti or other inscribed material for criminal prosecutions or proceedings pursuant to California Welfare and Institutions Code Section 602 pertaining to the person or persons who inscribed the graffiti or other material. These procedures shall be followed by the City prior to or during removal of graffiti or other inscribed material.

E. The City may recover the costs of graffiti removal pursuant to O.M.C. 8.10.520 and 530. (Ord. No. 13146, § 1, 1-22-2013)

## Article VIII

### Administrative Appeals

#### 8.10.700 Administrative Appeals.

A. An administrative assessment of fines or Costs may be appealed administratively pursuant to appeals of administrative actions set out in the Oakland Municipal Code or as developed by the City Administrator.

B. A party aggrieved by a final administrative decision of the City may seek judicial review of the administrative decision pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6 within the time frame pursuant to those code sections.

(Ord. No. 13146, § 1, 1-22-2013)

ceeded by another enactment of the California Legislature, it shall be deemed such amendments shall be automatically deemed adopted as part of this section of the Oakland Municipal Code as if fully set forth herein unless the City Council amends this Chapter to do otherwise.

(Ord. No. 13146, § 1, 1-22-2013)

#### 8.10.830 City Administrator Regulations.

The City Administrator is authorized to establish any regulations to aid in administration or enforcement of this Chapter.

(Ord. No. 13146, § 1, 1-22-2013)

## Article IX

### Miscellaneous

#### 8.10.810 Remedies Not Exclusive.

A. Selecting the Remedy. Selecting the appropriate remedy to be sought shall be consistent with the purpose and intent of this Chapter. This includes, but is not limited to, alternative options, such as graffiti removal, community service, parenting classes, counseling, and/or other forms of remedial education.

B. Remedies Not Exclusive. Remedies provided for the enforcement of this Chapter are in addition to and do not supersede or limit any and all other remedies provided by law. The remedies provided in this Chapter are cumulative and not exclusive. The City, a property owner victim, or anyone else authorized by this Chapter to use a remedy, may use one or more remedies in this Chapter or as available under other laws separately or together where appropriate.

(Ord. No. 13146, § 1, 1-22-2013)

#### 8.10.820 Amendments to State Laws Adopted Herein.

In the event that any California statute adopted or referred to in this Chapter is amended or suc-

## Chapter 8.12

### HAZARDOUS MATERIALS

**Sections:**

- 8.12.010      State hazardous materials law.**
- 8.12.020      Adoption of provisions of Chapter 6.95.**
- 8.12.030      Enforcement responsibility—Delegation of authority.**
- 8.12.040      Fees.**
- 8.12.050      Civil penalties and remedies for violations.**
- 8.12.060      Criminal penalties for violations.**

**8.12.010      State hazardous materials law.**

The city of Oakland (“city”) assumes the authority and responsibility for the implementation of Chapter 6.95 (“Chapter 6.95”) of the California Health and Safety Code (Health and Safety Code Section 25500 et seq.), as to the handling of the hazardous materials in the city. Pursuant to Section 25502 of Chapter 6.95, the city shall have exclusive jurisdiction within its boundaries for the purposes of carrying out Chapter 6.95.

Notwithstanding any other provision of this chapter, the Alameda County District Attorney shall continue to be responsible for any civil and criminal prosecution of Chapter 6.95 violations, unless otherwise agreed to by the city and county of Alameda in writing.

The city’s assumption of responsibility for the implementation of Chapter 6.95 is in accordance with Section 25502 of Chapter 6.95 and pursuant to that certain agreement dated November 1, 1994 between the city and the county of Alameda, entitled “Memorandum of Understanding Hazardous Materials, Community Right to Know Law Enforcement Agreement.” (Prior code § 2-12.01)

**8.12.020      Adoption of provisions of Chapter 6.95.**

The city adopts and incorporates by reference as

if fully set forth herein, the provisions of Chapter 6.95, as they may be amended from time to time. (Prior code § 2-12.02)

**8.12.030      Enforcement responsibility—Delegation of authority.**

In accordance with Section 25502(b) of Chapter 6.95, the Office of Fire Services (“Fire Department”) is designated as the administering department responsible for the administration and enforcement of the provisions of Chapter 6.95 and this chapter. The City Manager delegates to the Fire Chief of the Fire Department the authority to take any and all actions that may be necessary for the Fire Department to administer and enforce Chapter 6.95 and this chapter. All city employees designated by the Fire Chief and authorized to make such inspections and take any actions on behalf of the Fire Chief as may be required to administer and enforce the provisions of Chapter 6.95 and this chapter. (Prior code § 2-12.03)

**8.12.040      Fees.**

In accordance with Sections 25513 and 25535.2 of Chapter 6.95, as they may be amended from time to time, the city upon a majority vote of the City Council shall adopt and maintain a schedule of fees in the city’s master fee schedule to be collected from each business within the city that is required to submit a business plan and from each business within the city which may be required to submit a Risk Management and Prevention Program (“RMMP”) under Chapter 6.95. The City Council may provide for waiver of fees when a business, as defined in Section 25501.4 of Chapter 6.95 submits a business plan or an RMMP. (Prior code § 2-12.04)

**8.12.050      Civil penalties and remedies for violations.**

A. Businesses shall be civilly liable to the city in the amounts specified in Chapter 6.95 for violations of Chapter 6.95 and this chapter. (See Chapter 6.95 Sections 25514, 25514.5 and 25540.)

B. Civil actions brought under Chapter 6.95 and this chapter shall be prosecuted in accordance with

**8.12.050**

the provisions of Chapter 6.95 and this chapter.  
(Prior code § 2-12.05)

**8.12.060      Criminal penalties for violations.**

A. Pursuant to Section 25514.3 of Chapter 6.95, persons who violate the provisions of Chapter 6.95 specified therein, after reasonable notice of violation shall, upon conviction, be guilty of a misdemeanor. The criminal penalties set forth in Section 25514.3 of Chapter 6.95 do not preempt any other applicable criminal or civil penalties.

B. In accordance with Section 25515.1 of Chapter 6.95, any person who wilfully prevents, interferes with, or attempts to impede the enforcement of Chapter 6.95 by any authorized representative of the city, upon conviction, shall be guilty of a misdemeanor.

C. Any person who violates Section 25507 of Chapter 6.95, which requires among other things that upon discovery the handler, as the term handler is defined in Chapter 6.95, or any employee, authorized representative agent, or designee of a handler, immediately report any release or threatened release of a hazardous material in accordance with the provisions thereof, shall be subject to the penalties specified in Section 25515 of Chapter 6.95 which penalties include fines and/or imprisonment.

D. Any person who violates Section 25541 of Chapter 6.95 is subject to the penalties specified therein, which include fines and/or imprisonment upon conviction for knowingly making any false statement or representation in any record, report, or other document filed, maintained, or used for the purpose of compliance with Article 2 of Chapter 6.95, or destroys, alters or conceals any such record, report or other document filed, maintained or used for the purpose of compliance with Article 2 of Chapter 6.95. (Prior code § 2-12.06)

<b>Chapter 8.14</b>		<b>8.14.330</b>	Certain meats inspected before brought into city—Beef defined.
<b>MEAT</b>		<b>8.14.340</b>	Adulterated food.
<b>Sections:</b>		<b>8.14.350</b>	Authority and duty to inspect—Condemnation.
8.14.010	Supervision of meat preparation.	<b>8.14.360</b>	Use of scraps.
8.14.020	Brand or approval required on meats.	<b>8.14.370</b>	Standards used in tests.
8.14.030	Meat permit—Application.	<b>8.14.380</b>	Meat held for test to be quarantined.
8.14.040	Requirements for permit.	<b>8.14.390</b>	Fees for special inspection services.
8.14.050	Floors and walls.	<b>8.14.400</b>	Licenses.
8.14.060	Killing room—Cooling room.	<b>8.14.410</b>	Default in paying fees.
8.14.070	Construction of premises.	<b>8.14.420</b>	Inspection outside of city.
8.14.080	Fixed place of business required.	<b>8.14.430</b>	Meats advertised and sold by weight.
8.14.090	Refrigeration.		
8.14.100	Glass doors—Fan.		
8.14.110	Counters.		
8.14.120	Lard room.		
8.14.130	Trays.		
8.14.140	Racks—Refuse cans.		
8.14.150	Markets in basements.		
8.14.160	Lavatory equipment.		
8.14.170	Permit posted—Revocation.		
8.14.180	Cleanliness of employees.		
8.14.190	Vehicles.		
8.14.200	Slaughtering establishments.		
8.14.210	Slaughtering hours.		
8.14.220	Removal of offensive matters.		
8.14.230	Animals to stand at place of slaughter.		
8.14.240	Keeping live fowl and animals.		
8.14.250	Application for inspection.		
8.14.260	Time of inspection—Notice.		
8.14.270	Interstate shipment inspection.		
8.14.280	Inspection designated by number.		
8.14.290	Time of branding.		
8.14.300	Trade names on hams and bacons.		
8.14.310	Possession and use of stamps or brands.		
8.14.320	Partly dressed meats—Age and weight of calves.		
		<b>8.14.010</b>	<b>Supervision of meat preparation.</b>
			It is unlawful for any person to sell, have in possession, keep or expose for sale for human food, the flesh of any cattle, hogs, sheep, swine, goats, rabbits, or any other animal, poultry, fish, or meat food products, unless the same shall have been slaughtered or passed under the supervision of the United States Government Inspector, in accordance with the regulations relating to the inspection thereof as prescribed by the Department of Agriculture of the United States, or under the supervision of the state of California, Department of Agriculture Inspector, in accordance with the regulations relating to the inspection thereof as prescribed by the Department of Agriculture of the state of California, or under the supervision of the Health Officer of the city of Oakland, in accordance with the provisions of this chapter. (Prior code § 4-3.01)
		<b>8.14.020</b>	<b>Brand or approval required on meats.</b>
			It is unlawful for any person to sell, have in possession, keep or expose for sale, the flesh of cattle, calves, hogs, sheep or goats, or any meat food products, unless there has been placed on each primal part thereof, or on such food products, a brand of approval of the Bureau of Animal Industry

## **8.14.020**

of the United States, California Department of Agriculture, of the city of Oakland, or of an authorized inspector whose brand or mark of identification is acceptable to the Health Department of the city; or for any person to manufacture into sausage or other meat food products the flesh or meat of any animal designated in this chapter except such flesh or meat shall bear the brand of approval as provided herein. (Prior code § 4-3.02)

### **8.14.030 Meat permit—Application.**

No person shall manufacture, slaughter or sell any of the animals, fish or poultry, or parts thereof, or other meat products mentioned in Section 8.14.010 for use for food purposes in the city, or engage in such business, without first making application in writing to the Health Department of the city, and obtaining a permit so to do, which application shall be signed by the person making the same, and shall specify the location of the house or place where it is proposed to slaughter, handle, manufacture or sell such animals or parts thereof, fish or poultry, and state the nature of the business proposed to be carried on.

Upon the filing of such application with the said Health Department of the city, a duly authorized Meat Inspector of the city shall inspect said premises, and, if the same shall be found to comply with the provisions of this chapter relative to the construction and equipment, etc., he or she shall make a written report thereof to the Health Officer, whereupon the Health Department shall issue the permit applied for in writing and cause a record thereof to be kept in said department. (Prior code § 4-3.03)

### **8.14.040 Requirements for permit.**

No permit as required in Section 8.14.030 shall be issued except when the regulations in this chapter set forth, so far as they are applicable, have been strictly complied with. (Prior code § 4-3.04)

### **8.14.050 Floors and walls.**

The floor or floors and walls of the slaughterhouse, market or factory where meat, or meat food products, fish or poultry are handled, manufactured

or offered for sale shall be constructed of impervious material with smooth surface and semicircular corners, and maintained sufficiently tight to prevent the surroundings under or about the same becoming contaminated by filth or offensive matters, and all such floors shall be constructed on an incline and shall be sloped in such a manner as to provide adequate drainage therefrom. (Prior code § 4-3.05)

### **8.14.060 Killing room—Cooling room.**

The slaughterhouse or killing room shall be separate from any room where stock or poultry are fed. A cooling room shall be provided apart from the killing room, and shall be separated from the killing room by a tight partition in the side or sides next or nearest to the killing room. The cooling room shall be thoroughly ventilated and well screened so as to exclude flies and other insects therefrom. (Prior code § 4-3.06)

### **8.14.070 Construction of premises.**

All premises where meat or meat food products, fish or dressed poultry are kept, stored, handled, manufactured or offered for sale shall be constructed of impervious material and painted with at least three coats of flat white and one coat of white gloss enamel. Said premises must be flyproof with adequate light and ventilation and be provided with a porcelain sink of adequate size with hot and cold running water. (Prior code § 4-3.07)

### **8.14.080 Fixed place of business required.**

It is unlawful to peddle by hand or from any vehicle, or sell from any other than a fixed place of business as herein provided, any meat, meat food products or dressed poultry. (Prior code § 4-3.08)

### **8.14.090 Refrigeration.**

All meat markets must be equipped with a fresh meat cooler of a size not less than six by eight by nine feet high. Coolers, refrigerators and ice boxes must have a white gloss enamel finish and maintain a temperature below forty-five (45) degrees Fahrenheit with sufficient circulation, and be connected

indirectly with the sewer to comply with the plumbing laws of the city. (Prior code § 4-3.09)

#### **8.14.100 Glass doors—Fan.**

All markets shall be provided with glass front and double acting glass door or doors. A four-blade fast traveling fan or fans of sufficient size to prevent the entrance of flies or other insects, must be installed inside of door or doors when it is desired to keep said door or doors open; provided, however, that where a meat market is installed in a general open market, that all meat and meat products shall be enclosed in sanitary refrigerated glass cases approved by the Chief Meat Inspector. (Prior code § 4-3.10)

#### **8.14.110 Counters.**

All counters must be at least three feet high, and be provided with marble top and glass front, at least fourteen (14) inches high and twelve (12) inches over the top so as to prevent all exposed foodstuffs from being handled by patrons or prospective buyers. (Prior code § 4-3.11)

#### **8.14.120 Lard room.**

Any lard room must be finished with smooth surface Portland cement plaster and sufficient in size for the completion and manufacture of the lard, with vent pipe at least fifteen (15) inches in diameter extending above apex of roof to remove all odors. (Prior code § 4-3.12)

#### **8.14.130 Trays.**

Corn beef trays shall be of marble, concaved and drained without joints or additional slabs of any kind. (Prior code § 4-3.13)

#### **8.14.140 Racks—Refuse cans.**

All meat racks, rails, hooks, or brackets must be of metal. Metal cans for scraps and trimmings and other refuse and garbage must be provided with tight metal covers and sufficient in number and size to care for all refuse. (Prior code § 4-3.14)

#### **8.14.150 Markets in basements.**

It is unlawful for any person, firm, association, co-partnership or corporation to conduct or maintain a fish, dressed poultry or meat market in the basement of any building, or in any space below the level of the street, without strict compliance with the following regulations:

A. The ceiling thereof must be not less than ten feet above the floor.

B. All floors therein must be of concrete, or tile set in concrete.

C. Such fish, dressed poultry or meat markets in basements or spaces below the street level must be equipped with proper air ducts and suction fans sufficient to provide a complete change of air in not to exceed ten minutes in each room.

D. Such fish, dressed poultry or meat markets in basements or spaces below the street level must have sufficient evenly distributed artificial illumination to provide an average intensity of illumination of at least five footcandles measured three feet above the floor level over the entire area.

E. Such fish, dressed poultry or markets in basements or below the street level must be equipped with electric ceiling fans behind fish, dressed poultry and meat cases, said electric ceiling fans to be located on not more than fourteen-foot centers, and must have at least one electric ceiling fan in each breaking or cutting room; each of said electric ceiling fans shall have a sweep of not less than fifty (50) inches.

F. Each meat, dressed poultry or fish department in such fish, dressed poultry or meat market in basements or spaces below the street level shall contain a separate locker room, the same to be properly ventilated, for employees to change clothes, and which shall not open directly into any room or place where meat, dressed poultry or fish are sold or kept.

G. All plans and specifications must be approved by the Health Department, Building Department and the Electrical Department of the city before any meat, dressed poultry or fish market in any basement or below the level of the street is installed.

H. Except as in this section otherwise specified, all said meat, dressed poultry or fish markets in

## **8.14.150**

basements or below the street level must strictly comply with all of the provisions of this chapter regulating the construction, operation, maintenance and conduct of markets where meat or meat products, fish or dressed poultry, are kept or stored or handled or manufactured or offered for sale. (Prior code § 4-3.15)

### **8.14.160      Lavatory equipment.**

Sufficient lavatories, toilets and clothes closets for all employees, and, where women are employed, separate lavatories, toilets and clothes closets, with adequate light and ventilation, must be provided, together with an ample supply of soap, towels and toilet paper. No lavatory, toilet room or living room shall open directly into any room where any article of food mentioned in this chapter is kept, stored or handled. (Prior code § 4-3.16)

### **8.14.170      Permit posted—Revocation.**

The written permit in Section 8.14.030 required, when issued, shall be kept, at all times, posted in a conspicuous place on the premises. Said permit is not transferable. The holder thereof must strictly conform to all the regulations in this chapter set forth, and in addition to the other penalties in this chapter provided, such permit may be revoked by the Health Officer for any violation of such regulations. After such revocation, such place of business shall be closed until such time as all regulations have been complied with and a new permit granted. (Prior code § 4-3.17)

### **8.14.180      Cleanliness of employees.**

All persons handling any of the foods mentioned in this chapter shall at all times keep their person and wearing apparel in a cleanly condition. All aprons, gowns, smocks and other outer wearing apparel which is worn must be of a white material which can be easily washed and cleansed. No person shall use any portion of any such apparel as a handkerchief, or to wipe the hands or face. (Prior code § 4-3.18)

### **8.14.190      Vehicles.**

No meats or meat food products intended for purpose of sale shall be hauled in any pleasure car. All vehicles used for delivery shall be lettered with name and address of business, with letters at least three inches high on small vehicles, and six inches high on large trucks and drays. No such sign shall be covered at any time and must at all times be plainly visible. Pleasure cars shall not be used for delivery. (Prior code § 4-3.19)

### **8.14.200      Slaughtering establishments.**

All parts of slaughtering establishments, including the slaughterhouses, storage rooms for meats, markets, factories, trucks, carts, wagons or other receptacles, stables or corrals used for livestock, shall be kept in a cleanly, wholesome condition. All trucks, wagons, carts and other receptacles or conveyances, must be provided with at least one freshly clean canvas cover, and at least two freshly clean lots of burlap, each week, sufficient in size to cover the load in its entirety. (Prior code § 4-3.20)

### **8.14.210      Slaughtering hours.**

All inspection and slaughtering shall take place between the hours of seven a.m. and four p.m. of any one day, unless in emergency cases a special permit in writing authorizing slaughtering at another time is granted by the Health Officer. No slaughtering shall be done or inspection made on any Sunday, unless a special permit in writing is granted therefor by the Health Officer. (Prior code § 4-3.21)

### **8.14.220      Removal of offensive matters.**

All blood and offal shall be handled and disposed of in such a manner as not to permit decay or offensive effluvia to emanate therefrom.

All poultry feeding stations must be provided with sanitary batteries with metal removal pans which must be thoroughly cleaned and refuse removed daily. Said batteries must be cleaned and disinfected at least once each week. (Prior code § 4-3.22)

**8.14.230 Animals to stand at place of slaughter.**

Cattle must stand for a period of at least twenty-four (24) hours and calves, poultry and small animals twelve (12) hours at the place of slaughter before killing. (Prior code § 4-3.23)

**8.14.240 Keeping live fowl and animals.**

It is unlawful for any person to keep live chickens, ducks, geese, turkeys, or other live fowl or animals in any cellar or basement underneath any grocery store, market or other place where foodstuffs are kept for sale.

It is unlawful for any person to keep any live chickens, turkey, ducks, geese or other live fowl or animals where foodstuffs are prepared for sale, or sold. (Prior code § 4-3.24)

**8.14.250 Application for inspection.**

In addition to the permits in this chapter provided for, application in writing shall be made to the Health Officer for inspection of livestock, live poultry and slaughtering, as provided in this chapter. (Prior code § 4-3.25)

**8.14.260 Time of inspection—Notice.**

The days and parts of days during which the work of slaughtering any animal or manufacturing any meat food products mentioned in this chapter may be done shall be fixed by agreement between the holder of the permit and the Health Officer or Meat Inspector delegated by said Health Officer for such purpose. In case an agreement cannot be had, the Health Officer is empowered to designate the time at which such slaughtering shall be done.

In case of daily inspection and where no time has been fixed by agreement or otherwise, the person in charge of the slaughtering or such manufacturing shall notify the Inspector at the close of each day the work of slaughtering or manufacturing will be commenced. If no slaughtering or manufacturing is to be done on the following day, then he or she shall notify the Inspector at which time and what succeeding day such work will next be commenced.

Where such slaughtering or manufacturing does not take place daily, but at uncertain or infrequent times, at least twenty-four (24) hours' notice must be given the Health Department as to when the service of an Inspector will be required. (Prior code § 4-3.26)

**8.14.270 Interstate shipment inspection.**

All interstate shipments of live poultry must be inspected by an authorized Meat Inspector of the city at time of arrival of said shipment. The Health Department shall be notified by any person receiving the same before the same is unloaded, offered for sale, or sold. No poultry found to be diseased or unfit for human consumption shall be passed for sale. (Prior code § 4-3.27)

**8.14.280 Inspection designated by number.**

If inspection is granted by the Health Department, as provided in this chapter, the said Health Department shall designate by number each slaughterhouse or sausage factory to be inspected, which number shall be used on the mark, stamp or brand adopted by the city for all meats inspected as in this chapter provided. (Prior code § 4-3.28)

**8.14.290 Time of branding.**

The mark, stamp or brand of the city in this chapter provided for shall be placed upon primal parts of the animals only after ante-mortem and post-mortem inspection has been performed and the same found to be fit for human consumption, and at the time of slaughter and evisceration. (Prior code § 4-3.29)

**8.14.300 Trade names on hams and bacons.**

All smoked hams or bacon must bear a trade name, trademark or the name of the person producing such product. The said trade name, trademark, or name of the person producing such product must be stamped on each ham or bacon in letters not less than one inch in height, and must be stamped in such manner as to be perfectly legible. Each side of bacon must bear not less than two of said trade

## **8.14.300**

names, trademarks, or names of the person producing said product, each of which shall be placed not less than two inches from each end of said side of bacon in such a manner that at least one stamp will appear on each half of a side of bacon. The hams shall bear at least one such trade name, trademark, or the name of the person producing said product. All stamps for meat or meat product tradenames, trademarks or names of producers, must be approved by the Health Department. No person shall substitute the trade name or trademark of any other person on smoked or fresh meats. (Prior code § 4-3.30)

### **8.14.310 Possession and use of stamps or brands.**

It is unlawful for any person, except the Inspector in this chapter provided for or a person designated by the Health Officer for such duties, and while working under the immediate supervision of an Inspector, to have in possession, keep or use any mark, stamp or brand provided or used for making, stamping, or branding anything in this chapter required to be marked, stamped or branded; or for any person to have in possession, keep, make, or use any mark, stamp, brand or other device having thereon insignia or words similar in character or import to the marks, stamps or brands provided or used for marking, stamping or branding such articles, or to in any manner counterfeit such marks, stamps or brands. (Prior code § 4-3.31)

### **8.14.320 Partly dressed meats—Age and weight of calves.**

Partly dressed hogs, sheep, calves, and goats may be brought into the city for food purposes, provided that the same shall be immediately brought to the attention of the Health Department for inspection, at a fee of twenty cents (\$.20) a head. No such animal, however, shall be accepted unless at time of such inspection the head, heart, liver, lungs, glands and umbilicus remain attached by their natural attachments. Minimum age of calves shall be three weeks, and maximum weight shall be two hundred (200) pounds dressed. (Prior code § 4-3.32)

### **8.14.330 Certain meats inspected before brought into city—Beef defined.**

No beef, or dressed hogs, sheep, calves or goats may be brought into the city for human consumption, unless the same shall have been officially inspected and marked under the supervision of an authorized meat inspector of a public agency at the time of slaughter and evisceration. Bovine animals which dress over two hundred (200) pounds shall be considered beef. (Prior code § 4-3.33)

### **8.14.340 Adulterated food.**

No person shall sell, keep, use for purpose of manufacture, have in their possession, or offer for sale for human food, any meats, fish or poultry that is deemed adulterated within the meaning of this chapter.

The standard of purity of food shall be that proclaimed by the Secretary of the United States Department of Agriculture, or the California State Department of Agriculture, where standards are not fixed by this code or other ordinance of the city.

Food shall be deemed adulterated within the meaning of this chapter in any of the following cases:

- A. If any substance has been mixed or packed, or mixed and packed, with the food so as to produce or lower or injuriously affect its quality, purity, strength or food values;
- B. If any substance has been substituted wholly or in part for the article of food;
- C. If any essential or any valuable constituent or ingredient of the article of food has been wholly or in part abstracted;
- D. If the package containing it or its label shall bear in any manner any statement, design or device whereby damage or inferiority is concealed;
- E. If it contains any added poisonous or other added deleterious ingredient;
- F. If it is in any manner, mechanically or otherwise, blown up or inflated;
- G. If it consists in whole or in part of a spoiled, filthy, decomposed or putrid animal, poultry or fish or any portion thereof, unfit for food, whether manufactured or not, or if it is the product of a diseased

animal, poultry or fish, or one that has died otherwise than by slaughter. (Prior code § 4-3.34)

**8.14.350 Authority and duty to inspect—Condemnation.**

It shall be the duty of the Health Officer or Meat Inspectors, and they are empowered, to enter any place where meat or flesh of any animal (fish or poultry) or the products thereof may be stored, held, kept, exposed or offered for sale for human food, and every establishment where such meat or flesh is manufactured into articles of food, or preserved, cured, canned or otherwise prepared for food, and they shall inspect the same.

Whenever such meat or flesh shall, upon inspection and examination, be found not marked, stamped or branded as in this chapter required, or if said meat or meat food products, fish or poultry are found to be otherwise unfit for human consumption as in this chapter provided, the said Health Officer or Meat Inspectors shall condemn the same as unfit for human food, and shall mark and mutilate the same, and make the fact of such condemnation apparent, and shall immediately order the same, by notice in writing, to be removed within four hours and destroyed. (Prior code § 4-3.35)

**8.14.360 Use of scraps.**

The use of scraps or trimmings from retail markets in the manufacture of sausage or other meat food products is unlawful. (Prior code § 4-3.36)

**8.14.370 Standards used in tests.**

It shall be the duty of the Health Officer or Meat Inspectors in determining what constitutes diseased meat, fish or poultry, or meat, fish or poultry unwholesome or otherwise unfit for human consumption to be guided by the rules and regulations of the city, and by the specifications contained in the regulations of the Bureau of Animal Industry of the United States Department of Agriculture or the California State Department of Agriculture, governing the inspection of meats, meat food products, and the factories where same are handled or manufactured. (Prior code § 4-3.37)

**8.14.380 Meat held for test to be quarantined.**

When meat or meat food products, fish or poultry shall be held for final inspection by any Meat Inspector of the city, a quarantine tag of such character as shall be approved by the Health Officer shall be placed upon the same and it is unlawful for any person to remove the same without the authority of said Health Officer. (Prior code § 4-3.38)

**8.14.390 Fees for special inspection services.**

The fees for special inspection service rendered pursuant to the provisions of this chapter shall be as follows:

A. If inspection is furnished by a Veterinary Meat Inspector, said fee shall be upon the basis of three hundred dollars (\$300.00) for a full month's services.

B. If inspection is furnished by a District Meat Inspector and the full time of such inspector is required for a full month, said fee shall be three hundred dollars (\$300.00) for said month.

C. If both a Veterinary Meat Inspector and a District Meat Inspector are required for a full month in a single establishment, the said fee for such inspection for a month shall be six hundred dollars (\$600.00).

D. If inspection is furnished by a District Meat Inspector for less than a full month, the said fee shall be upon the basis of two dollars fifty cents (\$2.50) per hour, and the time occupied by such inspector in traveling to and from the place where such inspection services are rendered shall be computed as time for which such fee is charged.

E. All inspection fees shall be payable on the first day of the month following the month during which the inspection services are rendered. (Prior code § 4-3.39)

**8.14.400 Licenses.**

Markets selling at retail, meat, fish or poultry, or meat products, shall pay such license fee as may be required by other provisions of this code or ordinance of the city. (Prior code § 4-3.40)

**8.14.410**

**8.14.410 Default in paying fees.**

If the fees in this chapter provided for are not paid promptly upon the day the same become due under the terms of this chapter, no inspection of slaughtering, or manufacturing, or of live stock or live poultry as provided in this chapter shall be furnished to the person, firm or corporation so in default until the whole amount due is paid to the city. (Prior code § 4-3.41)

**8.14.420 Inspection outside of city.**

Any person, firm or corporation located outside of the city desiring to secure a permit or arrange for the inspection in this chapter provided for, may do so by paying the fees and complying with all the other provisions of this chapter. (Prior code § 4-3.42)

**8.14.430 Meats advertised and sold by weight.**

It is unlawful for any person, at any place of business in the city, to advertise, offer for sale or sell, or to cause or knowingly permit the advertising, offering for sale or selling of, any smoked, fresh or pickled meats, poultry, rabbits or fish, except shanks, offal, heads, plucks, and wild game, other than by weight, determined on a scale by weight or a beam, properly scaled by the Department of Weights and Measures. (Prior code § 4-3.44)

	<b>Chapter 8.16</b>	<b>8.16.250</b>	Different grades in plant—Application for inspection service.
	<b>MILK AND MILK PRODUCTS</b>		
<b>Sections:</b>			
8.16.010	Definitions.	8.16.260	Labels—Delivery vehicles.
8.16.020	Milk Inspection Bureau.	8.16.270	Label—Shipping package—Grade A milk.
8.16.030	Rule making power.	8.16.280	Label—Shipping package—Fluid dairy product.
8.16.040	Chief Dairy and Milk Inspector—Duties.	8.16.290	Label—Shipping package—Grade A cream.
8.16.050	Milk Inspector—Duties.	8.16.300	Label—Final package—Fluid dairy package.
8.16.060	Milk Inspectors—Take samples.	8.16.310	Label—Final package—Proof print.
8.16.070	Standards—Grade A milk—Fats and solids.	8.16.320	Containers—Coding to indicate date processed.
8.16.080	Standards—Grade A milk—Score and pasteurization.	8.16.330	Temperatures—Market milk.
8.16.090	Standards—Grade A milk.	8.16.340	Temperatures—Milk for cream.
8.16.100	Pasteurizing area.		Temperatures—Fluid dairy products.
8.16.110	Standards—Grade A cream—Bacteria count.	8.16.350	Temperatures—Store refrigeration.
8.16.120	Standards—Grade A cream—Used for standardizing.	8.16.360	Degrading—Condemning—Dairy products.
8.16.130	Standards—Skim milk—Bacteria count.	8.16.370	Degrading—How handled.
8.16.140	Standards—Skim milk—Used for standardizing.	8.16.380	Thermometers—Pasteurization.
8.16.150	Standards—Dairy drinks—Bacteria count.	8.16.390	Thermometer—Weigh tank.
8.16.160	Standards—Dairy drinks—Grade A milk.	8.16.400	Thermometer—Recording.
8.16.170	Standards—Dairy products—Market milk.	8.16.410	Valves.
8.16.180	Standards—Dairy products—Homogenized milk.	8.16.420	Preheating control.
8.16.190	Standards—Dairy products—Supervision.	8.16.430	Protective cover—Packaging.
8.16.200	Standards—Fluid dairy products—Processor.	8.16.440	Single service container—File sample with Health Officer.
8.16.210	Transfer of fluid dairy product.	8.16.450	Single service container—Sanitary regulations.
8.16.220	Manufacturing milk—Sterilizing equipment.	8.16.460	Approval of premises.
8.16.230	Different grades in plant.	8.16.470	Permit—Dairy permit.
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		8.16.490	Permit—Application and approval.
		8.16.500	Permit—Contents—Dairy permit.
		8.16.510	Permit—Renewal.
		8.16.520	

<b>8.16.530</b>	<b>Permit—Suspension or revocation—Nonshipment.</b>	<b>8.16.810</b>	<b>Communicable diseases.</b>
<b>8.16.540</b>	<b>Permit—Dairy products permit—Limited—Grade A cream.</b>	<b>8.16.820</b>	<b>Unlawful to violate provisions of chapter.</b>
<b>8.16.550</b>	<b>Bulk milk dispensers.</b>	<b>8.16.830</b>	<b>Unlawful to interfere with Milk Inspector.</b>
<b>8.16.560</b>	<b>Milk handlers—Examination.</b>	<b>8.16.840</b>	<b>Unlawful to distribute, etc., impure dairy products.</b>
<b>8.16.570</b>	<b>Whip cream topping.</b>	<b>8.16.850</b>	<b>Chapter and state law—Compatible.</b>
<b>8.16.580</b>	<b>Imitation whip cream topping.</b>		
<b>8.16.590</b>	<b>Eggnog.</b>		
<b>8.16.600</b>	<b>Pasteurizer's permit.</b>		
<b>8.16.610</b>	<b>Permit—Suspension and revocation.</b>		
<b>8.16.620</b>	<b>Permit—Posting—Carrying.</b>		
<b>8.16.630</b>	<b>Inspection fee—Processor—Dairy products permit.</b>		
<b>8.16.640</b>	<b>Inspection fee—Payable and delinquent—When.</b>		
<b>8.16.650</b>	<b>Processor—Keep receiving and weight records.</b>		
<b>8.16.660</b>	<b>Inspection fees—Penalty for nonpayment.</b>		
<b>8.16.670</b>	<b>Dairy products plant—Rooms.</b>		
<b>8.16.680</b>	<b>Dairy products plant—Construction.</b>		
<b>8.16.690</b>	<b>Dairy products plants—Construction.</b>		
<b>8.16.700</b>	<b>Dairy products plant—Score.</b>		
<b>8.16.710</b>	<b>Manufacturing, etc., in milk plant.</b>		
<b>8.16.720</b>	<b>Market milk—Transportation.</b>		
<b>8.16.730</b>	<b>Country trucks—Roadside stands.</b>		
<b>8.16.740</b>	<b>Conveyances—Protection.</b>		
<b>8.16.750</b>	<b>Tuberculin test.</b>		
<b>8.16.760</b>	<b>Tuberculin test—Permit.</b>		
<b>8.16.770</b>	<b>Animal diseases in dairy animals—Tests.</b>		
<b>8.16.780</b>	<b>Sanitation—Dairy equipment regulations.</b>		
<b>8.16.790</b>	<b>Sanitation—Animals.</b>		
<b>8.16.800</b>	<b>Sanitation—Miscellaneous.</b>		

**8.16.010 Definitions.**

The words and phrases used in this chapter shall be given the same definition and construction as such words and phrases are defined and construed in Division IV of Agricultural Code of the state of California and rules and regulations adopted and established by the regulations of the Director of Agriculture of the state of California, and such words and phrases as are used herein and not defined in said division of said Code or in said rules and regulations shall be defined and construed as provided in this chapter, unless it shall be apparent from the context that they have a different meaning:

“Adjacent plant” means any dairy products plant which is located within two hundred (200) feet of another dairy products plant.

Chief Dairy and Milk Inspector. Wherever the title Chief Dairy and Milk Inspector is used in this chapter there shall be substituted therefor the title Chief Milk Sanitarian.

“Dairy” means any place where one or more cows or goats are kept, a part of all of the milk or milk products of which are produced for distribution.

“Dairy permit” means a permit issued to a milk producer, as provided in this chapter.

“Dairy product” means and includes all fluid dairy products, butter, all types of cheese, dried milk and dried skim milk.

“Dairy products permit” means the permit issued to a transporter, processor, milk distributor or manufacturer of nondairy products, as provided in this chapter.

“Distribute,” or any of its variants, means and includes sale, offer for sale, expose for sale, have in

possession for sale, exchange, barter, trade, deliver or give away, any dairy product.

“Fluid dairy product” means and includes milk, homogenized milk, skim milk intended for human consumption, chocolate milk, chocolate dairy drink, and similar chocolate drinks, buttermilk, cultured buttermilk, milkshake and similar mixed drinks, evaporated milk, evaporated skim milk, sweetened condensed milk, sweetened condensed skim milk, sour milk, sour cream and whey, when in fluid form, but shall not include evaporated milk, evaporated skim milk, sweetened condensed milk, or sweetened condensed skim milk when in a hermetically sealed metal package.

“Health Department” means the Health Department of the city of Oakland.

“Health Officer” means the Health Officer of the city of Oakland.

“Homogenize,” or any of its variants, when applied to market milk means market milk which has been treated to insure sufficient reduction in size of fat globules so that no visible cream separation occurs after forty-eight (48) hours of storage at not over fifty (50) degrees Fahrenheit.

“Manufacturing milk” means and includes manufacturing cream and manufacturing skim milk.

“Milk distributor” means any person who receives for processing, or processes, manufactures, handles, stores, packages or keeps for sale, market milk at his or her established place of business or delivers market milk beyond its confines.

Milk Inspector. Wherever the title Milk Inspector is used in this chapter there shall be substituted therefor the title Milk Sanitarian.

“Milk plant” means any place where market milk is processed or prepared for distribution as market milk.

“Milk sanitarian” means the Chief Milk Sanitarian, Supervising Milk Sanitarian or Milk Sanitarian of the city of Oakland.

“Package,” or any of its variants, means and includes bottle, jug, single-service container, shipping can, can, carton, and any and every other container used or intended to be used for the purpose of transporting or distributing a dairy product.

Package, Final. “Final package” means and includes any package that is intended for distribution to a consumer.

“Process,” or any of its variants, means and includes packaging, pasteurizing, manufacturing and any and all other steps in the treatment or preparation of a dairy product for distribution.

“Transporter” means any person who transports for hire a fluid dairy product for delivery in the city of Oakland, or which is intended for distribution therein. (Prior code §§ 4-8.01, 4-8.01(a)—4-8.01(e), 4-8.01(g)—4-8.01(n), 4-8.01(p)—4-8.01(s), 4-8.01(u), 4-8.01(v))

#### **8.16.020 Milk Inspection Bureau.**

A Milk Inspection Bureau is created and established in the Health Department, and shall consist of a Chief Milk Sanitarian, a Supervising Milk Sanitarian, Milk Sanitarians, a Laboratory Assistant, two Dairy Bacteriologists, and a dairy products laboratory. The members of the Milk Inspection Bureau shall have the authority and power to enforce all of the provisions of this chapter. (Prior code § 4-8.02)

#### **8.16.030 Rule making power.**

The Health Officer shall have power to establish rules and regulations for the purpose of carrying out the provisions of this chapter. (Prior code § 4-8.03)

#### **8.16.040 Chief Dairy and Milk Inspector—Duties.**

The Chief Dairy and Milk Inspector is the authorized representative of the Health Officer for the purpose of administering the provisions of this chapter. (Prior code § 4-8.04)

#### **8.16.050 Milk Inspector—Duties.**

Each Milk Inspector shall have the right, and it shall be his or her duty, to enter and have full access, ingress and egress to and from all places where dairy products are received, stored, processed or distributed, and to all vehicles, railroad cars, boats and other conveyances of every kind used for transporting dairy products intended for processing or

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distribution in the city, and he or she shall enforce the provisions of this chapter. (Prior code § 4-8.05)

**8.16.060 Milk Inspectors—Take samples.**

Each Milk Inspector may take samples of any dairy product without making compensation therefor, for the purpose of analyzing the same, wherever such dairy product is within the city or is intended for distribution therein. (Prior code § 4-8.06)

**8.16.070 Standards—Grade A milk—Fats and solids.**

Grade A milk in final packages shall contain not less than three and five-tenths (3.5) percent milk fat and eight and fifteen-hundredths (8.15) percent solids not fat. (Prior code § 4-8.07)

**8.16.080 Standards—Grade A milk—Score and pasteurization.**

Grade A milk for pasteurization or for the production of Grade A cream shall be produced on a dairy that scores not less than seventy (70) percent on the Dairy Farm Score Card adopted and established by regulation of the Director of Agriculture of the state of California. Grade A milk for pasteurization shall be pasteurized at not less than one hundred forty-three (143) degrees Fahrenheit for thirty (30) minutes or not less than one hundred sixty (160) degrees Fahrenheit for fifteen (15) seconds. (Prior code § 4-8.08)

**8.16.090 Standards—Grade A milk.**

All market milk distributed in the city in the final package for human consumption shall be pasteurized except that certified raw milk, as defined in California Agricultural Code Section 35921, may be sold provided such milk is produced at dairies which, at the time of the production of such milk, are in compliance with California Agricultural Code, Division 15, Part 1, Milk and Milk Products Act of 1947, Chapters 1, 2, 3, 4, Sections 32501 through 33321; and Chapter 6, Sections 33701 through 33780; Chapters 8, 9, 10, 11, Sections 34001 through 34806; and Part 2, Chapters 1 and 2, Sections 35601 through 36123, Article 14; and California Adminis-

trative Code, Title 3, Agriculture, pertaining to the production, processing, distribution and care of market milk and related dairy products within the area designated by the Director of the Department of Agriculture, and said statutory provisions and all amendments thereto are adopted as part of this chapter. (Prior code § 4-8.09)

**8.16.100 Pasteurizing area.**

It is unlawful for any person to process or distribute within the city any Grade A pasteurized milk which has not been pasteurized within the city or within two miles of the boundary line of the city. For the purposes of this chapter, "pasteurizing area" shall include the area within the city, and the area within two miles of the boundary line of the city. (Prior code § 4-8.10)

**8.16.110 Standards—Grade A cream—Bacteria count.**

Grade A pasteurized cream shall contain not more than two hundred thousand (200,000) bacteria per milliliter before a pasteurization, and not more than thirty thousand (30,000) bacteria per milliliter at the time of delivery to the consumer. Grade A cream for pasteurization shall be cooled to fifty (50) degrees Fahrenheit or below immediately after separation, and so maintained until the process of pasteurization begins. (Prior code § 4-8.11)

**8.16.120 Standards—Grade A cream—Used for standardizing.**

Grade A cream used in standardizing Grade A milk shall be separated in the same milk plant for the same day's Grade A milk in which it is to be used, and unless so used immediately, shall be cooled to fifty (50) degrees Fahrenheit or below, and shall be so used within eight hours after separation. (Prior code § 4-8.12)

**8.16.130 Standards—Skim milk—Bacteria count.**

Skim milk intended for human consumption in fluid form shall be derived from Grade A milk. Skim milk shall be pasteurized before or after sepa-

ration and shall be immediately placed in a final package in the milk plant where pasteurized, and shall contain not over seventy-five thousand (75,000) bacteria per milliliter before pasteurization and not over fifteen thousand (15,000) bacteria per milliliter at the time of delivery to the consumer. (Prior code § 4-8.13)

**8.16.140 Standards—Skim milk—Used for standardizing.**

Skim milk used in standardizing Grade A milk shall be separated in the same milk plant from the same day's Grade A milk in which it is to be used, and unless used immediately, shall be cooled to fifty (50) degrees Fahrenheit or below, and shall be so used within eight hours after separation. (Prior code § 4-8.14)

**8.16.150 Standards—Dairy drinks—Bacteria count.**

Chocolate milk shall be made of Grade A milk, and chocolate dairy drink and similar chocolate drinks shall be made of Grade A milk or skim milk derived from Grade A milk, and shall contain not more than forty-five thousand (45,000) bacteria per milliliter at the time of delivery to the consumer. It shall be pasteurized after all ingredients have been added, and shall be packaged within twenty-four (24) hours after pasteurization, and shall be delivered to the consumer within forty-eight (48) hours after pasteurization. (Prior code § 4-8.15)

**8.16.160 Standards—Dairy drinks—Grade A milk.**

Every milkshake shall be made of Grade A milk, and all other mixed milk drinks and all mixed skim milk drinks in which are combined fruit juices, chocolate, chocolate syrup or other harmless syrups, shall be made of Grade A milk or skim milk derived from Grade A milk, and all such milk and skim milk shall be used directly from the final package, and such final package shall not be more than one quart capacity. Such final package shall be kept covered, and its contents under fifty (50) degrees Fahrenheit. The only exception to this section is

homogenized milk which may be dispensed in an approved bulk milk dispenser as provided in the State Agricultural Code and this chapter. (Prior code § 4-8.16)

**8.16.170 Standards—Dairy products—Market milk.**

A. All Grade A market milk brought into the city for processing or distribution therein, shall conform to the requirements, definitions, gradings, and standards of Grade A market milk as provided in the Agricultural Code and this chapter. All other milk shall be classified as manufacturing milk.

B. The mixing of separated constituents of milk or cream to form reconstituted milk or reconstituted cream is forbidden except by special permission of the Health Officer. (Prior code § 4-8.17)

**8.16.180 Standards—Dairy products—Homogenized milk.**

Homogenized milk shall not be mixed with any other fluid dairy product that has not been homogenized. Homogenized milk must meet all the requirements for market milk. There shall appear in letters not less than six-point boldface capital type in plain view on every final package of homogenized milk the word "homogenized." (Prior code § 4-8.18)

**8.16.190 Standards—Dairy products—Supervision.**

Standards of dairy products required by this chapter shall be maintained through adequate supervision of equipment and methods of milk producers, milk distributors, processors, and transporters, and by laboratory analysis of appropriate samples of dairy products. Samples of market milk shall be taken and analyzed in accordance with regulations adopted and established by the Director of Agriculture of the state of California. (Prior code § 4-8.19)

**8.16.200 Standards—Fluid dairy products—Processor.**

It is unlawful for any person to bring into the city, or to distribute therein, any fluid dairy product unless the same was processed by a processor hold-

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ing a dairy products permit issued by the Chief Dairy and Milk Inspector, as provided in this chapter. (Prior code § 4-8.20)

**8.16.210 Transfer of fluid dairy product.**

It is unlawful for any person to transfer Grade A milk or skim milk derived from Grade A milk from one container to another container in any place except in a milk plant, or to transfer any other dairy product from one container to another except in a dairy products plant; provided, however, this section shall not apply when such fluid dairy product is transferred to a drinking vessel for immediate consumption on the premises. (Prior code § 4-8.21)

**8.16.220 Manufacturing milk—Sterilizing equipment.**

In no case shall market milk be transported, processed, or stored in the same package or equipment in which manufacturing milk has been transported, processed, or stored, unless and until such package or equipment has been thoroughly cleansed and sterilized to the satisfaction of a Milk Inspector. (Prior code § 4-8.22)

**8.16.230 Different grades in plant.**

It is unlawful for any person to process more than one grade or quality of milk or skim milk in the same dairy products plant, or in an adjacent plant, except under the supervision of a Milk Sanitarian. (Prior code § 4-8.23)

**8.16.240 Different grades in plant—During absence of Inspector.**

In case any milk or skim milk under supervision which has been passed by the Milk Inspector is not converted into any other product during a daily inspection period, such milk or skim milk may be held over, during the absence of the Milk Inspector, until some subsequent inspection period by being stored in a package or room under the exclusive control of a Milk Inspector. Manufacturing milk shall be processed only in the dairy products plant where originally received in the city, except pursu-

ant to permission of the Chief Dairy and Milk Inspector. (Prior code § 4-8.24)

**8.16.250 Different grades in plant—Application for inspection service.**

An application for inspection service required by Sections 8.16.230 and 8.16.540 shall be filed with the Chief Dairy and Milk Inspector not less than five days before such service is required. The length of time a Milk Inspector shall be present in any dairy products plant shall be determined by the Chief Dairy and Milk Inspector. (Prior code § 4-8.25)

**8.16.260 Labels—Delivery vehicles.**

Every milk distributor distributing any pasteurized milk not processed by himself or herself shall display in capital letters and in figures not less than one and one-half inches high and one inch wide, on both sides of each vehicle operated by him or her, the words "Bottled By" followed by the state factory license number of the plant processing the milk. (Prior code § 4-8.26)

**8.16.270 Label—Shipping package—Grade A milk.**

Every package used in transporting Grade A milk for pasteurization shall be plainly marked by the owner of the package, in letters not less than three-fourths inch high and one-half inch wide, with the name of the milk producer and location of his or her dairy at which such milk was produced. (Prior code § 4-8.27)

**8.16.280 Label—Shipping package—Fluid dairy product.**

Every package used for shipping a fluid dairy product, other than market milk, into the city for processing or distribution therein, shall be plainly labeled by the shipper with the name of the product, the grade, whether raw or pasteurized, and the name and address of consignee and the name and address of the consignor. Every label affixed as required by this section shall remain on every such package until the fluid dairy product therein is emptied therefrom

for processing or distributing. The provisions of this section shall not apply to cream intended for the manufacture of butter. (Prior code § 4-8.28)

**8.16.290 Label—Shipping package—Grade A cream.**

Every package used for shipping Grade A cream intended for processing or distribution in the city shall be provided with wire ties securing labels identifying the product. (Prior code § 4-8.29)

**8.16.300 Label—Final package—Fluid dairy package.**

Every final package of a fluid dairy product shall have indelibly indicated thereon in a legible manner, in not less than eight point boldface capital type, the correct name of the product it contains, name and address of the person packaging the same. Chocolate skim milk drinks shall be labeled "Made of skim from Grade A milk." (Prior code § 4-8.30)

**8.16.310 Label—Final package—Proof print.**

A. A proof print of every final package for a fluid dairy product and the design for each cap, or label intended to be used thereon, shall be submitted in duplicate to, and approved by, the Chief Dairy and Milk Inspector before the same may be placed in use.

B. Every cap, label, and final package for a fluid dairy product which does not conform to the provisions of this chapter and the Agricultural Code shall be forfeited by the possessor thereof to a Milk Inspector and destroyed by him or her. (Prior code § 4-8.31)

**8.16.320 Containers—Coding to indicate date processed.**

All fiber, plastic or similar single service containers, and all metal containers which contain Grade A milk, homogenized milk, skim milk or nonfat milk, cream, dairy drinks, half-and-half, cottage cheese, ice cream mix, ice milk mix, milk drink mix, or similar mixes, delivered for sale at retail in the city, or stored by its processor within said city, shall be

coded to indicate the date of processing. The code or container shall also indicate the location of the processing plant. The code shall be legible and so located upon all containers that it can be seen at all times. The code shall be securely attached to metal containers, and not removed therefrom until emptied. Each processor of any of the above dairy products who stores or delivers for sale at retail the same in the city shall deliver to the Milk Inspection Bureau its code together with the method of deciphering same. (Prior code § 4-8.315)

**8.16.330 Temperatures—Market milk.**

Grade A milk for pasteurization shall be cooled immediately after being drawn from the cow or goat to a temperature at fifty (50) degrees Fahrenheit or below, and thereafter maintained at that temperature or below until delivery to the transporter, and shall not exceed fifty-five (55) degrees Fahrenheit during transportation and until processing begins, except as provided in Section 8.16.340. (Prior code § 4-8.32)

**8.16.340 Temperatures—Milk for cream.**

Grade A milk used for the production of Grade A cream which is delivered to a dairy products plant located outside of the pasteurization area of the city shall be cooled immediately after being drawn from the cow or goat to fifty (50) degrees Fahrenheit or below, and thereafter maintained at that temperature or below until delivery to the transporter, and shall not exceed fifty-five (55) degrees Fahrenheit during transportation and until processing begins at such plant, except that milk delivered to such plant within four hours after completion of milking shall, in lieu of the above cooling requirement, be cooled to as low a temperature as practicable on the dairy and so maintained during transportation. Such Grade A milk shall be separated as soon as received at such dairy products plant, or cooled to and held at the temperature of fifty (50) degrees Fahrenheit or below, until the separating process begins. (Prior code § 4-8.33)

**8.16.350 Temperatures—Fluid dairy products.**

After processing, skim milk, buttermilk, cultured buttermilk, chocolate milk, and chocolate dairy drink shall be immediately cooled to a temperature of fifty (50) degrees Fahrenheit or below, and so maintained until delivered to the consumer. (Prior code § 4-8.34)

**8.16.360 Temperatures—Store refrigeration.**

Every grocery store and other establishment distributing a fluid dairy product to the consumer shall have a refrigerator which shall be capable of maintaining fluid dairy products at a temperature of fifty (50) degrees Fahrenheit or below within such refrigerator. Such refrigerator shall have sufficient capacity to hold all fluid dairy products kept on such premises, and all such fluid dairy products shall at all times be kept in such refrigerator. Such refrigerator shall be kept clean at all times and shall be properly drained in accordance with the provisions of the Uniform Plumbing Code and the Uniform Mechanical Code. (Amended during 1997 codification; prior code § 4-8.35)

**8.16.370 Degrading—Condemning—Dairy products.**

Every fluid dairy product above the legal cooling temperature specified in this chapter, or which otherwise violates any provision of this chapter or of the Agricultural Code, which is found in the city, or intended for distribution therein, shall be degraded by a Milk Inspector. Market milk degraded for high temperature only may be used for market cream. All dairy products unfit for human consumption shall be condemned and shall be destroyed by a Milk Inspector or marked for identification by a nontoxic substance, or diverted to a use other than for human consumption. (Prior code § 4-8.36)

**8.16.380 Degrading—How handled.**

Every dairy product which is degraded may be diverted to manufacturing plant, or stored in a container or room under the exclusive control of a Milk

Inspector, and shall be sealed by, and identified by a label signed by him or her, and it is unlawful for any person to remove such dairy product from package or room in which the same is sealed, or to remove the same from the place where degraded, or to tamper with, remove, deface or substitute any such seal or label. A degraded product shall be handled only under the direction of Milk Inspector. (Prior code § 4-8.37)

**8.16.390 Thermometers—Pasteurization.**

Every person who operates pasteurizing equipment shall use for checking the pasteurization temperature of each vat, a long stem indicating thermometer which is accurate within one degree Fahrenheit, said thermometer to be supplied by the processor who operates the dairy products plant. (Prior code § 4-8.38)

**8.16.400 Thermometer—Weigh tank.**

Every processor who receives Grade A milk for pasteurization or separation in the city, or for distribution therein, shall provide an indicating thermometer on the milk weigh tank, and the correct temperature of each milk producer's milk at the time it is weighed shall be recorded upon the receiving sheet. (Prior code § 4-8.39)

**8.16.410 Thermometer—Recording.**

Every new installation of a recording thermometer used for recording the pasteurization temperature of market milk shall be equipped with a chart of a type which will record the pasteurization temperature in one degree divisions between one hundred thirty-five (135) degrees Fahrenheit and one hundred fifty (150) degrees Fahrenheit. The rotating chart support shall be provided with a positive lock on the chart in a manner to prevent its free rotation. (Prior code § 4-8.40)

**8.16.420 Valves.**

All inlet and outlet valves hereinafter installed on pasteurizing vats shall be flush or close coupled, leak-proof type, or each pasteurizing vat shall be filled or emptied by a single pipe which shall not be

connected to any other pasteurizing vat, and such pipe shall be connected only during the filling or emptying of each vat. (Prior code § 4-8.41)

#### **8.16.430 Preheating control.**

Except when an automatic holding time recorder is used on each pasteurization unit mentioned in this chapter showing time of closing inlet valves and opening of outlet valves for each pasteurization, all market milk preheating for the pasteurization process shall not advance above one hundred thirty-eight (138) degrees Fahrenheit at any time until the vat is filled or inlet pipe is permanently closed. (Prior code § 4-8.42)

#### **8.16.440 Protective cover—Packaging.**

Every final package of fluid dairy products shall be sealed in a manner that will protect the pouring lip of such package from contamination. The cap or cover used shall cover the pouring lip to at least its largest diameter, shall meet the approval of the Health Officer and shall be mechanically applied at the time of packaging. In no case shall a cap be used a second time on any package. (Prior code § 4-8.43)

#### **8.16.450 Single service container—File sample with Health Officer.**

No type of single service container for fluid dairy products shall be used in the city unless a sample of the same has been filed with, and approved in writing by the Health Officer, together with satisfactory evidence that the materials used in the manufacture of the same have been approved by the Director of Agriculture of the state of California. (Prior code § 4-8.44)

#### **8.16.460 Single service container—Sanitary regulations.**

All single service containers intended to contain a fluid dairy product shall be received at the dairy or milk plant in clean, unbroken, dustproof, factory-sealed shipping wrappers or cartons and shall be stored in cool dry rooms free of dust, insects, vermin or other sources of contamination. Such packag-

es shall remain in sealed wrappers or cartons and be exposed only immediately before filling in a room approved by the Health Officer for the handling of sterile packages. Moisture-proofing of such packages shall be done with a fully refined paraffin wax or other suitable material which is odorless, tasteless, sterile and nontoxic. All such packages shall be handled mechanically so far as possible, and be paraffined, conveyed, filled and sealed so as to prevent contamination from manual contact, dirt, vermin and insects. (Prior code § 4-8.45)

#### **8.16.470 Approval of premises.**

It is unlawful for any person to distribute any dairy product from any place unless the sanitary condition of such place shall have been approved by the Health Officer. (Prior code § 4-8.46)

#### **8.16.480 Permit—Dairy permit.**

It is unlawful for any person to bring into the city, or to process therein, any market milk unless the same was produced on a dairy operated by a milk producer holding a dairy permit issued by the Chief Dairy and Milk Inspector, as provided in this chapter. (Prior code § 4-8.47)

#### **8.16.490 Permit—Dairy products permit.**

It is unlawful for any person to operate in the city the business of processor, milk distributor, transporter, or any business using manufacturing milk in the processing of a nondairy product, unless he or she holds a dairy products permit issued by the Chief Dairy and Milk Inspector, as provided in this chapter. (Prior code § 4-8.48)

#### **8.16.500 Permit—Application and approval.**

An application for a dairy permit or a dairy products permit shall be made in writing to the Chief Milk Sanitarian upon a form supplied by the Health Officer and shall designate the location of the operations to be performed, the nature of such operations, and give such other information as may be required by the Chief Milk Sanitarian. Upon the filing of such application, a Milk Sanitarian shall inspect the

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premises referred to and their immediate surroundings, together with the equipment, facilities, and methods to be employed in conducting the operations to which such application pertains. If the Chief Milk Sanitarian shall find that all provisions of this chapter and the Agricultural Code pertaining to such applicant and such premises are complied with, that conditions of the premises, equipment, and facilities involved are compatible with public health, a permit shall be forthwith granted. (Prior code § 4-8.49)

### **8.16.510      Permit—Contents—Dairy permit.**

A. Every dairy permit shall set forth the grades of milk to be produced by the milk producer for processing or distribution in the city, the name and address of the person to whom the milk producer's milk is to be delivered, and such milk shall not be delivered to any other person except pursuant to the rules and regulations of the Health Officer.

B. Every dairy permit and every dairy products permit shall designate the dairy or dairy products plant, as the case may be, the premises and operations to which the permit shall apply, and shall be valid at no other location, and for no person other than the person thereon named. (Prior code § 4-8.50)

### **8.16.520      Permit—Renewal.**

Every dairy permit and every dairy products permit shall expire at the end of the calendar year in which issued. Every permit may be renewed during the month of January of each successive year, upon application therefor on a form supplied by the Health Officer, if the applicant for a renewal shall have conducted the business for which he or she holds a permit under this chapter in accordance with the requirements of the Agricultural Code and this chapter during the year preceding that for which such renewal is requested. (Prior code § 4-8.51)

### **8.16.530      Permit—Suspension or revocation—Nonshipment.**

Every dairy permit shall be subject to suspension by the Chief Dairy and Milk Inspector, and to revocation by the Health Officer, in the event the milk

producer to whom it was issued shall fail to commence shipment of market milk in accordance with his or her permit within five days after the date of issuance thereof, or shall discontinue shipment of market milk for five consecutive days, or in the event that such dairy shall at any time ship less than a minimum percentage of the total milk produced daily on such dairy in accordance with rules and regulations of the Health Officer, and thereby fail to demonstrate such dairy to be a bona fide source of milk supply for the city. (Prior code § 4-8.52)

### **8.16.540      Permit—Dairy products permit—Limited—Grade A cream.**

When Grade A milk for production of Grade A cream is delivered to a dairy products plant outside of the pasteurizing area of the city, a dairy products permit may be granted to such plant by the Health Officer subject to the limitation that such milk shall be used only for the production of Grade A cream. The Health Officer may grant a dairy permit containing the same limitation to each milk producer supplying such plant. Such dairy products shall be processed under the supervision of a Milk Sanitarian. All such Grade A cream for processing or distribution in the city shall be transported directly from such dairy products plant to a milk plant holding a permit from the city, and the label of every package shall be authenticated and sealed in a manner approved by the Health Officer. It is unlawful for any person to remove, tamper with, deface or substitute any seal or label, until such package is opened for processing. (Prior code § 4-8.53)

### **8.16.550      Bulk milk dispensers.**

A. Milk sold in bulk milk dispensers must conform to the California State Agricultural Code pertaining to dairy products and this chapter.

B. All containers in which milk is kept, stored, transported or delivered, shall be sound, smooth, free from rust or open seams, cracks and crevices, and at all times in a condition which will permit thorough cleaning of all surfaces which have been in contact with milk.

C. All parts in contact with milk must be so constructed that they are readily cleanable and of noncorrosive materials.

D. Any drip or spillage from dispensing valves shall be disposed of in a sanitary manner and the inside of the cabinet must be kept clean and sanitary.

E. All parts which come in contact with milk, except single service parts, must be rinsed, washed, and sterilized after the content of each can is emptied.

F. Temperature of the milk shall not exceed fifty (50) degrees Fahrenheit.

G. The bacteria, butterfat, and solids of the milk must be legal at all times.

H. Cans shall be sealed at the milk products plant and this seal shall not be broken until the can is emptied of all of its contents. A tag with the date or date code of processing and the grade of milk shall be attached to the can and remain on the can until all of its contents are emptied.

I. Milk or milk products shall be disposed of within seventy-two (72) hours after delivery.

J. Cans shall be filled in a sanitary manner and the milk must not be subject to contamination while filling at the milk products plant.

K. The location of the bulk milk dispenser is subject to approval by the Health Officer. (Prior code § 4-8.541)

#### **8.16.560 Milk handlers—Examination.**

All persons who come in contact with a dairy product or clean or unused packages must exercise scrupulous cleanliness and must not be afflicted with or be in condition to disseminate any communicable disease which may be conveyed through a dairy product, and must not be a contact of any such afflicted person directly or indirectly. The presence of such disease among employees or other persons on the premises shall be immediately reported to the Health Officer by the milk producer, milk distributor, processor, or transporter, as the case may be, employing such person and every person working in close proximity to an exposed dairy product or to clean packages intended for such products shall

furnish such information, permit such physical examination, and submit such laboratory specimens as the Health Officer may require for the purpose of determining freedom from infection. (Prior code § 4-8.55)

#### **8.16.570 Whip cream topping.**

A. Whip cream topping must conform to the laws and regulations of the State Agricultural Code pertaining to dairy products and this chapter.

B. Whip cream topping is a product packaged and dispensed from a pressurized hermetically sealed container.

C. All containers shall be smooth, sound, free from rust or open seams and at all times kept in a condition which will permit thorough cleaning of all surfaces. The containers shall be so constructed that they are readily cleanable and made of noncorrosive materials. Every cap, container, dispensing nozzle and label intended to be used for whip cream topping, shall be submitted to and approved by the Health Officer before the same may be placed in use. Every container, cap, dispensing nozzle and label which does not meet the requirements of this chapter or the California Agricultural Code shall be subject to condemnation by the Health Officer.

D. All dispensers must be washed and sterilized before refilling.

E. It shall be made from cream or other dessert material which contains not more than one hundred fifty thousand (150,000) bacteria per milliliter with or without added nonfat milk solids, sweetening and harmless edible stabilizer not exceeding one-half of one percent.

F. It shall contain not less than twenty (20) percent of milk fat and shall contain not more than thirty thousand (30,000) bacteria per milliliter after pasteurization.

G. It shall be charged with nitrous oxide or other inert harmless gas approved by the Health Officer.

H. Harmless flavoring or coloring may be added.

I. It shall be labeled with the term "Whip Cream Topping" and with the name and address of the manufacturer.

J. Milk and milk products used in the manufacture of whip cream topping shall be pasteurized.

K. All containers shall be date coded with the date of processing. The code identity shall be available to the Department of Public Health.

L. Container with whip cream topping must be kept under refrigeration at all times (fifty (50) degrees Fahrenheit or below) except when in actual use.

M. Dispensing nozzles shall be changed daily and washed and sterilized preferably by boiling for ten minutes and kept in a sanitizing solution until used. This does not apply to single service containers.

N. Whip cream topping shall be disposed of within seven days after processing, except those products which are sterilized. Any exceptions to this section must be approved by the Health Officer.

O. If the product is in the single service type of dispenser, is sterilized, and so certified and labeled, kept under refrigeration, it may be held for not longer than six months if unopened. After opening, it shall be disposed of within seven days.

P. The outlet of the containers shall have a protective cover.

Q. Every processor and distributor of whip cream topping shall obtain a permit from the Milk Inspector Department of the city before distributing this product. (Prior code § 4-8.561)

#### **8.16.580 Imitation whip cream topping.**

Imitation whip cream toppings (or so-called dessert toppings manufactured or processed from ingredients other than dairy product ingredients) shall meet the same standards and requirements of whip cream topping insofar as the same are applicable, and shall be labeled imitation whip cream topping in accordance with the requirements of Section 676 of the State Agricultural Code. All retail establishments processing or selling imitation whip cream toppings must also meet the above requirements. A sign shall be placed in a conspicuous place in all establishments selling imitation whip cream toppings in plain block letters not less than six inches high

with the words "Imitation Whip Cream Toppings Sold Here." (Prior code § 4-8.562)

#### **8.16.590 Eggnog.**

In addition to the requirements of Section 639.5 of the Agricultural Code eggnog which is sold to the wholesale trade shall be coded with the date of bottling or packaging on the container and sold to the consumer within seven days from this date. Samples of cartons shall be submitted to the Milk Inspection Bureau for approval. (Prior code § 4-8.563)

#### **8.16.600 Pasteurizer's permit.**

It is unlawful for any person to, or for any person to cause or permit any person to, operate any equipment for the pasteurization of any dairy product in the city, or for the pasteurization of Grade A milk or skim milk derived from Grade A milk outside of the city, if intended for distribution therein, unless the person operating such pasteurizing equipment shall have first obtained and shall hold a pasteurizer's permit issued by the State of California Dairy Bureau. (Prior code § 4-8.57)

#### **8.16.610 Permit—Suspension and revocation.**

Every permit issued pursuant to any provision of this chapter shall be subject to suspension by the Chief Dairy and Milk Inspector, and to revocation by the Health Officer, for the isolation of any provision of this chapter, or of the Agricultural Code. No permit shall be revoked until the holder thereof shall have had notice in writing of the reasons for the proposed revocation and of the time and place of the hearing for such revocation at least five days prior to the date thereof, and shall be entitled to be heard at such hearing. (Prior code § 4-8.58)

#### **8.16.620 Permit—Posting—Carrying.**

Every dairy permit and dairy products permit issued pursuant to the provisions of this chapter shall be posted conspicuously at the place of business named in such permit. A milk handler's permit and pasteurizer's permit shall be carried by the

holder thereof at all times when engaged in performing any function for which permit was issued, or shall be posted conspicuously in the room where such person is engaged in performing any function for which such permit was issued. (Prior code § 4-8.59)

#### **8.16.630      Inspection fee—Processor—Dairy products permit.**

Every processor of market milk under the jurisdiction of the city, Milk Inspection Department shall pay to the City Treasurer of the city, through the Chief Milk Sanitarian, a monthly inspection fee of 2.6 mills per gallon on all milk processed, except milk received from country milk plants under other inspection departments upon which fees have already been paid. The inspection fee required to be paid shall be due on the first day of every month for the preceding calendar month and shall be delinquent twenty (20) days after the first day of every month. The fee, when paid, shall be accompanied by a report on a form provided by the Chief Milk Sanitarian, duly sworn to by the manager or the person paying the fee, before a person authorized by law to administer oaths, setting forth the correct number of gallons of market milk processed during the previous month, upon which fee is based. (Prior code § 4-8.63)

#### **8.16.640      Inspection fee—Payable and delinquent—When.**

The inspection fee required to be paid by a milk distributor shall be payable on or before the twentieth day of each calendar month for the preceding calendar month. Every fee, when paid, shall be accompanied by a report on a form provided by the Health Officer setting forth the correct number of gallons of market milk received during the previous month upon which the required fee is based. Such inspection fee shall be delinquent on the twenty-first day of each calendar month. (Prior code § 4-8.68)

#### **8.16.650      Processor—Keep receiving and weight records.**

All original daily receiving sheets and records of

weights made by a processor or milk distributor relative to market milk received by him or her shall be kept available for examination by a Milk Inspector for a period of not less than five months. (Prior code § 4-8.69)

#### **8.16.660      Inspection fees—Penalty for nonpayment.**

Every inspection fee required by this chapter which has not been paid at the time it becomes delinquent shall thereupon have added thereto a penalty equal to ten percent of the delinquent fee, and an additional penalty of ten percent of the delinquent fee shall be added for each month or fraction thereof thereafter during such delinquency until the fee and penalty thereon are fully paid. Nonpayment of any delinquent inspection fee due shall constitute cause for suspension or revocation of any permit issued under this chapter. (Prior code § 4-8.74)

#### **8.16.670      Dairy products plant—Rooms.**

Every dairy products plant receiving or processing market milk shall provide separate rooms for:

- A. Receiving and weighing raw milk;
- B. Pasteurizing, cooling and bottling of milk;
- C. Bottle washing and sterilizing operations;
- D. Boiler, compressor and other machinery;
- E. Storage of supplies;
- F. Cold storage of dairy products; and
- G. Toilet and locker facilities. (Prior code § 4-8.75)

#### **8.16.680      Dairy products plant—Construction.**

All rooms in a dairy products plant in which dairy products are received, processed or stored shall be located above street level and have floors constructed of concrete or other impervious and easily cleaned material, smooth, properly drained, and provided with sufficient floor drains installed according to the Uniform Plumbing Code and the Uniform Mechanical Code. Intersection of floor and walls shall be covered. Floor drains shall be not more than thirty (30) feet apart, and single drains

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shall be near the center of the room. (Amended during 1997 codification; prior code § 4-8.76)

### **8.16.690      Dairy products plants—Construction.**

A. Walls of rooms in which dairy products are received, stored or processed shall be of concrete or masonry to a height of not less than four feet above adjoining floors. Walls and ceilings shall have tight, smooth, washable, light-colored surfaces. All openings into the outer air shall be effectively screened against flies, and doors shall be self-closing. All rooms shall be well lighted and properly ventilated according to their use.

B. Every dairy products plant shall be provided with adequate toilet facilities. Toilet rooms shall not open directly into any room in which dairy products are received, processed or stored. Doors of all toilet rooms shall be self-closing. Toilet rooms shall be kept clean and well ventilated. Lavatory facilities shall be provided, including running hot water, soap and towels in toilet rooms and each room where dairy products are processed.

C. Every dairy products plant shall provide a separate locker room for employees.

D. The interior of all dairy products plants shall be painted and kept in good condition and repair. (Prior code §§ 4-8.77, 4-8.78)

### **8.16.700      Dairy products plant—Score.**

Every dairy products plant shall score not less than eighty (80) percent on the score card for factories of dairy products adopted and established by regulations of the Director of Agriculture of the state of California. (Prior code § 4-8.79)

### **8.16.710      Manufacturing, etc., in milk plant.**

It is unlawful for any person to process cheese, butter, ice cream, ice milk, sherbet, dried milk, dried skim milk, evaporated milk, evaporated skim milk, sweetened condensed milk, or sweetened condensed skim milk, in any room where market milk intended for processing or distribution in the city is received, stored, or processed. (Prior code § 4-8.80)

### **8.16.720      Market milk—Transportation.**

Grade A milk shall be transported directly from the producing dairy to a milk plant holding a dairy products permit. (Prior code § 4-8.81)

### **8.16.730      Country trucks—Roadside stands.**

Every vehicle used in the transportation of market milk from a dairy to a dairy products plant shall be fully enclosed, and shall be insulated in a manner approved by the Health Officer. Roadside stands shall be constructed, enclosed and insulated in a manner approved by the Health Officer. (Prior code § 4-8.82)

### **8.16.740      Conveyances—Protection.**

Every vehicle while transporting market milk or milk products in final packages in the city shall be enclosed with bodies of metal or wooden materials approved by the Milk Inspection Bureau. Standard passenger vehicles shall not be used for regular deliveries of milk or milk products. Lettering must be painted permanently on both sides of all vehicles in accordance with the requirements of Section 676 of the State Agricultural Code. All replacement vehicles shall meet the above requirements and be approved by the Milk Inspection Bureau. Sacks in which ice is placed for refrigeration of fluid dairy products shall be of a type approved by the Milk Inspection Bureau and shall be kept in a clean and sanitary condition at all times. (Prior code § 4-8.83)

### **8.16.750      Tuberculin test.**

A. All dairy cattle and goats owned or controlled by a milk producer shall be given a tuberculin test and, if any such animal shall react to such test, such animal shall be immediately removed from the milking herd and shall be removed from the premises within thirty (30) days after the completion of the test. Every dairy shipping in market milk to processing plants under the jurisdiction of the city must conform to the state and federal tuberculosis eradication program.

B. A copy of every tuberculin-test certificate shall be filed with the Chief Milk Sanitarian before

the dairy shall be recognized as tuberculosis free. (Prior code § 4-8.84)

#### **8.16.760      Tuberculin test—Permit.**

No dairy permit shall be issued and an existing dairy permit shall be revoked if more than ten percent of the cows or goats in the herd shall react to the tuberculin test. (Prior code § 4-8.85)

#### **8.16.770      Animal diseases in dairy animals—Tests.**

The Health Officer may require, at intervals and by methods prescribed by him or her, any test or examination he or she may deem necessary for the purpose of determining in dairy cattle and goats the presence of animal diseases other than tuberculosis, the milk from which animals is intended for processing or distribution in the city. Every diseased dairy animal or goat shall be removed from the milking herd or from the dairy as the Milk Inspector may require. Cows or goats showing an extensive or entire induration of one or more quarters of the udder upon physical examination shall be permanently excluded from the milking herd. Every cow or goat giving bloody, stringy or otherwise abnormal milk, but with slight induration of the udder, shall be excluded from the herd, and the milk from such animal shall be discarded until a re-examination of such animal shows that its milk has become normal. (Prior code § 4-8.86)

#### **8.16.780      Sanitation—Dairy equipment regulations.**

A. A milk producer shall provide suitable equipment for properly washing and sterilizing dairy equipment and for cleaning dairy buildings.

B. Milk Houses. Milk rooms and wash rooms on dairies shall be used for no other purpose than that connected with the handling of milk and milk equipment.

C. Housing. Milkers on the dairy shall be housed in a sanitary manner and provided with sanitary toilet and bathing facilities.

D. Buckets. Hooded milking buckets with small openings shall be used at all times, and no more than one bucket shall be allowed to each milker.

E. Can Covers. Every can of five gallon capacity or more used for transporting Grade A milk shall be provided with tight-fitting mushroom-type cover.

F. Milk Stools. Milk stools shall be made of metal or other impervious material and shall be kept clean.

G. Wash Sinks, Etc. Every wash sink, table, rack, stepladder, and shelf on a dairy and in a dairy products plant shall be constructed of nonabsorbent material and kept clean at all times. (Prior code §§ 4-8.87, 4-8.88)

#### **8.16.790      Sanitation—Animals.**

A. No domestic or other animal shall be permitted in any room where dairy products are received, processed or stored.

B. Domestic or other animals, excepting dairy cows and goats, shall be removed from dairy buildings to a distance which, in the opinion of a Milk Inspector, will prevent them from being a nuisance from the standpoint of drainage, odor and flies. (Prior code § 4-8.89)

#### **8.16.800      Sanitation—Miscellaneous.**

A. No meat, fish, vegetables or other commodity affecting the flavor or odor of milk shall be stored in any cold storage room of a dairy or dairy products plant in which milk is stored.

B. No person shall use tobacco in any form, or expectorate, in any milk house or any room where exposed dairy products are received, stored, or processed.

C. Every brush and other appliance used in cleaning of packages and milk handling equipment shall be cleaned and sterilized daily.

D. Only flush type toilets with an adequate septic tank system shall be allowed on Grade A dairies.

E. Farm vats shall be rinsed out with cold water immediately after being emptied by the transport driver.

F. All doors of the milk house shall be in good repair, self-closing, and kept closed at all times.

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G. Cows' udders, flanks, and legs shall be washed before each milking until clean. Sediment discs taken at time of milking shall not show excessive sediment. Dairies showing an excessive amount of sediment on the sediment disc shall have their milk degraded until such time as they can produce clean milk as indicated by the sediment discs.

H. An opening shall be provided for the tanker hose in the door or wall of the milk house properly shuttered.

I. Wells shall be properly protected from contamination and a faucet installed close to the discharge of the pump, and a three-quarter inch pipe extended into the casing with a plug in order to chlorinate the well if necessary.

J. Human and animal wastes shall be disposed of in such a manner as to prevent the breeding of flies and mosquitoes.

K. Fly breeding shall be controlled.

L. The milk supplies and equipment shall be protected at all times from contamination.

M. The premises shall be kept clean, tidy, and sanitary at all times.

N. Proper materials and construction shall be provided around feed racks, water troughs, lanes, and corrals to keep the cows out of the mud and manure in the winter months. (Prior code § 4-8.90)

### **8.16.810 Communicable diseases.**

It is unlawful for any person to remove from any dwelling in which any case of communicable disease exists, any package until it has been released by the Health Officer. (Prior code § 4-8.91)

### **8.16.820 Unlawful to violate provisions of chapter.**

It is unlawful for any person to produce, receive, store, handle, process, or distribute any dairy product in violation of any provision of this chapter. (Prior code § 4-8.92)

### **8.16.830 Unlawful to interfere with Milk Inspector.**

It is unlawful for any person to prevent or to

interfere with or to attempt to nullify in any way the work of the Health Officer or any Milk Inspector in the enforcement of any provision of this chapter, or to interfere with or prevent any of said persons from examining any record or book in the conduct of his or her official business, or to prevent or interfere with or prevent any of said persons in the event he or she deems it advisable to secure samples of any dairy product. (Prior code § 4-8.93)

### **8.16.840 Unlawful to distribute, etc., impure dairy products.**

It is unlawful for any person to distribute, or to knowingly purchase or receive any impure, polluted, tainted, unclean, unwholesome, stale or adulterated dairy product or any product made wholly or in part from any such dairy product, or any dairy product which violates any provision of this chapter. (Prior code § 4-8.94)

### **8.16.850 Chapter and state law—Compatible.**

No provision of this chapter is intended to be in conflict with Section 498 or Section 497 of the Agricultural Code, as amended, and all provisions of this chapter shall be construed in harmony with said sections; nor shall any provisions of this chapter be construed so as to prohibit the Health Officer from permitting milk to be sold in the city in the manner provided in Section 485 of the Agricultural Code, as amended. (Prior code § 4-8.95)

## Chapter 8.18

### NUISANCES

**Sections:**

- |                 |  |
|-----------------|--|
| <b>8.18.010</b> | <b>Excessive and annoying noises prohibited.</b>     |
| <b>8.18.020</b> | <b>Persistent noises a nuisance.</b>                 |
| <b>8.18.030</b> | <b>Noises—Exceptions.</b>                            |
| <b>8.18.040</b> | <b>Smoke and soot.</b>                               |
| <b>8.18.050</b> | <b>Smoke and soot—Enforcement.</b>                   |
| <b>8.18.060</b> | <b>Noxious weeds.</b>                                |
| <b>8.18.070</b> | <b>Fences.</b>                                       |
| <b>8.18.080</b> | <b>Dumping in streams, etc.</b>                      |
| <b>8.18.090</b> | <b>Smoking in public conveyances.</b>                |
| <b>8.18.100</b> | <b>Sound amplification from aircraft prohibited.</b> |

**8.18.010      Excessive and annoying noises prohibited.**

A. It is unlawful for any person to create or allow to be created any excessive or annoying noise as defined herein. Any violation of the regulations specified herein shall be punishable as an infraction.

B. Definitions.

“Annoying noise” means noise with a repetitive pattern, shrill frequencies, and/or static-like sounds, including loud music and noise attributable to, but not limited to, leaf blowers, alarms, engines, barking dogs, and other animals.

“Excessive noise” means any unnecessary noise which persists for ten minutes or more; such period of noise need not be witnessed by enforcement personnel if the occupants of two or more separate housing or commercial units certify that they have experienced such period of noise and describe with particularity the source.

C. Excessive and Annoying Noises a Nuisance. The following acts, and the causing or permitting thereof, shall be considered disturbing the peace and shall constitute an infraction.

1. Mechanical or Electronic Devices. Using any mechanical or electronic device for the intensification of any sound or noise into the public streets which produces excessive or annoying noise;

2. Vehicular Attachments. Attaching any accessory or device to any vehicle which results in the creation of unnecessary noise;

3. Advertisement. Using any instrument, whistle, drum, bell, or making any other unnecessary noise for the purpose of advertising, announcing, or otherwise calling attention to any goods, wares, merchandise, or to any show, entertainment, or event. The provisions of this section shall not be construed to prohibit the selling by outcry of merchandise, food, or beverages at licensed sporting events, parades, fairs, circuses or other similar licensed public entertainment events;

4. Animals and Birds. Owning, possessing, or harboring any animal or bird which howls, barks, meows, squawks, or makes other annoying noises continuously and/or incessantly for an unreasonable period of time so as to create a noise disturbance across a real property line. For the purposes of this chapter, the animal or bird noise shall not be deemed a noise disturbance if a person is trespassing or threatening to trespass upon private property in or upon which the animal or bird is situated, or is using any other means to tease or provoke the animal or bird. This provision shall not apply to public zoos;

5. Emergency Signaling Device. The intentional sounding or permitted sounding outdoors of any fire, burglar, or civil defense alarm, siren, whistle, or similar stationary emergency signaling device not in compliance with subsection (C)(5)(a) or (b), unless occurring for emergency purposes:

a. The testing of a stationary emergency signaling device shall not occur before seven a.m. or after seven p.m. Any such testing shall use only the minimum cycle test time, in no case shall such test time exceed sixty (60) seconds.

b. The testing of the complete emergency signaling system, including the functioning of the signaling device, and personnel response to the signaling device, shall not occur more than once in each calendar month. Such testing shall not occur before seven a.m. or after ten p.m. The time limit specified in subsection (C)(5)(a) of this section shall not apply to such complete system testing;

**6. Stationary Nonemergency Signaling Devices.** Sounding of any electronically amplified signal from any stationary bell, chime, siren, whistle, or similar device, intended primarily for nonemergency purposes, from any place, for more than ten seconds in an hourly period. Churches, schools, and bell towers shall be exempt from the operation of this provision;

**7. Burglar or Fire Alarm.** Sounding of any exterior burglar or fire alarm or any motor vehicle burglar alarm which is not terminated within fifteen (15) minutes of activation;

**8. Loading and Unloading.** Loading, unloading, opening, closing, or other handling of boxes, crates, containers, building materials, refuse, or similar objects between the hours of nine p.m. and six a.m. in such a manner as to cause a noise disturbance across a residential property line or at any time to violate the applicable noise provisions of the Oakland Planning Code;

**9. Domestic Power Tools, Machinery.** Operating or permitting the operation of any mechanically powered saw, sander, drill, grinder, lawn or garden tool, or similar tool between nine p.m. and six a.m. so as to create a noise disturbance across a real property line or at any time to violate the applicable noise provisions of the Oakland Planning Code;

**10. Sensitive Uses.** Creation of any noise within or adjacent to a hospital or medical care facility, nursing home, school, court, day care, church, or similar facility, so as to interfere with the functions of such activity;

**11. Noise resulting from construction and demolition activities, the operation of commercial refrigeration units, air conditioning systems, compressors, commercial exhaust systems, ventilation units, and other commercial or industrial noises associated with land use activities, shall be regulated pursuant to standards contained within the noise regulations of the Oakland Planning Code.**

**D. Noise Enforcement Procedures.** If it is determined that a noise in violation of this chapter exists, the following procedures shall be followed:

1. A written or verbal warning shall be issued by the investigating official or his or her agent to

the person(s) responsible for the event causing the noise disturbance.

2. If the noise disturbance persists for more than fifteen (15) minutes following the issuance of a written or verbal warning, or recurs within a one-week period from the issuance of such warning, then the person responsible for the event causing the noise disturbance shall be guilty of a violation of this chapter.

**E. Violations and Penalties—Public Nuisance.**

1. Any person who violates or causes or permits another person to violate any provision of this chapter is subject to, but not limited to, fines and penalties specified in Chapter 1.28 of this code and civil penalties and administrative citations authorized pursuant to Chapters 1.08, 1.12 and 1.16 of this code.

2. In addition to the penalties herein provided, any condition caused or permitted to exist in violation of any of the provisions of this chapter is a threat to the public health, safety and welfare, and is declared and deemed a public nuisance and shall be punishable as such.

**F. Continuing Violation.** Unless otherwise provided, a person shall be deemed guilty of a separate offense for each and every day during any portion of which the violation of this chapter is committed, continued or permitted by the person and shall be punished accordingly as herein provided.

**G. Remedies not Exclusive.** Remedies under this chapter are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive.

**H. Severability.** If any part or provision of this chapter or the application thereof, to any person or circumstance is held invalid, the remainder of the chapter, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end the provisions of this chapter are severable. (Ord. 11894 § 2, 1996: prior code § 3-1.01)

**8.18.020 Persistent noises a nuisance.**

The persistent maintenance or emission of any noise or sound produced by human, animal or mechanical means, between the hours of nine p.m. and seven a.m. next ensuing, which, by reason of its raucous or nerve-racking nature, shall disturb the peace or comfort, or be injurious to the health of any person shall constitute a nuisance.

Failure to comply with the following provisions shall constitute a nuisance.

A. All construction equipment powered by internal combustion engines shall be properly muffled and maintained.

B. Unnecessary idling of internal combustion engines is prohibited.

C. All stationery noise-generating construction equipment such as tree grinders and air compressors are to be located as far as is practical from existing residences.

D. Quiet construction equipment, particularly air compressors, are to be selected whenever possible.

E. Use of pile drivers and jack hammers shall be prohibited on Sundays and holidays, except for emergencies and as approved in advance by the Building Official.

Whenever the existence of any such nuisance shall come to the attention of the Health Officer, it shall be his or her duty to notify in writing the occupant of the premises upon which such nuisance exists, specifying the measures necessary to abate such nuisance, and unless the same is abated within forty-eight (48) hours thereafter, the occupant so notified shall be guilty of an infraction, and the Health Officer shall summarily abate such nuisance. (Prior code § 3-1.02)

**8.18.030 Noises—Exceptions.**

Nothing in Sections 8.18.010 and 8.18.020 shall apply to the playing of music by a band or the blowing of a bugle, or the announcing of any show, entertainment, or event upon the public streets for which band music, bugle blowing or privilege or announcing, the Chief of Police of the city has granted a special permit specifying the time and place when and where such music may be played or

such bugle blown, or shall apply to the blowing of any whistle or horn or the ringing of any bell or other noise necessary as a vehicular or pedestrian traffic warning or signal; or to any regularly licensed peddler calling his or her wares in an ordinary tone of voice, or ringing a bell or blowing a horn of moderate size in front of the residence of any customer of such peddler for the purpose of announcing the presence of such peddler; or to any public celebration or public function on a public holiday or other public occasion generally celebrated. (Ord. 12239 § 1, 2000: prior code § 3-1.03)

**8.18.040 Smoke and soot.**

Every person who shall cause, suffer or allow dense smoke to be discharged from any building, place, premises, stationary or locomotive engine or motor vehicle within the city, or shall cause, suffer or allow soot, ashes, or cinders to be discharged from any building, place, premises, stationary or locomotive engine or motor vehicle to such an extent that such soot, ashes, or cinders are blown upon or fall upon adjacent property, is guilty of an infraction. (Prior code § 3-1.04)

**8.18.050 Smoke and soot—Enforcement.**

The Building Official or his or her designee shall have the authority to enter, during reasonable hours, upon any premises upon which is located any flue, chimney, smokestack, or any other structure or appliance from which any smoke, soot, ashes or cinders shall be discharged, for the purpose of making an investigation as to the cause of the discharge and for the purpose of ascertaining the kind or character of fuel used, and the manner of using the same, and any other fact or facts showing compliance with or violation of Section 8.18.040. (Ord. 11920, 1996: prior code § 3-1.06)

**8.18.060 Noxious weeds.**

Every person who shall permit to mature on any land owned, possessed, managed or controlled by him or her, or who shall knowingly sow, or disseminate or cause or permit to be sown or disseminated, or shall sell or in any manner dispose of or cause to

## **8.18.060**

permit to be sold or disposed of, or shall transport or convey or cause to permit to be transported or conveyed into the city, any seed of the Scotch or Canada Thistle, the Russian Thistle, the Mexican Cocklebur, or any noxious weed, whether such sowing, selling, transporting or conveying be alone or in hay, grass, grain or in any manner whatsoever, is guilty of an infraction. (Prior code § 3-1.07)

### **8.18.070 Fences.**

Every person who shall maliciously erect or maintain in the city, for the purpose of annoying the owners or occupants of adjoining property, any fence, or other structure in the nature of a fence, unnecessarily exceeding six feet in height, is guilty of an infraction, punishable as provided in this code and such fence or structure shall be deemed a private nuisance. (Prior code § 3-1.08)

### **8.18.080 Dumping in streams, etc.**

It is unlawful for any person to dump any junk, refuse, garbage, dirt or any other material in any stream, creek, watercourse or stream bed, or within the banks of the same, in the city, without written permission so to do issued by the Superintendent of Streets. (Prior code § 3-1.09)

### **8.18.090 Smoking in public conveyances.**

It is unlawful for any person to smoke any cigar, pipe or cigarette, or to carry any lighted cigar, pipe or cigarette within any street car, motorbus, transbay train unit, or other public utility passenger vehicle being operated within the city. Nothing in this section shall be deemed to render unlawful smoking within the units of a transbay train nor the portions of the equipment of commercial railroads designed for or set aside for smoking by the utility operating such trains or equipment. (Prior code § 3-1.10)

### **8.18.100 Sound amplification from aircraft prohibited.**

No person shall operate, or cause to be operated, any aircraft for any purpose in or over the city with sound-amplifying equipment in operation.

“Aircraft” as used in this section means any contrivance now known or hereafter invented, used, or designated for navigation or for flight in the air. The word “aircraft” shall include helicopters and lighter-than-air dirigibles and balloons.

“Sound-amplifying equipment” as used in this section means any machine or device for the amplification of music, the human voice, or any other noise or sound. “Sound-amplifying equipment” shall not be construed as including warning devices on authorized emergency aircraft or any horns, or other warning device used only for traffic safety purposes. (Prior code § 3-1.11)

## Chapter 8.19

### WOOD-BURNING APPLIANCES

#### Sections:

##### **8.19.010 Wood-burning appliances.**

##### **8.19.010 Wood-burning appliances.**

A. Purpose. The purpose of this section is to reduce the health risks from airborne particulates and other pollutants deriving from the products of combustion of wood and similar cellulose and lignin-based substances under the climatic conditions applicable to Oakland and the San Francisco Bay Area air basin.

B. Definitions. For purposes of this section the following terms shall be defined as set forth below:

“EPA” is the United States Environmental Protection Agency.

“EPA certified” is any wood-burning appliance or device that is listed and labeled “EPA certified” in accordance with the standards in Title 40, Part 60, Subpart AAA, of the Code of Federal Regulations in effect at the time the appliance is installed.

“Wood” is the tough, fibrous cellular substance constituting the xylem of trees and shrubs consisting largely of cellulose and lignin.

“Wood-burning” is an enclosed appliance means that burns wood or any wood-based solid fuel, including but not limited to wood pellets and charcoal.

“Wood heater” is an enclosed, wood burning appliance capable and intended for space heating or domestic water heating that meets the criteria in Title 40, Part 60, Subpart AAA, Section 60.531 of the Code of Federal Regulations amended October 17, 2000.

“Pellet heater” is a wood heater that burns pellet fuel exclusively and is either EPA certified or exempted under EPA requirements set forth in Part 60, Title 40, Subpart AAA, of the Code of Federal Regulations, February 26, 1988.

“Wood-burning fireplace” is in site-build masonry construction of factory-built, either open or with doors in front of the combustion chamber, which is neither a wood heater as defined in Title 40, Part 60,

Subsection .531 of the Code of Federal Regulations nor a wood-burning cooking stove as defined herein.

#### C. Applicability.

1. This chapter shall apply within the limits of the city of Oakland.

2. All wood-burning appliances installed in new residential units or wood-burning appliances being added to or replacing wood-burning appliances with the exception of wood-burning fireplaces in existing residential units shall comply with this chapter.

3. All wood-burning appliances installed in new commercial occupancies or wood-burning appliances being added to or replacing wood-burning appliances in existing commercial occupancies shall comply with this chapter.

4. Exemptions: Gas fireplaces shall be exempt from this chapter, however, the conversion of a gas fireplace to burn wood shall constitute the installation of a wood-burning appliance and shall be subject to the requirements of this chapter. A pellet-fueled wood heater is not subject to this chapter.

The one to one replacement or reconstruction of residential fireplaces in residential units and secondary units constructed prior to the adoption of this chapter with new wood-burning fireplaces that otherwise meet building codes, shall be exempt from Sections 8.19.010(D and E). Replacement fireplaces and the operation of such fireplaces shall meet Sections 8.19.010(G), (H), (I), and (J).

Historic buildings are exempt from the requirements of this chapter. “Historical buildings” means those buildings designated as historic resources in the General Plan, buildings on any other city-adopted listing of historic resources, buildings which have been identified after appropriate analysis as being eligible for the State or National Register of Historic Places, or buildings recognized by the Landmark Preservation Board.

D. Installations. All new wood-burning installations shall be EPA certified, whenever such certification exists.

E. Repairs. Existing masonry fireplaces may be repaired in accordance with the applicable codes in effect at the time of the proposed repair and shall be limited to resurfacing the combustion chamber, re-

placement of dampers, installation or replacement of spark arrestors, and repair to flue pipe or chamber. Repair of the fireplace that may alter its drafting capabilities, including but limited to reduction of the overall length of flue, is not permitted. Repairs to the combustion chamber must, in any case, be in accordance with Title 40, Part 60, Subsection .531 of the Code of Federal Regulations.

F. Mechanical Permits. As a condition for issuing a mechanical permit for a wood-burning installation or a wood-burning fireplace repair, the applicant shall provide approved documentation that the appliance, device, or method or repair conforms to the requirements of this section.

G. Fuels. Fuel used in wood-burning installations shall be limited to dry and seasoned wood and wood based products manufactured for such use. Garbage, plastic, treated wood, similarly adulterated wood and wood based products (pressure-treated, painted, stained, creosoted, etc.), coal, paint solvents, glossy paper, rubber products, particle board, waste petroleum products, and salt water drift wood shall not be used as fuel.

H. Airborne Particulates. Wood-burning installations shall not be used at any time the San Francisco Bay Area Air Quality Management District (BAAQMD) has declared a moratorium on burning or a no-burn day with the exception of an existing wood-burning appliance that is the only source of heat.

I. Education. All citizens burning wood are encouraged to learn how to minimize air pollution. Educational materials will be available in City Council offices and through the BAAQMD offices. Upon the application for a building permit for installing a wood-burning appliance, Building Services shall provide an informational handout outlining ways to minimize pollution from wood-burning appliances.

J. Enforcement. The City Administrator, or his or her designated representative, is empowered to enforce the provisions of this section. The provisions as set forth in Chapter 15.08 and Chapter 1.28 of this code shall apply to any such abatement. Fees, charges, penalties, and interest assessed for any abatement action performed by or on behalf of the

city shall be recovered by the city in accordance with the provisions set forth in Chapter 15.08 of this code. (Ord. 12671 § 3, 2005)

	<b>Chapter 8.20</b>	
	<b>PAY TELEPHONES</b>	
<b>Sections:</b>		
<b>8.20.010</b>	<b>Purpose, intent and applicability.</b>	<b>8.20.200</b> <b>Fees established.</b>
<b>8.20.020</b>	<b>Pay telephones exempted.</b>	<b>8.20.210</b> <b>Joint and several liability.</b>
<b>8.20.030</b>	<b>Definitions.</b>	<b>8.20.220</b> <b>Severability.</b>
<b>8.20.040</b>	<b>Pay phone permit required for existing pay telephones and installation of pay telephones on improved property.</b>	<b>8.20.230</b> <b>Continuing violations.</b>
<b>8.20.050</b>	<b>Installation of pay telephones in the public right-of-way—Space use agreement required.</b>	<b>8.20.240</b> <b>Civil actions.</b>
<b>8.20.060</b>	<b>Pay phone permit and space use agreement—Required findings for approval and operation.</b>	<b>8.20.250</b> <b>Remedies not exclusive.</b>
<b>8.20.070</b>	<b>Pay phone permit and space use agreement operating standards.</b>	
<b>8.20.080</b>	<b>Prohibited locations—Public nuisances.</b>	<b>8.20.010</b> <b>Purpose, intent and applicability.</b>
<b>8.20.090</b>	<b>Replacement prohibited.</b>	The purpose of this chapter is to prescribe the rules governing the issuance of permits for outdoor pay phones. The intent of this chapter is to ensure safe, quality public pay telephone service and to avoid potential public nuisances and criminal activities by reviewing and, where necessary, imposing operating and maintenance standards on the installation and operation of outdoor pay telephones. The purpose of this chapter is also to establish appropriate procedures for the revocation of pay phone permits where warranted by violation of the provisions of this ordinance. The provisions of this chapter shall apply to any telephone booth, mounted telephone, or other form of publicly accessible pay telephone not enclosed within the interior of a building, whether on public or private property. (Ord. 12271 § 3 (part), 2000)
<b>8.20.100</b>	<b>Enforcement, forfeiture—Right to recover costs.</b>	
<b>8.20.110</b>	<b>Pay phone permit revocation.</b>	<b>8.20.020</b> <b>Pay telephones exempted.</b>
<b>8.20.120</b>	<b>Pay phone permit—Appeal procedures.</b>	The provisions of this chapter shall not apply on property owned by the following entities:
<b>8.20.130</b>	<b>Overconcentration of pay phones.</b>	A. Oakland/Alameda Coliseum Complex;
<b>8.20.140</b>	<b>Prohibition of pay phones at alcohol beverage sales establishments.</b>	B. Oakland Airport;
<b>8.20.150</b>	<b>Moratorium on new installations.</b>	C. BART;
<b>8.20.160</b>	<b>Pay phone permit—Annual renewal.</b>	D. Amtrak;
<b>8.20.170</b>	<b>Violation—Penalty.</b>	E. Oakland Unified School District;
<b>8.20.180</b>	<b>Guidelines for administration of this chapter.</b>	F. Peralta Community College District;
<b>8.20.190</b>	<b>Indemnity and hold harmless.</b>	G. Mills College;
		H. College of Holy Names;
		I. Laney College. (Ord. 12271 § 3 (part), 2000)
		<b>8.20.030</b> <b>Definitions.</b>
		As used in this chapter, the following terms are defined in this section:
		“Applicant” means the person, organization, corporation, association or other entity and the prop-

erty owner applying for a permit to install and operate an outdoor pay phone.

“Block-face” means the length of land between intersections.

“City” means the city of Oakland as a municipal corporation, existing pursuant to the laws of the state of California.

“Existing pay telephone” means those phones that were lawfully installed as of July 25, 2000.

“Hearing Officer” means a person appointed or designated by the City Manager who is qualified by training and experience to conduct administrative hearings.

“Outdoor pay phones” means any telephone booth, mounted telephone, or other form of publicly accessible pay telephone, located on public property or on private property as an accessory, not enclosed within the interior of a building.

“Pay phone permit” means the written approval of the Zoning Administrator jointly authorizing the pay phone service provider and the owner of the real property on which the outdoor pay telephone is to be located to install or maintain an outdoor pay telephone on private property subject to the provisions of this chapter.

“Pay phone service provider” means any person, firm, or corporation that owns pay phones or manages and operates a business that directly provides pay phone services.

“Pay telephone” means any coin- or credit card-operated telephone that is installed on private property or in the public right-of-way.

“Space use agreement” means an agreement between the city and any company intending to place phones on the public right-of-way that requires the company to pay a specified percentage of revenue to the city in exchange for the use of the right-of-way.

“Zoning Administrator” means the person appointed or designated by the Planning Director who is charged with the responsibility to administer the Oakland Planning Code and this chapter. (Ord. 12353 § 1, 2001; Ord. 12271 § 3 (part), 2000)

#### **8.20.040 Pay phone permit required for existing pay telephones and installation of pay telephones on improved property.**

A. No pay telephone shall be installed on any improved property outside of a building unless a pay phone permit for its installation is first issued by the Zoning Administrator. This requirement shall apply to existing pay telephones as well as pay telephones installed after July 25, 2000.

B. The pay phone permit shall be applied for on a form provided by the Community and Economic Agency, Planning and Zoning Division. Except for existing pay telephones, the real property owner and pay phone provider shall be co-applicants. For existing pay telephones, the pay phone provider shall provide proof of a valid contract currently in effect with the property owner/tenant, or the phone shall be treated as a new installation and subject to requirements in this Section 8.20.040. The application shall also contain the name of the lessee of the property, if any, and the owner and the installer of the proposed pay telephone. The application shall also contain such information as the Zoning Administrator deems relevant to his/her consideration of the application. A nonrefundable application fee shall be paid in an amount set forth in this section or in the master fee schedule.

C. Applicants for permits related to installation of new pay telephones shall cause notice to be mailed to all persons shown on the last equalized assessment roll as owning real property in the city within three hundred (300) feet of the property involved, and to any other interested parties that request such notice including neighborhood associations and Neighborhood Crime Prevention Councils (NCPCs). The application will be referred to both the Oakland Police Department (OPD) Area Commander and OPD Crime Analysis Division for their comments and recommendations on the application.

D. Such permit shall be applied for within sixty (60) days of the effective date of the ordinance codified in this chapter. The Zoning Administrator will prepare a schedule that outlines the application process timeframes along identified geographic

boundaries. However, the city reserves the right to process an application for a pay phone permit sooner if the city determines the phone may be a public nuisance. Upon receipt of a completed pay phone application, the pay telephone shall be allowed to remain pending a final decision on the application. All existing pay telephones will be granted a pay telephone permit provided that there are no complaints on file with the city. In the event that complaints have been filed with the city, the Zoning Administrator shall have the discretion to impose reasonable conditions on continued operation of the pay telephone at the location as provided under Section 8.20.110, up to and including removal of the pay telephone at the location in question.

E. All pay phone permit applications must include plans indicating the proposed or existing location of the pay telephone in relation to the public right-of-way.

F. The decision by the Zoning Administrator to either grant or deny a pay phone permit for a new installation is final and not subject to further appeal.

G. The procedures set forth in this section shall govern the issuance or revocation of such permit. If no permit is obtained as required by this section, the city may remove or cause to be removed such pay telephone. The pay phone service provider or property owner shall be responsible for paying the cost of removal as set forth in this chapter. (Ord. 12353 § 4, 2001; Ord. 12271 § 3 (part), 2000)

#### **8.20.050 Installation of pay telephones in the public right-of-way—Space use agreement required.**

A. A space use agreement shall be required for all pay telephones, existing and new, installed on:

1. The public right-of-way;
2. Private property where the pay telephone overhangs the right-of-way or requires a person to stand in that right-of-way to use the phone;
3. Pay telephones located such that a minimum distance from the pay telephone to the public right-of-way is less than that required for property owner's, property tenant's and/or pay phone service provider's compliance with the Americans With

Disabilities Act or Title 24 of the California Uniform Building Code..

B. No pay telephone shall be installed in the public right-of-way unless the installation is made pursuant to a space use agreement entered into under this section. Any pay telephone installed or maintained in violation of this subsection B shall be subject to immediate removal by the city. The city may also contract for the removal of telephones illegally installed or maintained in the public right-of-way. Costs of removal hereunder shall be at the property owner's and/or pay phone service provider's expense.

C. The City Manager or his or her designee shall have the authority to enter into space use agreements with pay phone service providers that grant the privilege of installing and maintaining pay telephones in the public right-of-way.

D. The City Manager or his or her designee shall have the right to deny any application for a space use agreement without the right of appeal.

E. Space use agreements in existence prior to the effective date of this chapter shall continue to be in effect until the expiration date noted in the agreement. New space use agreements as described above will be required after the expiration of any existing agreements. (Ord. 12353 § 5, 2001; Ord. 12271 § 3 (part), 2000)

#### **8.20.060 Pay phone permit and space use agreement—Required findings for approval and operation.**

A pay phone permit and space use agreement will be authorized by the Zoning Administrator only upon making the following findings:

A. That both the physical site and building conditions, and established uses on the property on which the phone is to be located, shall be in compliance with all city codes and any other applicable local, state or federal laws or regulations;

B. That the applicant has provided assurance that the proposed phone will be maintained at all times in compliance with all usage control measures required by this chapter or included in the conditions

of approval of the pay phone permit or space use agreement;

C. That the granting of the pay phone permit or space use agreement will not adversely affect the established or planned character and land uses of the surrounding area nor be injurious to the property or improvements in such vicinity and zone in which the property is located;

D. That the design, location, establishment, maintenance, or operation of the use for which the pay phone permit or space use agreement is sought will not, under the particular case, be detrimental to the public interest, health, safety, morals, comfort, convenience, or welfare of persons or other permitted uses operating nearby;

E. That the phone is and/or shall be maintained in accordance with the "Pay phone permit and space use agreement operating standards" contained in Section 8.20.070. (Ord. 12353 § 6, 2001: Ord. 12271 § 3 (part), 2000)

#### **8.20.070 Pay phone permit and space use agreement operating standards.**

A. Pay phone permit and space use agreements issued pursuant to this chapter shall contain such conditions as are deemed necessary by the Zoning Administrator to implement the provisions of this chapter.

B. No pay phone permit or space use agreement shall be issued unless the following minimum standards for the installation, operation, and maintenance of outdoor pay phones have been met:

1. The applicant shall maintain a valid city business license tax certificate at all times;

2. The phone shall be capable of dialing emergency, phone repair, and information numbers such as "911," "211," "411," etc. at all times;

3. The phone shall be maintained in a clean, neat, damage-free, graffiti-free, and operable manner at all times;

4. Encroachment permits as required by Chapter 12.08 of the Oakland Municipal Code are not required for pay phones. However, the phone shall comply with any and all required conditions from the city's encroachment permit procedure set forth

in Chapter 12.08 of the Oakland Municipal Code and be maintained such that it does not interfere with any operations of any established use of the property such as emergency fire exits and parking;

5. The phone shall be installed and maintained in accordance with all requirements of the California Public Utilities Commission and the Federal Communications Commission, and comply with all state and federal rules including Americans With Disabilities Act and California Uniform Building Code, Title 24 requirements;

6. Light shall be provided to the phone location and immediate vicinity to assist in safe and easy use. Such lighting shall be permanently maintained to ensure that any user of the phone is clearly visible to nearby traffic, pedestrians, or public areas and to allow easy readability of telephone numbers or signage during all evening hours. Such lighting shall be directed away from any adjacent residential uses;

7. Other operating restrictions or modifications to the above may be required as necessary to address regulatory or technological changes or other public nuisance issues that may develop;

8. The property shall be returned to its original condition if the pay telephone is removed. (Ord. 12353 § 7, 2001: Ord. 12271 § 3 (part), 2000)

#### **8.20.080 Prohibited locations—Public nuisances.**

A. Prohibited Locations. No pay telephone shall be installed, located, or maintained on unimproved or abandoned property as defined in Section 8.24.020 of the Oakland Municipal Code. This subsection does not apply to existing pay telephones except to the extent provided under Section 8.20.040(D). For existing pay telephones, the pay phone provider shall provide proof of a valid contract currently in effect with the property owner, or the phone shall be subject to the prohibitions of this Section 8.20.080 and shall be removed. Once said pay telephones are removed, the prohibition in this Section 8.20.080 shall apply, and no permits or other approvals shall be issued by the city.

B. Public Nuisance. Any pay telephone which is used as an instrumentality for or contributes sub-

stantially by its presence to any of the following conditions, is declared to be a public nuisance:

1. The selling or giving away of controlled substances as defined in Division 10 of the California Health and Safety Code; or, the soliciting, agreeing to engage in, or engaging in any act of prostitution; or, the conduct of any other criminal activity;
  2. The consumption of alcoholic beverages on nearby outdoor public or private property except where outdoor consumption of alcoholic beverages is specifically authorized pursuant to the Department of Alcoholic Beverages Control or by law;
  3. Loitering, as defined in state law;
  4. Disturbing the peace;
  5. Any acts which threaten the public health and safety including, but not limited to, public urination.
- C. Any pay telephone, which is installed, located, maintained, or operated in violation of this chapter, is declared a public nuisance. (Ord. 12353 § 8, 2001: Ord. 12271 § 3 (part), 2000)

#### **8.20.090 Replacement prohibited.**

No pay telephone shall be installed on any parcel, or any abutting parcel owned by the same property owner, for a period of two years from the date of removal of any pay telephone determined to be a public nuisance as defined in Section 8.20.080. (Ord. 12271 § 3 (part), 2000)

#### **8.20.100 Enforcement, forfeiture—Right to recover costs.**

A. The city shall have a right of entry to any property on which an outdoor pay telephone is located for the purposes of inspecting pay telephones, removing pay telephones and otherwise enforcing the provisions of this chapter.

B. The city shall have the right to remove any illegally installed phone upon twenty-four (24) hours notice to the owner of the pay telephone.

C. Where a permit is revoked upon the final decision by a Hearing Officer, the city shall have the right to remove that pay telephone.

D. The city may pursue all legal remedies, including the right to lien property and to recoup its costs of removing the pay telephone. In addition, all

removed pay telephones not claimed after thirty (30) days shall be deemed forfeited.

E. The applicant may only reclaim a removed pay telephone upon payment of the actual removal costs incurred by the city, storage charges, and any outstanding fees associated with the pay telephone.

F. The city may dispose of all forfeited pay telephones and keep any money found within any forfeited pay telephone. (Ord. 12271 § 3 (part), 2000)

#### **8.20.110 Pay phone permit revocation.**

In the event that a pay telephone permit issued pursuant to this chapter has been found to cause a violation of any provisions of the Oakland Municipal Code, including the Oakland Planning Code, or in the event of a failure of the applicant to comply with any prescribed condition of approval, or if the Zoning Administrator determines after the permit is issued that the application was false in any material detail, the Zoning Administrator may, after notice, issue a written order to revoke any pay phone permit. (Ord. 12271 § 3 (part), 2000)

#### **8.20.120 Pay phone permit—Appeal procedures.**

A. Within ten days from the date the Zoning Administrator's written pay telephone permit revocation notice or notice to deny a permit for an existing pay telephone is mailed to the permittee, the applicant may request a hearing with the Hearing Officer. The applicant must pay for the actual cost of the Hearing Officer. The request for hearing shall state specifically wherein it is claimed there was an error or abuse of discretion by the Zoning Administrator in revoking the permit. The request for a hearing shall be accompanied by such information as may be required to facilitate review. Upon receipt of the request for hearing, the Zoning Administrator shall set a time for the hearing and notify the permittee in writing at least seven calendar days before the hearing. At least five calendar days before the hearing, the city shall serve on the applicant copies of all documentary evidence the city will present to the Hearing Officer.

B. The Hearing Officer appointed by the City Manager shall consider the merits of the appeal. The Hearing Officer's review shall be limited to whether there was an error or abuse of discretion by the Zoning Administrator or whether the Zoning Administrator's decision is not supported by the evidence. The Hearing Officer in no case shall substitute their opinion for that of the Zoning Administrator. The written decision of the Hearing Officer shall be final. (Ord. 12353 § 9, 2001: Ord. 12271 § 3 (part), 2000)

#### **8.20.130 Overconcentration of pay phones.**

No pay phone permit shall be issued for a pay telephone at an intersection when there are already two or more pay phones at an intersection. No pay phone permit will be issued for any block when there are already two or more pay telephones on the block-face between intersections. This applies to all outdoor pay telephones, whether on public or private property. The Hearing Officer may grant an exception to this requirement upon the finding that it will enhance service to the public and will not create a public nuisance at that particular location. Nothing in this subsection requires the removal of any existing pay telephone except as provided in Section 8.20.110. (Ord. 12353 § 10, 2001: Ord. 12271 § 3 (part), 2000)

#### **8.20.140 Prohibition of pay phones at alcohol beverage sales establishments.**

No pay phone permits will be issued for outdoor pay telephones located on the property of alcohol beverage sales establishments selling alcohol beverages except at establishments with twenty-five (25) or more full time equivalent (FTE) employees and a minimum total floor area of twenty thousand (20,000) square feet. Nothing in this subsection requires the removal of existing pay telephones except as provided in Section 8.20.110. (Ord. 12353 § 11, 2001: Ord. 12271 § 3 (part), 2000)

#### **8.20.150 Moratorium on new installations.**

A six month moratorium on all new installations

of outdoor pay telephones will begin on the effective date of this chapter. No application for new pay telephones shall be accepted during the period of the moratorium. Pay telephones installed in violation of this moratorium shall be removed upon twenty-four (24) hours notice to the pay phone provider and property owner. The decision to remove a phone installed in violation of the moratorium shall be final and nonappealable. (Ord. 12271 § 3 (part), 2000)

#### **8.20.160 Pay phone permit—Annual renewal.**

All pay phone permits are effective for twelve (12) months from the date of issuance and must be renewed annually. The renewal fees shall be as set forth in this chapter or the city's master fee schedule. The Zoning Administrator may refuse to renew a permit if it is found to no longer be in compliance with approved conditions of approval or if it is found to be a public nuisance. The Zoning Administrator's decision to not renew a pay phone permit is appealable as provided for in Section 8.20.120. The annual renewal fee shall be due and payable thirty (30) days prior to the expiration of the permit. If the annual renewal fee has not been paid by this date, the city may revoke the permit. Late fees shall be as set forth in this chapter. The city may use any and all lawful means to collect outstanding fees including liening the real property, legal action, or holding of removed pay telephones until all fees are paid. (Ord. 12271 § 3 (part), 2000)

#### **8.20.170 Violation—Penalty.**

The violation of any provision of this chapter shall constitute an infraction. Each day that a violation of this chapter continues shall constitute a separate offense. Administrative citations may be assessed as provided for in Chapter 1.12 of the Oakland Municipal Code. (Ord. 12271 § 3 (part), 2000)

#### **8.20.180 Guidelines for administration of this chapter.**

The Zoning Administrator shall adopt such rules

and guidelines as he/she may deem necessary for the public welfare and the administration of this chapter. Copies of the rules and guidelines shall be kept on file at the Community and Economic Development Agency, Planning and Zoning Division, and shall be made available to any person upon request. (Ord. 12271 § 3 (part), 2000)

**8.20.190 Indemnity and hold harmless.**

A. The city shall not at any time be liable for any injury or damage occurring to any person or property from any cause whatsoever arising from the use, operation, or condition of the applicant's pay telephone.

B. As a condition of issuing a pay telephone permit, the permittee shall agree to indemnify, save and hold harmless, and defend the city from all liens, charges and claims, including but not limited to libel, slander, invasion of privacy, and unauthorized use of any trademark, trade name, or service mark; demands; suits; actions; fines; penalties; losses; costs, including but not limited to reasonable legal fees and court costs, including legal fees and court costs on appeals; judgments; injuries; liabilities or damages, in law or equity, or any and every kind and nature whatsoever, except those based upon the city's negligence, arising out of or in any way connected with the installation, operation, maintenance or condition of the applicant's pay telephones or the granting of the pay phone telephone permit. The granting of the pay telephone permit is a separate and distinct consideration for the granting of this indemnity. (Ord. 12271 § 3 (part), 2000)

**8.20.200 Fees established.**

The following fees shall be effective until the



master fee schedule has been amended to incorporate these new fees.

- A. Pay Phone Permit: two hundred sixty-five dollars (\$265.00) nonrefundable application fee.
- B. Annual Renewal Fee: eighty dollars (\$80.00).
- C. Late Fees: one hundred sixty dollars (\$160.00). (Ord. 12271 § 3 (part), 2000)

#### **8.20.210 Joint and several liability.**

The property owner and the pay phone service provider shall be jointly and severally liable for violations of this chapter. (Ord. 12271 § 3 (part), 2000)

#### **8.20.220 Severability.**

If any clause, paragraph, section or subsection is found to be unenforceable by any court, that finding shall not invalidate the rest of the ordinance. The City Council hereby finds and declares that it would have enacted the rest of the ordinance codified in this chapter without that clause, paragraph, section or subsection. (Ord. 12271 § 3 (part), 2000)

#### **8.20.230 Continuing violations.**

Unless otherwise provided, a person shall be deemed guilty of a separate offense for each and every day during any portion of which a violation of this chapter is committed, continued or permitted by the person and shall be punishable accordingly as herein provided. (Ord. 12271 § 3 (part), 2000)

#### **8.20.240 Civil actions.**

In addition to any other remedies provided in this chapter, any violation of this chapter may be enforced by civil action brought by the city. In any such action, the city may seek, and the court shall grant, as appropriate, any or all of the following remedies:

- A. A temporary restraining order, a preliminary injunction and/or permanent injunction;
- B. Assessment of the violator for the costs of any investigation which led to the establishment of the violation, and for the reasonable costs of preparing and bringing legal action under this subsection, including but not limited to attorney's fees. (Ord. 12271 § 3 (part), 2000)

#### **8.20.250 Remedies not exclusive.**

Remedies under this chapter are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided herein shall be cumulative and not exclusive. (Ord. 12271 § 3 (part), 2000)

**Chapter 8.22****RESIDENTIAL RENT ADJUSTMENTS  
AND EVICTIONS\*****Sections:****Article I. Residential Rent Adjustment Program**

- 8.22.010 Findings and purpose.**
- 8.22.020 Definitions.**
- 8.22.030 Exemptions.**
- 8.22.040 Composition and functions of the Board.**
- 8.22.050 Summary of notices required by this chapter, Article I.**
- 8.22.060 Notice of the existence of this chapter required at commencement of tenancy.**
- 8.22.070 Rent adjustments for occupied covered units.**
- 8.22.080 Rent increases following vacancies.**
- 8.22.090 Petition and response filing procedures.**
- 8.22.100 Mediation of rent disputes.**
- 8.22.110 Hearing procedures.**
- 8.22.120 Appeal procedure.**
- 8.22.130 Retaliatory evictions.**
- 8.22.140 Voluntary mediation of evictions.**
- 8.22.150 General remedies.**
- 8.22.160 Computation of time.**
- 8.22.170 Severability.**
- 8.22.180 Non-waiverability.**
- 8.22.190 Applicability—Effective date of chapter.**
- 8.22.200 Reduced rents to disaster victims.**

**Article II. Just Cause for Eviction Ordinance  
(Measure EE)**

- 8.22.300 Just cause for eviction introductory clauses.**
- 8.22.310 Title.**
- 8.22.320 Findings.**
- 8.22.330 Purpose.**
- 8.22.340 Definitions.**

- 8.22.350 Applicability.**
- 8.22.360 Good cause required for eviction.**
- 8.22.370 Remedies.**
- 8.22.380 Non-waiverability.**
- 8.22.390 Partial invalidity.**

**Article III. Terminating Tenancy to Withdraw Residential Rental Units from the Rental Market**

- 8.22.400 Statement of purpose.**
- 8.22.410 Definitions.**
- 8.22.420 Application of this chapter, Article III.**
- 8.22.430 When withdrawal is effective (except for eligible elderly or disabled tenants).**
- 8.22.440 Effective date of withdrawal for units occupied by elderly or disabled tenants.**
- 8.22.450 Relocation payments for lower income households.**
- 8.22.460 Re-offering withdrawn units for rent.**
- 8.22.470 Defense to unlawful detainer.**
- 8.22.480 Miscellaneous.**

**Article IV. Rent Program Service Fee**  
**8.22.500 Rent Program Service Fee.**

\* Prior ordinance history. Ords 11758, 11872, 12030 and 12273

**Article I. Residential Rent Adjustment Program****8.22.010 Findings and purpose.**

A. The City Council finds that a shortage of decent, safe, affordable and sanitary residential rental housing continues to exist in Oakland. This shortage is evidenced by a low vacancy rate among such units throughout the city and a continually increasing demand for such housing. Many residents of Oakland pay a substantial amount of their monthly income for rent. The present shortage of rental housing units and the prevailing rent levels have a detrimental effect on the health, safety, and welfare of a substantial number of Oakland residents, particularly senior citizens,

persons in low and moderate income households, and persons on fixed incomes. Stability in their housing situation is important for individuals and families in rental housing. In particular, tenants desire to be free from the fear of eviction motivated by a rental property owner's desire to increase rents. Rental property owners desire the ability to expeditiously terminate the tenancies of problem tenants.

B. Further, the welfare of all persons who live, work, or own residential rental property in the City depends in part on attracting persons who are willing to invest in residential rental property in the city. It is, therefore, necessary that the City Council take actions that encourage investment in residential housing while also protecting the welfare of residential tenants.

C. Among the purposes of this chapter are providing relief to residential tenants in Oakland by limiting rent increases for existing tenants; encouraging rehabilitation of rental units, encouraging investment in new residential rental property in the city; reducing the financial incentives to rental property owners who terminate tenancies under California Civil Code Section 1946 ("Section 1946") or where rental units are vacated on other grounds under state law Civil Code Sec. 1954.50, et seq. ("Costa-Hawkins") that permit the city to regulate initial rents to new tenants, and allowing efficient rental property owners the opportunity for both a fair return on their property and rental income sufficient to cover the increasing cost of repairs, maintenance, insurance, employee services, additional amenities, and other costs of operation.

D. The City Council also wishes to foster better relations between rental property owners and tenants and to reduce the cost and adversarial nature of rent adjustment proceedings under This chapter. For these reasons, This chapter includes options for rental property owners and tenants to mediate rent disputes that would otherwise be subject to a hearing process, and to mediate some evictions.

E. Terminations of Tenancies. On November 5, 2002, Oakland voters passed the Just Cause for Eviction Ordinance (Measure EE). The enactment of the Just Cause for Eviction Ordinance by the electorate

makes unnecessary the need for the eviction restrictions in This chapter, Article I (Rent Adjustment Ordinance) for a tenant whose tenancy is terminated by California Civil Code Section 1946 and also overrides portions of the Rent Adjustment Ordinance.

F. The City Council believes that the relationship between landlords and tenants in smaller owner-occupied rental properties involve special relationships between the landlord and the tenants residing in the same smaller property. Smaller property owners also have a difficult time understanding and complying with rent and eviction regulation. The Just Cause for Eviction Ordinance recognizes this special relationship and exempts from its coverage owner-occupied properties divided into a maximum of three units. For these reasons, the City Council believes owner-occupied rental properties exempt from the Just Cause for Eviction Ordinance should similarly be exempt from the Rent Adjustment Program so long as the property is owner-occupied. In order to permit tenants to adjust to the possibility of unregulated rents and to address the potential for abuse of the owner-occupancy exemption by landlords who are motivated to move into a property to gain an exemption just to increase rent and not to reside in the property, this exemption should not take effect for one year after the amendment to This chapter exempting these rental units is adopted, or one year after the landlord begins owner-occupancy, whichever is later.

G. The City Council desires to provide efficient and effective program services to rental property owners and tenants. The City Council recognizes there must be an adequate funding source in order to accomplish this objective. To provide adequate funding for the program and services provided to rental property owners and tenants under This chapter, an annual fee has been established, as set out in the Master Fee Schedule. The funds provided from this fee shall be dedicated to the administrative, public outreach, enforcement, and legal needs of the programs and services set out in This chapter and not for any other purposes. This fee is to be paid by the rental property owner not as the owner of real property, but instead as the operator of the business of

renting residential units, with a reimbursement of fifty (50) percent of the fee from the tenant as provided in This chapter. The fee will sunset after two years unless the City Council acts to extend it. With the enactment of the Just Cause for Eviction Ordinance, the City Council desires to extend the Rent Program Service Fee to all residential rental units covered by either Residential Rent Adjustment Program or the Just Cause for Eviction Ordinance and, therefore, moves the section of Article I pertaining to the fee to a new Chapter 8.22, Article IV. (Ord. 12538 § 1 (part), 2003; Ord. 12399 (part), 2002)

## **8.22.020 Definitions.**

As used in this chapter, Article I:

“1946 notice” means any notice of termination of tenancy served pursuant to California Civil Code Section 1946. This notice is commonly referred to as a thirty (30) or sixty (60) day notice of termination of tenancy, but the notice period may actually be for a longer or shorter period, depending on the circumstances.

“1946 Termination of tenancy” means any termination of tenancy pursuant to California Civil Code § 1946.

“Anniversary date” is the date falling one year after the day the tenant was provided with possession of the covered unit or one year after the day the most recent rent adjustment took effect, whichever is later. Following certain vacancies, a subsequent tenant will assume the anniversary date of the previous tenant (Section 8.22.080).

“Banking” means any CPI Rent Adjustment (or any rent adjustment formerly known as the Annual Permissible Rent Increase) the owner chooses to delay imposing in part or in full, and which may be imposed at a later date, subject to the restrictions in the regulations.

“Board” and “Residential Rent Adjustment Board” means the Housing, Residential Rent and Relocation Board.

“Capital improvements” means those improvements to a covered unit or common areas that materially add to the value of the property and appreciably prolong its useful life or adapt it to new building

codes. Those improvements must primarily benefit the tenant rather than the owner.

“CPI—All items” means the Consumer Price Index—All items for all urban consumers for the San Francisco—Oakland—San Jose area as published by the U.S. Department of Labor Statistics for the twelve (12) month period ending on the last day of February of each year.

“CPI—Less shelter” means the Consumer Price Index—All items less shelter for all urban consumers for the San Francisco—Oakland—San Jose area as published by the U.S. Department of Labor Statistics for the twelve (12) month period ending on the last day of February of each year.

“CPI Rent Adjustment” means the maximum rent adjustment (calculated annually according to a formula pursuant to Section 8.22.070 B.3) that an owner may impose within a twelve (12) month period without the tenant being allowed to contest the rent increase, except as provided in Section 8.22.070B.2 (failure of the owner to give proper notices, decreased housing services, and uncured code violations).

“Costa-Hawkins” means the California state law known as the Costa-Hawkins Rental Hawkins Act codified at California Civil Code § 1954.50, *et seq.* (Appendix A to this chapter contains the text of Costa-Hawkins).

“Covered unit” means any dwelling unit, including joint living and work quarters, and all housing services located in Oakland and used or occupied in consideration of payment of rent with the exception of those units designated in Section 8.22.030A as exempt.

“Debt service” means the monthly principal and interest payments on one or more promissory notes secured by deed(s) of trust on the property on which the covered units are located.

“Ellis Act Ordinance” means the ordinance codified at O.M.C. 8.22.400 (Chapter 8.22, Article III) setting out requirements for withdrawal of residential rental units from the market pursuant to California Government Code § 7060, *et seq.* (the Ellis Act).

“Fee” means the Rent Program Service Fee as set out in O.M.C. 8.22.500 (Chapter 8.22, Article IV).

“Housing services” means all services provided by the owner related to the use or occupancy of a covered unit, including, but not limited to, insurance, repairs, maintenance, painting, utilities, heat, water, elevator service, laundry facilities, janitorial service, refuse removal, furnishings, parking, security service, and employee services.

“Owner” means any owner, lessor or landlord, as defined by state law, of a covered unit that is leased or rented to another, and the representative, agent, or successor of such owner, lessor or landlord.

“Owner of record” means a natural person, who is an owner of record holding an interest equal to or greater than thirty-three percent (33%) in the property, but not including any lessor, sublessor, or agent of the owner of record.

“Just Cause for Eviction Ordinance” means the ordinance adopted by the voters on November 5, 2002 (also known as Measure EE) and codified at O.M.C. 8.22.300 (O.M.C. Chapter 8.22, Article II).

“Rent” means the total consideration charged or received by an owner in exchange for the use or occupancy of a covered unit including all housing services provided to the tenant.

“Rent Adjustment Program” means the department in the city that administers this chapter and also includes the board.

“Regulations” means the regulations adopted by the board and approved by the City Council for implementation of this chapter, Article I (formerly known as “Rules and Procedures”) (After regulations are approved, they will be attached to this chapter as Appendix B).

“Security deposit” means any payment, fee, deposit, or charge, including but not limited to, an advance payment of rent, used or to be used for any purpose, including but not limited to the compensation of an owner for a tenant’s default in payment of rent, the repair of damages to the premises caused by the tenant, or the cleaning of the premises upon termination of the tenancy exclusive of normal wear and tear.

“Tenant” means a person entitled, by written or oral agreement to the use or occupancy of any covered unit.

“Uninsured repairs” means that work done by an owner or tenant to a covered unit or to the common area of the property or structure containing a covered unit which is performed to secure compliance with any state or local law as to repair damage resulting from fire, earthquake, or other casualty or natural disaster, to the extent such repair is not reimbursed by insurance proceeds. (Ord. 12538 § 1 (part), 2003; Ord. 12399 (part), 2002)

### **8.22.030 Exemptions.**

A. Types of Dwelling Units Exempt. The following dwelling units are not covered units for purposes of this chapter, Article I only (the Just Cause for Eviction Ordinance (Chapter 8.22, Article II) and the Ellis Act Ordinance (Chapter 8.22, Article II)) have different exemptions):

1. Dwelling units whose rents are controlled, regulated (other than by this chapter), or subsidized by any governmental unit, agency or authority.

2. Accommodations in motels, hotels, inns, tourist houses, rooming houses, and boarding houses, provided that such accommodations are not occupied by the same tenant for thirty (30) or more continuous days.

3. Housing accommodations in any hospital, convent, monastery, extended care facility, convalescent home, nonprofit home for the aged, or dormitory owned and operated by an educational institution.

4. Dwelling units in a nonprofit cooperative, owned, occupied, and controlled by a majority of the residents.

5. Dwelling units which were newly constructed and received a certificate of occupancy on or after January 1, 1983. This exemption does not apply to any newly constructed dwelling units that replace covered units withdrawn from the rental market in accordance with O.M.C. 8.22.400, *et seq.* (Ellis Act Ordinance). To qualify as a newly constructed dwelling unit, the dwelling unit must be entirely newly constructed or created from space that was formerly entirely non-residential.

6. Substantially rehabilitated buildings.

7. Dwelling units exempt pursuant to Costa-Hawkins (California Civil Code § 1954.52).

8. A dwelling unit in a residential property that is divided into a maximum of three (3) units, one of which is occupied by an owner of record as his or her principal residence. For purposes of this section, the term owner of record shall not include any person who claims a homeowner's property tax exemption on any other real property in the state of California.

#### B. Exemption Procedures.

##### 1. Certificate of Exemption:

a. A certificate of exemption is a determination by the Rent Adjustment Program that a dwelling unit or units qualify for an exemption and, therefore, are not covered units. An owner may obtain a certificate of exemption by claiming and proving an exemption in response to a tenant petition or by petitioning the Rent Adjustment Program for such exemption. A certificate of exemption may be granted only for dwelling units that are permanently exempt from the Rent Adjustment Ordinance as new construction, substantial rehabilitation, or by state law (Costa Hawkins)

b. For purposes of obtaining a certificate of exemption or responding to a tenant petition by claiming an exemption from Chapter 8.22, Article I, the burden of proving and producing evidence for the exemption is on the owner. A certificate of exemption is a final determination of exemption absent fraud or mistake.

c. Timely submission of a certificate of exemption previously granted in response to a petition shall result in dismissal of the petition absent proof of fraud or mistake regarding the granting of the certificate. The burden of proving such fraud or mistake is on the tenant.

#### 2. Exemptions for Substantially Rehabilitated Buildings.

a. In order to obtain an exemption based on substantial rehabilitation, an owner must have spent a minimum of fifty (50) percent of the average basic cost for new construction for a rehabilitation project.

b. The average basic cost for new construction shall be determined using tables issued by the chief building inspector applicable for the time period when the substantial rehabilitation was completed.

#### C. Controlled, Regulated, or Subsidized Units.

The owner of a dwelling unit that is exempt because it is controlled, regulated (other than by this chapter), or subsidized by a governmental agency (Section 8.22.030A.1) must file a notice with the Rent Adjustment Program within thirty (30) days after such dwelling unit is no longer otherwise controlled, regulated, or subsidized by the governmental agency. Once the dwelling unit is no longer controlled, regulated, or subsidized, the dwelling unit ceases to be exempt and becomes a covered unit subject to this chapter, Article I. Such notice must be on a form prescribed by the Rent Adjustment Program.

D. Exemptions for Owner-Occupied Properties of Three or Fewer Units. Units in owner-occupied properties divided into three or fewer units will be exempt from this chapter, Article I under the following conditions:

1. One-Year Minimum Owner Occupancy. A qualifying owner of record must first occupy one of the units continuously as his or her principal residence for at least one year.

2. Continuation of Exemption. The owner-occupancy exemption continues until a qualifying owner of record no longer continuously occupies the property.

3. Rent Increases. The owner of record qualifying for this exemption may notice the first rent increase that is not regulated by this chapter, Article I one year after the effective date of this exemption or one year after the qualifying owner of record starts residing at the affected property as his or her principal place of residence.

4. Effective date of this Exemption. This exemption for owner-occupied properties of three or fewer units takes effect one year after the adoption of this ordinance modifying this chapter, Article I. (Ord. 12781 § 1 (part), 2007; Ord. 12538 § 1 (part), 2003; Ord. 12399 (part), 2002)

### **8.22.040 Composition and functions of the Board.**

#### A. Composition.

1. Members. The Board shall consist of seven regular members appointed pursuant to Section 601

of the City Charter. The Board shall be comprised of two residential rental property owners, two tenants, and three persons who are neither tenants nor residential rental property owners. The Board shall also have three alternate members, one residential rental property owner, one tenant and one person who is neither a tenant nor residential rental property owner appointed pursuant to Section 601 of the Charter. An alternate member may act at Board meetings in the absence of a regular Board member of the same category.

2. **Appointment.** A Board member is deemed appointed after confirmation by the City Council and upon taking the oath of office.

3. Board members serve without compensation.

**B. Vacancies and Removal.**

1. A vacancy on the Board exists whenever a Board member dies, resigns, or is removed, or whenever an appointee fails to be confirmed by the City Council within two City Council meetings of nomination by the Mayor.

2. **Removal for Cause.** A Board member may be removed pursuant to Section 601 of the City Charter. Among other things, conviction of a felony, misconduct, incompetency, inattention to or inability to perform duties, or absence from three consecutive regular meetings except on account of illness or when absent from the city by permission of the Board, constitute cause for removal.

3. **Report of Attendance.** To assure participation of Board members, attendance by the members of the Board at all regularly scheduled and special meetings of the Board shall be recorded, and such record shall be provided semiannually to the Office of the Mayor.

**C. Terms and Holdover.**

1. **Terms.** Board members' terms shall be for a period of three years beginning on February 12 of each year and ending on February 11 three years later. Board members shall be appointed to staggered terms so that only one-third of the Board will have terms expiring each year, with no more than one Board member who is neither a residential rental property owner nor a tenant, and no more than one rental property owner and no more than one tenant

expiring each year. Terms will commence upon the date of appointment, except that an appointment to fill a vacancy shall be for the unexpired portion of the term only. No person may serve more than two consecutive terms.

2. **Holdover.** A Board member whose term has expired may remain as a Board member for up to one year following the expiration of his or her term or until a replacement is appointed whichever is earlier. The City Clerk shall notify the Mayor, the Rent Program, the Board, and affected Board member when a Board member's holdover status expires. Prior to notification by the City Clerk of the end of holdover status, a Board member may fully participate in all decisions in which such Board member participates while on holdover status and such decisions are not invalid because of the Board member's holdover status.

**D. Duties and Functions.**

1. **Appeals.** The Board hears appeals from decisions of hearing officers.

2. **Regulations.** The Board may develop or amend the regulations, subject to City Council approval.

3. **Reports.** The Board shall make such reports to the City Council or committees of the City Council as may be required by this chapter, by the City Council or City Council Committee.

4. **Recommendations.** The Board may make recommendations to the City Council or appropriate City Council committee pertaining to this chapter or City housing policy when requested to do so by the City Council or when the Board otherwise acts to do so. (Ord. 12706 § 1, 2005; Ord. 12538 § 1 (part), 2003; Ord. 12399 (part), 2002)

**8.22.050 Summary of notices required by this chapter, Article I.**

The following is a summary of notices required by this chapter, Article I (the Just Cause for Eviction Ordinance (Chapter 8.22, Article II) and the Ellis Act Ordinance (Chapter 8.22, Article III) may require other or different notices). Details of the requirements for each notice are found in the applicable section.

A. Notice at the Commencement of a Tenancy. Existence and scope of this chapter (Section 8.22.060).

B. Change in Terms of Tenancy or Rent Increase. Notice of tenant's right to petition. (Section 8.22.070H). (Ord. 12538 § 1 (part), 2003; Ord. 12399 (part), 2002)

**8.22.060      Notice of the existence of this chapter required at commencement of tenancy.**

A. Notice at Commencement of Tenancy. The owner of any covered unit is required to comply with the following notice requirements at the commencement of any tenancy:

1. On or before the date of commencement of a tenancy, the owner must give the tenant a written notice in a form prescribed by the Rent Adjustment Program which must include the following information:

- a. The existence and scope of this chapter; and
- b. The tenant's rights to petition against certain rent increases.

B. Evidence of Giving Notice. When filing an owner's response to a tenant petition or an owner's petition for a rent increase, the owner must submit evidence that the owner has given the notice required by this section to the affected tenants in the building under dispute in advance of the filing. When responding to a tenant petition, the owner may allege that the affected dwelling units are exempt in lieu of providing evidence of complying with the notice requirement. If an owner fails to submit the evidence and the subject dwelling unit is not exempt, then the owner's petition or response to a tenant's petition must be dismissed. This evidence can be a statement of compliance given under oath, however, the tenant may controvert this statement at the hearing. An owner's filing the notice in advance of petition or response prevents the owner's petition or response from being dismissed, but the owner may still be subject to the rent increase forfeiture if the notice was not given at the commencement of the tenancy or within the cure period set out in Section 8.22.060(C).

C. Failing to Give Notice. An owner who fails to give notice of the existence and scope of the Rent Adjustment Program at the commencement of a tenancy, but otherwise qualifies to petition or respond to a petition filed with the Rent Adjustment Program, will forfeit six months of the rent increase sought unless the owner cured the failure to give the notice. An owner may cure the failure to give the notice at the commencement of a tenancy required by this section and not be subject to a forfeiture of a rent increase if the owner gives the notice at least six months prior to serving the rent increase notice on the tenant or, in the case of an owner petition, at least six months prior to filing the petition. (Ord. 12538 § 1 (part), 2003; Ord. 12399 (part), 2002)

**8.22.070      Rent adjustments for occupied covered units.**

This section applies to all rent adjustments for continuously occupied covered units. (Rent increases following vacancies of covered units are governed by Section 8.22.080). Any rent increase for a continuously occupied covered unit must comply with this section.

A. One Rent Increase Each Twelve Months. An owner may increase the rent on a covered unit occupied continuously by the same tenant only once in a twelve (12) month period. Such rent increase cannot take effect earlier than the tenant's anniversary date.

B. CPI Rent Adjustments.

1. Effective Date of this Section. An owner may first impose CPI Rent Adjustments pursuant to this section that take effect on or after July 1, 2002.

2. CPI Rent Adjustment Not Subject to Petition. The tenant may not petition to contest a rent increase in an amount up to and including the CPI Rent Adjustment unless the tenant alleges one or more of the following:

a. The owner failed to provide the notice required at the commencement of tenancy and did not cure such failure (Section 8.22.060);

b. The owner failed to provide the notice required with a rent increase (Section 8.22.070 H);

c. The owner decreased housing services;

d. The covered unit has uncured health, safety, fire, or building code violations pursuant to Section 8.22.070 D.7).

3. Calculation of the CPI Rent Adjustment. Beginning in 2002, the CPI Rent Adjustment is the average of the percentage increase in the CPI—All items and the CPI—Less shelter for the twelve (12) month period starting on March 1 of each calendar year and ending on the last day of February of the following calendar year calculated to the nearest one tenth of one percent.

4. Effective Date of CPI Rent Adjustments. An owner may notice a rent increase for a CPI Rent Adjustment so that the rent increase is effective during the period from July 1 following the Rent Adjustment Program's announcement of the annual CPI Rent Adjustment through June 30 of the next year. The rent increase notice must comply with state law and take effect on or after the tenant's anniversary date.

5. Banking. In accordance with rules set out in the regulations, an owner may bank CPI rent adjustments and annual permissible rent adjustments previously authorized by this chapter.

6. Schedule of Prior Annual Permissible Rent Adjustments. Former annual permissible rent adjustments available under the prior versions of this chapter:

a. May 6, 1980 through October 31, 1983, the annual rate was ten percent.

b. November 1, 1983 through September 30, 1986, the annual rate was eight percent.

c. October 1, 1986 through February 28, 1995, the annual rate was six percent.

d. March 1, 1995 through June 30, 2002, the annual rate was three percent.

#### C. Rent Increases in Excess of the CPI Rent Adjustment.

1. A tenant may file a petition in accordance with the requirements of Section 8.22.110 contesting any rent increase which exceeds the CPI Rent Adjustment.

2. If a tenant files a petition and if the owner wishes to contest the petition, the owner must respond by either claiming an exemption and/or justify-

ing the rent increase in excess of the CPI Rent Adjustment on one or more of the following grounds:

- a. Banking;
- b. Capital improvement costs;
- c. Uninsured repair costs;
- d. Increased housing service costs;
- e. Debt service costs;
- f. The rent increase is necessary to meet constitutional or fair return requirements.

3. The amount of rent increase allowable for the grounds listed in Section 8.22.070 C.2 are subject to the limitations set forth in the regulations.

4. An owner must provide a summary of the justification for a rent increase upon written request of the tenant.

#### D. Operative Date of Rent Adjustment when Petition Filed.

1. While a tenant petition is pending, a tenant must pay when due, pursuant to the rent increase notice, the amount of the rent increase that is equal to the CPI Rent Adjustment unless:

- a. The tenant's petition claims decreased housing services; or
- b. The owner failed to separately state in the rent increase that equals the CPI Rent Adjustment pursuant to Section 8.22.070 H.

2. The amount of any noticed rent adjustment above the CPI Rent Adjustment that is the subject of a petition is not operative until the decision of the hearing officer has been made and the time to appeal has passed.

3. When a party appeals the decision of a hearing officer, the tenant must continue to pay the amount of the rent adjustment due during the period prior to the issuance of the decision and the remaining amount of the noticed rent increase is not operative until the board has issued its written decision.

4. Following a final decision, a rent adjustment takes effect on the following dates:

- a. In the case of a rent increase, the date the increase would have been effective pursuant to a valid rent increase notice given to the tenant, unless a six month forfeiture applies for an uncured failure to give the required notice at the commencement of tenancy;

b. In the case of a decrease in housing services, on the effective date for a noticed decrease in housing services or, if no notice was given, the date the decrease in housing services occurred.

5. A tenant who files a petition following a thirty (30) day rent increase notice and who does not file a petition before the increased rent becomes due, must pay the increased rent when due until the tenant files the petition. Once the tenant files the petition, the portion of rent increase above the CPI Rent Adjustment need not be paid until the decision on the petition is final.

6. A rent increase following an owner's petition is operative on the date the decision is final and following a valid rent increase notice based on the final decision.

7. No part of any noticed rent increase is operative during the period after the tenant has filed a petition and the applicable covered unit has been cited in an inspection report by the appropriate governmental agency as containing serious health, safety, fire, or building code violations as defined by Section 17920.3 of the California Health and Safety Code, excluding any, violation caused by a disaster or where the owner proves the violation was solely caused by the willful conduct of the tenant. In order for such rent increase to be operative the owner must provide proof that the cited violation has been abated. The owner must then issue a new rent increase notice pursuant to California Civil Code Section 827. The rent increase will be operative in accordance with Section 827.

E. An owner cannot increase the rent for a covered unit except by following the procedures set out in this chapter (including the Just Cause for Eviction Ordinance (O.M.C. Chapter 8.22, Article II) and the Ellis Act Ordinance (O.M.C. Chapter 8.22, Article III)) or where Costa-Hawkins allows an owner to set the initial rent for a new tenant without restriction.

F. Decreased housing services. A decrease in housing services is considered an increase in rent. A tenant may petition for an adjustment in rent based on a decrease in housing services under standards in the regulations. The tenant's petition must specify the housing services decreased. Where a rent or a rent

increase has been reduced for decreased housing services, the rent or rent increase may be restored in accordance with procedures set out in the regulations when the housing services are reinstated.

G. Pass-through of Fee. An owner may pass-through one half of the fee to a tenant in accordance with Section 8.22.500G. The allowed fee pass-through shall not be added to the rent to calculate the CPI Rent Adjustment or any other rent adjustment and shall not be considered a rent increase.

H. Notice Required to Increase Rent or Change Other Terms of Tenancy.

1. As part of any notice to increase rent or change any terms of tenancy, an owner must include:

a. Notice of the existence of this chapter;

b. The tenant's right to petition against any rent increase in excess of the CPI Rent Adjustment;

c. When an owner notices a rent increase in excess of the CPI Rent Adjustment, the notice must include a statement that the owner must provide the tenant with a summary of the justification for the amount of the rent increase in excess of the CPI Rent Adjustment if the tenant makes a written request for such summary.

i. If a tenant requests a summary of the amount of the rent increase in excess of the CPI Rent Adjustment, the tenant must do so within thirty (30) days of service of the rent increase notice;

ii. The owner must respond to the request with a written summary within fifteen (15) days after service of the request by the tenant.

d. If the increase exceeds the CPI Rent Adjustment, the notice must state the amount of the increase constituting the CPI Rent Adjustment. If the amount constituting the CPI Rent Adjustment is not separately stated the tenant is not required to pay the amount of the CPI Rent Adjustment while a petition challenging the rent increase is pending.

2. A notice to increase rent must include the information required by 8.22.070H.1 using the language and in a form prescribed by the Rent Adjustment Program.

3. A rent increase is not permitted unless the notice required by this section is provided to the tenant. An owner's failure to provide the notice required

by this section invalidates the rent increase or change of terms of tenancy. This remedy is not the exclusive remedy for a violation of this provision. If the owner fails to timely give the tenant a written summary of the basis for a rent increase in excess of the CPI Rent Adjustment, as required by Section 8.22.070 H.1.c, the amount of the rent increase in excess of the CPI Rent Adjustment is invalid.

I. An owner may terminate the tenancy for nonpayment of rent (California Code of Civil Procedure § 1161(2) (unlawful detainer)) of a tenant who fails to pay the portion of a rent increase that is equal to the CPI Rent Adjustment when the tenant is required to do so by this subsection. In addition to any other defenses to the termination of tenancy the tenant may have, a tenant may defend such termination of tenancy on the basis that:

1. The owner did not comply with the notice requirements for a rent increase;
2. The tenant's petition was based on decreased housing services; or
3. That the owner failed to give the tenant a written summary of the basis for a rent increase in excess of the CPI Rent Adjustment as required by Section 8.22.070 H.1.c. (Ord. 12781 § 1 (part), 2007; Ord. 12538 § 1 (part), 2003; Ord. 12399 (part), 2002)

#### **8.22.080      Rent increases following vacancies.**

A. Purpose of Section. This section sets forth how an owner may set the rents to a new tenant following vacancies. Rent increases following an owner's setting the initial rent are regulated by this chapter.

B. Setting Initial Rents to Tenants Without Restriction. Costa-Hawkins provides that owners may set an initial rent to a new tenant without restriction except in certain circumstances.

C. Costa-Hawkins Exceptions. Costa-Hawkins permits an owner to set initial rents to a new tenant without restriction except where the previous tenant vacated under the following circumstances:

1. 1946 Termination of Tenancy. ("The previous tenancy has been terminated by the owner by notice pursuant to [California Civil Code §] 1946 ...") (California Civil Code § 1954.53(a)(1)).

2. Change of Terms of Tenancy or Rent Increase Not Permitted by This chapter. The previous tenancy was terminated following a notice of a rent increase not permitted by this chapter. ("The previous tenancy ... has been terminated upon a change in the terms of the tenancy pursuant to [California Civil Code §] 827, except a change permitted by law in the amount of rent or fees.") (California Civil Code § 1954.53(a)(1)).

3. Failure to Renew Contract with Government That Limits Rent Increases. In certain circumstances, "... an owner ... [who] terminates or fails to renew a contract or recorded agreement with a government agency that provides for a rent limitation to a qualified tenant" ... "shall not be eligible to set an initial rent for three years following the date of the termination or nonrenewal of the contract or agreement". (California Civil Code § 1954.53(a)(1)(A)).

4. Owner Agrees to Rent Restriction in Exchange for Subsidy. The owner has agreed to a rent restriction in return for public financial support. (California Civil Code § 1954(a)(1)(B)(2)).

5. Unabated Serious Code Violations. The dwelling unit was cited for serious health, safety, fire, or building code violations at least sixty (60) days prior to the vacancy and the violations were not abated by the time the unit was vacated. (California Civil Code § 1954.53(f)).

D. Sublets and Assignments. Under specified conditions, Costa-Hawkins permits an owner to set initial rents without restriction when a covered unit is sublet or assigned and none of the original occupants permanently reside in the covered unit. (California Civil Code § 1954.53(d)).

E. Rent Increases After Setting an Initial Rent Without Restriction. After the owner sets an initial rent without restriction pursuant to Costa-Hawkins, the owner may only increase rent in conformance with the requirements of Section 8.22.070, based on circumstances or cost increases that arise after the beginning of the new tenancy. The owner may not increase rents based on banking, cost increases, capital improvements, or other circumstances that arose before the new tenancy began.

**F. Restrictions Where the Owner May Not Set the Initial Rent.**

1. The Just Cause for Eviction Ordinance (O.M.C. 8.22.300 (Chapter 8.22, Article II)) provides for certain restrictions on setting initial rents to new tenants and upon re-rental to former tenants.
2. The Ellis Act Ordinance (O.M.C. 8.22.400 (Chapter 8.22, Article III)) provides for certain restrictions on setting initial rents to new tenants and upon re-rental to former tenants. (Ord. 12538 § 1 (part), 2003; Ord. 12399 (part), 2002)

**8.22.090 Petition and response filing procedures.**

**A. Tenant Petitions.**

1. Tenant may file a petition regarding any of the following:
  - a. A rent increase exceeds the CPI Rent Adjustment, including, without limitation circumstances where:
    - b. The owner failed to timely give the tenant a written summary of the basis for a rent increase in excess of the CPI rent adjustment as required by Section 8.22.070 H.1.c; and
    - c. The owner set an initial rent in excess of the amount permitted pursuant to Section 8.22.080 (Rent increases following vacancies);
    - d. A rent increase notice fails to comply with the requirements of Section 8.22.070H;
    - e. The owner failed to give the tenant a notice in compliance with Section 8.22.060;
    - f. The owner decreased housing services to the tenant;
    - g. The tenant alleges the covered unit has been cited in an inspection report by the appropriate governmental agency as containing serious health, safety, fire, or building code violations pursuant to Section 8.22.070 D.7;
    - h. The tenant claims relocation restitution pursuant to Section 8.22.140 C.1.
    - i. The petition is permitted by the Just Cause for Eviction Ordinance (Measure EE) O.M.C. 8.22.300;
    - j. The petition is permitted by the Ellis Act Ordinance, O.M.C. 8.22.400.

k. The tenant contests an exemption from this O.M.C. 8.22, Article I.

2. For a petition contesting a rent increase, the petition must be filed within sixty (60) days of whichever of the following is later:
  - a. The date the owner serves the rent increase notice; or
  - b. The date the tenant first receives written notice of the existence and scope of this chapter as required by Section 8.22.060.
3. In order to file a petition or respond to an owner petition, a tenant must provide the following at the time of filing the petition or response:
  - a. A completed tenant petition or response on a form prescribed by the Rent Adjustment Program;
  - b. Evidence that the tenant's rent is current or that the tenant is lawfully withholding rent; and
  - c. A statement of the services that have been reduced or eliminated, if the tenant claims a decrease in housing services;
  - d. A copy of the applicable citation, if the tenant claims the rent increase need not be paid because the covered unit has been cited in an inspection report by the appropriate governmental agency as containing serious health, safety, fire, or building code violations pursuant to Section 8.22.070D.7.

4. A tenant must file a response to an owner's petition within thirty (30) days of service of the notice by the Rent Adjustment Program that an owner petition was filed.

**B. Owner Petitions and Owner Responses to Tenant Petitions.**

1. In order for an owner to file a response to a tenant petition or to file a petition seeking a rent increase, the owner must provide the following:
  - a. Evidence of possession of a current city business license;
  - b. Evidence of payment of the Rent Adjustment Program Service Fee;
  - c. Evidence of service of written notice of the existence and scope of the Rent Adjustment Program on the tenant in each affected covered unit in the building prior to the petition being filed;
  - d. A completed response or petition on a form prescribed by the Rent Adjustment Program; and

e. Documentation supporting the owner's claimed justification(s) for the rent increase or supporting any claim of exemption.

2. An owner must file a response to a tenant's petition within thirty (30) days of service of the notice by the Rent Adjustment Program that a tenant petition was filed. (Ord. 12538 § 1 (part), 2003; Ord. 12399 (part), 2002)

**8.22.100 Mediation of rent disputes.**

Voluntary mediation of all rent increase disputes will be available to all parties to a rent adjustment hearing after the filing of the petition and response. (Ord. 12538 § 1 (part), 2003; Ord. 12399 (part), 2002)



**8.22.110 Hearing procedures.**

A. Hearing Officer. A hearing shall be set before a Hearing Officer to decide the issues in the petition.

B. Hearings.

1. All hearings on petitions shall be open to the public and recorded;

2. Any party to a hearing may be assisted by a representative who may be an attorney or any other person. A party must designate his or her representative in writing.

C. Notification and Consolidation. Rent Adjustment Program staff shall notify the owner and tenant in writing of the time and place set for hearing. Representatives of parties shall also be notified of hearings, provided that the Rent Adjustment Program has been notified in writing of a party's designation of a representative at least ten days prior to the notice of the hearing being sent. Disputes involving more than one covered unit in any single building may be consolidated for hearing.

D. Time of Hearing and Decision.

1. The Hearing Officer shall have the goal of hearing the matter within sixty (60) days of the original petition's filing date.

2. The Hearing Officer shall have a goal of rendering a decision within sixty (60) days after the conclusion of the hearing or the close of the record, whichever is later. The decision shall be issued in writing.

3. The decision of the examiner shall be based entirely on evidence placed into the record.

E. A Hearing Officer may order a rent adjustment as restitution for any overcharges or undercharges due, subject to guidelines set out in the regulations.

F. Administrative Decisions.

1. Notwithstanding the acceptance of a petition or response by the Rent Adjustment Program, if any of the following conditions exist, a hearing may not be scheduled and a Hearing Officer may issue a decision without a hearing:

a. The petition or response forms have not been properly completed or submitted;

b. The petition or response forms have not been filed in a timely manner;

c. The required prerequisites to filing a petition or response have not been met; or

d. Conclusive proof of exemption has been provided and is not challenged by the tenant.

2. A notice regarding the parties' appeal rights will accompany any decision issued administratively. Appeals are governed by Section 8.22.120.

G. Should the petitioner fail to appear at the designated hearing, the Hearing Officer may dismiss the petition. (Ord. 12538 § 1 (part), 2003; Ord. 12399 (part), 2002)

**8.22.120 Appeal procedure.**

A. Filing an Appeal.

1. Either party may appeal the Hearing Officer's decision, including an administrative decision, within fifteen (15) days after service of the notice of decision by filing with the Rent Adjustment Program a written notice on a form prescribed by the Rent Adjustment Program setting forth the grounds for the appeal.

2. The matter shall be set for an appeal hearing and notice thereof shall be served on the parties not less than ten days prior to such hearing.

B. Appeal Hearings. The following procedures shall apply to all Board appeal hearings:

1. The Board shall have a goal of hearing the appeal within thirty (30) days of filing the notice of appeal.

2. All appeal hearings conducted by the Board shall be public and recorded.

3. Any party to a hearing may be assisted by an attorney or any person so designated.

4. Appeals shall be based on the record as presented to the Hearing Officer unless the Board determines that an evidentiary hearing is required. If the Board deems an evidentiary hearing necessary, the case will be continued and the Board shall issue a written order setting forth the issues on which the parties may present evidence. All evidence submitted to the Board must be submitted under oath.

5. Should the appellant fail to appear at the designated hearing, the Board may dismiss the appeal.

C. Board's Decision Final. The Board's decision is final. Parties cannot appeal to the City Council.

D. Court Review. A party may seek judicial review of a final decision of the Board pursuant to California Civil Code Section 1094.5 within the time frames set forth therein. (Ord. 12538 § 1 (part), 2003; Ord. 12399 (part), 2002)

#### **8.22.130 Retaliatory Evictions.**

An owner may not recover possession of a covered unit in retaliation against a tenant for exercising rights under this chapter. If an owner attempts to terminate the tenancy of a tenant who files a petition under this chapter from the date the petition filing to within six months after the notice of final decision, such termination of tenancy will be rebuttably presumed to be in retaliation against the tenant for the exercise rights under this chapter. (Ord. 12538 § 1 (part), 2003; Ord. 12399 (part), 2002)

#### **8.22.140 Voluntary mediation of evictions.**

The Rent Arbitration Program will assist in making voluntary mediation of evictions in covered units available to tenants and owners prior to an unlawful detainer lawsuit being filed. (Ord. 12538 § 1 (part), 2003; Ord. 12399 (part), 2002)

#### **8.22.150 General Remedies.**

##### A. Violations of this chapter.

1. Violations of Orders or Decisions. Failure of a party to abide by an order or decision of a Hearing Officer and/or the Board shall be deemed a violation of this chapter and shall be punishable administratively or by civil remedies unless otherwise provided in this chapter.

2. Violations of this chapter. Violations of this chapter may be enforced administratively or by civil remedies as set forth in this section or as otherwise specifically set out in this chapter.

3. In addition to the remedies provided in this chapter, a violator is liable for such costs, expenses, and disbursements paid or incurred by the city in abatement and prosecution of the violation.

4. The remedies available in this chapter are not exclusive and may be used cumulatively with any other remedies in this chapter or at law.

5. Remedies for violations of Section 8.22.080 are set out in that section.

##### B. General Administrative Remedies.

1. Administrative Citation. Anyone who violates specified provisions of this chapter may be issued an administrative citation. Administrative citations shall be issued in accordance with O.M.C Chapter 1.12 (Administrative Citations). The specified sections of this chapter that may be enforced by administrative citation shall be set out in the regulations.

2. Administrative Assessment of Civil Penalties. Anyone who violates specified provisions of this chapter may be administratively assessed a civil penalty. Civil penalties for violations are assessed in accordance with O.M.C Chapter 1.08 (Administrative Assessment of Civil Penalties) as a major violation under that Chapter 1.08. Specified sections of this chapter that may be enforced with civil penalties shall be set out in the regulations.

3. The City Manager shall designate staff authorized to issue administrative citation and civil penalties.

4. Each and every day or any portion of a day during which a violation of any provision of this chapter is committed, continued, or permitted is a separate violation and shall be punishable accordingly.

C. General Civil Remedies. An aggrieved party or the City Attorney, on behalf of such party, may bring a civil action for injunctive relief or damages, or both, for any violation of the provisions of this chapter or an order or decision issued by a Hearing Officer or the Board. (Ord. 12538 § 1 (part), 2003; Ord. 12399 (part), 2002)

#### **8.22.160 Computation of time.**

In this O.M.C. 8.22, Article I, days are computed using calendar days unless otherwise specifically stated. Date of service of any matter under this chapter is the date the matter is placed in the mail (in which case the time for responding is extended by

five days) or the date of receipt for a matter personally served. Timely filing requires receipt by the Rent Arbitration Program on or before 5:00 p.m. on the last day to file the document as prescribed in this chapter or the regulations. If the last day to file is a weekend or holiday the period of time to file the document is extended to the next business day. The Rent Arbitration Program may establish rules and procedures to accept electronic filing of certain documents. (Ord. 12538 § 1 (part), 2003; Ord. 12399 (part), 2002)

#### **8.22.170 Severability.**

This chapter shall be liberally construed to achieve its purposes and preserve its validity. If any provision or clause of this chapter or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application; and to this end the provisions of this chapter are declared to be severable and are intended to have independent validity. (Ord. 12538 § 1 (part), 2003; Ord. 12399 (part), 2002)

#### **8.22.180 Non-waiverability.**

Any provision, whether oral or written, in or pertaining to a rental agreement whereby any provision of this chapter is waived or modified, is against public policy and void. (Ord. 12538 § 1 (part), 2003; Ord. 12399 (part), 2002)

#### **8.22.190 Applicability—Effective date of chapter.**

The ordinance codified in this chapter shall take effect as follows:

A. The CPI Rent Adjustment. The CPI Rent Adjustment is effective for rent increases taking effect on or after July 1, 2002 in accordance with Section 8.22.070(B)(1);

B. Exemption for Owner-occupied Properties of Three or Fewer Units. The exemption for owner-occupied properties of three or fewer units is effective one year after this ordinance amending this chapter, Article I to provide for this exemption is adopted

by the City Council in accordance with Paragraph 8.22.030(D)(4).

C. Other Provisions. All other provisions of this chapter take effect pursuant to Section 216 of the Oakland City Charter. Whenever a new section takes effect on a date after this amended chapter takes effect pursuant to Section 216 of the Oakland City Charter, the provisions of the former Chapter 8.22 will apply. (Ord. 12538 § 1 (part), 2003; Ord. 12399 (part), 2002)

#### **8.22.200 Reduced rents to disaster victims.**

A. Purpose. The purpose of this Section 8.22.200 is to permit owners to offer temporary below market rent to certified displaced persons from areas hit by the Hurricane Katrina disaster (“displacees”) and to enable the owners to increase the rent to market rate at the end of the temporary period.

Invocation of Section and Period of Invocation. The provisions of this section will remain in effect for six months after the date of action invoking this section unless rescinded earlier by the City Council. The City Council may extend the time during which this section is in effect. After the end of the period during which the invocation of Section 8.22.200 was in effect, owners and displacees may not enter into new rental agreements pursuant to this section, but may renew or extend rental agreements previously entered into under this section during the invocation on the same terms.

B. Rent Increases to Displacees. During the period of invocation set out in subsection 8.22.200(B), an owner may enter into a rental agreement with a displacee for an initial rent at a below market rate fixed for a period of at least six months and may increase the rent at the end of the six month period if the owner has given the displacee the notice required by subsection 8.22.200(D). The rent increase at the end of the six month period or other term is not subject to the limitations on rent increases provided in this chapter, but any subsequent rent increases are subject to the limitations on rent increases provided in this Chapter 8.22. The rent increase must not exceed the amount stated in the notice the owner gives to the displacee prior to the commencement of the

tenancy. If an owner agrees to continue to rent to a displacee at the reduced rent for a period longer than one year, the owner may increase the initial rent pursuant to O.M.C. 8.22.070 (Rent Adjustments for Occupied Rental Units). In order for a rental agreement to be eligible under this Section 8.22.200, the below market rent must be no greater than fifty percent (50%) of the HUD Fair Market Rents in effect in Oakland at the time this section is invoked based on the number of bedrooms in the rental unit. The City Administrator will make available to the public the maximum rents for eligibility under this section.

C. Notice to Displacee. An owner who seeks to rent to a displacee, prior to entering into a rental agreement with a displacee, must give the displacee a notice provided by the Rent Adjustment Program. This notice must specify the amount of the rent the owner will charge after the end of the term of the temporary rental agreement; and at a minimum shall include information about the Rent Adjustment Ordinance and the Just Cause Ordinance.

D. Determination of Eligibility as Displacee.

1. The City Administrator will develop a list of public or private agencies, including but not limited to the Federal Emergency Management Agency, that will identify and certify that persons are displacees and can provide documentation of certification as to whether a person is a displacee.

2. The City Administrator may develop a procedure for owners to receive approval in advance of entering into a rental agreement with a displacee. A rental agreement that is approved in advance would not be subject to challenge on the ground that the agreement violates this Section 8.22.200 or Chapter 8.22, absent fraud by the owner.

3. An owner who enters into a rental agreement that is based on fraud or misrepresentation by the tenant is not subject to any penalty under this Chapter 8.22 unless the owner knew or should have known of the fraud or misrepresentation in advance of entering into the rental agreement with the tenant.

4. Eligibility to receive benefits as a displacee of the disaster for which this Section 8.22.200 is invoked is implied as material term of the tenancy created by a rental agreement entered into under this

section. The tenancy of an ineligible tenant who knowingly or fraudulently enters into a rental agreement under this section is subject to termination under subsection 8.22.360(A)(1) on the ground that he or she violated a material term of the tenancy and the rent for the rental unit may be increased to the rate given in the notice required by subsection 8.22.200(D), unless the owner knew or should have known of the tenant's fraud or ineligibility. The owner also may recover the difference in the rent the tenant actually paid and the rent set out in the notice required by subsection 8.22.200(D) and such owner's costs and reasonable attorney's fees.

E. Termination of Tenancy by Displacee. Any rental agreement entered into pursuant to this section must permit the displacee to terminate the rental agreement pursuant to California Civil Code § 1946.

F. Definitions. The following definitions are applicable to this Section 8.22.200.

1. For purposes of this section, "displacee" means a person or household who has been displaced as a result of the Katrina Hurricane disaster for which this section has been invoked by City Council, and who has been certified as such by FEMA or other agency designated by the City Administrator pursuant to subsection 8.22.200(E)(1) of this section.

G. Procedures, Standards, and Regulations. The Rent Adjustment Board is authorized to develop regulations pursuant to O.M.C. 8.22.040(D)(2). The City Administrator is authorized to develop any procedures and standards to carry out this section that are not in conflict with this Section 8.22.200 or any regulations that may later be adopted.

H. Retroactivity. This Section 8.22.200 may be applied to rental agreements that displacees and owners executed before the ordinance codified in this chapter became effective if it meets all requirements of Section 8.22.200 including this subsection H. The City Administrator is authorized to develop the procedures and requirements that rental agreements must comply with to be eligible for the protections provided by this section. (Ord. 12707 § 1, 2005)

**Article II**  
**Just Cause for Eviction Ordinance**  
**(Measure EE)**

**8.22.300 Just Cause for Eviction**  
**Introductory Clauses.**

Whereas, the laws of the State of California and the Housing Element of the General Plan of the city of Oakland prohibit arbitrary discrimination by landlords, and

Whereas, the right to occupancy of safe, decent, and sanitary housing is a human right, and

Whereas, the city of Oakland's prolonged affordable housing crisis disproportionately impacts low income and working class households, senior citizens, people of color, and people with disabilities, and thereby increases homelessness and crime, harms neighborhood stability and cohesion, and damages business prospects for small businesses, and

Whereas, recent state laws that eliminate limits on rent increases upon the vacation of rental units provide added economic incentive to evict tenants, such that the number of no cause evictions has increased markedly in recent years, and

Whereas, the absence of a local law prohibiting a landlord from evicting a tenant without good cause is a significant barrier to implementation and enforcement of the Oakland Residential Rent Arbitration Ordinance, and

Whereas, residential tenants, who constitute approximately sixty-five percent (65%) of the residents of Oakland, suffer great and serious hardship when forced to move from their homes, and

Whereas, basic fairness requires that a landlord must not terminate the tenancy of a residential tenant without good, just, non-arbitrary, non-discriminatory reasons, and

Whereas, the good cause eviction protections enacted in San Francisco, Berkeley, Hayward, and other California cities, have aided community stability and reduced urban problems associated with arbitrary disruption of stable households, and

Whereas, the general welfare of all citizens of Oakland would be enhanced if no cause evictions were prohibited,

Therefore, the electorate of the city of Oakland hereby enacts this ordinance, prohibiting a landlord from terminating a tenancy without good or just cause. (Ord. 12537 § 1 (part), 2003)

**8.22.310 Title.**

This ordinance shall be known as the Just Cause for Eviction Ordinance. (Ord. 12537 § 1 (part), 2003)

**8.22.320 Findings.**

1. A public emergency exists in the city due to the lack of adequate, safe, sanitary, and affordable housing. This emergency disproportionately impacts tenants of residential rental units, a majority of whom are people of color, working class families, the homeless, those of low income, and the elderly and disabled.

2. Just cause eviction protections would strengthen and effectuate existing rent control legislation in Oakland as landlords are able to use no cause evictions to evade the Oakland Residential Rent Arbitration Ordinance.

3. Oakland presently has no just cause protections for tenants. As a result, any residential tenant may be subjected to eviction at anytime and without reason.

4. Without just cause protections, many tenants are afraid to demand their right to a safe, inhabitable home.

5. Furthermore, Oakland is experiencing extreme housing market pressures from neighboring Santa Clara and San Francisco counties, resulting in a decrease in the vacancy rate and an increase in residential rental prices.

6. This situation has been exacerbated by the Costa-Hawkins law, which, by eliminating controls on rents upon the voluntary vacation of a rental unit, has provided added economic incentive to evict tenants. From January 1999 through December 2000, the effective date of foil implementation of the Costa-Hawkins law, Sentinel Fair Housing has reported a three hundred (300) percent increase in the eviction of Oakland tenants. This trend has continued to date.

7. Without the institution of just cause protections, Oakland's housing emergency will continue, and will contribute to increases in homelessness, crime, neighborhood instability, and harm to small businesses.

8. Many municipal jurisdictions in California, including Berkeley, Hayward, and San Francisco in the Bay Area, have effectively utilized just cause protections to preserve affordable housing. Such protections have helped abate the urban problems associated with neighborhood instability, homelessness, and illegal activity in vacant units, providing concrete benefits for both landowners and tenants.

9. Just cause eviction protections are consistent with the Housing Element of the Master Plan of the city of Oakland, which states that residents have the right to decent housing in pleasant neighborhoods at prices they can afford. (Ord. 12537 § 1 (part), 2003)

#### **8.22.330 Purpose.**

The purpose of this chapter is to defend and nurture the stability of housing and neighborhoods in the city of Oakland by protecting tenants against arbitrary, unreasonable, discriminatory, or retaliatory evictions, thereby maintaining diversity in Oakland neighborhoods and communities while recognizing the rights of rental property owners. This chapter is intended to address housing problems in the city of Oakland so as to preserve the public health, safety, and welfare, and to advance the housing policies of the city with regard to low and fixed income persons, people of color, students, and those needing special protections, such as long-term elderly and disabled tenants. (Ord. 12537 § 1 (part), 2003)

#### **8.22.340 Definitions.**

“Landlord” means an owner of record, or lessor or sublessor of an owner of record, or any other person or entity entitled either to receive rent for the use or occupancy of any rental unit or to maintain an action for possession of a rental unit, or an agent, representative, or successor of any of the foregoing.

“Owner of Record” means a natural person, who is an owner of record holding an interest equal to or greater than thirty-three percent (33%) in the prop-

erty at the time of giving a notice terminating tenancy and at all times thereafter, until and including the earlier of the tenant’s surrender of possession of the premises or the execution of a writ of possession pursuant to the judgment of a court of competent jurisdiction; but not including any lessor, sublessor, or agent of the owner of record.

“Rent” means the consideration, including any deposit, bonus, benefit, or gratuity demanded or received for, or in connection with, the use or occupancy of rental units and housing services. Such consideration shall include, but not be limited to, moneys and fair value of goods or services rendered to or for the benefit of the landlord under the rental agreement, or in exchange for a rental unit or housing services of any kind.

“Rent Board” means city of Oakland Housing, Residential Rent, and Relocation Board (HRRRB), aka Residential Rent Arbitration Board (RRAB), aka Rent Arbitration Board, aka Oakland Rent Board, aka Rent Board, established under Ordinance No. 9980 and subsequent amendments.

“Rental Agreement” means an agreement, oral, written, or implied, between a landlord and a tenant for the use and/or occupancy of a rental unit.

“Rental Unit” (aka Unit, aka Premises) means any unit in any real property, regardless of zoning status, including the land appurtenant thereto, that is rented or available for rent for residential use or occupancy (regardless of whether the unit is also used for other purposes), together with all housing services connected with use or occupancy of such property, such as common areas and recreational facilities held out for use by the tenant.

“Property” means a parcel of real property, located in the city of Oakland, that is assessed and taxed as an undivided whole.

“Tenant” means any renter, tenant, subtenant, lessee, or sublessee of a rental unit, or any group of renters, tenants, subtenants, lessees, sublessees of a rental unit, or any other person entitled to the use or occupancy of such rental unit, or any successor of any of the foregoing.

“Skilled Nursing Facility” means a health facility or a distinct part of a hospital that provides, at a

minimum, skilled nursing care and supportive care to patients whose primary medical need is the availability of skilled nursing care on an extended basis. Such facility must provide twenty-four (24) hour inpatient care, an activity program, and medical, nursing, dietary, pharmaceutical services. Additionally, the facility must provide effective arrangements, confirmed in writing, through which services required by the patients but not regularly provided within the facility can be obtained promptly when needed.

“Health Facility” means any facility, place or building that is organized, maintained, and operated for the diagnosis, care, and treatment of human illness, physical or mental, including convalescence and rehabilitation, and including care during and after pregnancy, or for any one or more of these purposes.

“Maximum Lawful Rent” means the maximum rent which may lawfully be charged for such unit under the terms of the Oakland Residential Rent Arbitration Ordinance or successor ordinances intended to limit or regulate rent charged for residential rental units within the city of Oakland.

“Business Tax Declaration” means the annual declaration required to be filed in connection with a landlord’s obtaining or renewing a city business license for rental units. Any failure by a landlord to file such a declaration, whether pursuant to an exemption or otherwise, shall not relieve a rental unit from being subject to the provisions of this chapter.

“Child/Parent” means a child/parent relationship is one in which a child is either a parent’s biological child or adopted child, provided that such relationship was established prior to the child’s eighteenth birthday and at least one year prior to the attempted eviction. At the time of attempted eviction, a child of an owner of record must be over the age of eighteen (18) or be emancipated.

“Tenants’ Rights Organization” means any unincorporated tenant’s association, incorporated tenants association, nonprofit housing and/or tenant’s rights entity of any form. (Ord. 12537 § 1 (part), 2003)

#### **8.22.350      Applicability.**

The provisions of this chapter shall apply to all rental units in whole or in part, including where a notice to vacate/quit any such rental unit has been served as of the effective date of this chapter but where any such rental unit has not yet been vacated or an unlawful detainer judgment has not been issued as of the effective date of this chapter. However, Section 6 [8.22.360] and Section 7(A)-(E) [8.22.370(A) through 8.22.370(E)] of the chapter [O.M.C. Chapter 8.22, Article II] shall not apply to the following types of rental units:

A. Rental units exempted from Part 4, Title 4, Chapter 2 of the California Civil Code (CCC) by CCC § 1940(b).

B. Rental units in any hospital, skilled nursing facility, or health facility.

C. Rental units in a nonprofit facility that has the primary purpose of providing short term treatment, assistance, or therapy for alcohol, drug, or other substance abuse and the housing is provided incident to the recovery program, and where the client has been informed in writing of the temporary or transitional nature of the housing at its inception.

D. Rental units in a nonprofit facility which provides a structured living environment that has the primary purpose of helping homeless persons obtain the skills necessary for independent living in permanent housing and where occupancy is restricted to a limited and specific period of time of not more than twenty-four (24) months and where the client has been informed in writing of the temporary or transitional nature of the housing at its inception.

E. Rental units in a residential property where the owner of record occupies a unit in the same property as his or her principal residence and regularly shares in the use of kitchen or bath facilities with the tenants of such rental units. For purposes of this section, the term owner of record shall not include any person who claims a homeowner’s property tax exemption on any other real property in the State of California.

F. A rental unit in a residential property that is divided into a maximum of three units, one of which is occupied by the owner of record as his or her prin-

cipal residence. For purposes of this section, the term owner of record shall not include any person who claims a homeowner's property tax exemption on any other real property in the State of California.

G. A unit that is held in trust on behalf of a developmentally disabled individual who permanently occupies the unit, or a unit that is permanently occupied by a developmentally disabled parent, sibling, child, or grandparent of the owner of that unit.

H. Newly constructed rental units which are completed and offered for rent for the first time after the effective date of the initial Oakland Residential Rent, Relocation, and Arbitration Ordinance, provided that such new units were not created as a result of rehabilitation, improvement or conversion as opposed to new construction. (Ord. 12537 § 1 (part), 2003)

**8.22.360      Good Cause Required for  
Eviction.**

A. No landlord shall endeavor to recover possession, issue a notice terminating tenancy, or recover possession of a rental unit in the city of Oakland unless the landlord is able to prove the existence of one of the following grounds:

1. The tenant has failed to pay rent to which the landlord is legally entitled pursuant to the lease or rental agreement and under provisions of state or local law, and said failure has continued after service on the tenant of a written notice correctly stating the amount of rent then due and requiring its payment within a period, stated in the notice, of not less than three days. However, this subsection shall not constitute grounds for eviction where tenant has withheld rent pursuant to applicable law.

2. The tenant has continued, after written notice to cease, to substantially violate a material term of

the tenancy other than the obligation to surrender possession on proper notice as required by law, provided further that notwithstanding any lease provision to the contrary, a landlord shall not endeavor to recover possession of a rental unit as a result of subletting of the rental unit by the tenant if the landlord has unreasonably withheld the right to sublet following a written request by the tenant, so long as the tenant continues to reside in the rental unit and the sublet constitutes a one-for-one replacement of the departing tenant(s). If the landlord fails to respond to the tenant in writing within fourteen (14) days of receipt of the tenant's written request, the tenant's request shall be deemed approved by the landlord.

3. The tenant, who had an oral or written agreement with the landlord which has terminated, has refused after written request or demand by the landlord to execute a written extension or renewal thereof for a further term of like duration and under such terms which are materially the same as in the previous agreement; provided, that such terms do not conflict with any of the provisions of this chapter. [O.M.C. Chapter 8.22, Article II].

4. The tenant has willfully caused substantial damage to the premises beyond normal wear and tear and, after written notice, has refused to cease damaging the premises, or has refused to either make satisfactory correction or to pay the reasonable costs of repairing such damage over a reasonable period of time.

5. The tenant has continued, following written notice to cease, to be so disorderly as to destroy the peace and quiet of other tenants at the property.

6. The tenant has used the rental unit or the common areas of the premises for an illegal purpose including the manufacture, sale, or use of illegal drugs.

7. The tenant has, after written notice to cease, continued to deny landlord access to the unit as required by state law.

8. The owner of record seeks in good faith, without ulterior reasons and with honest intent, to recover possession of the rental unit for his or her occupancy as a principal residence where he or she has previously occupied the rental unit as his or her principal residence and has the right to recover pos-

session for his or her occupancy as a principal residence under a written rental agreement with the current tenants.

9. The owner of record seeks in good faith, without ulterior reasons and with honest intent, to recover possession for his or her own use and occupancy as his or her principal residence, or for the use and occupancy as a principal residence by the owner of record's spouse, domestic partner, child, parent, or grandparent.

a. Here the owner of record recovers possession under this Subsection (9) [Paragraph 8.22.360 A.9], and where continuous occupancy for the purpose of recovery is less than thirty-six (36) months, such recovery of the residential unit shall be a presumed violation of this chapter.

b. The owner of record may not recover possession pursuant to this subsection more than once in any thirty-six (36) month period,

c. The owner must move in to unit within three (3) months of the tenant's vacation of the premises.

~~d. When the owner seeking possession of a unit under Section 6(A)(9) [8.22.360 A.9] owns a similar vacant unit, the owner's decision not to occupy said similar unit shall create a rebuttable presumption that they are seeking to recover possession in bad faith.\*~~

e. A landlord may not recover possession of a unit from a tenant under Subsection 6(A)(9) [8.22.360 A.9], if the landlord has or receives notice, any time before recovery of possession, that any tenant in the rental unit:

i. Has been residing in the unit for five (5) years or more; and

(a) Is sixty (60) years of age or older; or

(b) Is a disabled tenant as defined in the California Fair Employment and Housing Act (California Government Code § 12926); or

ii. Has been residing in the unit for five (5) years or more, and is a catastrophically ill tenant, defined as a person who is disabled as defined by

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Subsection (e)(i)(b) [8.22.360 A.9.e.i.b]]and who suffers from a life threatening illness as certified by his or her primary care physician.

f. The provisions of Subsection (e) [8.22.360 A.9.e] above shall not apply where the landlord's qualified relative who will move into the unit is 60 years of age or older, disabled or catastrophically ill as defined by Subsection (e) [8.22.360 A.9.e], and where every rental unit owned by the landlord is occupied by a tenant otherwise protected from eviction by Subsection (e) [8.22.360 A.9.e].

g. A tenant who claims to be a member of one of the classes protected by Subsection 6(A)(9)(e) [8.22.360 A.9.e] must submit a statement, with supporting evidence, to the landlord. A landlord may challenge a tenant's claim of protected status by requesting a hearing with the Rent Board. In the Rent Board hearing, the tenant shall have the burden of proof to show protected status. No civil or criminal liability shall be imposed upon a landlord for challenging a tenant's claim of protected status. The Rent Board shall adopt rules and regulations to implement the hearing procedure.

h. Once a landlord has successfully recovered possession of a rental unit pursuant to Subsection 6(A)(9) [8.22.360 A.9], no other current landlords may recover possession of any other rental unit in the building under Subsection 6(A)(9) [8.22.360 A.9]. Only one specific unit per building may undergo a Subsection 6(A)(9) [8.22.360 A.9] eviction. Any future evictions taking place in the same building under Subsection 6(A)(9) [8.22.360 A.9] must be of that same unit, provided that a landlord may file a petition with the Rent Board or, at the landlord's option, commence eviction proceedings, claiming that disability or other similar hardship prevents him or her from occupying a unit which was previously the subject of a Subsection 6(A)(9) [8.22.360 A.9] eviction. The Rent Board shall adopt rules and regulations to implement the application procedure.

i. A notice terminating tenancy under this Subsection must contain, in addition to the provisions required under Subsection 6(B)(5) [8.22.360 B.5]:

ii [sic] A listing of all property owned by the intended future occupant(s).

iii [sic]The address of the real property, if any, on which the intended future occupant(s) claims a homeowner's property tax exemption.

iv [sic] A statement informing tenant of his or her rights under Subsection 6(C) [8.22.360 C].\*

10. The owner of record, after having obtained all necessary permits from the City of Oakland on or before the date upon which notice to vacate is given, seeks in good faith to undertake substantial repairs that cannot be completed while the unit is occupied, and that are necessary either to bring the property into compliance with applicable codes and laws affecting health and safety of tenants of the building, or under an outstanding notice of code violations affecting the health and safety of tenants of the building.

a. Upon recovery of possession of the rental unit, owner of record shall proceed without unreasonable delay to effect the needed repairs. The tenant shall not be required to vacate pursuant to this section, for a period in excess of three months; provided, however, that such time period may be extended by the Rent Board upon application by the landlord. The Rent Board shall adopt rules and regulations to implement the application procedure.

b. Upon completion of the needed repairs, owner of record shall offer tenant the first right to return to the premises at the same rent and pursuant to a rental agreement of substantially the same terms, subject to the owner of record's right to obtain rent increase for capital improvements consistent with the terms of the Oakland Residential Rent Arbitration Ordinance or any successor ordinance.

c. A notice terminating tenancy under this Subsection 6(A)(10) [8.22.360 A.10] must include the following information:

i. A statement informing tenants as to their right to payment under the Oakland Relocation Ordinance.

ii. A statement that "When the needed repairs are completed on your unit, the landlord must offer

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you the opportunity to return to your unit with a rental agreement containing the same terms as your original one and with the same rent (although landlord may be able to obtain a rent increase under the Oakland Residential Rent Arbitration Ordinance [O.M.C. Chapter 8.22, Article I].”

~~iii. A statement informing tenant of his or her rights under Subsection 6(C) [8.22.360 C].\*~~

iv. An estimate of the time required to complete the repairs and the date upon which it is expected that the unit will be ready for habitation.

11. The owner of record seeks ~~in good faith, without ulterior reasons and with honest intent,\*~~ to remove the property from the rental market in accordance with the terms of the Ellis Act (California Government Code Section 7060 et seq.).

B. The following additional provisions shall apply to a landlord who seeks to recover a rental unit pursuant to Subsection 6(A) [8.22.360 A]:

1. The burden of proof shall be on the landlord in any eviction action to which this order is applicable to prove compliance with Section 6 [8.22.360].

2. A landlord shall not endeavor to recover possession of a rental unit unless at least one of the grounds enumerated in Subsection 6(A) [8.22.360 A] above is stated in the notice and that ground is the landlord's dominant motive for recovering possession and the landlord acts in good faith in seeking to recover possession.

3. Where a landlord seeks to evict a tenant under a just cause ground specified in Subsections 6(A)(7, 8, 9, 10, 11) [8.22.360 A.7, 8, 9, 10, 11], she or he must do so according to the process established in CCC § 1946 (or successor provisions providing for 30 day notice period); where a landlord seeks to evict a tenant for the grounds specified in Subsections 6(A)(1, 2, 3, 4, 5, 6) [8.22.360 A.1, 2, 3, 4, 5, 6], she or he must do so according to the process established in CCP § 1161 (or successor provisions providing for 3 day notice period).

4. Any written notice as described in Subsection 6(A)(2, 3, 4, 5, 7) [8.22.360 A.2, 3, 4, 7] shall be served by the landlord prior to a notice to terminate tenancy and shall include a provision informing tenant that a failure to cure may result in the initiation of eviction proceedings.

5. Subsection 6(B)(3) [8.22.360 B.3] shall not be construed to obviate the need for a notice terminating tenancy to be stated in the alternative where so required under CCP § 1161.

6. A notice terminating tenancy must additionally include the following:

a. A statement setting forth the basis for eviction, as described in Subsections 6(A)(1) [8.22.360 A.1] through 6(A)(11) [8.22.360 A.11];

b. A statement that advice regarding the notice terminating tenancy is available from the Rent Board.

c. Where an eviction is based on the ground specified in Subsection 6(A)(9) [8.22.360 A.9], the notice must additionally contain the provisions specified in Subsection 6(A)(9)(i) [8.22.360 A.9.i].

d. Where an eviction is based on the ground specified in Subsection 6(A)(10) [8.22.360 A.10], the notice must additionally contain the provisions specified in Subsection 6(A)(10)(c) [8.22.360 A.10].

e. Failure to include any of the required statements in the notice shall be a defense to any unlawful detainer action.

7. Within ten (10) days of service of a notice terminating tenancy upon a tenant, a copy of the same notice and any accompanying materials must be filed with the Rent Board. Each notice shall be indexed by property address and by the name of the landlord. Such notices shall constitute public records of the City of Oakland, and shall be maintained by the Rent Board and made available for inspection during normal business hours. Failure to file the notice within ten (10) days of service shall be a defense to any unlawful detainer action.

~~C. The following additional provisions shall apply to a landlord who seeks to recover a rental unit pursuant to Subsections 6(A)(9) [8.22.360 A.9] or (10) [8.22.360 A.10]:\*~~

~~1. Where the landlord owns any other residential rental units, and any such unit is available or will become available between the time of service of written notice terminating tenancy and the earlier of the~~

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~~surrender of possession of the premises or the execution of a writ of possession pursuant to the judgment of a court of competent jurisdiction, the landlord shall, as a condition of obtaining possession pursuant to Section 6 [8.22.360], notify tenant in writing of the existence and address of each such vacant unit and offer tenant the right to choose any available rental unit and at the tenant's option: i) to enter into a temporary rental agreement; or ii) to enter into a new rental agreement. The landlord shall offer that unit to the tenant at a rent based on the rent that the tenant is currently paying, with upward or downward adjustments allowed based upon the condition, size, and other amenities of the replacement unit. Disputes concerning the initial rent for the replacement unit shall be determined by the Rent Board.\*~~

~~2. The following shall be considered rebuttably presumptive violations of this chapter by the landlord:~~\*

~~a. Where the event which the landlord claims as grounds to recover possession under Subsection 6(A)(9) [8.22.360 A.9] or (10) [8.22.360 A.10] is not initiated within three (3) months after the tenant vacates the unit.\*~~

~~b. Where a landlord times the service of the notice, or the filing of an action to recover possession, so as to avoid offering a tenant a replacement unit.\*~~

~~c. Where the individual (a landlord or qualified relative) for whom the Subsection 6(A)(9) [8.22.360 A.9] eviction occurred does not occupy a unit for a minimum of thirty-six (36) consecutive months.\*~~

D. Substantive limitations on landlord's right to evict.

1. In any action to recover possession of a rental unit pursuant to Section 6 [8.22.360], a landlord must allege and prove the following:

a. the basis for eviction, as set forth in Subsection 6(A)(1) through 6(A)(11) [8.22.360 A.1 though 8.22.360 A.11] above, was set forth in the notice of termination of tenancy or notice to quit;

b. that the landlord seeks to recover possession of the unit with good faith, honest intent and with no ulterior motive;

2. If landlord claims the unit is exempt from this ordinance, landlord must allege and prove that

the unit is covered by one of the exceptions enumerated in Section 5 [8.22.350] of this chapter. Such allegations must appear both in the notice of termination of tenancy or notice to quit, and in the complaint to recover possession. Failure to make such allegations in the notice shall be a defense to any unlawful detainer action.

3. This subsection (D) [8.22.360 D] is intended as both a substantive and procedural limitation on a landlord's right to evict. A landlord's failure to comply with the obligations described in Subsections 7(D)(1) or (2) [sic] [8.22.360 D.1 or 8.22.360 D.2] shall be a defense to any action for possession of a rental unit.

E. In the event that new state or federal legislation confers a right upon landlords to evict tenants for a reason not stated herein, evictions proceeding under such legislation shall conform to the specifications set out in this chapter [O.M.C. Chapter 8.22, Article II]. (Ord. 12537 § 1 (part), 2003)

## 8.22.370 Remedies.

A. Remedies for violation of eviction controls.

~~1. A tenant who prevails in an action brought by a landlord for possession of the premises shall be entitled to bring an action against the landlord and shall be entitled to recover actual and punitive damages, costs, and reasonable attorney's fees.\*~~

2. Whenever a landlord or anyone assisting a landlord wrongfully endeavors to recover possession or recovers possession of a rental unit in violation of Subsection 6(A) [8.22.360 A], the tenant or Board may institute a civil proceeding for injunctive relief, money damages of not less than three times actual damages (including damages for mental or emotional distress), and whatever other relief the court deems appropriate. In the case of an award of damages for mental or emotional distress, said award shall only be trebled if the trier of fact finds that the landlord acted in knowing violation of or in reckless disregard of

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this ordinance. The prevailing tenant shall be entitled to reasonable attorney's fees and costs pursuant to order of the court.

3. The remedies available in this section shall be in addition to any other existing remedies which may be available to the tenant.

B. Violation of the Ordinance. Any violation of the provisions of this ordinance or application thereof shall entitle the aggrieved tenant to actual ~~and punitive\*~~ damages according to proof and costs and attorney's fees.

C. Authorization of City Attorney to enforce the Ordinance. The City Attorney shall have the authority to enforce provisions of this ordinance; to bring actions for injunctive relief on behalf of the city, or on behalf of tenants seeking compliance by landlords with the ordinance.

D. It shall be unlawful for a landlord to refuse to rent or lease or otherwise deny to or withhold from any person any rental unit because the age of a prospective tenant would result in the tenant acquiring rights under this chapter [O.M.C. Chapter 8.22, Arti-

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cle II]. Any person who refuses to rent in violation of the subsection shall, in addition to any other penalties provided by state or federal law, be guilty of a misdemeanor.

E. It shall be unlawful for a landlord or any other person who willfully assists the landlord to endeavor to recover possession or to evict a tenant except as provided in Subsection 6(A) [8.22.360 A]. (Ord. 12537 § 1 (part), 2003)

#### **8.22.380 Non-waiverability.**

The provisions of this chapter may not be waived, and any term of any lease, contract, or other agreement which purports to waive or limit a tenant's substantive or procedural rights under this ordinance are contrary to public policy, unenforceable, and void. (Ord. 12537 § 1 (part), 2003)

#### **8.22.390 Partial invalidity.**

If any provision of this chapter or application thereof is held to be invalid, this invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provisions or applications, and to this end the provisions and applications of this chapter are severable. (Ord. 12537 § 1 (part), 2003)

### **Article III. Terminating Tenancy to Withdraw Residential Rental Units from the Rental Market**

#### **8.22.400 Statement of Purpose.**

Measure EE, the Just Cause for Eviction Ordinance adopted by the electorate on November 5, 2002, includes the withdrawal of rental units from the rental market as one of the allowable causes for eviction of tenants (Measure EE, Section 6A(11)). The purpose of this Municipal Code Section is to enact and implement the constraints on and procedures for such withdrawals as authorized by the Ellis Act (Government Code 7060, *et seq.*). This section shall be interpreted so as to provide the city with the broadest range of authority permitted under these provisions and to intrude the least into the city's authority in all other applications of its power. This Section O.M.C. 8.22.400 shall not be construed to

permit the conversion of any rental housing to condominiums, hotels or any other use, which conversions are otherwise regulated by the City of Oakland, the State of California, or other applicable law. (Ord. 12539 § 1 (part), 2003)

#### **8.22.410 Definitions.**

"Disabled" means a person with a disability, as defined in Section 12955.3 of the Government Code.

"Elderly" means a person sixty-two (62) years old or older.

"Owner" means an owner of record of the real property on which the rent units to be withdrawn are located.

"Rent Adjustment Program" means the Rent Adjustment Program as that term is defined in O.M.C. 8.22.020.

"Tenant" means a tenant as that term is defined in O.M.C. 8.22.020 and also includes a lessee.

"Unit or Rental Unit" means a Covered Rental Unit as that term is defined in O.M.C. 8.22.020 and also includes rental units that may be conditionally exempt while occupied by a tenant who is receiving assistance with rent payments through the federal Section 8 voucher program or any successor or similar program providing rent assistance to low income persons.

"Withdrawal Notices" means those documents an owner is required to be filed with the Rent Adjustment Program pursuant to Paragraph 8.22.430A.

"Withdrawn Unit" means a rental unit that has been withdrawn from the rental market in accordance with this O.M.C. Article 8.22.400. (Ord. 12539 § 1 (part), 2003)

#### **8.22.420 Application of this chapter, Article III.**

A. This O.M.C. Article 8.22.400 shall only apply to and shall only be exercised for the concurrent withdrawal of all rental units in the following (also referred to as "Accommodations" in California Government Code § 7060, *et seq.*):

1. The rental units (as defined in O.M.C. 8.22.020) in any detached physical structure containing four or more residential rental units or,

2. With respect to a detached physical structure containing three or fewer residential rental units, the rental units in that structure and in any other structure located on the same parcel of land, including any detached physical structure specified in Paragraph 8.22.420 1. (Ord. 12539 § 1 (part), 2003)

**8.22.430 When withdrawal is effective (except for eligible elderly or disabled tenants).**

A. For units not occupied by a tenant who has resided in the unit for at least one year and is either elderly (62 years or older) or disabled, the withdrawal of the rental units is effective not less than one hundred twenty (120) days from the delivery in person or by first-class mail to the Rent Adjustment Program all of the following (referred to together as the "Withdrawal Notices"):

1. Written notice to the Rent Adjustment Program of the intent to withdraw the Rental Units. The notice must be signed under penalty of perjury and must include the following:

- a. Address and legal description of the subject property;
- b. Number of rental units being removed;
- c. The names of all tenants residing in the units being withdrawn; and
- d. The lawful rent applicable to each such unit paid on the date of the notice.

2. A fee in an amount set by the City Council in the Master Fee Schedule to reimburse the city for the estimated direct and actual costs administering the withdrawal of the rental units.

3. A conformed copy of a written summary of the notice of intent (Paragraph 8.22.430 A.1) recorded with the Alameda County Recorder and in a form prepared by the Rent Adjustment Program. The summary must contain such information as is prescribed by the Rent Adjustment Program to summarize the owner's notice of intent. This summary must not contain any of the information deemed confidential pursuant to Subsection 8.22.430 E.

4. A certification under penalty of perjury that terminations of all tenancies for the units to be withdrawn have commenced in accordance with applicable law. Such notices may be served in any manner

authorized for the service of a notice terminating tenancy under California Civil Code Section 1946. The notices terminating tenancy must contain the following information:

a. That the owner is terminating the tenancy pursuant to this O.M.C. Article 8.22.400 and will provide the Rent Adjustment Program with the withdrawal notices required in Paragraph 8.22.430A.

b. A summary of the specific information to be provided to the Rent Adjustment Program in that notice regarding the particular tenant's unit;

c. That within thirty (30) days of receipt of notice to terminate, the tenant may notify the owner in writing that the tenant would be interested in re-renting the unit if it is re-offered for rent at a future time and advising the tenant to notify the owner of future address changes;

d. A description of the following includes the time frames for the tenant to provide notices to the owner:

- i. the right of a tenant to re-rent the withdrawn unit should it be re-offered for rent;
- ii. the right of tenants who are elderly or disabled to an extended withdrawal period; and
- iii. the right of lower income tenants to relocation payments.

B. Confidential Information. The following information submitted to the Rent Adjustment Program in compliance with this O.M.C. Article 8.22.400 is deemed confidential for purposes of the California Information Practices Act of 1977 (California Civil Code Section 1798, et seq.)

- 1. The name or names of the tenants;
- 2. The rent applicable to any residential rental unit to be withdrawn; and
- 3. The total number of rental units to be withdrawn. (Ord. 12539 § 1 (part), 2003)

**8.22.440 Effective date of withdrawal for units occupied by elderly or disabled tenants.**

A. If a tenant is elderly or disabled, and has lived in the rental unit for at least one year prior to the date of delivery to the Rent Adjustment Program of the Withdrawal Notices required by Section 8.22.430A, then the date of withdrawal of the rental

unit occupied by that tenant shall be extended to one year from the date of delivery of the Withdrawal Notices, provided the tenant gives written notice of his or her entitlement to an extension to the owner within sixty (60) days of the date of delivery to the Rent Adjustment Program of the Withdrawal Documents.

B. In the event the tenant provides such notice to the owner, the following provisions shall apply:

1. The tenancy shall be continued on the same terms and conditions as existed on the date of delivery of the Withdrawal Notices to the Rent Adjustment Program, subject to any CPI Rent Adjustments otherwise available;

2. No party shall be relieved of the duty to perform any obligation under the lease or rental agreement;

C. Within thirty (30) days of the notification by the tenant to the owner of his or her entitlement to an extension, the owner shall give written notice to the Rent Adjustment Program of the claim that the tenant or lessee is entitled to stay in his or her rental unit for one year after the date of delivery to the withdrawal documents.

D. Within fifteen (15) days after notification by a tenant that the tenant claims status as elderly or disabled, an owner who, reasonably and in good faith, believes that a tenant does not meet the requirements of this O.M.C. Article 8.22.400 as being elderly or disabled may request the tenant provide information demonstrating the tenant is elderly or disabled. The owner may not request nor should the tenant provide any information demonstrating age or disability that is considered confidential by any local, state, or federal law. The tenant must respond to the request for information within thirty (30) days. The owner must keep the documents submitted by the tenant confidential unless there are litigation or administrative proceedings regarding the tenant's eligibility for elderly or disabled status or the relocation payments or the documents must be produced in response to a subpoena or court order, in which case the tenant may seek an order from the court or administrative body to keep the documents confidential.

E. The owner may elect to extend the date of withdrawal on any other rental unit within the same building up to one year after the date of delivery of

the Withdrawal Notices to the Rent Adjustment Program, subject to Subsection 8.22.440 (B).

F. Within ninety (90) days of the date of delivery of the Withdrawal Notices to the Rent Adjustment Program, the owner must give written notice to the Rent Adjustment Program and the affected tenant(s) or lessee(s) of the owner's election to extend the date of withdrawal and the new date of withdrawal under Section 8.22.440 (E). (Ord. 12539 § 1 (part), 2003)

#### **8.22.450 Relocation payments for lower income households.**

A. Tenant households whose income is not more than that permitted for lower income households, as defined by California Health and Safety Code Section 50079.5, are entitled to receive payments to mitigate the adverse impact of displacement from withdrawal of the unit.

B. The relocation payment is two months of the tenant's rent in effect at the time owner issues the notice of termination of tenancy under this O.M.C. Article 8.22.400.

C. A tenant whose household qualifies as lower income may request relocation payments from the owner, provided the tenant gives written notice of his or her entitlement to such payments to the owner within sixty (60) days of the date of delivery to the Rent Adjustment Program of the Withdrawal Documents.

D. An owner who, reasonably and in good faith, believes that a tenant does not meet the income standards as a household may request documentation from the tenant demonstrating the tenant's income. Such documentation may not include any document that is protected as private or confidential under any state, local, or federal law. The owner's request must be made within fifteen (15) days after receipt of the tenant's notification of eligibility for relocation benefits. The tenant has thirty (30) days following receipt of the owner's request for documentation to submit documentation. The owner must keep the documents submitted by the tenant confidential unless there is litigation or administrative proceedings regarding the tenant's eligibility for relocation payments or the documents must be produced in response to a sub-

poena or court order, in which case the tenant may seek an order from the court or administrative body to keep the documents confidential.

E. Time for payment. The owner must make the relocation payment within fifteen (15) days of the tenant's notice of eligibility or the tenant supplying documentation of the tenant's eligibility, provided that the tenant agrees not to contest an unlawful detainer based on the notice to terminate tenancy for the withdrawal of the tenant's rental unit. If the tenant does not so agree, then the relocation payment is not due unless the owner prevails in the unlawful detainer. If the owner prevails in the unlawful detainer, the relocation payment must be paid to the tenant prior to the owner seeking a writ of possession for the tenant to vacate the withdrawn unit.

F. Failure to make the relocation payments in the manner and within such times as prescribed in this Section 8.22.450 is not a defense to an unlawful detainer action. However, if an owner fails to make the relocation payment as prescribed, the tenant may file an action against the owner and, if the tenant is found eligible for the relocation payments, the tenant will be entitled to recover the amount of the relocation payments plus an equal amount as damages and the tenant's attorney's fees. Should the owner's failure to make the payments as prescribed be found to be in bad faith, the tenant shall be entitled to the relocation payments plus an additional amount of three times the amount of the relocation payments and the tenant's attorney's fees.

G. A tenant who is eligible for relocation payments under state or federal law, is not also entitled to relocation under this section. A tenant who is also eligible for relocation under the City of Oakland's Code Enforcement Relocation Program (O.M.C. Chapter 15.60), must elect for either relocation payments under this section or O.M.C. Chapter 15.60, and may not collect relocation payments under both.

H. The regulations may provide procedures for escrowing disputed relocation funds. (Ord. 12539 § 1 (part), 2003)

#### **8.22.460 Re-offering withdrawn units for rent.**

A. Requirements for all re-offers of Withdrawn Units for rental pursuant to this subsection.

1. The owner must provide written notice of the intention to re-offer a Withdrawn Unit to the Rent Adjustment Program not less than thirty (30) days prior to re-offering a Withdrawn Unit for rent;

2. The owner must offer each Withdrawn Unit at an amount of rent not in excess of the same rent as of the date of withdrawal plus any CPI Rent Adjustments that could have applied had the Units not been withdrawn;

3. Offer to former tenant.

a. The owner must first offer the Withdrawn Unit for rent or lease to the tenant displaced from that unit by the withdrawal pursuant to this section, if the tenant advised the owner in writing within thirty (30) days of the displacement of the tenant's desire to consider an offer to renew the tenancy and furnished the owner with an address to which that offer is to be directed. Such tenant must advise the owner at any time during the eligibility of any change of address to which an offer is to be directed.

b. If the owner again offers a Withdrawn Unit for rent pursuant to this section and the tenant advised the owner pursuant to subsection 8.22.460 A.3.a of a desire to consider an offer to consider an offer to renew the tenancy, then the owner shall offer to reinstitute a rental agreement on terms permitted by law and this section to that displaced tenant. This offer shall be deposited in the United States mail, by registered or certified mail with postage prepaid, addressed to the displaced tenant or lessee at the address furnished to the owner as provided in this subparagraph, and shall describe the terms of the offer. The displaced tenant shall have thirty (30) days from the deposit of the offer in the mail to accept the offer by personal delivery of that acceptance or by deposit of the acceptance in the United States mail by registered or certified mail with postage prepaid.

8. Re-Offering Withdrawn Units for Rent Within Two Years of Withdrawal. In the event that the Withdrawn Units are offered again for rent or lease for residential purposes by the owner within two years from date the rental units were withdrawn

from rent or lease, the following provisions shall govern:

1. An owner who re-offers withdrawn rental units for residential rental within two years of the date of delivery of the Withdrawal Notices to the Rent Adjustment Program shall be liable to any tenant who was displaced from the property by the withdrawal of the units for actual and punitive damages. Any action by a tenant pursuant to this subparagraph shall be brought within three years of the date of delivery of the Withdrawal Notices to the Rent Adjustment Program. Nothing in this subparagraph precludes a tenant from pursuing any alternative remedy available under the law.

2. The City Attorney may institute a civil proceeding against any owner who has again offered Withdrawn Units for rent within two years the date of delivery of the Withdrawal Notices to the Rent Adjustment Program, for exemplary damages for displacement of tenants. Any action brought by the City Attorney shall be brought within three years of the date of delivery of the Withdrawal Notices to the Rent Adjustment Program.

C. Re-Offering Withdrawn Units for Rent Within Five Years of Withdrawal. For all tenancies commenced during the time periods described in subparagraphs below, the Withdrawn Units shall be offered and rented at an amount not in excess of the lawful rent in effect on the date of delivery of the Withdrawal Documents to the Rent Adjustment Program, plus any CPI Rent Adjustments available. The provisions of this paragraph apply to all tenancies commenced during either of the following time periods:

1. The five-year period after the date of delivery of the Withdrawal Notices to the Rent Adjustment Program, whether or not the withdrawal is rescinded or the withdrawal of the rental units is completed pursuant to Withdrawal Notices.

2. The five-year period after the units the date of delivery of the Withdrawal Notices to the Rent Adjustment Program.

D. Re-Offering Withdrawn Units for Rent Within Ten Years of Withdrawal.

1. An owner who offers Withdrawn Units again for rent within a period not exceeding ten (10) years

the date of delivery of the Withdrawal Notices to the Rent Adjustment Program shall first offer the unit to the tenant displaced from that unit by the withdrawal, if that tenant requests the offer in writing within thirty (30) days after the owner has notified the Rent Adjustment Program of an intention to offer the Withdrawn Units again for residential rent pursuant to Subsection 8.22.460 A.

2. The owner of the Withdrawn Units shall be liable to any tenant who was displaced by that action for failure to comply with this subsection for punitive damages in an amount not to exceed the contract rent for six months.

E. Demolition of Withdrawn Units and Construction of New Units. If the Withdrawn Units are demolished and new residential rental units are constructed on the same property, and are offered for rent within five years of the date the Withdrawn Units were withdrawn from rent, the newly constructed residential rental units shall be subject to controls pursuant to O.M.C. Chapter 8.22, Article I on the price at which they would be offered on the basis of a fair and reasonable return on the newly constructed residential rental units, notwithstanding any exemption in O.M.C. Chapter 8.22, Article I for newly constructed units.

F. Application of Withdrawal Constraints to Subsequent Owner.

1. The constraints on offering Withdrawn Units again for rent or demolition of the Withdrawn Units and construction of new units apply to the owner of record when the withdrawal is initiated and any subsequent owner of the real property on which the Withdrawn Units are located.

2. Ninety (90) days after filing a notice of intent to withdraw units pursuant to this section, the owner shall submit to the Rent Adjustment Program a notice that specifically describes the real property where the Withdrawn Units are located, the dates applicable to the constraints, and the name of the owner(s) of record of the real property. This notice must be signed under penalty of perjury. The Rent Adjustment Program shall record this notice with the Alameda County Recorder. The notice shall be indexed in the grantor grantee index.

3. A person who acquires title to the real property subsequent to the date upon which the rental units thereon have been withdrawn from rent or lease, as a bona fide purchaser for value, shall not be a successor in interest for the purposes of this O.M.C. Article 8.22.400, if the notice prescribed by this section has not been recorded with the county recorder at least one day before the transfer of title. (Ord. 12539 § 1 (part), 2003)

#### **8.22.470 Defense to unlawful detainer.**

If an owner seeks to displace a tenant from a unit withdrawn from rent pursuant to this O.M.C. Article 8.22.400 by an unlawful detainer, the tenant may appear and answer or demur pursuant to California Code of Civil Procedure Section 1170 and may assert by way of defense that the owner has not complied with the applicable provisions of California Government Code Sections 7060. et seq., this section, or any regulations promulgated by the City Council or Rent Board to implement this section. (Ord. 12539 § 1 (part), 2003)

#### **8.22.480 Miscellaneous**

A. Compliance with Other Laws. This O.M.C. Article 8.22.400 shall in no respect relieve an owner from complying with the requirements of any applicable state law or of any lease or rental agreement.

B. Notices to Owners by Tenant. Any notices sent by a tenant to an owner is deemed effective if sent or delivered to the owner in the manner prescribed in this Article III at the location or address where the tenant paid rent to the owner unless the owner notifies the tenant in the manner owners are required to notify tenants in this section to send such notices to another address at least thirty (30) days prior to the effective date of such address or location change.

C. Regulations and Forms. The Rent Board has the authority to make such regulations to implement this O.M.C. Article 8.22.400 as are not inconsistent with this section or with Government Code § 7060, et seq. The Rent Adjustment Program shall develop forms to implement this section. Any changes to the initial forms shall be effective thirty (30) days after they are made available to the public at the Rent Ad-

justment Program offices, unless the Rent Adjustment Program makes a finding that an earlier effective date is necessary.

D. Severability. This O.M.C. Chapter 8.22, Article III shall be liberally construed to achieve its purposes and preserve its validity. If any provision or clause of this chapter or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this O.M.C. Chapter 8.22, Article III which can be given effect without the invalid provision or application; and to this end the provisions of this chapter are declared to be severable and are intended to have independent validity.

E. Non-waiverability. Any provision, whether oral or written, in or pertaining to a rental agreement whereby any provision of this O.M.C. Article 8.22.400 is waived or modified, is against public policy and void.

#### **F. Effective Date.**

1. The ordinance codified in this O.M.C. Article 8.22.400 takes effect pursuant to Section 216 of the Oakland City Charter.

2. This O.M.C. Article 8.22.400 applies to all terminations of tenancy based on Measure EE subsection (6)(A)(11) (Ellis Act evictions) that commenced before the effective date of this ordinance, but where the notice period for the termination of tenancy has not expired.

3. Sections 8.22.400 through 8.22.420, 8.22.460 and 8.22.480 apply to all withdrawn units where the termination of tenancy based on Measure EE subsection (6)(A)(11) (Ellis Act) expired or the tenant vacated prior to the effective date of Section 8.22.400. In order for a tenant to be eligible to receive an offer to re-rent the Withdrawn Unit, the tenant must provide an address to the owner within thirty (30) days after the enactment of this section. The rent adjustment program is authorized to record a notice in accordance with subsection 8.22.460(F)(2) for all units where the rent adjustment program receives notice that the units were withdrawn in accordance with Measure EE subsection (6)(A)(11). (Ord. 12539 § 1 (part), 2003)

## Article IV. Rent Program Service Fee

### **8.22.500      Rent program service fee.**

A. Establishment of the Fee. The rent program service fee (the “fee”) is hereby established. The fee and any penalties or costs for late or non payment of the fee are dedicated solely to the payment or services and costs of the rent adjustment program and may be used only for the administration, outreach, legal needs, enforcement of Chapter 8.22 (including the rent adjustment program and the Just Cause for Eviction Ordinance), collection of this fee, and other costs of the rent adjustment program and cannot be used for any other purpose. The City Manager shall develop procedures for collection of the fee and ensuring that all funds generated by the fee will be used only for the rent adjustment program. The fee is to be charged against any residential rental unit that is subject to either the Rent Adjustment Ordinance, the Just Cause for Eviction Ordinance, or both.

#### B. Definitions.

- . 1. “Rental property owner” includes an owner as defined in the Rent Adjustment Ordinance (O.M.C. 8.22.020) or a landlord as defined in the Just Cause for Eviction Ordinance (Measure EE, Section 4A).

- . 2. “Tenant” has the same meaning as that term is defined in the Rent Adjustment Ordinance (O.M.C. 8.22.020).

C. Amount of Fee. The amount of the fee shall be set by the City Council in the master fee schedule. For the city’s fiscal years of 2001—2002, and 2002—2003 the fee is set at twenty-four dollars (\$24.00) per covered unit. Each fiscal year the City Manager shall report to the City Council on the costs of the rent adjustment program for the preceding fiscal year and the anticipated costs of the rent adjustment program for the coming year.

D. Residential Rental Units Subject to the Fee. The fee is to be charged on a per unit basis against all residential rental units that are either covered units or are covered by the Just Cause for Eviction Ordinance, except such residential rental units that are owned or operated by a public entity, including, but not limited to, the City of Oakland, the Redevelopment Agency of the City of Oakland, and the Oak-

land Housing Authority. A rental property owner who does not timely pay the fee because the rental property owner claims the dwelling unit is not subject to the fee must pay all fees, delinquent charges, interest, and collection costs for any dwelling unit that is found by the city to be subject to the fee. Neither the fact that a rental property owner paid the fee nor that a rental property owner claimed dwelling units are not subject to the fee can be used as evidence in any determination of a petition with the rent adjustment program or in a court proceeding regarding whether the subject dwelling unit is covered by the Rent Adjustment Ordinance or the Just Cause for Eviction Ordinance.

E. Fee Based on Business Operation. The fee is a fee associated with the operation of a residential rental property business and not a fee based on ownership of real property.

F. Due Date for Fee. For the first fiscal year of 2001—2002, the fee will be due on March 1, 2002 and will be deemed delinquent if not paid by May 1, 2002. For all subsequent fiscal years, the fee will be due on January 1, and will be deemed delinquent if not paid by March 1.

G. Passthrough of One-Half of Fee. For rental properties that are covered by the rent adjustment program, a rental property owner may pass through one-half of the fee to a tenant in the year in which it is due, unless the owner does not pay the fee before the date it is deemed late. A rental property owner may not pass through any penalties, delinquent charges, or interest to a tenant. Rental properties that subject to the fee, but are not covered by the rent adjustment program are not subject to the limitation in this Subsection 8.22.500(G).

H. Delinquent Owner. A rental property owner who has not paid the fee and any charges related to a delinquency in payment of the fee cannot:

1. Respond to a petition brought by a tenant; or
2. Petition for a rent increase.

I. Delinquent Charges, Interest, and Collection Costs.

1. An owner who does not pay the fee on or before the date it is considered late must pay a delinquency charge according to the following schedule:

a. Ten (10) percent of the fee due if paid in full within thirty (30) days of the date it is considered late;

b. Twenty-five (25) percent of the fee due if paid in full within sixty (60) days of the date it is considered late;

c. Fifty (50) percent if paid after sixty (60) days of the date it is considered late.

2. In addition to the delinquent charges, a rental property owner who fails to remit the fee due by the date it is late shall pay simple interest at the rate of one percent per month or fraction thereof on the amount of the fee inclusive of delinquent charges from the date the fee is late.

3. A rental property owner who has not paid the fee by the end of the fiscal year in which it is due may also be assessed the city's costs of collecting the fee, including the city's administrative costs of collection and any attorney's fees whether incurred by the City Attorney's Office or by outside counsel.

4. The amount of any fee, delinquent charges, interest, and collection costs imposed by Chapter 8.22 shall be deemed a debt to the city and any rental property owner carrying on a residential rental business without paying the fee and/or any delinquent charges, interest or collection costs shall be liable in an action in the name of the city in any court of competent jurisdiction, for the amount of the fee and any tax and delinquent charges, interest or collection costs imposed. An action to collect the fee must be commenced within three years of the date the fee became due. An action to collect delinquent charges, interest or collection costs for nonpayment of the fee must be commenced within three years of the date such accrues.

J. Severability. This O.M.C. Article 8.22.500 shall be liberally construed to achieve its purposes and preserve its validity. If any provision or clause of this chapter or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application; and to this end the provisions of this chapter are declared to be severable and are intended to have independent validity.

K. Nonwaiverability. Any provision, whether oral or written, in or pertaining to a rental agreement whereby any provision of this O.M.C. Chapter 8.22, Article IV (8.22.500) is waived or modified, is against public policy and void.

L. Effective Date.

1. The ordinance codified in this O.M.C. Chapter 8.22, Article IV (8.22.500) takes effect this section chapter take effect pursuant to Section 216 of the Oakland City Charter.

2. For rental units covered only by the Just Cause for Eviction Ordinance (O.M.C. Chapter 8.22 Article II (8.22.300)) and not by the Rent Adjustment Ordinance (O.M.C. Chapter 8.22 Article I (8.22.100)), the fee shall be charged to such rental units in the fiscal year beginning July 1, 2003. (Ord. 12517 § 1, 2003)

## Chapter 8.23

### **EVICTION FOR NUISANCE AND ILLEGAL ACTIVITY**

**Sections:**

**8.23.100      Eviction for nuisance and illegal activity ordinance.**

**8.23.100      Eviction for nuisance and illegal activity ordinance.**

A. Purpose. The city of Oakland has a significant problem wherein owners of rental property have tenants who commit illegal acts on the property or use it to further illegal activities. Often rental property owners fail to take action to evict such tenants for a variety of reasons including, but not limited to: neglect, lack of knowledge of the illegal activity, monetary gain from renting to the offending tenants, or fear of retribution from the offending tenants. This illegal activity represents a serious threat to the health, safety, and welfare of other residents in the rental property, the neighborhood in which the rental property is located, and the city as a whole.

The city has broad authority to address nuisances, including nuisances created by illegal activity. Often the city's recourse is to seek mandatory injunctions to force rental property owners to remove tenants who engage in illegal activity; this can be time consuming and costly to the city and the rental property owner. The city may also have to order the property vacated, which often can result in the displacement of tenants who are not engaged in illegal activity. The City Council desires a more expeditious, less costly, and more targeted approach to removal from the rental property tenants committing a nuisance by engaging in illegal activity.

The purposes of the ordinance codified in this chapter include: to establish a procedure whereby rental property owners can be required to evict tenants committing illegal activity on the premises; to penalize such owners for maintaining a nuisance or authorize the city to take other action against the rental property owner for failing to take appropriate action against the offending tenants; to enable rental property owners to assign the eviction cause of action

to the city and allow the City Attorney to handle the eviction of the offending tenant; and to authorize owners to remove from the rental unit only the person engaged in the illegal activity and not other tenants in the unit who may be innocent of the activity.

B. Definitions. For the purposes of this section, the following definitions apply:

“Commercial rental unit” means any rental unit that is rented or offered for rent for commercial, not residential use.

“Controlled substance” means a drug, substance, or immediate precursor, as listed in the Uniform Controlled Substances Act, Health and Safety Code Section 11000, et. seq.

“Drug-related nuisance” means any activity related to the possession, sale, use or manufacturing of a controlled substance that creates an unreasonable interference with the comfortable enjoyment of life, property or safety of other residents of the premises. These activities include, but are not limited to, any activity commonly associated with illegal drug dealing, such as noise, steady foot and vehicle traffic day and night to a particular unit, barricaded units, possession of weapons, or drug loitering as defined in California Health and Safety Code Section 11532, or other drug-related activities. Activity relating to the sale of a controlled substance that occurs off the premises is regarded as having occurred on the premises if, the activity occurs within such proximity to the premises that the tenant’s activity either unreasonably interferes with the comfortable enjoyment of life, property or safety of other residents of the premises or the tenant likely uses the premises to further the drug sale activity.

“Gang-related crime” means any crime motivated by gang membership in which the perpetrator, victim, or intended victim is a known member of a gang.

“Illegal drug activity” means a violation of any of the provisions of Chapter 6 (commencing with Section 11350) or Chapter 6.5 (commencing with Section 11400) of the California Health and Safety Code.

“Illegal possession, sale, or use of weapon” means illegal possession of a weapon by anyone occupying a rental unit who is not authorized to possess such a weapon, who sells such weapon and is not legally permitted to do so, or who uses or possesses the

weapon in an illegal manner. Weapon includes, but is not limited to, a "deadly weapon" as defined in California Business and Professions Code Section 7500.1 and includes any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, metal knuckles, dirk, dagger, pistol, or revolver, or any other firearm, any knife having a blade longer than five inches, any razor with an unguarded blade, and any metal pipe or bar used or intended to be used as a club.

"Owner" means an owner, landlord, lessor, or sublessor (including any person, firm, corporation, partnership, or other entity) of residential or commercial rental property who receives or is entitled to receive rent directly or through an agent for the use of any rental unit, or the agent, representative including a property manager, or successor of any of the foregoing.

"Premises" means the rental unit and the land on which it and other buildings of the rental complex are located and common areas, including but not limited to, parking facilities, streets, alleyways, laundry, stairwells, yard, roofs, and elevators.

"Rental unit" means a residential rental unit or commercial rental unit irrespective of whether the unit, buildings, or premises are properly permitted or zoned for the particular use.

"Residential rental unit" means all dwelling units, efficiency dwellings, units, guest rooms, and suites, including one-family dwellings, multi-family dwellings, rooming houses, dormitories, live-work units, units in a hotel occupied by tenants (and not by transients), and condominiums rented or offered for rent for living or dwelling purposes in the city of Oakland. This term also includes mobile homes, whether rent is paid for the mobile home and the land upon which the mobile home is located, or the rent is paid for the land alone. Further, it includes recreational vehicles, as defined in California Civil Code Section 799.24, if located in a mobile home park or recreational vehicle park, whether rent is paid for the recreational vehicle and the land upon which it is located, or rent is paid for the land alone.

**Safety-Related Reasons.** Safety-related reasons include that the owner has information that a credible threat has been made by the tenant committing the

illegal activities or someone on that tenant's behalf against the person or property of the owner, the owner's family, the owner's employees, the owner's other tenants, or a witness against the offending tenant.

"Tenant" means a tenant, subtenant, lessee, sublessee, any person entitled to use, possession, or occupancy of a rental unit, or any other person residing in the rental unit.

"Threat of violent crime" means any statement made by a tenant, or at his or her request, by his or her agent to any person who is on or resides on the premises or to the owner of the premises, or his or her agent, threatening commission of a crime which will result in death or great bodily injury to another person, with the specific intent that the statement is to be taken as a threat, even if there is no intent of actually carrying it out, when on its face and under the circumstances in which it is made, it is so unequivocal, immediate and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety. Such a threat includes any statement made verbally, in writing, or by means of an electronic communication device and regarding which a police report has been completed. A threat of violent crime under this section does not include a crime that is committed against a person who is residing in the same rental unit as the person making the threat. "Immediate family" means any spouse, whether by marriage or not, domestic partner, parent, child, any person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household. "Electronic communication device" includes but is not limited to, telephones, cellular telephones, video recorders, fax machines, or pagers. "Electronic communications" has the same meaning as the term is defined in subsection 12 of Section 2510 of Title 18 of the United States Code.

"Violent crime" means any crime involving a gun, a weapon, or serious bodily injury and for which a police report has been completed. A violent crime

under this section does not include a crime that is committed against a person residing in the same rental unit as the person committing the crime.

**C. Incorporation of Eviction for Illegal Activity Into all Rental Agreements.**

1. All agreements for the rental of real property in the city of Oakland, whether for residential or commercial purposes, are deemed to include a prohibition against using the rental unit and the premises for illegal activity, or committing or permitting the rental unit or the premises to be used for an illegal act thereon. Such illegal acts include, but are not limited to, the following illegal activity: drug-related nuisance, gang-related crime, illegal drug activity, illegal possession, sale, or use of weapon, violent crime, or threat of violent crime. A tenant who violates this prohibition is subject to eviction pursuant to subsection 8.22.360(A)(6) (Just Cause for Eviction Ordinance, Measure EE subsection 6(A)(6)) for a residential tenant whose rental unit is subject to Section 8.22.300, et seq. and, for any commercial tenant or residential tenant whose rental unit is not covered by Section 8.22.300, et seq., under any appropriate contract or state law provision pertaining to termination of tenancy for illegal activities.

**D. Duty of Owner to not Permit or Maintain Tenant Nuisance.**

1. For purposes of this chapter, an owner who causes or permits either of the following is deemed to be creating, permitting, or maintaining a nuisance:

a. The premises to be used or maintained for any drug-related nuisance, gang-related crime, illegal drug activity, illegal possession or use of weapon, violent crime, or threat of violent crime; or

b. A tenant to use or occupy the premises if the tenant commits, permits, maintains, or is involved in any drug-related nuisance, gang-related crime, illegal drug activity, illegal possession or use of weapon, violent crime, or threat of violent crime.

2. As part of a compliance plan after being cited for maintaining a nuisance, or by direct notice from the city to evict a tenant, an owner may be required to evict a tenant who is creating nuisance by causing or permitting illegal activity on the premises.

3. Information to Tenants. Owners who are covered by the rent adjustment ordinance are re-

quired to give a notice to all tenants at the commencement of their tenancies pursuant to Section 8.22.060. In addition to the information required by Section 8.22.060, this notice must include information to the effect that a tenant who commits an illegal act on the premises, as set out in this section, is required by Oakland law to be evicted and that if the owner does not evict, the City Attorney elect may do so upon request of the owner. The City Manager shall modify the required notice to include the appropriate additional language set out in this subsection.

4. The illegal activities described in this section are not exclusive of the activities or conduct that a tenant may engage in and be subject to eviction pursuant to subsection 8.22.360(A)(6) (Measure EE, subsection (6)(A)(6)) or under state law provisions providing for eviction for engaging in illegal activity on the premises.

**E. Eviction of Offending Tenant.**

1. A tenant who commits, permits, maintains, or is involved in any drug-related nuisance, gang-related crime, illegal drug activity, illegal possession or use of weapon, violent crime, or threat of violent crime on the premises where the tenant resides is deemed to be using the rental unit for an illegal purpose pursuant to subsection 8.22.360 (A)(6) (Measure EE (Just Cause for Eviction), subsection (6)(A)(6)). Under this section, "permit" includes allowing a guest, visitor, or licensee to commit an illegal act on the premises or use the premises for the illegal purpose.

2. An owner may bring an action to recover possession of a rental unit on one of the following grounds, which action may be brought under subsection 8.22.360(A)(6) (Measure EE subsection (6)(A)(6)) for a residential tenant in a rental unit subject to Section 8.22.300, and, for any commercial tenant or residential tenant not covered by Section 8.22.300, under any appropriate contract or state law provision pertaining to termination of tenancy:

a. The tenant commits, permits, maintains, or is involved in any drug-related nuisance, gang-related crime, illegal drug activity, illegal possession, sale, or use of weapon, violent crime, or threat of violent crime on the premises, or

b. The tenant has been convicted of a crime and the underlying offense involves any drug-related nuisance, gang-related crime, illegal drug activity, illegal possession, sale, or use of weapon, violent crime, or threat of violent crime, and the crime occurred on the premises where the tenant resides or involves the use of the premises.

F. Notification by the City to Remove Tenant.

1. Evaluation of Facts and Evidence by City.

a. The City Manager, or the City Manager's designee, is authorized to gather facts and evidence to evaluate whether a tenant committed, permitted, maintained, or was involved in any drug-related nuisance, gang-related crime, illegal drug activity, illegal possession, sale, or use of weapon, violent crime, or threat of violent crime on the premises where the tenant resides. Facts or evidence may be derived from any source including, but not limited to, the owner, other tenants, persons within the community, law enforcement agencies, or prosecution agencies. The City Manager's evaluation of whether a tenant is engaged in illegal conduct is to be based on whether the owner could prevail in a unlawful detainer proceeding against the tenant based on a preponderance of evidence that the tenant is engaged in the illegal activities and that eviction under such grounds is permissible under the just cause for eviction ordinance (Section 8.22.300) and applicable state law; a tenant need not be arrested, cited, or convicted of the conduct to justify removing the tenant from the rental unit. Based on such evaluation, the City Manager, or the City Manager's designee, may determine if the owner of the premises where the tenant resides should be required seek the eviction of the tenant.

b. The city's evaluation should not be based on any information regarding the tenant's alleged illegal activities that the city is not willing or able to release to the owner. Such information includes, but is not limited to, any information the city may have uncovered during its investigation that it would not release to a crime victim including, but not limited to, the identity of any confidential informants, witnesses who requested anonymity, or any other information that might jeopardize any criminal case or on-going investigation, or based on any federal, state, or city

law that requires withholding or redacting certain information.

2. Notice by City to Owner and Tenant.

a. When the City Manager or designee determines that a tenant committed, permitted, maintained, or was involved in any drug-related nuisance, gang-related crime, illegal drug activity, illegal possession, sale or use of weapon, violent crime, or threat of violent crime on the premises where the tenant resides, the city will give the owner written notice, requiring the owner to file an action for the removal of the tenants in the unit within twenty-five (25) days of the date of mailing the notice (subject to any extensions permitted by subsection 8.23.100(F)(3)). Included with the notice will be the amount of city's fee assessing the owner the costs of investigating and evaluating the facts and evidence leading to the notice and the costs of sending the notice pursuant to subsection 8.23.100(4). If the owner fails to file the unlawful detainer action within the twenty-five (25) days, the city make take further action against the owner for maintenance of a nuisance, including the assessment of civil penalties pursuant to Section 1.08.100.

c. This notice to the owner to remove a tenant shall include a summary of the factual basis for requiring the eviction of the tenant and the availability of documentary evidence supporting the eviction.

d. The city shall serve the notice on the owner and the tenant by certified mail, return receipt requested and first class mail or other appropriate delivery method authorized by Section 1.08.050. Failure of the tenant to receive or accept the notice does not preclude the city requiring the owner to remove the tenant. As an accommodation, the city should attempt to notify all owners who appear on the public record; however, notice to any owner of record is deemed sufficient notice. Also as an accommodation, the city should also attempt to provide notice to agents of the owner responsible for managing the subject premises, if known to the city.

e. Within twenty-five (25) days of the city's mailing the written notice to remove a tenant to the owner (subject to any extensions pursuant to subsection 8.23.100(F)(3)), the owner must respond to the notice in one of the following ways:

i. Provide the city with all relevant information pertaining to the unlawful detainer case the owner has filed or a statement that the tenant has completely vacated and surrendered the rental unit.

ii. Request the city review whether there is sufficient evidence for the owner to prevail in an unlawful detainer, including the existence of any contrary or exculpatory evidence, and whether the owner should be required to evict the tenant. In order to have the city review its decision to issue the notice to the owner, the owner must state with specificity why the owner believes the evidence is insufficient to prevail in an unlawful detainer.

iii. Provide a written explanation setting forth any safety-related reasons for noncompliance, and a request to assign the unlawful detainer to the city.

iv. Request the city review whether a settlement evicting only the offending tenant or a leaving minor offending tenant in place pursuant to subsection 8.23.100(H) is appropriate. The owner must state with specificity the reasons for requesting settlement.

f. If the owner requests the city to accept assignment of the unlawful detainer, reconsider the notice, or settlement in advance of the owner filing the unlawful detainer, the City Attorney will notify the owner of acceptance or rejection of these owner requests within fifteen (15) days or within such later time as is reasonably practicable after receipt of the owner's response to the notice.

g. If the City Attorney rejects either assignment of the unlawful detainer, reconsideration of the notice, or settlement under subsection 8.23.100(H), the owner must file the unlawful detainer action within fifteen (15) days of the date of the City Attorney's mailing of the rejection of the request for unlawful detainer assignment. The owner must also report all relevant information pertaining to the unlawful detainer case to the city within the fifteen (15) days following the city's rejection of any request.

h. If an owner fails to take the action to commence an unlawful detainer within the time frames required by this subsection or fails to submit a report or request to the city to accept assignment of the eviction within the required time frames, the city may take further action against the owner for maintenance of a nuisance, including, but not limited to, the as-

essment of civil penalties pursuant to Section 1.08.100.

i. An owner who makes a request for the city to accept assignment, reconsider the notice, or settle a potential unlawful detainer without reasonable justification, in bad faith, or to delay commencing an unlawful detainer, may be cited for an administrative citation and assessed costs pursuant to Chapter 1.12.

3. Availability of Evidence to Owner. The city will make available to the owner the evidence the city relied on in making its determination that the tenant should be evicted. The owner must make a written request for the information. The city has the goal of releasing the evidence to the owner within five days of receipt of the owner's written request. If the city is not able to release the evidence within the five days, the owner's time for responding to the notice is extended by one day for each day beyond the five days. The city will not provide the owner with any information the city may have uncovered during its investigation that it would not release to a crime victim including, but not limited to, the identity of any confidential informants, witnesses who requested anonymity, or any other information that might jeopardize any criminal case or on-going investigation, or based on any federal, state, or city law that requires withholding or redacting certain information.

4. Contents of Notice to Tenant. The notice to the tenant requiring the tenant's eviction must include the following:

a. A summary of the purpose and procedures under this section;

b. A statement of where general information concerning evictions is available, (which can be a reference to the city's rent program);

c. Information on settlement of the eviction where the offending tenant is removed or where a minor is the offending tenant;

d. A summary of the factual basis for requiring the eviction of the tenant and the availability of documentary evidence supporting the eviction; and

e. Any other information the City Manager deems appropriate.

5. Availability of Evidence to Tenant. The city will make available to the tenant the evidence the city relied on in making its determination that the tenant

should be evicted. The tenant must make a written request for the information. The city has the goal of releasing the evidence to the tenant within five days of receipt of the tenant's written request. The city will not provide the tenant with any information the city may have uncovered during its investigation that it would not release to a crime victim including, but not limited to, the identity of any confidential informants, witnesses who requested anonymity, or any other information that might jeopardize any criminal case or on-going investigation, or based on any federal, state, or city law that requires withholding or redacting certain information.

6. In response to the city's notice to the tenant, the tenant may make the following requests to the city:

a. Request the city review whether a settlement evicting only the offending tenant or a leaving minor offending tenant in place pursuant to subsection 8.23.100(H) is appropriate. The tenant must state with specificity the reasons for requesting settlement, or

b. Request the city review whether there is sufficient evidence for the owner to prevail in an unlawful detainer, including the existence of any contrary or exculpatory evidence, and whether the owner should be required to evict the tenant. In order to have the city review its decision to issue the notice to the owner, the tenant must state with specificity why the tenant believes the evidence is insufficient to prevail in an unlawful detainer. The tenant should make this request for review within fifteen (15) days after the date of the city's notice to the tenant advising the tenant that city noticed the owner to evict the tenant.

7. Should the city decide to rescind a notice to an owner to evict a tenant, the city will attempt to notify the owner and the tenant as soon as feasible after the decision is made.

8. Within ten days of the tenant vacating and surrendering the rental unit or the final judgment in an unlawful detainer, the owner must report the results to the city. At any time after the city issues a notice to remove a tenant to an owner, the city may request a report on the status of the tenant's removal.

G. Assignment of Unlawful Detainer to the City.

1. The owner may assign an unlawful detainer cause of action to the city for the City Attorney to pursue, at the City Attorney's election, where the unlawful detainer is brought for illegal activities by the tenant pursuant to this section and the owner provides a valid safety-related reason for not bringing the unlawful detainer. The request for assignment must be on a form provided by the city.

2. The city may, at its sole election, also accept assignment of an unlawful detainer where the removal of the tenant is initiated directly by the owner and not by the city pursuant to subsection 8.23.100(F). Where the owner initiates the request for assignment of the unlawful detainer before notification by the city, the unlawful detainer must be based on illegal activity by the tenant pursuant to this section and the owner must provide a valid safety-related reason for not bringing the unlawful detainer directly. The owner must also provide sufficient evidence to establish the tenant's violation of illegal purpose provisions of subdivision 4 of Section 1161 of the California Code of Civil Procedure and/or subsection 8.22.360(A)(6) (Measure EE (Just Cause for Eviction), subsection (6)(A)(6)) sufficient to warrants the tenant's eviction.

3. The City Attorney, at the City Attorney's sole discretion, may accept or reject assignment of the unlawful detainer and the City Attorney's decision is not appealable. In making a decision to accept or reject a request for assignment, the City Attorney should make a practical, common-sense decision whether, given all the circumstances set forth in the owner's request before him or her, including the "veracity" and "basis of knowledge" of persons supplying hearsay information, there is a fair probability that a credible safety-related reason exists. Fair probability (probable cause) means more than mere suspicion, but less than *prima facie* proof, and less than a preponderance of the evidence. The City Attorney may also consider the availability of sufficient resources to handle the unlawful detainer. The City Attorney should consult with the City Manager prior to making a decision to accept or reject an assignment. If the City Attorney refuses to accept assignment of the unlawful detainer, the owner remains responsible for bringing the unlawful detainer.

4. Litigation Costs.

a. If City Attorney accepts assignment of the right to bring the unlawful detainer action, the owner must reimburse the city for all costs and attorney's fees associated with addressing the unlawful detainer, including, but not limited to, costs of investigation, case preparation, discovery, and trial, in rates as set by the City Council in the master fee schedule.

b. Where the owner fails to pay the costs of the City Attorney's office provided for by this subsection, the city may place a lien for these costs against the owner's premises. The attorney and litigation costs will also become a debt to the city and the city may bring an action in any court of competent jurisdiction to collect the amount of any delinquent fees, and will be entitled to any attorney's fees and cost incurred to collect the debt. In the City Attorney's sole discretion, the City Attorney may require the owner to place a reasonable amount on deposit with the city for anticipated attorney's fees and costs as a condition of the city accepting assignment of the unlawful detainer.

5. If the City Attorney accepts the assignment of the owner's right to bring the unlawful detainer action, the owner retains all other rights and duties, including handling the tenant's personal property following issuance of the writ of possession and its delivery to and execution by the appropriate agency. The City Attorney's assignment ends when the judgment in the unlawful detainer is issued or a settlement is executed, unless the City Attorney agrees separately from the acceptance of the unlawful detainer assignment and the owner agrees to pay the additional costs.

6. If any party appeals the unlawful detainer judgment, the City Attorney may continue to retain the unlawful detainer assignment or return the matter to the owner to handle the appeal. The costs of appeal will be borne by the owner.

7. If the tenant prevails in an unlawful detainer assigned to the city, the owner will be responsible for any attorney's fees assessed by the court to the tenant as prevailing party, as if the unlawful detainer had not been assigned to the city.

8. In any assignment of an unlawful detainer accepted by the city, the owner will be required to

waive any claims against the city and hold the city harmless for any claims arising out of the city's prosecuting the unlawful detainer.

9. Once the City Attorney accepts an assignment, the owner may not revoke the assignment without the agreement of the City Attorney. Such an agreement may include payment of all attorney costs and litigation costs incurred by the city and assurance the unlawful detainer will be satisfactorily prosecuted.

H. Settlement of Unlawful Detainer by Removing Offending Person or where the Offender is a Minor.

I. The owner or the City Manager may settle an unlawful detainer action brought under this section by removing only the offending tenant and avoiding the eviction of all persons occupying the unit where the person alleged to be committing the nuisance or illegal activity resides. Such settlement must be approved by the City Attorney under the following conditions, unless the City Manager finds good cause for different terms:

a. The person determined by the city who committed the nuisance or illegal activity is excluded from the rental unit by court order;

b. The remaining tenants stipulate to a judgment in unlawful detainer against them should they permit the excluded person to return to the rental unit without first obtaining the permission of the owner and the City Manager; and

c. The remaining tenants agree to amend their rental agreement with owner to include a provision prohibiting the return of the former tenant who engaged in the illegal activity for a period of at least three years after execution of this settlement agreement, and that the return of such tenant constitutes a substantial breach of a material term of the tenancy and good cause for eviction. The tenants further agree that the settlement agreement and the notice given pursuant to subsection 8.23.100(F) of this section separately constitute written notices to cease required by subsection 8.22.360(A)(2) prior to bringing an unlawful detainer.

2. When the offending tenant is an unemancipated minor residing in a rental unit with the minor's parent or guardian, the owner or the City Attorney

may settle an unlawful detainer action brought under this section by permitting the minor and all other occupants to remain in the rental unit. Such settlement must be approved by the City Manager under the following condition, unless the City Manager finds good cause for different terms:

a. The minor's parent(s) or guardian(s) residing in the rental unit stipulate to a judgment in unlawful detainer against them should the minor engage in any other illegal conduct covered under this section; and

b. The minor's parent(s) or guardian(s) residing in the rental unit agree to amend their rental agreement with owner to include a provision that includes the following:

i. Any additional illegal conduct, as set out in this section that the minor tenant engages in anytime within at least three years following the execution of the settlement agreement constitutes a substantial breach of a material term of the tenancy pursuant to subsection 8.22.360(A)(2) and also constitutes illegal use of the premises pursuant to subsection 8.22.360(A)(6), and good cause for eviction under either of the aforementioned sections; and

ii. The tenants further agree that the settlement agreement and the notice given pursuant to subsection 8.23.100(F) separately constitute written notices to cease required by subsection 8.22.360 (A)(2) prior to bringing an unlawful detainer pursuant to that section.

3. Either the owner or the tenant may request the city consider settling the eviction either before or after the unlawful detainer is filed. The notice to the tenant that the city is requiring the tenant's removal will include information on settling the matter pursuant to this subsection.

#### I. Tenant Removed from Rental Unit Cannot Return for Three Years.

1. An owner may not re-rent to or permit a tenant who was removed from a rental unit pursuant to this section to reoccupy any rental unit in the city of Oakland owned by the owner for a period of at least three years following the tenant's vacating the rental unit, without first obtaining the approval of the City Manager, or the City Manager's designee.

2. For purposes of this section, a tenant is removed from a rental unit when the tenant vacates the

units either voluntarily after the city has sent a notice to the owner to seek the tenant's removal or after a court order evicting the tenant.

3. An owner who permits a removed tenant to occupy a rental unit owned by the owner within three years following the tenant's removal is subject to remedies by the city as if the owner had failed to prosecute an unlawful detainer against the tenant.

4. A tenant who re-rents from the same owner within three years after being removed from a rental unit owned by the owner is subject to being evicted under this section and may be subject to any remedies for nuisance available to the city, including, but not limited to assessment of civil penalties pursuant to Chapter 1.08.

J. Eviction Under this Section Deemed in Good Faith. Any eviction notice served to or unlawful detainer brought against a tenant pursuant to this section is deemed brought in good faith by the owner and not wrongful for purposes of any of the remedies available to a tenant pursuant to the just cause for eviction ordinance (Section 8.22.300, et seq.) irrespective of whether the tenant, owner, or city is the prevailing party except under the following circumstances:

1. The owner knew or should have known that that there was contrary or exculpatory evidence tending to show that the city's evidence is not sufficient to warrant the tenant's eviction;

2. The city did not consider the additional evidence prior to issuing its notice to the owner; and

3. The owner did not seek reconsideration of the city's issuing the notice for the tenant's eviction pursuant to subsection 8.23.100(F)(2)(e)(ii) based on the additional evidence.

#### K. Assessment of City's Cost to Owner.

1. To defray the costs to the city and taxpayers generally for investigating, evaluation, sending notices to owners, monitoring, and following up on compliance with notices to evict an offending tenant, the city will assess to each owner who receives a notice to evict an offending tenant a fee for such costs. The costs will include the staff and attorney time and overhead costs charged and calculated in accordance with the master fee schedule.

2. The amount of the initial fee will be sent to the owner along with each notice of evict a tenant. Additional fees may be assessed as the city incurs costs related to the notice and follow up or other activities. Payment of the fee will be due within fifteen (15) calendar days following the date of service of the notice. If the fee is not paid within the fifteen (15) days, the fee will be considered delinquent and is subject to being placed as a lien against the owner's property. A delinquent fee assessment may also be subject to such delinquent charges, penalties, and interest as may be set out in the master fee schedule.

3. The amount of the fee is deemed a debt to the city of Oakland. The city may bring an action in any court of competent jurisdiction to collect the amount of any delinquent fees. Should the city prevail in any litigation to collect any delinquent fees, the city is entitled to collect its attorney's fees and costs for pursuing the matter.

#### L. City Remedies for Owner Failure to Prosecute Unlawful Detainer or for Repeated Issuances of Notices to Remove Tenants.

1. In addition to citing the owner for civil penalties pursuant to Chapter 1.08, the city may bring a nuisance action against an owner who fails to bring, or fails to diligently or in good faith prosecute an unlawful detainer action against a tenant who commits, permits, maintains, or is involved in any nuisance or illegal activity on the premises under the conditions set out in this section.

2. Upon the failure of the owner to file an unlawful detainer action or to respond to the City Attorney after notice pursuant to subsection 8.23.100 (F)(1)(d) or, after having filed an action, if the owner fails to prosecute the unlawful detainer diligently and in good faith, the city may take any or all of the following actions:

- a. Assess the owner civil penalties for the nuisance pursuant to Chapter 1.08;
- b. Take any action authorized under Chapter 1.16;
- c. Bring an administrative action against the owner for permitting or maintaining a nuisance or substandard property which includes as a remedy a possible administrative order vacating the property;

d. Bring a nuisance action in court against the owner and/or tenant for maintaining a nuisance. As part of the relief sought, the City Attorney may seek a mandatory injunction assigning to the city the owner's unlawful detainer cause of action against the offending tenant. When the city prevails in a nuisance action against the owner under this section, the city is entitled to recover its administrative costs in pursuing the matter, including any costs of investigation, and any attorney's fees and costs related to bringing the court action.

3. An owner who receives more than two notices to remove tenants issued pursuant to this section within a twenty-four (24) month period, may be cited for nuisance, assessed civil penalties pursuant to Chapter 1.08, and required to pay for all of the city's costs associated with the investigation and noticing for each subsequent notice to remove a tenant issued to the owner. Each subsequent notice issued by the city to such owner is also subject to civil penalties under Chapter 1.08.

4. All remedies of the city pursuant to this section are cumulative and non-exclusive with any other remedies the city may have against an owner or a tenant who violates this section or who creates, permits, or maintains a nuisance.

M. Owner's Recovery of Costs from Tenant. Where an owner or the City Attorney, on the owner's behalf, prevail in an unlawful detainer action based on Section 8.23.100, the court may award as costs in pursuing the unlawful detainer, all costs assessed by the city administratively for the citation against the owner based on the tenant's conduct.

N. Time. In this section, "days" means calendar days, unless otherwise stated. A report to the city is considered timely if mailed to the city by its due date.

O. Procedures and Forms. The City Manager may develop procedures, and forms to implement this section.

P. Partial Invalidity. If any provision of the ordinance codified in this chapter or application thereof is held to be invalid, this invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provisions or applications, and to this end, the provisions and applications of this ordinance are severable.

**8.23.100**

**Q. Effective Date.** This ordinance will become effective in accordance with Section 216 of the Oakland city charter. (Ord. 12592 § 1, 2004)

## Chapter 8.24

### PROPERTY BLIGHT

**Sections:**

<b>8.24.010</b>	<b>Purpose of chapter.</b>
<b>8.24.020</b>	<b>Blighted property defined.</b>
<b>8.24.030</b>	<b>Time restriction—Parking.</b>
<b>8.24.040</b>	<b>General obligation.</b>
<b>8.24.050</b>	<b>Enforcement responsibility—Delegation of authority.</b>
<b>8.24.060</b>	<b>Abatement.</b>
<b>8.24.070</b>	<b>Restriction of use or occupancy—Dangerous condition.</b>
<b>8.24.080</b>	<b>Abatement procedures.</b>
<b>8.24.090</b>	<b>Procedures of this chapter—Cumulative.</b>
<b>8.24.100</b>	<b>Violation—Penalty.</b>

**8.24.010      Purpose of chapter.**

The purpose of this chapter is to promote the health, safety, and general welfare of the citizens by requiring a level of maintenance of residential, commercial, and industrial property which will protect and preserve the livability, appearance, and social and economic stability of the city and which will also protect the public from the health and safety hazards and the impairment of property values which results from the neglect and deterioration of property. (Ord. 12046 § 1, 1998: prior code § 15-1.01)

**8.24.020      Blighted property defined.**

Any property on which there exists any one or more of the following conditions or activities is a blighted property for the purpose of this chapter:

A. Abandoned Building or Structure.

1. A building or structure which is not occupied, inhabited, used, or secured. For purposes of this chapter, a building or structure is unsecured when it is unlocked or the public can gain entry without the consent of the owner,

2. Any partially constructed, reconstructed or demolished building or structure upon which work

is abandoned. Work is deemed abandoned when there is no valid and current building or demolition permit or when there has not been any substantial work on the project for six months;

B. Attractive Nuisance. Property which is in an unsecured state so as to potentially constitute an attraction to children, a harbor for vagrants, criminals, or other unauthorized persons, or so as to enable persons to resort thereto for the purpose of committing a nuisance or unlawful act;

C. A Building or Structure Which is in a State of Disrepair.

1. Any building or other structure which by reason of rot, weakened joints, walls, floors, underpinning, roof, ceilings, or insecure foundation, or other cause has become dilapidated or deteriorated,

2. Any building or other structure with exterior walls and/or roof coverings which have become so deteriorated as to not provide adequate weather protection and be likely to, or have resulted in, termite infestation or dry rot,

3. Buildings or structures with broken or missing windows or doors which constitute a hazardous condition or a potential attraction to trespassers. For purposes of this chapter "window" shall include any glazed opening, including glazed doors, which upon a yard, court, or vent shaft open unobstructed to the sky,

4. Buildings or structures including, but not limited to, walls, windows, fences, signs, retaining walls, driveways, or walkways which are obsolete, broken, deteriorated, or substantially defaced to the extent that the disrepair visually impacts on neighboring property or presents a risk to public safety. For purposes of this chapter "defaced" includes, but is not limited to, writings, inscriptions, figures, scratches, or other markings commonly referred to as "graffiti" and peeling, flaking, blistering, or otherwise deteriorated paint.

D. Property Inadequately Maintained.

1. Property which is not kept clean and sanitary and free from all accumulations of offensive matter or odor including, but not limited to, overgrown or dead or decayed trees, weeds or other vegetation, rank growth, dead organic matter, rubbish, junk,

garbage, animal intestinal waste and urine, and toxic or otherwise hazardous liquids and substances and material. For the purposes of this section the term "rubbish" shall include combustible and noncombustible waste materials, except garbage; and the term shall also include the residue from the burning of wood, coal, coke, and other combustible material; and the term shall also include paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, hay, straw, tin cans, metal, mineral matter, glass, crockery, and dust; and the term shall also include animal feed and the products of and residue from animal quarters. For the purposes of this section, the terms "animal" and "animal quarters" shall be as set forth in Chapter 6.04, Animal Control Regulations Generally, of this code,

2. Property which constitutes a fire hazard or a condition considered dangerous to the public health, safety, and general welfare,

3. Property which is likely to or does harbor rats or other vectors, vermin, feral pets, or other non-domesticated animal nuisances,

4. Property which substantially detracts from the aesthetic and economic values of neighboring properties including, but not limited to, personal property and wares and foodstuffs, premises garbage and refuse receptacles, and commercial and industrial business activities which are inadequately buffered from any street, sidewalk, or other publicly trafficked area or such buffering which is inadequately maintained. For the purposes of this section, "buffered" shall apply to the provisions set forth in Chapter 17.110 of the Oakland Planning Code,

5. Landscaping which is inadequately maintained or which is not installed as required by city codes or any permit issued in accordance with such codes,

6. Matter including, but not limited to, smoke, odors, dust, dirt, debris, fumes, and sprays which is permitted to be transported by wind or otherwise upon any street, course, alley, sidewalk, yard, park, or other public or private property and which is determined to be a violation of federal, state, regional, or local air quality regulations,

7. Property including, but not limited to, building facade, window, doorway, driveway, walkway, fence, wall, landscaped planter or area, sidewalk, curb and gutter, and edge of street pavement on which dirt, litter, vegetation, garbage, refuse, debris, flyers, or circulars have accumulated,

8. Property on which a swimming pool, pond, stream, or other body of water which is abandoned, unattended, unfiltered, or not otherwise maintained, resulting in the water becoming polluted. "Polluted water" is defined for the purpose of this chapter, as water which contains bacterial growth, remains of garbage, refuse, debris, papers and any other foreign matter or material which constitutes an unhealthy or unsafe condition,

9. Parking lots, driveways, paths, and other areas used or intended to be used for commercial and industrial business activities including, but not limited to, selling, manufacturing, processing, packaging, fabricating, treating, dismantling, processing, transferring, handling, transporting, storing, compounding, or assembling which are inadequately maintained and pose a risk of harm to public health or safety including, but not limited to, unpaved surfaces which generate fugitive dust and paved surfaces with cracks, potholes, or other breaks,

10. Property on which recyclable materials are openly stored. For the purposes of this chapter, "open storage" means storage on private property other than in a completely enclosed building. Materials shall be deemed to be held in "open storage" even though screened from public view, or view of residents of adjacent property, by a fence or other such partition,

11. Property which is not securely fenced or adequately lighted to prevent illegal access and activity related to the dumping of garbage, waste, debris and litter.

"Recyclable materials" includes any materials, goods, vehicles, machinery, appliances, product or article, new or used, which is suitable for reuse;

E. Property Which Creates a Dangerous Condition.

1. Property having a topography, geology, or configuration which, as a result of grading opera-

tions, erosion control, sedimentation control work, or other improvements to said property, causes erosion, subsidence, unstable soil conditions, or surface or subsurface drainage problems as to harm or pose a risk of harm to adjacent properties,

2. Property whereon any condition or object obscures the visibility of public street intersections to the public so as to constitute a hazard, including but not limited to, landscaping, fencing, signs, posts, or equipment,

3. Conditions which due to their accessibility to the public pose a hazard including, but not limited to, unused and broken equipment, abandoned wells, shafts, or basements, hazardous or unprotected pools, ponds, or excavations, structurally unsound fences or structures, machinery which is inadequately secured or protected, lumber, trash, fences or debris that may pose a hazard to the public, storage of chemicals, gas, oil, or toxic or flammable liquids;

#### F. Parking, Storage or Maintenance of the Following in Areas Zoned for Residential Use.

1. Any construction or commercial equipment, machinery, material, truck or tractor or trailer or other vehicle having a weight exceeding seven thousand (7,000) pounds, or recyclable materials, as defined in this chapter, except that such items may be temporarily kept within or upon residential property for the time required for the construction of installation of improvements or facilities on the property,

2. Trailers, campers, recreational vehicles, boats, and other mobile equipment for a period of time in excess of seventy-two (72) consecutive hours in front or side yard areas.

a. Any parking, keeping or storing of these items in the side or rear yard areas shall be either in an accessory building constructed in accordance with the provisions of this code or in an area which provides for a five-foot setback from any property line.

b. In addition to the setback requirement, fifteen hundred (1,500) square feet or at least sixty (60) percent of the remaining rear yard area, whichever is less, must be maintained as usable outdoor recreational space.

c. No item shall be parked, stored or kept within five feet of any required exit, including existing windows,

3. Any motor vehicle which has been wrecked, dismantled or disassembled, or any part thereof, or any motor vehicle which is disabled or which may not be operated because of the need for repairs or for any other reason for a period of time in excess of seventy-two (72) consecutive hours,

4. Any refrigerator, washing machine, sink, stove, heater, boiler, tank or any other household equipment, machinery, furniture, or other than furniture designed and used for outdoor activities, appliance or appliances, or any parts of any of the listed items for a period of time in excess of seventy-two (72) consecutive hours.

This subsection does not prohibit the following:

a. Machinery installed in the rear setback areas for household or recreational use,

b. Furniture designed and used for outdoor activities,

c. Any item stored or kept within an enclosed storage structure or unit. For the purpose of this subsection, a storage unit is a prefabricated enclosure which is not required to have a building permit and is not permanently affixed to the ground, but which is not on wheels or mobile,

5. Storing or keeping packing boxes, lumber, dirt and other debris, except as allowed by this code for the purpose of construction, in any setback areas visible from public property or neighboring properties for a period of time in excess of seventy-two (72) consecutive hours;

6. No item covered by this section shall be parked, stored, or kept between the front lot line and the front wall of the facility, including the projection of the front wall across the residential property lot line, except where such item is located in an approved driveway or approved parking space.

#### G. Activities Prohibited in Areas Zoned for Residential Uses.

1. Wrecking, dismantling, disassembling, manufacturing, fabricating, building, remodeling, assembling, repairing, painting, washing, cleaning or servicing, in any setback area, of any airplane, aircraft,

motor vehicle, boat, trailer, machinery, equipment, appliance or appliances, furniture or other personal property.

This chapter shall not prohibit the following:

a. Any owner, lessee or occupant of residential property may repair, wash, clean or service any personal property which is owned, leased, or rented by such owner, lessee or occupant of such property. Any such repairing or servicing performed in any such area shall be completed within a seventy-two (72) consecutive hour period. The provisions of this section shall apply to any truck, tractor, trailer, or other commercial vehicle weighing more than seven thousand (7,000) pounds.

b. A vehicle or part thereof which is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property, or

c. A vehicle or part thereof which is stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler, licensed vehicle dealer or a junkyard which is a legal nonconforming use. This exception shall not authorize the maintenance of a public or private nuisance as defined under provisions of law other than this chapter,

2. The use of any trailer, camper, recreational vehicle or motor vehicle for living or sleeping quarters in any place in the city, outside of a lawfully operated mobile home park or travel trailer park, subject to the following:

a. Nothing contained in this section shall be deemed to prohibit bona fide guests of a city resident from occupying a trailer, camper, or recreational vehicle upon residential premises with the consent of the resident for a period not to exceed seventy-two (72) consecutive hours.

b. Any trailer, camper, or recreational vehicle so used shall not discharge any waste or sewage into the city's sewer system except through the residential discharge connection of the residential premises on which the trailer, camper or recreational vehicle is parked;

H. Permit Requirement. Any use of property which does not have all required permits pursuant

to city codes or where such permits have expired or been revoked;

#### I. General Conditions.

1. Any condition which is detrimental to the public health, safety or general welfare or which constitutes a public nuisance as defined in California Civil Code Section 3480,

2. Any condition of deterioration or disrepair which substantially impacts on the aesthetic or economic value of neighboring properties.

This chapter shall not prohibit the following: any property owned or leased by the city or the Redevelopment Agency which has been designated or acquired for the purpose of redevelopment or rehabilitation. (Ord. 12046 § 2, 1998; prior code § 15-1.02)

### **8.24.030 Time restriction—Parking.**

For purposes of this chapter an item is unlawfully parked, kept or stored in any area for a period of time in excess of seventy-two (72) consecutive hours when:

A. The item has not been removed from such area for an intervening period of time in excess of seventy-two (72) consecutive hours; or

B. The item has been parked, kept or stored during the intervening period of time upon any public street. (Prior code § 15-1.03)

### **8.24.040 General obligation.**

No person, firm, group, or corporation whether as owner, owner's agent or manager of the subject property, or as lessee, sublessee, or occupant in possession of the property shall maintain any property in a blighted condition or shall cause or permit the property to be blighted. No person, firm, group, or corporation shall take any action or allow any action to be taken in violation of any provision of this chapter or order issued pursuant thereto. (Prior code § 15-1.04)

### **8.24.050 Enforcement responsibility—Delegation of authority.**

The Building Official and his or her designees

shall be responsible for the enforcement of this chapter and shall make such inspections and take such actions as may be required to enforce the provisions of this chapter. The Building Official is authorized to establish guidelines and interpretations to enforce the provisions of this chapter. (Ord. 12046 § 3, 1998: prior code § 15-1.05)

#### **8.24.060 Abatement.**

A. Any condition set forth in this chapter may be abated by the Building Official, or his or her designee, in accordance with the procedures set forth in Chapter 15.08 of this code.

B. Actions taken to abate conditions set forth in this chapter may include, but are not limited to, assessment of fees, charges, penalties, and interest; and/or repair or removal of the condition; and/or installation and maintenance of physical barriers to deter the recurrence of or illegal access to the condition; and/or any other abatement action determined by the Building Official, or his or her designee, to be necessary. (Ord. 12046 § 4, 1998: prior code § 15-2.01)

#### **8.24.070 Restriction of use or occupancy—Dangerous condition.**

Whenever any condition set forth in this chapter is determined by the Building Official, or his or her designee, to be dangerous and imminently hazardous to public health and safety, the use or occupancy of the blighted property may be restricted in accordance with the procedures set forth in Chapter 15.08 of this code. In addition to restricting the use or occupancy, the Building Official may require other abatement actions to be taken including, but not limited to, immediate repair or removal of the condition. (Ord. 12046 § 5, 1998: prior code § 15-2.02)

#### **8.24.080 Abatement procedures.**

The Building Official, or his or her designee, may institute procedures for abatement of any conditions set forth in this chapter, except where such conditions are otherwise authorized or permitted by law. The provisions as set forth in Chapter 15.08 including, but not limited to, conditions of compliance

which assure expeditious abatement of conditions by the property owner and Chapter 1.28 of this code shall apply to any such abatement. Fees, charges, penalties, and interest assessed for any abatement action performed by, or on behalf of, the city including, but not limited to, costs incurred in relocating occupants of the blighted property shall be recovered by the city in accordance with the provisions set forth in Chapter 15.08 of this code. The Building Official may establish time durations for abating blighting conditions which serve the best interests of the city and may subsequently limit or extend or otherwise adjust such durations for good cause. (Ord. 12046 § 6, 1998: Ord. 11552 § 3, 1993; prior code § 15-2.03)

#### **8.24.090 Procedures of this chapter—Cumulative.**

A. Procedures used and actions taken for the abatement of property blight are not limited by this chapter. Procedures and actions under this code may be utilized in conjunction with, or in addition to, any other procedure applicable to the regulation of buildings, structures, or property, including, but not limited to, injunctive or other judicial relief, and the impositions of administrative penalties pursuant to the provisions of Chapter 1.28 of this code.

B. All property blight conditions which are required to be abated pursuant to the provisions and permit requirements of this chapter shall be subject to all provisions of this code including, but not limited to, building construction, repair or demolition and to all housing, zoning, traffic and fire code provisions, except that the provisions set forth in Title 12, Streets, Sidewalks, and Public Places, Chapter 16, Improvements Generally, Section 12.16.030 of this code shall not apply. (Ord. 12046 § 7, 1998: prior code § 15-2.04)

#### **8.24.100 Violation—Penalty.**

Violation of this chapter shall constitute an infraction. (Prior code § 15-2.05)

## Chapter 8.26

### SCRAP YARD ABATEMENT PROCEDURES

**Sections:**

- 8.26.010      Purpose.**
- 8.26.020      Public nuisance—Nonexclusive remedy.**
- 8.26.030      Definitions.**
- 8.26.040      Complaint and hearing prior to abatement.**
- 8.26.050      Abatement proceedings.**
- 8.26.060      Entry upon private property to abate nuisance.**
- 8.26.070      Account of cost of abatement—Submission of itemized report to City Council.**
- 8.26.080      Service of copy of report.**
- 8.26.090      Hearing on report—Modification—Confirmation.**
- 8.26.100      Expense of abatement—Assessed against property.**
- 8.26.110      Lien to draw interest—Statute of limitations.**
- 8.26.120      Disposition of materials and proceeds.**
- 8.26.130      Limitation on imposition of lien.**
- 8.26.140      Alternative method of collection—Addition of amount of costs to tax bill—Procedure.**

**8.26.010      Purpose.**

The purpose of this chapter is to provide for abatement of illegal scrap yards and recyclable materials held illegally in open storage when same are within five hundred (500) feet of residential uses. (Prior code § 3-18.01)

**8.26.020      Public nuisance—Nonexclusive remedy.**

Illegal scrap operations within five hundred (500) feet of residential uses and the open storage of recyclable materials on residentially zoned property or property used for residential purposes are de-

clared to be public nuisances and may be abated as provided in this chapter. The procedure provided herein shall be in addition to any other applicable penalty or remedy, civil or penal, available to the city or any affected party under any provision of state or municipal law. (Prior code § 3-18.02)

**8.26.030      Definitions.**

For the purpose of this chapter the following words and phrases shall mean and include:

“Illegal or illegally” means declared a public nuisance by this chapter, or otherwise in violation of this code or any other state or municipal law, or any regulation or condition of entitlement adopted pursuant thereto.

“Open storage” means storage on private property other than in a completely enclosed building. Materials shall be deemed to be held in “open storage” even though screened from public view, or view of residents of adjacent property, by a fence.

“Recyclable material” means any material, goods, vehicles, machinery, appliance, product or article, new or used (although typically used) that has monetary value and is being held for salvage, scrap or re-use, with or without additional processing.

“Scrap operations” means and includes, but is not limited to, Scrap Operation Commercial Activity as defined in Section 17.10.530 of the Oakland Planning Code. (Prior code § 3-18.03)

**8.26.040      Complaint and hearing prior to abatement.**

The Housing Division Official may file with the City Manager a written complaint setting forth facts showing that a public nuisance, as described in this chapter, exists upon any premises in the city. Upon receipt of such complaint the city shall present the same to the City Council, and the City Council shall forthwith by resolution fix a time and place for a public hearing on such complaint.

The Housing Division Official shall cause a copy of such resolution and complaint to be served upon the person in possession of such premises, and upon the owner thereof, not less than ten days prior to the time fixed for such hearing. Such service may be by

delivery of a copy of such resolution and complaint to the owner and person ostensibly in charge of the operation in question on the said premises personally or by enclosing the same in a sealed envelope, postage prepaid, addressed to the said person in charge of such premises, and to the owner at his or her last known address as the same appears on the last equalized assessment rolls, and depositing the same in the United States mail. (Prior code § 3-18.04)

#### **8.26.050 Abatement proceedings.**

Upon the date and at the place and hour fixed for the hearing on such complaint, the Council of the city shall hear such evidence as may be presented by any interested party, continued from time to time by the City Council. Upon the completion of such hearing the City Council shall find and determine whether there is a public nuisance as described in this chapter on the premises in question and whether the owner of the real property caused same to exist, or permitted, allowed, countenanced or acquiesced in same. The City Council shall thereupon either dismiss the complaint, or shall direct that such public nuisance be abated. The Housing Division Official shall forthwith give written notice, in the manner provided in Section 8.26.040, to the owner or person in charge of said premises to abate such condition forthwith. If such abatement is not commenced within twenty (20) days thereafter, and diligently prosecuted to completion, the Housing Division Official shall cause the same to be abated.

The Council shall order to be paid, and the Director of Finance shall pay, all sums which may be necessarily expended by the Housing Division Official in abating such conditions.

The Housing Division Official may employ any means he or she sees fit to abate such condition, including, but not limited to, sale to a salvage or scrap dealer. (Prior code § 3-18.05)

#### **8.26.060 Entry upon private property to abate nuisance.**

The Housing Division Official and any person directed or engaged by him or her to abate a nuisance, as provided in this chapter, may enter upon private property to abate same. If it reasonably appears to the Housing Division Official that a breach of the peace might result from the entry thereon, he or she may initiate proceedings in a court of law to effectuate such entry and the costs of such court proceedings shall be included in the cost of abatement. (Prior code § 3-18.06)

#### **8.26.070 Account of cost of abatement—Submission of itemized report to City Council.**

The Housing Division Official shall keep an account of the cost of abatement and shall submit to the City Council for confirmation an itemized written report showing such cost, including the proceeds, if any, of the salvage. The Council shall thereupon schedule a hearing for considering and confirming said report. (Prior code § 3-18.07)

#### **8.26.080 Service of copy of report.**

Five days prior to the hearing on confirmation of the report, a copy thereof shall be sent to the owner of the premises involved and the person in possession thereof, as provided for in, and in the same manner as, Section 8.26.040. (Prior code § 3-18.08)

#### **8.26.090 Hearing on report—Modification—Confirmation.**

At the time fixed for considering the report, the City Council shall hear it with any objections of the property owners or other persons liable to be assessed for the abatement. It may modify the report if it is deemed necessary. The legislative body shall then confirm the report by motion or resolution. (Prior code § 3-18.09)

**8.26.100      Expense of abatement—Assessed against property.**

The expense incurred by the Housing Division Official or any department of the city in the abatement of any such condition, including any charges inspired by the master fee schedule, shall be assessed against the real property upon which the same was located and shall, in addition, be a personal obligation of the person, firm or corporation responsible for the creation or maintenance of such public nuisance. The Housing Division Official shall give the owner and person in charge of such premises a written notice in the manner provided in Section 8.26.040 showing the itemized cost of such abatement, and requesting payment thereof. If the amount of such expense as shown in such statement is not paid to the Housing Division official within five days after such notice, the Housing Division Official shall record in the Office of the County Recorder of the county of Alameda, state of California, a certificate substantially in the following form:

**Notice of Lien**

Pursuant to authority vested in me by Resolution No. \_\_\_\_\_ C.M.S. of the Council of the City of Oakland, passed on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_, and the provisions of Chapter 8.26 of the Oakland Municipal Code, I did, on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_, cause a public nuisance located upon the hereinafter described real property to be abated at the expense of the owner thereof, in the amount of \$\_\_\_\_\_, and that said amount has not been paid, nor any part thereof, and the City of Oakland does hereby claim a lien upon the hereinafter described real property in said amount; the same shall be a lien upon the said real property until said sum with interest thereon at the rate of 6% per annum from the date of the recordation of this lien in the Office of the County Recorder of the County of Alameda, State of California, has been paid in full. The real property hereinabove mentioned and upon which a lien is claimed is that certain

parcel of land lying and being in the City of Oakland, County of Alameda, State of California, and particularly described as follows, to-wit:

(Insert description of property)

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

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Housing Division Official  
City of Oakland

And the same shall be a lien against the property described therein until the amount thereof, plus accrued interest, has been paid in full. (Prior code § 3-18.10)

**8.26.110      Lien to draw interest—Statute of limitations.**

The amount of such lien shall draw interest at the rate of six percent per annum from the date of the recordation of such lien in the Office of the County Recorder, and the statute of limitations shall not run against the right of the city to enforce the payment of such lien. (Prior code § 3-18.11)

**8.26.120      Disposition of materials and proceeds.**

The owner of the premises or person entitled to the materials or other property may remove same and thereby abate the nuisance at any time prior to the expiration of the twenty (20) days following City Council resolution as provided for in Section 8.26.050. Unless such materials or other property are so removed no person may thereafter claim the return of the property, but shall be entitled to any net proceeds, if any, of the sale thereof after the city has deducted all of its costs in abating such nuisance. (Prior code § 3-18.12)

**8.26.130      Limitation on imposition of lien.**

The cost of abatement may not be assessed on the real property in question as a lien unless the City Council finds that the owner of said property caused the public nuisance to exist, or permitted, allowed,

countenanced or acquiesced in the creation or maintenance of same. (Prior code § 3-18.13)

**8.26.140 Alternative method of collection—  
Addition of amount of costs to tax  
bill—Procedure.**

As an alternative method of collection of the amount of the lien, the Housing Division Official of the city may transmit the notice of lien to the County Auditor, who shall thereupon enter the amount thereof on the County Assessment Book opposite the description of the particular lot or parcel of land, and the amount shall be collected, together with all other taxes levied against the property. The assessment shall be subject to the same penalties and interest and to the same procedure under foreclosure and sale, in case of delinquency, as provided for all other municipal and county taxes against the property; and all laws applicable to the levy, collection and enforcement of general property taxes are made applicable to such special assessment. (Prior code § 3-18.14)

<b>Chapter 8.28</b>	<b>8.28.210</b>	<b>Report of delinquent charges transmitted to City Council.</b>	
<b>SOLID WASTE COLLECTION AND DISPOSAL AND RECYCLING</b>			
<b>Sections:</b>			
<b>8.28.010</b>	<b>Definitions.</b>		
<b>8.28.020</b>	<b>Procedures for determining rates of compensation.</b>	<b>8.28.220</b>	<b>Notice of hearing.</b>
<b>8.28.030</b>	<b>Collection of recyclable or organic recyclable materials.</b>	<b>8.28.230</b>	<b>Recordation of lien for delinquent charges.</b>
<b>8.28.040</b>	<b>Ownership of recyclable materials.</b>	<b>8.28.240</b>	<b>Collection of delinquent charges by special assessment.</b>
<b>8.28.050</b>	<b>Right of persons to dispose of recyclables or organic recyclable material.</b>	<b>8.28.250</b>	<b>Release of lien assessment.</b>
<b>8.28.060</b>	<b>Collection of solid waste restricted to collector.</b>	<b>8.28.260</b>	<b>Mandatory refuse collection fund.</b>
<b>8.28.070</b>	<b>Transportation of solid waste on city streets restricted to collector.</b>	<b>8.28.270</b>	<b>Manner of giving notices.</b>
<b>8.28.080</b>	<b>City fees.</b>	<b>8.28.280</b>	<b>Violations, enforcement and remedies.</b>
<b>8.28.090</b>	<b>Recycling surcharge fee.</b>	<b>8.28.290</b>	<b>Rates of compensation for solid waste collection.</b>
<b>8.28.100</b>	<b>Required solid waste collection.</b>		
<b>8.28.110</b>	<b>Failure to initiate service or to provide sufficient solid waste containers.</b>		
<b>8.28.120</b>	<b>Frequency of solid waste collection.</b>		
<b>8.28.130</b>	<b>Materials prohibited from solid waste disposal.</b>		
<b>8.28.140</b>	<b>Required provision of approved solid waste containers.</b>		
<b>8.28.150</b>	<b>Prohibition on disposal.</b>		
<b>8.28.160</b>	<b>Use of litter receptacles.</b>		
<b>8.28.170</b>	<b>Collector entitled to payment for services rendered.</b>		
<b>8.28.180</b>	<b>Complaint of nonpayment.</b>		
<b>8.28.190</b>	<b>Payment for services rendered and the assessment of administrative charges.</b>		
<b>8.28.200</b>	<b>Administrative hearing on delinquent charges.</b>		
			<b>8.28.010      Definitions.</b>
			For the purpose of this chapter, certain words and phrases are defined and certain provisions shall be construed as herein set out, unless it shall be apparent from the context that they have a different meaning:
			“Business” means of or pertaining to a commercial establishment and/or industrial facility including, but not limited to, governmental, religious, and educational facilities.
			“City” means the city of Oakland.
			“Collector” means the solid waste and yard waste collector franchised by the city.
			“Construction debris” means waste building materials resulting from construction, remodeling, repair or demolition operations.
			“Director” means the Director of Public Works of the city, or his or her authorized representatives.
			“Disposal facility” means the sanitary landfill, or other solid waste disposal facility, utilized for the receipt and final disposition of some or all of the solid waste collected or accepted.
			“Dwelling” means a residence, flat, apartment, or other facility used for housing one or more persons in the city.
			“Finance Officer” means the Director of the Office of Budget and Finance of the city, or his or her

**Hazardous Waste.**

1. "Hazardous waste" means any hazardous waste, material, substance or combination of materials which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or may pose a substantial present or potential risk to human health or the environment when improperly treated, stored, transported, disposed or otherwise managed; and which requires special handling under any present or future federal, state or local law, excluding de minimis quantities of waste of a type and amount normally found in residential solid waste after implementation of programs for the safe collection, recycling, treatment and disposal of household hazardous waste in compliance with Sections 41500 and 41802 of the California Public Resources Code.

2. "Hazardous waste" shall include, but not be limited to: (a) substances that are toxic, corrosive, inflammable or ignitable; (b) petroleum products, crude oil (or any fraction thereof) and their derivatives; (c) explosives, asbestos, radioactive materials, toxic substances or related hazardous materials; and (d) substances defined by applicable local, state or federal law as "hazardous substances," "hazardous materials," "reproductive toxins," or "toxic substances," including those so defined in any of the following statutes: 15 U.S. Code Section 2601, et seq. (the Toxic Substances Control Act); 33 U.S. Code Section 1251, et seq. (the Federal Water Pollution Control Act); 42 U.S. Code Section 6901, et seq. (the Resource Conservation and Recovery Act); 42 U.S. Code Section 7401, et seq. (the Clean Air Act); 42 U.S. Code Section 9601, et seq. (the Comprehensive Environmental Response, Compensation and Liability Act); 49 U.S. Code Section 1801, et seq. (the Hazardous Materials Transportation Act); California Health & Safety Code Section 25100, et seq. (Hazardous Waste Control); Section 25300, et seq. (the Hazardous Substance Account Act); California Water Code Section 13000, et seq. (the Porter-Cologne Water Quality Control Act); the regulations adopted and promulgated pursuant to such statutes, and any

regulations adopted pursuant to these statutes, as well as any subsequently enacted federal or California statute relating to the use, release or disposal of toxic or hazardous substances, or to the remediation of air, surface waters, groundwater, soil or other media contaminated with such substances.

"Material recovery facility" means any plant or site used for the purpose of sorting, cleansing, treating or reconstituting recyclables and returning them to the economy.

"Medical waste" means all materials defined as medical waste in the California Health & Safety Code Section 25023.2, not including waste identified as not being medical wastes in Sections 25023.5 and 25023.8, or the regulations promulgated thereunder, as amended from time to time.

"Multifamily dwelling" means any residential structure with five or more living units and/or any residential structure which uses bin service for solid waste collection.

"Organic recyclable material" means organic materials such as vegetable, fruit, grain, dairy, meat, fish, yard, tree, wood, and nonrecyclable paper discards which are set aside, handled, packaged, or offered for collection separate from solid waste for the purpose of being processed and then returned to the economic mainstream in the form of commodities such as, but not limited to, compost, soil amendments, mulch, animal feed, and fertilizer.

"Owner," when used in reference to a dwelling, means the person or persons holding legal title to the dwelling.

"Person" means an individual, association, partnership, corporation, joint venture, the United States, the state of California, any municipality or other political subdivision thereof, or any other entity whatsoever.

"Premises" means any land or building in the city where solid waste, yard waste or recyclables are generated or accumulated.

"Processing facility" means a facility which has adequate capacity for the receipt, sorting, storage and processing (including without limitation, grinding, chipping, screening, preparation for and performance of composting of yard waste materials) of

recyclables so that they may be further processed or sold to end-use markets.

**Recyclables.**

1. "Recyclables" means nonhazardous residential, commercial, or industrial materials or by-products which are set aside, handled, packaged, or offered for collection in a manner different than solid waste for the purpose of being reused or processed and then returned to the economic mainstream in the form of commodities.

2. Recyclables include but are not limited to paper (newspaper, magazines, corrugated cardboard, kraft paper, ledger paper, computer print out, box board, and other paper grades); glass; ferrous and nonferrous metal materials; plastic containers, films, packaging materials and scrap; and construction and demolition materials. Recyclables shall include source separated materials and organic recyclable materials.

"Recycler" means a person or entity which is permitted by the city to collect and transport recyclables or organic recyclable material.

"Residual" means contaminant material, separated from recyclable material or yard waste, which cannot be recycled, composted, marketed or otherwise utilized, and which shall be disposed of as solid waste, hazardous waste, or medical waste, as appropriate.

"Single-family dwelling" means any dwelling which has four or fewer living units within it and/or those dwellings which use can service for solid waste collection.

"Solid waste" means and includes all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, discarded home and industrial appliances, dewatered, treated or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes as defined in California Public Resources Code Section 40191, as that section may be amended from time to time, but does not include source separated recyclables which comply with the resid-

ual content limits in Section 8.28.030, abandoned vehicles and parts thereof, hazardous waste or low-level radioactive waste, medical waste, unacceptable waste or yard waste which is source separated at single-family dwellings.

"Source separated" means recyclables that have been segregated from solid waste by or for the generator thereof on the premises at which they were generated for handling different from that of solid waste. This does not require that different types of recyclable commodities be separated from each other, except from organic recyclable material.

"Tenant," when used in reference to a dwelling, means any person or persons, other than the owner, occupying or in possession of the dwelling.

"Transfer station" means a facility utilized to receive solid waste, to temporarily store, separate, recover, convert or otherwise process the materials comprising the solid waste, and to transfer the solid waste to vehicles for transport to a disposal facility.

"Unacceptable waste" means any and all waste, including but not limited to hazardous waste and medical waste, the acceptance or handling of which by collector would cause a violation of any permit condition or legal or regulatory requirement, substantial damage to collector's equipment or facilities, or present a substantial endangerment to the health or safety of the public or collector's employees.

"Yard waste" means single-family dwelling prunings, brush, leaves, grass clippings and such other similar types of organic waste that may be specified by the city in its reasonable discretion for collection by the collector pursuant to the franchise agreement between the city and the collector. Untreated and unpainted wood which fits within the yard waste container provided by collector is also yard waste. (Ord. 11819 § 1 (part), 1995: prior code § 6-4.01)

**8.28.020 Procedures for determining rates of compensation.**

The charge for the collection of solid waste by the collector within the city shall be those rates established and adjusted according to procedures established by the City Council. A copy of the

adjusted rates shall be filed in the Office of the City Clerk by June 30th of each year by the Finance Officer.

A. The current rates are set forth in Section 8.28.290.

B. The current rates shall be adjusted to reflect changes in the Consumer Price Index ("CPI"), as set forth in the franchise agreement between collector and city, as determined by the Finance Officer.

C. Non-CPI related rate adjustments may be granted by the City Council, in the exercise of its legislative discretion, consistent with the terms of the franchise agreement. (Ord. 11819 § 1 (part), 1995: prior code § 6-4.02)

#### **8.28.030 Collection of recyclable or organic recyclable materials.**

A. Permits. All persons collecting and transporting recyclables or organic recyclable material within the city must hold a valid city business license. Recyclers shall be required to maintain records, in a prescribed format and schedule, documenting that all recyclables or organic recyclable material that they collect and transport, less allowable residual, is recycled. Such records shall be maintained in an auditable form for at least three years, and the city shall have the right to examine said records upon written request.

B. Limits on Residual Content. Recyclables or organic recyclable material collected by recyclers shall be source separated and recycled at a recycling facility, that holds all applicable permits, and (1) if mixed paper, may contain no more than ten percent by weight of residual per load; or (2) if commingled recyclables other than mixed paper may contain no more than five percent by weight of residual per load. Any load of recyclables and/or organic recyclable material which contains more than the aforementioned residual, shall be disposed of in accordance with all applicable laws and regulations. Disputes over whether material should be classified as recyclables or organic recyclable material or solid waste will be resolved by the Director. The Director's decision may be appealed to the City Manager in writing, explaining the basis of the

appeal, within ten days of such decision and the payment of a five hundred dollar (\$500.00) appeal fee. The burden of proof shall be on the person challenging the Director's decision. The City Manager or his or her designee shall hear said dispute and render a written decision which shall be final. It is unlawful for any person except for the collector to collect organic recyclable material, other than wood, mixed with recyclables. However, simultaneous collection of recyclables and organic recyclable material shall be permitted if said organic recyclable material is placed in a separate watertight compartment of the collection vehicle.

C. Service and Permit Fees. Nothing herein shall prevent recycler from charging fees for collection, transporting, and/or processing services rendered for recyclables or organic recyclable materials. (Ord. 11819 § 1 (part), 1995: prior code § 6-4.03)

#### **8.28.040 Ownership of recyclable materials.**

Recyclables or organic recyclable materials shall become the property of the authorized recycler when placed at designated recycling locations for collection by the recycler unless otherwise provided by contract between the authorized recycler and the generator of the materials or his or her agent. A recycling collection container shall constitute a designated recycling location. (Ord. 11819 § 1 (part), 1995: prior code § 6-4.04)

#### **8.28.050 Right of persons to dispose of recyclables or organic recyclable material.**

Nothing in this chapter shall limit the right of any person to donate, sell, transport, pay for the removal of, or otherwise dispose of their own recyclables or organic recyclable material provided that any such activity is in accordance with the provisions of this chapter. (Ord. 11819 § 1 (part), 1995: prior code § 6-4.05)

#### **8.28.060 Collection of solid waste restricted to collector.**

It is unlawful for any person other than the col-

lector or those persons employed by the collector to collect or haul any solid waste, and source separated yard waste from single-family dwellings, within the city except:

A. Source separated recyclables, including but not limited to those collected by a person under contract to the city and those collected through private arrangements between the generator and the collector. Loads which consist of mixed paper and which contain more than ten percent by weight of residual shall not be considered source separated recyclables. Loads which consist of recyclables other than mixed paper and which contain more than five percent by weight of residual shall not be considered source separated recyclables;

B. Construction debris (1) removed from a premises by a licensed contractor as an incidental part of a total construction, remodelling or demolition service offered by that contractor, rather than as a separately contracted or subcontracted hauling service using debris boxes or similar apparatus, or (2) directly loaded onto a fixed body vehicle and hauled directly to a transfer station or disposal facility;

C. Lawn and garden trimmings (1) removed from a premises by a contractor as an incidental part of a total landscaping or gardening service offered by that contractor, rather than as a separately contracted or subcontracted hauling service using debris boxes or similar apparatus; or (2) directly loaded onto a fixed body vehicle and hauled directly to a transfer station or disposal facility;

D. Animal waste and remains from slaughterhouses and butcher shops, or grease waste for use as tallow;

E. By-products of sewage treatment, including sludge, grit and screenings;

F. Solid waste or yard waste collected and transported by city crews to a disposal facility, transfer station, processing facility, or material recovery facility;

G. Solid waste hauled directly to a transfer station or disposal facility by a person who is also the generator of the solid waste; and

H. Recyclables which are donated to a youth, civic or charitable organization. (Ord. 11819 § 1 (part), 1995: prior code § 6-4.06)

#### **8.28.070 Transportation of solid waste on city streets restricted to collector.**

It is unlawful for any person other than the collector or those persons employed by the collector to transport over or upon the streets of the city any solid waste, or source separated yard waste from single-family dwellings, produced in the city, except in those cases described in Section 8.28.060. (Ord. 11819 § 1 (part), 1995: prior code § 6-4.07)

#### **8.28.080 City fees.**

The city may attach a surcharge on solid waste fees collected by the collector to compensate the city for some or all of the cost of programs to clean up litter and illegal dumping on public streets and rights-of-way. Said surcharges shall be collected by the collector and remitted to the Finance Officer on a scheduled basis and shall be in the amounts established by the City Council. (Ord. 11819 § 1 (part), 1995: prior code § 6-4.08)

#### **8.28.090 Recycling surcharge fee.**

The city may attach a surcharge on Solid Waste fees collected by the collector to compensate the city for some or all costs incurred in achieving the waste reduction mandates set by the state of California in the Integrated Waste Management Act of 1989 or any other applicable state or local statute. Said surcharge shall be collected by the collector and remitted to the Finance Officer on a scheduled basis and shall be in the amounts established by the City Council. (Ord. 11819 § 1 (part), 1995: prior code § 6-4.09)

#### **8.28.100 Required solid waste collection.**

Every owner of any premises in the city in, upon, or from which solid waste is created, produced, or accumulated shall dispose of the solid waste through the regular solid waste collection service of the collector, and shall pay therefor the rate or rates set by the city. Arrangements with the collector shall be

made by each such owner for the required collection of solid waste, and such arrangements shall specify the location of the premises, solid waste container types and sizes, and the frequency of collection. Exemptions from required solid waste collection may be granted by the Director.

The owner of a single-family dwelling or multi-family dwelling must by prior agreement with the collector and with the occupants of such dwellings arrange for the individual, joint, or communal use of solid waste containers thereon and for the payment of solid waste collection rates; and such owner shall be responsible for the payment of the solid waste collection rate or rates to the collector. (Ord. 11819 § 1 (part), 1995: prior code § 6-4.10)

#### **8.28.110 Failure to initiate service or to provide sufficient solid waste containers.**

The owner of any dwelling shall start service within fifteen (15) days of occupancy of such dwelling. In the absence of service start-up by owner, the Director may give the owner written notification that such service is required. If service is not initiated within fifteen (15) days from the date of mailing of the notice, then the Director may require the collector to initiate and continue solid waste service for said dwelling. When in the judgment of the Director additional solid waste containers and/or collection services are required, they shall be provided by the owner upon written notification from the Director. The additional solid waste containers shall meet the requirements set forth in Section 8.28.140. (Ord. 11819 § 1 (part), 1995: prior code § 6-4.11)

#### **8.28.120 Frequency of solid waste collection.**

Collection of solid waste by the collector from each solid waste container shall be made at least once a week or more often as may be required to adequately serve the premises. Exemptions from weekly service may be granted by the Director to those dwellings which produce minimal solid waste and whenever less frequent service will not produce

a public health and safety concern. (Ord. 11819 § 1 (part), 1995: prior code § 6-4.12)

#### **8.28.130 Materials prohibited from solid waste disposal.**

Hazardous waste, medical waste, unacceptable waste, earth, rocks, batteries, human waste and other potentially infectious material, and liquid wastes shall not be deposited or placed in solid waste containers. Organic waste of the type produced in the preparation of food shall be drained of all moisture and completely wrapped before it is placed or put in solid waste containers. (Ord. 11819 § 1 (part), 1995: prior code § 6-4.13)

#### **8.28.140 Required provision of approved solid waste containers.**

All solid waste created or produced in the city shall be deposited in a container or containers approved by the Director, equipped with suitable handles and a tight-fitting cover, and watertight. Every person in possession, charge, or control of any premises shall provide a sufficient number of such containers of sufficient capacity to hold all solid waste which is created, produced, or accumulated on such premises between the time of successive collections by the collector. Such solid waste containers shall be kept in a suitable location upon such premises, readily accessible to the collector, if backyard service is provided. Every person subscribing to curbside collection of solid waste shall place the container(s) at curbside or streetside on their collection day in a manner that does not block any driveway, sidewalk or street. Containers placed at curbside or streetside shall be returned to their normal storage area after the collector has emptied the container(s). By written permission of the Director, a location for such container or containers upon public property may be arranged.

Solid waste containers for joint or multiple use may be provided for multifamily dwellings, provided that each container is clearly marked so as to designate the dwelling which it serves. Each solid waste container for individual, joint, or multiple use shall have a capacity of not more than thirty-two

## **8.28.140**

(32) gallons if collected manually by the collector and shall be kept in a clean, neat, and sanitary condition at all times. The combined weight of each thirty-two (32) gallon container and its contents shall not exceed seventy-five (75) pounds. (Ord. 11819 § 1 (part), 1995: prior code § 6-4.14)

### **8.28.150 Prohibition on disposal.**

It is unlawful to dispose of solid waste anywhere in the city except as provided for in this chapter. (Ord. 11819 § 1 (part), 1995: prior code § 6-4.15)

### **8.28.160 Use of litter receptacles.**

It is unlawful for any person to deposit any material from any building or yard in, on top of, or alongside the street litter receptacles placed in the sidewalk area; provided, that pedestrians and other persons using said streets shall be permitted to deposit in said receptacles miscellaneous small articles of refuse carried by them. (Ord. 11819 § 1 (part), 1995: prior code § 6-4.16)

### **8.28.170 Collector entitled to payment for services rendered.**

Pursuant to the provisions of this chapter, the collector shall be entitled to payment from owner for any services rendered. City is not responsible for any payment due collector by reason of either entering into a franchise agreement, setting rates, adjusting rates, or failing to adjust rates, except if, and to the extent it is explicitly stated in such franchise agreement. Should there be a failure by an owner to make payment for any services rendered by the collector, the means for effecting payment shall be in accordance with the procedure set forth in Sections 8.28.180 to 8.28.240, inclusive. (Ord. 11819 § 1 (part), 1995: prior code § 6-4.17)

### **8.28.180 Complaint of nonpayment.**

Upon the expiration of the period during which the collector has rendered service and has presented the owner with a bill for such service, if the bill has not been paid in full, the collector shall send to the owner a second request for payment. The form and content of the second request for payment sent by

the collector shall be approved by the Finance Officer.

Upon the expiration of not less than ten days following the mailing of the second request for payment by the collector, if the bill remains unpaid, the collector may file with the Finance Officer a verified written complaint which shall contain the specific allegations setting forth the name or names of said owner(s), the address of the dwelling served, the period of such service, the amount due, the steps taken to secure payment, and such other information as the Finance Officer may reasonably require. Such verified written complaints shall be submitted by the collector to the Finance Officer not more than ninety (90) days following the end of the service period. (Ord. 11819 § 1 (part), 1995: prior code § 6-4.17.01)

### **8.28.190 Payment for services rendered and the assessment of administrative charges.**

Upon receipt of the complaint filed in accordance with Section 8.28.180, the Finance Officer shall pay the amount due the collector from a revolving fund provided herein under Section 8.28.260 and owner shall be liable to the city for service charges paid, plus an administrative charge as established by the city's master fee schedule. (Ord. 11819 § 1 (part), 1995: prior code § 6-4.17.02)

### **8.28.200 Administrative hearing on delinquent charges.**

After making payment to the collector for services rendered, the Finance Officer will establish a time and place for an administrative hearing to allow the owner(s) of premises against which delinquent charges are assessed an opportunity to protest the charges. The Finance Officer shall cause notice of this hearing to be mailed to each person to whom such described property is assessed in the most recent property ownership records provided to the city by the County Assessor on the date that the Finance Officer causes notice to be mailed. Notice of this hearing may be combined with notice of the

hearing before the City Council as provided herein under Section 8.28.220.

At the administrative hearing, the City Manager and the collector or their designated representative(s) will hear any protests regarding delinquent charges for services rendered. The City Manager and the collector or their designated representative(s) shall investigate the protest as may be required and report their findings to the owner prior to the hearing before the City Council provided herein under Section 8.28.220. The City Manager or his or her designated representative may waive the service fee in those cases where he or she has found that the charges have been made improperly; where he or she has found that the owner was improperly notified of the delinquent service fee, he or she may waive the administrative charges established under Section 8.28.190; or he or she may recommend to the City Council that the owner receive no waiver of payment of service fees and/or administrative charges. (Ord. 11819 § 1 (part), 1995: prior code § 6-4.17.03)

#### **8.28.210 Report of delinquent charges transmitted to City Council.**

Upon receipt of verified written complaints from the collector, the Finance Officer shall transmit to the City Council a report of delinquent charges. Upon receipt by the City Council of the report, it shall fix a time, date and place for hearing the report and any protests or objections thereto. (Ord. 11819 § 1 (part), 1995: prior code § 6-4.17.04)

#### **8.28.220 Notice of hearing.**

The City Council shall cause written notice of the hearing to be mailed to the owner of the premises to which the service was rendered not less than ten days prior to the date of hearing. The said written notice shall be mailed to each person to whom such premises is assessed in the most recent property ownership records provided to the city by the County Assessor on the date the City Council causes notice to be mailed. (Ord. 11819 § 1 (part), 1995: prior code § 6-4.17.05)

#### **8.28.230 Recordation of lien for delinquent charges.**

Upon confirmation of the report of delinquent charges by the City Council, a lien on the premises to which the service was rendered will be recorded with the Recorder of the county of Alameda. (Ord. 11819 § 1 (part), 1995: prior code § 6-4.17.06)

#### **8.28.240 Collection of delinquent charges by special assessment.**

Upon the confirmation of the report pursuant to Section 8.28.210 by the City Council, the delinquent charges contained therein which remain unpaid by the owner shall constitute a special assessment against the premises to which service was rendered and shall be collected at such time as established by the County Assessor for inclusion in the next property tax assessment.

The Finance Officer shall turn over to the County Assessor for inclusion in the next property tax assessment the total sum of unpaid delinquent charges consisting of the delinquent solid waste collection service charges and administrative charges, plus an assessment as established by the city's master fee schedule as a special assessment against the premises to which said service was rendered.

Thereafter, said assessment may be collected at the same time and in the same manner as ordinary municipal taxes are collected and shall be subject to the same penalties and the same procedures of sale as provided for delinquent ordinary municipal taxes. The assessment shall be subordinate to all existing special assessment liens previously imposed upon the premises and paramount to all other liens except for those of state, county and municipal taxes, with which it shall be upon parity. The lien shall continue until the assessment and all interest and charges due and payable thereon are paid. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to said special assessments. (Ord. 11819 § 1 (part), 1995: prior code § 6-4.17.07)

**8.28.250 Release of lien assessment.**

In addition to the assessments as provided by Section 8.28.240, there is assessed a procedural fee in an amount equal to the amount charged by the Alameda County Recorder's Office as and for a county service charge and a release of lien filing fee. (Ord. 11819 § 1 (part), 1995: prior code § 6-4.17.08)

**8.28.260 Mandatory refuse collection fund.**

The mandatory solid waste collection fund shall be credited with such sums as may be appropriated by the City Council, delinquencies collected by the Finance Officer, assessments collected by the Tax Collector, and sums received in consideration of release of liens. Expenditures from said fund shall include payments to the collector for owner delinquent accounts and those operating expenses incurred by the city for the administration of the mandatory solid waste program. The sum of one hundred forty thousand dollars (\$140,000.00) shall be maintained in the mandatory solid waste collection fund; and excess over this sum shall be transferred to the unappropriated balance of the general fund. Transfers from the unappropriated balance of the general fund shall also be authorized, as necessary, to maintain the integrity of the mandatory solid waste collection fund. (Ord. 11819 § 1 (part), 1995: prior code § 6-4.17.09)

**8.28.270 Manner of giving notices.**

Any notice required to be given hereunder by the city, the Director, the Finance Officer or any collector to an owner shall be sufficiently given for all purposes hereunder if personally served upon the owner or if deposited, postage prepaid, addressed to the "Owner" at the official address if the owner maintained by the Tax Collector for the mailing of tax bills, or, if no such address is available, to the owner at the address of the dwelling. (Ord. 11819 § 1 (part), 1995: prior code § 6-4.17.10)

**8.28.280 Violations, enforcement and remedies.**

A. **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 hundred dollars (\$100.00) and, for a second conviction within a period of one year, by a fine of not more than two hundred dollars (\$200.00) and, for a third or any subsequent conviction within a one-year period, by a fine of not more than five hundred dollars (\$500.00). 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 one thousand dollars (\$1,000.00) or by imprisonment in the county jail for a period of not more than six months or by both.

B. **Continuing Violation.** Unless otherwise provided, a person shall be deemed guilty of a separate offense for each and every day during any portion of which a violation of this chapter is committed, continued or permitted by the person and shall be punishable accordingly as herein provided.

C. **Violations Deemed a Public Nuisance.** In addition to the penalties herein provided, any condition caused or permitted to exist in violation of any of the provisions of this chapter is a threat to the public health, safety and welfare, and is declared and deemed a nuisance.

D. **Civil Actions.** In addition to any other remedies provided in this chapter, any violation of this chapter may be enforced by civil action brought by the city. In any such action, the city may seek, and the court shall grant, as appropriate, any or all of the following remedies:

1. A temporary and/or permanent injunction;
2. Assessment of the violator for the costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation, and for the reasonable costs of preparing and bringing legal action under this subsection (including attorneys' fees);
3. Costs incurred in removing, correcting, or terminating the adverse effects resulting from the violation (including attorneys' fees).

E. **Authority to Issue Citations.** Authorized enforcement officials or employees may issue a cita-

tion and notice to appear in the manner prescribed by Chapter 5c of Title 3, Part 2 of the Penal Code, including Section 853.6 (or as the same may hereafter be amended). It is the intent of the City Council that the immunities prescribed in Section 836.5 of the Penal Code be applicable to public officers or employees or employees acting in the course and scope of employment pursuant to this chapter.

F. Administrative Enforcement Option. Chapters 1.08, 1.12 and 1.16 of this code, which provide for alternative code enforcement mechanisms, including but not limited to a civil penalty program and an administrative citation program, are incorporated by reference as if fully set forth herein.

G. Remedies Not Exclusive. Remedies under this chapter are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive.

(Ord. 11819 § 1 (part), 1995: prior code § 6-4.18)

#### **8.28.290      Rates of compensation for solid waste collection.\***

\* Editor's note: Ordinance 12499 § 4 authorizes annual rate increases for solid waste collection without presentation of rate changes to the City Council.

The current rates to be charged by collector for the collection and disposal of solid waste are set forth in this section, as adjusted pursuant to Section 8.28.020. These rates shall become effective as of July 1, 1996.

**City of Oakland**  
**Single Family Residential Rates (Monthly)**  
**July 1, 2013—June 30, 2014**

	<b>Contractor Supplied Carts</b>	<b>Customer Supplied Cans</b>
<b>Curbside Service*</b>		
Mini Can Rate—20 Gallon	\$21.84	
35 Cart	\$29.30	
64 Cart	\$63.89	
96 Cart	\$98.44	
<b>Premium Backyard Service*</b>		
Mini Can Rate—20 Gallon	\$39.18	\$35.32
35 Cart	\$46.64	\$42.78
64 Cart	\$81.23	\$77.37
96 Cart	\$115.78	\$111.92
Physically disabled customers receive Backyard Service at Curbside rates.		
Low Income Senior Rate Discount: 12.5%		

Bag It Rate.....	\$6.14
BAGSTER Rate.....	\$178.88
Additional 64-gallon Yard Trimmings/Food Scraps Cart(s) .....	\$9.61
Residential Special P/U Rate—Other Than Regular Day .....	\$29.32
Residential Special P/U Rate—Regular Day—Scheduled .....	\$7.80
Residential Special P/U Rate—Regular Day—Unscheduled .....	\$11.16
One 32-gallon Can Service—Commercial Rate* .....	\$29.46
Additional 32-gallon can .....	\$29.09
Monthly Excess/Overage Charge—Can Service, per gallon .....	\$0.91
Bin Service—Monthly Excess/Overage Charge:	
Residential, per gallon .....	\$1.09
Commercial, per gallon .....	\$0.91

\*Rates do not include StopWaste Benchmark Fee of \$0.15 - \$0.60 per month depending on service level (Alameda County Waste Management Authority Resolution #WMA 2012-6 - see [www.stopwaste.org/benchmark](http://www.stopwaste.org/benchmark) for details).

**City of Oakland**  
**Multi Family Residential Rates (Monthly)**  
**Rates Discounted to Account for Tenant Vacancy**  
**July 1, 2013—June 30, 2014**

These rates DO NOT INCLUDE bulky pick-up service.<sup>(1)</sup>

# of units	<b>Rates for apartment complexes with 5 or more units<sup>(1)</sup></b>				
	<b>1/week</b>	<b>2/week</b>	<b>3/week</b>	<b>4/week</b>	<b>5/week</b>
	\$23.31 Discounted rate <sup>(2), (3)</sup>	\$46.59 Discounted rate <sup>(2), (3)</sup>	\$69.91 Discounted rate <sup>(2), (3)</sup>	\$93.18 Discounted rate <sup>(2), (3)</sup>	\$116.50 Discounted rate <sup>(2), (3)</sup>
5	\$116.55	\$232.95	\$349.55	\$465.90	\$582.50
6	\$139.86	\$279.54	\$419.46	\$559.08	\$699.00
7	\$163.17	\$326.13	\$489.37	\$652.26	\$815.50
8	\$186.48	\$372.72	\$559.28	\$745.44	\$932.00
9	\$209.79	\$419.31	\$629.19	\$838.62	\$1,048.50
10	\$233.10	\$465.90	\$699.10	\$931.80	\$1,165.00
11	\$256.41	\$512.49	\$769.01	\$1,024.98	\$1,281.50
12	\$279.72	\$559.08	\$838.92	\$1,118.16	\$1,398.00
13	\$303.03	\$605.67	\$908.83	\$1,211.34	\$1,514.50
14	\$326.34	\$652.26	\$978.74	\$1,304.52	\$1,631.00
15	\$349.65	\$698.85	\$1,048.65	\$1,397.70	\$1,747.50
16	\$372.96	\$745.44	\$1,118.56	\$1,490.88	\$1,864.00
17	\$396.27	\$792.03	\$1,188.47	\$1,584.06	\$1,980.50
18	\$419.58	\$838.62	\$1,258.38	\$1,677.24	\$2,097.00
19	\$442.89	\$885.21	\$1,328.29	\$1,770.42	\$2,213.50
20	\$466.20	\$931.80	\$1,398.20	\$1,863.60	\$2,330.00
21	\$489.51	\$978.39	\$1,468.11	\$1,956.78	\$2,446.50
22	\$512.82	\$1,024.98	\$1,538.02	\$2,049.96	\$2,563.00
23	\$536.13	\$1,071.57	\$1,607.93	\$2,143.14	\$2,679.50
24	\$559.44	\$1,118.16	\$1,677.84	\$2,236.32	\$2,796.00
25	\$582.75	\$1,164.75	\$1,747.75	\$2,329.50	\$2,912.50
26	\$606.06	\$1,211.34	\$1,817.66	\$2,422.68	\$3,029.00
27	\$629.37	\$1,257.93	\$1,887.57	\$2,515.86	\$3,145.50
28	\$652.68	\$1,304.52	\$1,957.48	\$2,609.04	\$3,262.00
29	\$675.99	\$1,351.11	\$2,027.39	\$2,702.22	\$3,378.50
30	\$699.30	\$1,397.70	\$2,097.30	\$2,795.40	\$3,495.00

<sup>(1)</sup> Rates do not include StopWaste Benchmark Fee of \$0.60 - \$1.81 per month depending on service level (Alameda County Waste Management Authority Resolution #WMA 2012-6 - see [www.stopwaste.org/benchmark](http://www.stopwaste.org/benchmark) for details).

<sup>(2)</sup> Discounted rates shown in this table are based on 32 gallons of weekly service per unit and include the following discounts:

\*Assumed vacancy discount: 8%

\*Single payer discount (bill paid by one person/Mgmt. Co.): 8%

If bill is paid by more than one party, an additional charge of 8% may be applied to above rates.

<sup>(3)</sup> If bill is paid by more than one party, an additional charge of 8% may be applied to above rates.

**City of Oakland**  
**Commercial Rates for Bins (Monthly)**  
**July 1, 2013—June 30, 2014**

<b>Container Size</b>	<b>Frequency Per Week</b>						<b>Special Pick Up</b>
	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	
1 Yard	\$137.54	\$278.68	\$437.75	\$609.76	\$741.88	\$874.12	\$45.76
1.5 Yard	\$192.48	\$352.41	\$582.03	\$833.39	\$1,035.62	\$1,237.83	\$58.51
2 Yard	\$251.64	\$464.94	\$770.61	\$1,104.96	\$1,373.96	\$1,643.11	\$71.31
3 Yard	\$360.62	\$680.58	\$1,136.70	\$1,636.52	\$2,038.10	\$2,439.66	\$95.68
4 Yard	\$464.73	\$881.29	\$1,427.52	\$2,057.22	\$2,562.81	\$3,068.50	\$113.80
6 Yard	\$644.54	\$1,238.18	\$1,831.66	\$2,425.26	\$3,018.79	\$3,612.34	\$152.43
7 Yard	\$753.88	\$1,446.44	\$2,138.85	\$2,831.41	\$3,523.83	\$4,216.39	\$174.74

Rates do not include StopWaste Benchmark Fee of \$0.60 - \$1.81 per month depending on service level (Alameda County Waste Management Authority Resolution #WMA 2012-6 - see [www.stopwaste.org/benchmark](http://www.stopwaste.org/benchmark) for details).

**City of Oakland**  
**Roll Off Rates (Per Service)**  
**July 1, 2013—June 30, 2014**

<b>Box Size</b>	<b>Rates</b>
20 Yard Box or Less .....	\$573.25
30 Yard Box.....	\$859.91
40 Yard Box.....	\$1,146.54
50 Yard Box.....	\$1,433.17

Relocation Charge.....	\$114.91
Stand-by Time .....	\$132.46
Placement Charge .....	\$77.03
Demurrage Charge Per Week .....	\$37.04
Demurrage Charge Per Day Thereafter.....	\$5.31
Flasher Charge per Pull .....	\$38.44
Per Additional Yard if Overloaded 6 Yards or More.....	\$28.63

Note: Compactor Rates twice the regular rate.

Demurrage charge to permanent customers when frequency falls below minimum level of service of 1 time per week.

Rates do not include StopWaste Benchmark Fee of \$1.81 per month depending on service level (Alameda County Waste Management Authority Resolution #WMA 2012-6 - see [www.stopwaste.org/benchmark](http://www.stopwaste.org/benchmark) for details).

(Ord. 12604 § 1, 2004: Ord. 11819 §§ 1 (part), 3, Exh. B, 1995: prior code § 6-4.20)

## Chapter 8.30

### SMOKING

**Sections:**

- 8.30.010**      **Title.**
- 8.30.020**      **Findings and purpose.**
- 8.30.030**      **Definitions.**
- 8.30.040**      **Application of chapter to city-owned facilities.**
- 8.30.050**      **Prohibition of smoking in enclosed places and notices for multi-housing.**
- 8.30.055**      **Prohibition of smoking in unenclosed places.**
- 8.30.060**      **Smoking policy requirements.**
- 8.30.070**      **Power to adopt more restrictive smoking policies.**
- 8.30.080**      **Smoking optional areas.**
- 8.30.090**      **Posting of signs.**
- 8.30.100**      **Enforcement.**
- 8.30.110**      **Violations and penalties.**
- 8.30.120**      **Nonretaliation.**
- 8.30.130**      **Public education.**
- 8.30.140**      **Governmental agency cooperation.**
- 8.30.150**      **Other applicable laws.**

**8.30.010      Title.**

This chapter shall be known as the smoking pollution control ordinance. (Prior code § 4-10.01)

**8.30.020      Findings and purpose.**

The City Council of the city finds that:

A. Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution; and

B. Reliable studies have shown that breathing secondhand smoke is a significant health hazard for certain population groups, including elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease; and

C. Health hazards induced by breathing secondhand smoke include lung cancer, respiratory infection, decreased exercise tolerance, decreased respiratory function, bronchoconstriction, and bronchospasm; and

D. Nonsmokers who suffer allergies, respiratory diseases and other ill effects of breathing secondhand smoke may experience a loss of job productivity or may be forced to take periodic sick leave because of such adverse reactions; and

E. Numerous studies have shown that a majority of both nonsmokers and smokers desire to have restrictions on smoking in public places and places of employment; and

F. Smoking is a documented cause of fires, and cigarette and cigar burns and ash stains on merchandise and fixtures cause economic losses to businesses. Accordingly, the City Council finds and declares that the purposes of this chapter are:

1. To protect the public health and welfare by prohibiting smoking in public places except in designated smoking areas, and by regulating smoking in places of employment, and

2. To strike a reasonable balance between the needs of smokers and the need of nonsmokers to breathe smoke-free air, and to recognize that, where these needs conflict, the need to breathe smoke-free air shall have priority. (Prior code § 4-10.02)

**8.30.030      Definitions.**

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

“Bar” means an area or a room utilized primarily for the sale of alcoholic beverages for consumption by patrons on the premises and in which the serving of food is incidental to the consumption of such beverages.

“Business” means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making purposes.

“City Manager” means the city of Oakland City Administrator or his or her designee.

“Dining area” means any area available to or customarily used by the general public or employees,

that is designed, established, or regularly used for consuming food and drink.

“Employee” means any person who is employed by any employer, as defined in this section, in the consideration for direct or indirect monetary wages or profit and any person who volunteers his or her services for a nonprofit entity.

“Employer” means any person, partnership, corporation, or nonprofit entity which employs the service of one or more persons, and includes the city of Oakland.

“Enclosed” means closed in by a roof and four or more connected walls with appropriate openings for ingress and egress.

“Multi-housing complex” means any housing complex with two or more separate units.

“Multi-housing common area” means any common area of a multi-housing complex accessible to and usable by more than one residence, including but not limited to halls and paths, lobbies, laundry rooms, common cooking areas, outdoor dining areas, play areas, swimming pools, and parking lots.

“Nonprofit entity” means any organization exempt from federal income taxation under Section 501 of the Internal Revenue Code or any organization exempt from State Income Taxation under Section 23708 of the California Revenue and Taxation Code.

“Place of employment” means any enclosed area under the control of any employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, breakrooms and restrooms, conference and classrooms, cafeterias, hallways, employer-owned vehicles used in employment or for business purposes, hotel and motel lobbies, meeting rooms and banquet rooms, and warehouses. A private residence is not a place of employment unless it is used as licensed health care or a licensed child or adult care facility.

“Recreational area” means any outdoor area, owned or operated by the city of Oakland, open to the general public for recreational purposes, regardless of any fee or age requirement, including, but not limited to: parklands, including portions of parks, such as picnic areas, playgrounds, or sports fields;

walking paths; gardens; hiking trails; bike paths; horseback riding trails; athletic fields; skateboard parks; and amusement parks. For the purposes of this chapter, “recreational area” does not include outdoor areas of city-owned golf courses.

“Retail tobacco store” means a retail store utilized primarily for the sale of tobacco products and tobacco accessories and in which the sale of other products is merely incidental.

“Service area” means any area designed to be or regularly used by one or more persons to receive or wait to receive a service, enter a public place, or make a transaction, whether or not such service includes the exchange of money, including, for example, ATMs, bank teller windows, telephones, ticket lines, bus stops, waiting rooms, and cab stands.

“Smoking” means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, weed, or other combustible substance. (Ord. 12837 § 4 (part), 2007; Ord. 12708 §§ 1 (part) and 2, 2005: prior code § 4-10.03)

#### **8.30.040 Application of chapter to city-owned facilities.**

All facilities owned by the city shall be subject to the provisions of this chapter. (Ord. 12837 § 4 (part), 2007; prior code § 4-10.04)

#### **8.30.050 Prohibition of smoking in enclosed places and notices for multi-housing.**

A. Smoking shall be prohibited in the following enclosed places:

1. Places of employment;
2. New and existing multi-housing common areas;
3. Service areas.

B. Disclosure of Smoking Policy in New and Existing Multi-Housing:

1. All landlords in multi-housing complexes are required to disclose to prospective tenants whether smoking is permitted in the unit to be rented and, which units are designated smoking units and the smoking policy for the complex.

2. All sellers of condominium units are required to disclose to prospective buyers respectively whether smoking is permitted in the unit and the smoking policy for the complex. (Ord. 12837 § 4 (part), 2007; prior code § 4-10.05)

#### **8.30.055 Prohibition of smoking in unenclosed places.**

Smoking shall be prohibited in the following unenclosed places:

- A. Service areas;
- B. Dining areas;
- C. Recreational areas, except in parking areas used for parking vehicles of persons accessing the recreational area;
- D. Multi-housing common areas, except that the landlord may designate a portion of the outdoor area of the premises as a smoking area as provided in subsection 1 below.
  - 1. A designated smoking area:
    - a. Must be located at least twenty-five (25) feet from any indoor area where smoking is prohibited;
    - b. Must not include and must be at least twenty-five (25) feet from outdoor areas primarily used by children, including, but not limited to, areas improved or designated for play or swimming;
    - c. Must be no more than twenty-five percent (25%) of the total outdoor area of the premises of the multi-housing complex;
    - d. Must have a clearly marked perimeter;
    - e. Must be identified by conspicuous signs; and
    - f. Must not overlap with any area in which smoking is otherwise prohibited by this chapter or other provisions of this Code, state law, or federal law. (Ord. 12837 § 4 (part), 2007)

#### **8.30.060 Smoking policy requirements.**

A. Smoking shall not be permitted in places of employment and employers shall post "No Smoking" or "Smoke Free" signs in accordance with Section 8.30.090. Employers should promote smoking cessation programs for smoking employees and contact local health organizations for assistance and materials in this effort.

B. Smoking outside of any enclosed place where smoking is prohibited shall occur at a minimum distance of twenty-five (25) feet from any building entrance, exit, window and air intake vent of the building, except that bars are exempted from the outside smoking requirements of this section, provided the smoke does not enter adjacent areas in which smoking is prohibited by law or by the owner, lessee, or licensee of the adjacent property.

C. This provision shall not apply to exempted governmental and educational agencies with facilities located in the city. (Ord. 12837 § 4 (part), 2007; Ord. 12708 § 1 (part), 2005; prior code § 4-10.06)

#### **8.30.070 Power to adopt more restrictive smoking policies.**

Notwithstanding any other provisions of this chapter, any owner, operator, manager or employer or other person who controls any establishment or place of employment or multi-housing complex regulated by this chapter, may adopt policies relating to smoking which are more restrictive than those provided herein. (Ord. 12837 § 4 (part), 2007; prior code § 4-10.07)

#### **8.30.080 Smoking optional areas.**

Notwithstanding any other provision of this chapter, to the contrary, the following areas shall not be subject to the smoking restrictions of this chapter:

- A. Enclosed areas of private, detached, single family residences, except those used as licensed child care, adult care, or health care facilities;
- B. Unenclosed areas of private, detached, single family residences, except, during their hours of operation, those used as licensed child care, adult care, or health care facilities;
- C. Retail tobacco stores;
- D. By performers during theatrical productions, if smoking is an integral part of the story. (Ord. 12837 § 4 (part), 2007; prior code § 4-10.08)

#### **8.30.090 Posting of signs.**

A. "No Smoking" or "Smoke Free" signs, with letters of no less than one inch in height or the international "No Smoking" symbol (consisting of a pic-

torial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly, sufficiently and conspicuously posted in every building or other place where smoking is regulated by this chapter, by the owner, operator, manager or other person having control of such building or other place, except that signs are not required inside non-smoking units of multi-housing complexes. For purposes of this chapter, the City Administrator or appropriate designee shall be responsible for the posting of signs in regulated facilities of the city.

B. Notwithstanding this provision, the presence or absence of signs shall not be a defense to the violation of any other provision of this chapter. (Ord. 12837 § 4 (part), 2007; prior code § 4-10.09)

#### **8.30.100 Enforcement.**

A. Enforcement of this chapter shall be implemented by the City Administrator, or his or her designee.

B. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the City Administrator or his or her designees.

C. Any owner, manager, operator or employee of any establishment regulated by this chapter shall have the right to inform persons violating this chapter of the appropriate provisions thereof.

D. Notwithstanding any other provision of this chapter, a private citizen may bring legal action to enforce this chapter. (Ord. 12837 § 4 (part), 2007; prior code § 4-10.10)

#### **8.30.110 Violations and penalties.**

A. It is unlawful for any persons to smoke in any area where smoking is prohibited by the provisions of this chapter.

B. Any person who violates any provision of this chapter shall be guilty of an infraction, punishable by:

1. A fine not exceeding one hundred dollars (\$100.00) for a first violation;

2. A fine not exceeding two hundred dollars (\$200.00) for a second violation of this chapter within one year;

3. A fine not exceeding five hundred dollars (\$500.00) for each additional violation of this chapter within one year. (Prior code § 4-10.11)

#### **8.30.120 Nonretaliation.**

No person shall discharge, refuse to hire, or in any manner retaliate against any employee or applicant for employment because such employee or applicant exercises any rights afforded by this chapter.

No person shall intimidate, harass, or otherwise retaliate against any person who seeks to attain compliance with this chapter. Moreover, no person shall intentionally or recklessly expose another person to secondhand smoke in response to that person's effort to achieve compliance with this chapter. (Ord. 12837 § 4 (part), 2007; prior code § 4-10.12)

#### **8.30.130 Public education.**

The City Administrator shall engage in a continuing program to explain and clarify the purposes of this chapter to citizens affected by it, and to guide owners, operators, and managers in their compliance with it. (Ord. 12837 § 4 (part), 2007; prior code § 4-10.13)

#### **8.30.140 Governmental agency cooperation.**

The City Administrator shall annually request other governmental and educational agencies having facilities within the city to establish local operating procedures in cooperation and compliance with this chapter. The City Administrator shall urge federal, state, county, and special school district agencies to enforce their existing no smoking regulations and to comply voluntarily with this chapter. (Ord. 12837 § 4 (part), 2007; prior code § 4-10.14)

#### **8.30.150 Other applicable laws.**

This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws. (Prior code § 4-10.15)

## Chapter 8.32

### TOBACCO PRODUCT DISTRIBUTION RESTRICTIONS

**Sections:**

- |                 |   |
|-----------------|---|
| <b>8.32.010</b> | <b>Title.</b>   |
| <b>8.32.020</b> | <b>Findings.</b>  |
| <b>8.32.030</b> | <b>Definitions.</b>   |
| <b>8.32.040</b> | <b>Prohibition of nonsale<br/>distribution of tobacco products<br/>and accessories.</b> |
| <b>8.32.050</b> | <b>Enforcement and penalties.</b>   |
| <b>8.32.060</b> | <b>Severability.</b>  |

**8.32.010 Title.**

This chapter shall be known as the ordinance to prohibit tobacco product giveaways. (Prior code § 4-11.01)

**8.32.020 Findings.**

The City Council of the city finds that:

- A. Scientific evidence indicates a causal relationship between tobacco smoking and diseases such as cancer, chronic bronchitis, heart disease and emphysema; and
- B. The Surgeon General of the United States has determined that smoking is the leading preventable cause of death in this country; and
- C. Smoking is responsible for one-quarter of all deaths caused by fire; and
- D. The use of smokeless or chewing tobacco is a hazard to the health of the user and may cause gum disease, mouth or oral cancers, and leukoplakia; and
- E. There is medical evidence that addiction to nicotine, a component of tobacco products, can result from smoking a single pack of cigarettes; and
- F. The free distribution of tobacco products and accessories is intended to encourage people to consume tobacco products which leads to a form of addiction, discourages those who already smoke or chew tobacco from quitting, and tempts those who have quit using tobacco to resume consumption; and

G. The marketing practice of tobacco product giveaways is commonly pursued through the use of multimedia equipped vans and promotion teams which distribute tobacco product samples at shopping areas, public parks and other areas where contact with the general public is frequent; and

H. Encouraging smoking and discouraging smokers from quitting smoking endangers the public health by leading more people to form or renew habits that cause illness and death; and

I. Tobacco product giveaways promote unsightly litter, thereby increasing the costs to the public in cleaning the streets, and also causes pedestrian and vehicular traffic congestion; and

J. Educators, health workers, parents, church leaders and business owners have complained about this marketing practice which targets low income urban neighborhoods. (Prior code § 4-11.02)

**8.32.030 Definitions.**

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

“Dispensing” or “distribution” means to give, sell, deliver, issue, offer or cause or hire any person to give, sell, deliver, issue or offer tobacco products, tobacco accessories and/or coupons or rebate offers for such products or accessories.

“Nonsale distribution” means the dispensing to the general public at no cost or at nominal cost of tobacco products or tobacco accessories, or distribution of coupons or rebate offers for tobacco products and tobacco accessories to the general public. Distribution of tobacco products or tobacco accessories, coupons and rebate offers in connection with the sale of another item, including tobacco products, magazines, newspapers or other items shall not constitute a non-sale distribution.

“Person” means an individual, firm, partnership, joint venture, unincorporated association, corporation, estate, trust, trustee, or any other group or combination of the above acting as a unit.

“Tobacco accessories” means cigarette papers or wrappers, pipes, cigarette rolling machines, and any



other item designed primarily for the smoking or ingestion of tobacco products.

“Tobacco product” means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, and dipping tobacco. (Prior code § 4-11.03)

**8.32.040 Prohibition of nonsale distribution of tobacco products and accessories.**

It is unlawful for any person to engage in the nonsale distribution of any tobacco product or tobacco accessory within the city for any purpose, including but not limited to promotional, marketing, advertising, testing, and consumer research purposes. (Prior code § 4-11.04)

**8.32.050 Enforcement and penalties.**

A. Any person who violates or refuses to comply with the provisions of this chapter shall be guilty of an infraction.

B. Each day such violation is committed or permitted to continue shall constitute a separate offense.

C. 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 hundred dollars (\$100.00) and, for a second conviction within a period of one year, by a fine of not more than two hundred dollars (\$200.00) and, for a third or any subsequent conviction within a one-year period, by a fine of not more than five hundred dollars (\$500.00). 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 one thousand dollars (\$1,000.00) or by imprisonment in the county jail for a period of not more than six months or by both.

D. The City Manager or his or her designee shall enforce this chapter against violations by any of the following actions:

1. Receiving and investigating complaints related to the violation of this chapter;

2. Serving notice requiring the correction of any violation of this chapter;

3. Calling upon the City Attorney to maintain an action for injunction to enforce the provisions of this chapter and to cause the correction of any such violation through all appropriate equitable and legal means. (Prior code § 4-11.05)

**8.32.060 Severability.**

This chapter shall be enforced to the full extent of the authority of the city. If any section, subsection, paragraph, sentence or word of this chapter is deemed to be invalid or beyond the authority of the city, either on its face or as applied, the invalidity of such provision shall not affect the other sections, subsections, paragraphs, sentences or words of this chapter, and the applications thereof; and to that end the section, subsections, paragraphs, sentences and words of this chapter shall be deemed severable. (Prior code § 4-11.06)

**Chapter 8.34****TOBACCO PRODUCT VENDING  
MACHINES****Sections:**

- |                 |   |
|-----------------|---|
| <b>8.34.010</b> | <b>Title.</b>   |
| <b>8.34.020</b> | <b>Findings.</b>  |
| <b>8.34.030</b> | <b>Definitions.</b>                                     |
| <b>8.34.040</b> | <b>Prohibition of tobacco product vending machines.</b> |
| <b>8.34.050</b> | <b>Exemption.</b>                                       |
| <b>8.34.060</b> | <b>Enforcement and penalties.</b>                       |
| <b>8.34.070</b> | <b>Severability.</b>                                    |

**8.34.010 Title.**

This chapter shall be known as the ordinance to prohibit tobacco product vending machines in areas accessible to persons under twenty-one (21) years of age. (Ord. 11771 § 1, 1995: prior code § 4-12.01)

**8.34.020 Findings.**

The City Council of the city finds that:

A. The adverse effects of smoking are well established by studies conducted in the health and medical fields; and

B. The smoke emitted by tobacco products contains over four thousand (4,000) chemicals, many of which are known carcinogens, mutagens, irritants and toxins; and

C. The Surgeon General has identified the smoking of tobacco products as the single most preventable cause of death in our society, accounting for an estimated three hundred ninety thousand (390,000) premature deaths per year in the United States alone; and

D. The smoking of cigarettes and other related products is highly addictive, so that the chances are only one out of twenty (20) that a smoker attempting to quit smoking will succeed; and

E. Minors are generally not informed of the adverse effects of smoking or are led through advertisements and commercial promotions to believe that cigarette smoking will enhance their image or lifestyle; and

F. Tobacco product vending machines provide minors unregulated access to smoking products, increasing the risk of early exposure to smoking which may result in a life-long addiction to tobacco products; and

G. In order to minimize the use of tobacco products by minors it is necessary that an ordinance be adopted which restricts access to tobacco vending machines by minors, in the interest of promoting their health, safety and welfare. (Prior code § 4-12.02)

**8.34.030 Definitions.**

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

“Person” means an individual, firm, partnership, joint venture, unincorporated association, corporation, estate, trust, trustee, or any other group or combination of the above acting as a unit.

“Six-month owner” means a person who purchased a tobacco product vending machine with an approved electronic security device fewer than six months prior to the effective date of this chapter for the purpose of using the machines to sell or distribute tobacco products exclusively within the city of Oakland and who on the effective date of this chapter was using the vending machines in an area accessible to minors and who has not, or will not have, recovered his or her investment therein by the date on which discontinuance of use is required pursuant to Section 8.34.040B.

“Tobacco accessories” means cigarette papers or wrappers, pipes, cigarette rolling machines, and any other item designed primarily for the smoking or ingestion of tobacco products.

“Tobacco product” means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, and dipping tobacco.

“Tobacco product vending machine” means any mechanical or electrical device requiring the insertion of coins or paper bills, or other thing representative of value, to dispense or release a tobacco

product and/or tobacco accessories. (Ord. 11771 § 2, 1995; prior code § 4-12.03)

#### **8.34.040 Prohibition of tobacco product vending machines.**

A. No person shall place, maintain, use, or permit the placement, maintenance, or use, of any tobacco product vending machine ("machine") on his or her premises for the purpose of selling or distributing any tobacco products or tobacco accessories when persons under twenty-one (21) years of age have access to the premises.

B. All machines in use on premises accessible to minors shall be removed within ninety (90) days after the effective date of the ordinance codified in this chapter except a machine owned by a person who has purchased the machine within six months prior to the effective date of the ordinance codified in this chapter, and who has applied for and received a use extension based on financial hardship, as described in subsection C of this section.

C. A use extension shall be granted to an owner of a machine who has purchased such a machine within six months prior to the effective date of this chapter, upon a showing of financial hardship, determined if all the following are present:

1. That the tobacco product vending machine had been in use in the city in an area accessible to minors on the effective date of this chapter;
2. That the tobacco product vending machine owner ("owner") had owned the machine for less than six months prior to the effective date of this chapter;
3. That the owner will not have recovered his or her investment in the machine before the date of required discontinuance; and
4. That the investment not recovered at the date of required discontinuance will exceed ten percent of the actual cost of the machine; and
5. That the machine will be located so as to allow for constant supervision by the owner or a responsible employee.

The length of the use extension shall be determined by the City Manager or his or her designee, provided that the use extension shall in no event

exceed one year from the date of installation of the machine. The owner shall bear the burden of proof on each issue, and the decision of the City Manager or his or her designee shall be final. The City Manager's power to grant a use extension shall expire six months after the effective date of this chapter. (Ord. 11771 § 3, 1995; prior code § 4-12.04)

#### **8.34.050 Exemption.**

A. A tobacco product vending machine equipped with an approved electronic security device which notifies an adult proprietor, employee, or other adult individual in custody and control of the tobacco vending machine of an impending vending machine transaction, and which requires said proprietor or employees or individual to unlock the vending machine security device before the transaction can be consummated, is exempt from the provisions of Section 8.34.040, provided that the vending machine cannot be accessed without deactivating the security device. The security device shall be on at all times, except when a transaction is made, and must only be turned off for a specific transaction.

B. For the exemption in this section to apply, approval, in the form of a permit, of the electronic security device must be obtained from the City Manager or his or her designee.

C. The fee for such permit is to be established pursuant to the Master Fee Schedule. (Prior code § 4-12.05)

#### **8.34.060 Enforcement and penalties.**

A. Any person who violates or refuses to comply with the provisions of this chapter shall be guilty of an infraction.

B. Each day such violation is committed or permitted to continue shall constitute a separate offense.

C. Any person convicted of an infraction under the provisions of this chapter shall be punished upon a first conviction by a fine of not more than one hundred dollars (\$100.00) and, for a second conviction within a period of one year, by a fine of not more than two hundred dollars (\$200.00) and, for

## **8.34.060**

a third or any subsequent conviction within a one-year period, by a fine of not more than five hundred dollars (\$500.00). 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 one thousand dollars (\$1,000.00) or by imprisonment in the county jail for a period of not more than six months or by both.

D. The City Manager or his or her designee shall enforce this chapter against violations by any of the following actions:

1. Receiving and investigating complaints related to the violation of this chapter;
2. Serving notice requiring the correction of any violation of this chapter;
3. Calling upon the City Attorney to maintain an action for injunction to enforce the provisions of this chapter and to cause the correction of any such violation through all appropriate equitable and legal means. (Prior code § 4-12.06)

## **8.34.070      Severability.**

This chapter shall be enforced to the full extent of the authority of the city. If any section, subsection, paragraph, sentence or word of this chapter is deemed to be invalid or beyond the authority of the city, either on its face or as applied, the invalidity of such provision shall not affect the other sections, subsections, paragraphs, sentences or words of this chapter, and the applications thereof; and to that end the section, subsections, paragraphs, sentences and words of this chapter shall be deemed severable. (Prior code § 4-12.07)

## Chapter 8.36

### SWIMMING POOLS

**Sections:**

- 8.36.010      Enclosures.**  
**8.36.020      Enclosures—Exemptions.**

**8.36.010      Enclosures.**

Every person in possession of land upon which is situated a swimming pool shall at all times maintain on the lot or premises upon which such pool is located and completely surrounding such pool, lot or premises, a fence not less than four feet in height so that the swimming pool is completely enclosed by such fence, or is enclosed in part by such fence, and in part by a dwelling house or other permanent structure to which such fence is connected to form a complete enclosure at least four feet in height. Said fence shall be constructed so as to prevent any person, including small children, from crawling or passing through the same except at gates therein, which gates shall be equipped with a self-closing or self-latching device designed to keep, and capable of keeping, such gate securely closed at all times when the swimming pool is not in use. The door of any dwelling occupied by human beings and forming any part of the enclosure hereinabove required need not be so equipped.

Notwithstanding the other provisions of this section, the Building Inspector of the city is authorized upon written application, accompanied by plans, pictures or other descriptive materials satisfactory to the Building Inspector, to approve any other method or means of fencing or enclosing a swimming pool that will afford adequate protection to small children. Provided, however, a decision of the Building Inspector disapproving such other methods or means of fencing or enclosing a swimming pool shall, upon the written request of the applicant, be reviewed by the Board of Examiners and Appeals created by Section 15.04.025 of the Oakland Municipal Code. Such request shall be made within ten days after notice of denial of the application. Notice shall be completed upon deposit in the United States mail of

the decision in an envelope postpaid, addressed to the applicant at the address given in the application. The Board shall review the said application according to such rules of procedure as it adopts and determine whether or not the provisions of this section have been complied with.

In the event the Board of Examiners and Appeals shall likewise disapprove, or shall fail to approve, such other means of fencing or enclosing a swimming pool, the Council shall, upon the written request of the applicant addressed to the City Clerk, review the application. Such request shall be made within ten days after notice of denial of the application by said Board, said notice to be deemed completed upon deposit in the United States mail of said decision in an envelope postpaid, addressed to the applicant at the address given in the application. The City Clerk shall forthwith set said matter for hearing before the Council and cause notice thereof to be given to the applicant and to such other persons, if any, as shall have recorded an interest therein. Such hearing may, by the Council, be continued from time to time. The Council shall by resolution determine whether the proposed alternative method of fencing or enclosing the swimming pool will afford adequate protection of small children. Such determination shall be final and conclusive. (Ord. 11926, 1996: prior code § 2-5.24)

**8.36.020      Enclosures—Exemptions.**

The provisions of Section 8.36.010 shall not apply to public swimming pools for which a charge or admission price is required to be paid for the use thereof, nor to swimming pools which are a part of and located upon the same premises as a hotel or motel, if the owner or operator, or the adult employee of said owner or operator is present at and in active charge of the premises upon which such pool is located. (Prior code § 2-5.25)

**Chapter 8.38****SANITATION****Sections:**

- 8.38.010** **Drainage and sewerage overflow.**  
**8.38.020** **Refuse in public streets.**  
**8.38.030** **Keeping sidewalks clean.**  
**8.38.040** **Cost of cleanup.**  
**8.38.050** **Cesspools.**  
**8.38.060** **Stagnant water.**  
**8.38.070** **Expectoration.**  
**8.38.080** **Vacating disease-infected buildings.**  
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**8.38.010 Drainage and sewerage overflow.**

It is unlawful for any person holding or having control of any premises to suffer or permit any sewerage or drainage other than clear water from such premises to enter into or upon any public street, way, square, park, natural watercourse, or storm sewer in the city. (Prior code § 4-5.01)

**8.38.020 Refuse in public streets.**

Any person who sweeps into or deposits in any roadway, gutter, culvert, or storm water inlet any such material moved from adjacent sidewalk, garden, yard or building, is guilty of an infraction. (Prior code § 4-5.011)

**8.38.030 Keeping sidewalks clean.**

The occupant or tenants, or in the absence of occupant or tenant, the owner, lessee, or proprietor of any real estate in the city in front of which there is a paved sidewalk shall maintain said sidewalk free of dirt or refuse. Sweepings from said sidewalk shall not be swept or otherwise made or allowed to go into the gutter or roadway, but shall be disposed of in the same manner as required for the disposal of garbage. Any of the above enumerated parties who shall be notified by the Superintendent of Streets that provisions of this section are being violated shall be liable for continued violations. (Prior code § 4-5.012)

**8.38.040 Cost of cleanup.**

Any person who dumps or causes to be dumped any waste matter in or upon any public road, including any portion of the right-of-way thereof, or in or upon any public park or other public property other than property designated or set aside for that purpose by the governing board or body having charge of that property is liable to the city for the costs of cleaning up such dumping if that person fails to perform such cleanup or pay to have such cleanup performed.

Further, any person who places, deposits, or dumps or causes to be placed, deposited, or dumped, any rocks or dirt in or upon any road, including any portion of the right-of-way thereof, or in or upon any public park or other public property, without consent of the state or city agency having jurisdiction over road or property shall be liable to the city for the costs of cleanup except as otherwise stated above. (Prior code § 4-5.013)

**8.38.050 Cesspools.**

It is unlawful for any person to construct or use

or have or maintain any cesspool upon any lot or land owned or occupied by him or her in the city within one hundred fifty (150) feet of either line of any street having a sewer therein unless such cesspool is properly connected with the street sewer, and at all such connections there shall be a trap or other device to prevent the escape of gas or other obnoxious odors therefrom into the open air so as to be offensive to the senses of persons in the immediate neighborhood thereof, and in all such connections there shall be maintained a constant supply of water sufficient to prevent accumulation in said cesspool or the pipes of drains thereof. (Prior code § 4-5.02)

#### **8.38.060      Stagnant water.**

It is unlawful for any person having possession or control of any real property in the city to cause, permit or allow any stagnant water, or any obnoxious or offensive substance, to stand or remain thereon. (Prior code § 4-5.03)

#### **8.38.070      Expectoration.**

It is unlawful for any person to spit or expectorate within the city upon the floor or steps or any public car or conveyance, or any public building, or upon any sidewalk or crosswalk. (Prior code § 4-5.04)

#### **8.38.080      Vacating disease-infected buildings.**

Whenever it shall be certified to the City Manager by the Health Officer of the city that any building or part thereof is unfit for human habitation by reason of its being so infected with disease or from other causes as to be likely to cause sickness or disease among its occupants, the City Manager may issue an order requiring all persons therein to vacate said building or the objectionable part thereof, and shall also cause a copy of said order to be affixed conspicuously upon the front of the said building, and shall also cause a copy of said order to be served personally, or by mail if personal service cannot be made, upon the owner, agent or lessee of said building. Said order shall state the reasons for requiring the infected building or portions thereof

to be vacated, and shall require that such premises be vacated within ten days after affixing said order thereon; provided, however, that if in the opinion of the Health Officer, the public health and safety shall require the said premises to be vacated sooner than as hereinabove provided, the City Manager may require, and said order shall provide for, the vacating of such premises within a shorter time than ten days, in no case, however, to be less than twenty-four (24) hours from the time of affixing a copy of the order on the premises. (Prior code § 4-5.05)

#### **8.38.090      Dangerous or insanitary buildings, etc. abatement.**

Every dangerous or insanitary condition which may exist upon any premises in the city may be abated by the Health Officer in the manner provided in this chapter. (Prior code § 4-5.06)

#### **8.38.100      Complaint and hearing on dangerous or insanitary condition.**

The Health Officer may file with the City Manager a written complaint setting forth facts showing that a dangerous or insanitary condition exists upon any premises in the city. Upon receipt of such complaint the City Manager shall present the same to the City Council, and the City Council shall forthwith by resolution fix a time and place for a public hearing on such complaint.

The Health Officer shall cause a copy of such resolution and complaint to be served upon the person in possession of such premises, or upon the owner thereof, not less than five days prior to the time fixed for such hearing. Such service may be by delivery of a copy of such resolution and complaint to the owner or occupant personally or by enclosing the same in a sealed envelope, postage prepaid, addressed to the occupant at such premises, or to the owner at his or her last known address as the same appears on the last equalized assessment rolls of the city, and depositing the same in the United States mail. Service shall be deemed completed at the time of the deposit in the United States mail. (Prior code § 4-5.07)

**8.38.110 Abatement proceedings.**

Upon the date and at the place and hour fixed for the hearing on such complaint, the Council of the city shall hear such evidence as may be presented by any interested party. Such hearing may be continued from time to time by the City Council. Upon the completion of such hearing the City Council shall either dismiss the complaint, or shall direct that the dangerous or insanitary condition shall be abated. The Health Officer shall forthwith give written notice, in the manner provided in Section 8.38.100, to the owner or occupant of said premises to abate such condition forthwith. If such abatement is not commenced within five days thereafter, and diligently prosecuted to completion, the Health Officer shall cause the same to be abated.

The Council shall order to be paid, and the Auditor shall audit and the Treasurer shall pay all sums which may be necessarily expended by the Health Officer in abating such condition. In lieu of employing a contractor, or other person to abate such condition, the Health Officer may call upon the Street Department or other department of the city to abate such condition. (Prior code § 4-5.08)

**8.38.120 Expense of abatement—Assessed against property.**

The expense incurred by the Health Officer or any department of the city in the abatement of any dangerous or insanitary condition shall be assessed against the real property upon which the same was located. The Health Officer shall give the owner or occupant of such premises a written notice in the manner provided in Section 8.38.100, showing the itemized cost of such abatement, and requesting payment thereof. If the amount of such expense as shown in such statement is not paid to the Health Officer within five days after such notice, the Health Officer shall record in the Office of the County Recorder of the county of Alameda, state of California, a certificate substantially in the following form:

**Notice of Lien**

Pursuant to authority vested in me by Resolution No. \_\_\_\_ C.M.S., of the Council of the City of Oakland, passed on the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and the provisions of Chapter 8.38 of the Oakland Municipal Code, I did, on the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, cause a dangerous (insanitary) condition located upon the hereinafter described real property to be abated at the expense of the owner thereof, in the amount of \$ \_\_\_\_\_, and that said amount has not been paid nor any part thereof, and the City of Oakland does hereby claim a lien upon the hereinafter described real property in said amount; the same shall be a lien upon the said real property until said sum with interest thereon at the rate of 6% per annum from the date of the recordation of this lien in the Office of the County Recorder of the County of Alameda, State of California, has been paid in full. The real property hereinabove mentioned and upon which a lien is claimed is that certain parcel of land lying and being in the City of Oakland, County of Alameda, State of California, and particularly described as follows, to-wit:

(Insert description of property)

Dated this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

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Health Officer  
City of Oakland

And the same shall be a lien against the property described therein until the amount thereof, plus accrued interest, has been paid in full. (Prior code § 4-5.081)

**8.38.130 Lien to draw interest—Statute of limitations.**

The amount of such lien shall draw interest at the rate of six percent per annum from the date of the recordation of such lien in the Office of the County Recorder, and the statute of limitations shall not run

against the right of the city to enforce the payment of such lien. (Prior code § 4-5.082)

#### **8.38.140 Transportation of offensive matters.**

It is unlawful for any person to convey or transport upon any public street, lane or alley within the limits of the city, any swill, garbage, filth, offal of any kind, or any offensive or ill-smelling matter between the hours of twelve noon and six in the evening; or to use any cart or vehicle at any time for such transportation or conveyance of any such offensive or ill-smelling matter, unless such means of conveyance is so constructed and covered as to prevent any leakage thereof or any smell to emit therefrom. (Prior code § 4-5.09)

#### **8.38.150 Separation of ashes from garbage.**

It is unlawful for any person, whether as owner, agent or occupant of any premises in the city, to cause or permit any ashes or cinders that may accumulate on such premises to be or become mixed with any swill, garbage or filth of any kind, or any rubbish or any offensive or ill-smelling matter. (Prior code § 4-5.10)

#### **8.38.160 Premises to be kept sanitary.**

Every person owning, occupying or controlling any premises in the city shall maintain the same in a clean and sanitary condition, and free from any accumulation of garbage, filth, decayed matter, or any matter detrimental to health. All garbage or waste matter on such premises shall be placed in a metal can and shall be kept tightly covered.

It shall be the duty of the Health Officer of the city to cause any person who shall allow any accumulation of any offensive matter, as in this section prohibited, to be notified in writing to abate such condition; and in case such person shall fail to comply with such notice within twenty-four (24) hours, such condition may be abated by the Health Officer in the manner provided by this chapter, and in addition thereto the person failing to comply with such notice shall be guilty of a misdemeanor. (Prior code § 4-5.11)

#### **8.38.170 Dumping garbage.**

It is unlawful for any person to dump or place on any land or in any water or waterways within the city, any dead animal, butcher offal, fish or parts of fish, or any waste vegetable or animal matter whatever. (Prior code § 4-5.12)

#### **8.38.180 Rats.**

Every person owning, occupying or controlling any wharf, building or basement in the city shall use for the protection thereof such funnels, screens, netting, cement or other materials as may be necessary to prevent the ingress of rats thereto, and shall, when so directed by the Health Officer of the city, use on such premises such rat traps or other means or methods of rat eradication as may by said Health Officer be deemed necessary. (Prior code § 4-5.13)

#### **8.38.190 Return of certain merchandise prohibited.**

It is unlawful for any person engaged in the sale at retail of the following articles of merchandise: (A) mattresses, blankets, sheets, comforters, pillows and other bedding; (B) heating pads and metal hot water bottles, stockings made of rubber, reducing rollers, water bags and other rubber goods of a like or similar kind; (C) combs, hair brushes, toothbrushes, barrettes, bath brushes, powder puffs, lipsticks, compacts, broken packages of powder, creams and rouges; (D) corsets, brassieres, underwear, union suits, bloomers, bathing suits; (E) articles made of hair to be worn by a person, and veils; to accept from the purchaser of any of the above articles, once delivery is effected; provided, that this section shall not be construed to prohibit the return of articles misfitting or defective in their construction, which shall be disinfected before being offered for resale, or articles which are sold in tightly sealed packages and returned with such original sealed package unbroken. (Prior code § 4-5.14)

#### **8.38.200 Transportation of radioactive materials.**

Any individual or entity transporting hazardous

radioactive materials or their by-products into or through the city shall first obtain from the Fire Marshal a Certificate of Transport for each shipment.

The term "hazardous radioactive material" as used herein means a radioactive substance or combination of radioactive substances which, because of its quantity, concentration, or physical or chemical characteristics, may cause or significantly contribute to an immediate increase in mortality or an immediate increase in serious irreversible or incapacitating reversible illness to unconsenting members of the public or a substantial hazard to the environment when improperly treated, stored, transported, or disposed of or otherwise managed.

To obtain a certificate of transport, an individual, entity or its designated representative must notify the Fire Marshal at least forty-eight (48) hours prior to transport, informing the Fire Marshal of the quantity and type of radioactive material to be transported, the proposed date and time of transport, the proposed type of carrier and containers, the proposed route to be utilized, and proposed security methods. All such methods of transport and equipment must be of the latest type approved by the appropriate federal and state agencies and must be in the highest state of operating and physical condition. The route shall be on freeways to the maximum extent feasible subject to other safety conditions.

The Fire Marshal shall notify and coordinate said proposed transporting with the Chief of Police. After considering all of the information, the Fire Marshal with the concurrence of the Chief of Police shall issue a certificate of transport to the individual or entity shipping the radioactive material with such conditions as are appropriate to safeguard the health, welfare and safety of the citizens of the city. This certificate of transport must be available for inspection by law enforcement officers at all times during transport within the city.

This section is not intended to apply to the transporting of radioactive materials where the risk to the public is minimal in the event of an accident or other improper handling because of the small quantity, concentration or physical or chemical character-

istics of the radioactive material being transported. Examples of such exclusions are as follows:

A. Radioactive materials transported to physicians, hospitals, licensed medical suppliers or licensed medical users, intended for diagnostic or therapeutic use;

B. Radioactive materials transported in approved smoke alarms and other similar devices for use by the public;

C. Radioactive materials transported in approved testing or measuring equipment for use by the public or in construction or industry. (Prior code § 4-5.15)

## Chapter 8.40

### MISCELLANEOUS HEALTH AND SAFETY REGULATIONS

**Sections:**

- 8.40.010 Medicine samples.**
- 8.40.020 Registry of births.**
- 8.40.030 Removal and interment of dead bodies.**
- 8.40.040 Records of vital statistics.**
- 8.40.050 Certification of certificates of inoculation and vaccination.**
- 8.40.060 Confetti.**
- 8.40.070 Quiet zones.**
- 8.40.080 Offensive places and occupations.**
- 8.40.090 Smelting ores.**
- 8.40.100 Regulating sale of contraceptives.**
- 8.40.110 Report of injuries to city employees.**
- 8.40.120 Cellar doors.**
- 8.40.130 Playing in the streets.**
- 8.40.140 Stairway protection.**
- 8.40.150 Plans on theater program.**
- 8.40.160 Theater exit lights.**
- 8.40.170 Hallway and exit obstructions prohibited.**

**8.40.010 Medicine samples.**

It is unlawful for any person to go from house to house, or place to place, distributing any free sample of any drug or medicine, or preparation intended for medicinal purposes. (Prior code § 4-7.01)

**8.40.020 Registry of births.**

Every physician, midwife, nurse or other person assisting at a birth, shall report in writing within five days thereafter to the Health Office, a certificate of registry of such birth, which shall contain, among other matters, the time and place of birth; name, sex, race and color of the child; the name, residence, age, birthplace, and occupation of the parents; the maiden name of the mother; whether born in or out

of wedlock; and such other information as may be required by the said Health Officer. (Prior code § 4-7.02)

**8.40.030 Removal and interment of dead bodies.**

It is unlawful for any person to deposit in any cemetery in the city the body of any human being who has died in said city, or to remove the same from within the limits of the city, without first having obtained and filed with the Health Officer a certificate signed by a regularly licensed physician or coroner, setting forth as nearly as possible the name, age, color, place of birth, occupation, location and cause of death of the deceased, and having also obtained from the Health Officer a permit in writing for such burial or other purpose; or for any person to transport in or through the streets of the city the body of any human being who has died within the limits of the city, or any body or remains of a deceased person exhumed or taken from any grave, unless the person so transporting such body or remains shall first obtain from the Health Officer a permit in writing therefor, which shall accompany the body or remains.

The Health Officer shall collect the sum of one dollar (\$1.00) for any permit issued pursuant to this section. (Prior code § 4-7.03)

**8.40.040 Records of vital statistics.**

The Health Officer of the city shall, whenever requested so to do, issue certificates of the records of the births and deaths as shown in the office of the Health Department, which said certificates shall be signed by said Health Officer and duly certified by the Clerk of the Health Department. A charge of one dollar (\$1.00) shall be made for the issuance of each certificate. (Prior code § 4-7.04)

**8.40.050 Certification of certificates of inoculation and vaccination.**

The Health Officer of the city shall, whenever requested so to do, certify certificates of inoculation and vaccination. A charge of one dollar (\$1.00) shall

## **8.40.050**

be made for certification of each such certificate. (Prior code § 4-7.041)

### **8.40.060 Confetti.**

It is unlawful for any person to gather or pick up from any public street, sidewalk or place, except for the purpose of cleaning such street, sidewalk or place, the substance generally known and designated as "confetti" or to have in his or her possession, or to sell or offer for sale, confetti that has been gathered or picked up from any public street, sidewalk or place, or to throw or cause to be thrown confetti so gathered or picked up, or confetti in mixed colors, upon any person or the apparel of any individual. (Prior code § 4-7.05)

### **8.40.070 Quiet zones.**

There is created and established a zone of quiet in all territory embraced within a distance of three hundred (300) feet of every hospital in the city, and it is unlawful for any person to make, cause or permit to be made, any unnecessary noise in any such zone of quiet, or to cause any disturbance of the peace and quiet of any of the inmates of any such hospital.

It shall be the duty of the City Manager to place or cause to be placed, in conspicuous places on every street upon which any hospital may be situated and at a distance of not less than three hundred (300) feet in every direction from said hospital, a sign or placard displaying the words "Notice! Zone of Quiet. No loud or unnecessary noises permitted." (Prior code § 4-7.06)

### **8.40.080 Offensive places and occupations.**

It is unlawful for any person to establish or maintain any slaughterhouse, to keep any hog, to cure or keep hides, skins or peltry, to slaughter cattle, sheep or any other kind of animal, to pursue, maintain or carry on any other business or occupation offensive to the senses or prejudicial to the public health or comfort, within the limits of the city.

Provided, however, that if any provision in this section shall be found in conflict with any provision

of Title 17 of this code, the provisions set forth in said Title 17 shall prevail. (Prior code § 4-7.07)

### **8.40.090 Smelting ores.**

It is unlawful for any person to engage in the occupation or business of reducing or smelting ores containing sulphurets of lead, arsenic, copper, or antimony within the limits of the city. (Prior code § 4-7.08)

### **8.40.100 Regulating sale of contraceptives.**

It is unlawful for any person to vend, sell or distribute, at retail or to the public in any manner whatsoever, any article, drug or medicinal preparation primarily manufactured, produced or intended for use as, or which may be used as a contraceptive, within the city, except regularly licensed practitioners of medicine or registered pharmacists.

It is unlawful to vend, sell or distribute any such articles, drugs or medicines on the streets, or elsewhere, within the city, by means of machines, or by peddling, canvassing or soliciting from house to house, or otherwise, except as hereinbefore provided. In case of sale by machines, the owner of the machine, as well as the owner and occupant of the premises where the machine is located, shall be deemed a violator hereof. (Prior code § 4-7.09)

### **8.40.110 Report of injuries to city employees.**

Every physician, surgeon or other practitioner attending or rendering or furnishing medical, surgical or other attention or treatment to any employee of the city or any contractor or subcontractor engaged in performing work for, or under contract with, said city, which employee has sustained any personal injury by accident arising out of and in the course of his or her employment of said city, or in or upon said work, shall within twenty-four (24) hours after his or her first visit to, and examination of, said injured employee, or after having knowledge of such injury furnish a report in writing to the Health Officer, stating the name, age, sex and address of such injured employee, the place where such injured employee is located and being attended

or treated, the character, extent, apparent cause, and probable duration, of his or her injury or injuries, and in cases where the death of such employee has occurred or resulted, the fact, time and cause of such death. Any violation of the provisions of this section shall be a misdemeanor. (Prior code § 5-7.01)

#### **8.40.120 Cellar doors.**

It is unlawful for any person to allow any cellar door over any sidewalk in the city or any door leading from a sidewalk to a basement, to remain open at any time except during the reception or delivery of goods, wares or merchandise, or to fail to provide adequate safeguards on said doors for the safety of the public; provided, however, that in such places as the public convenience is in no way interfered with, a permit may be granted by the Chief of Police to keep any door leading from the sidewalk to the basement open at all times. Such doors and openings must be completely covered by a strong wire mesh and no sign shall be attached to or displayed thereon. (Prior code § 2-5.12)

#### **8.40.130 Playing in the streets.**

It is unlawful for any person to fly a kite or play any game of ball on any street, lane or alley in the city. (Prior code § 2-5.13)

#### **8.40.140 Stairway protection.**

Every person shall keep around every area between the building and the sidewalk and on both sides of every flight of stairs descending from the sidewalk to the basement on premises owned or occupied by him or her, a fence or railing at least three feet high. (Prior code § 2-5.14)

#### **8.40.150 Plans on theater program.**

In all performances in theaters or opera houses a diagram or plan of each gallery or floor showing distinctly the exits therein, each occupying a space not less than five square inches, shall be printed in black lines in a legible manner on the program of the performance. (Prior code § 2-5.15)

#### **8.40.160 Theater exit lights.**

Every exit in any theater or opera house shall have over the same on the inside at a height of not more than twelve (12) inches above the exit a metal box with the word "EXIT" cut therein in legible letters not less than eight inches high. In each exit box there shall be a red light on an independent circuit from all other lights in the building and said lights must be lighted at all times during exhibitions. (Prior code § 2-5.16)

#### **8.40.170 Hallway and exit obstructions prohibited.**

All doors, aisles and passageways within and leading into or out of theaters, churches, and all other places of public assemblage shall be free from easels, signs, standards, camp-stools, chairs, sofas, benches and every other article that might obstruct or delay the exit of the audience, congregation or assemblage during the entire time during which any assemblage may be held, and it is unlawful for any person to sit or stand, or to allow any other person to so remain in any such place of public assemblage in any aisle under any circumstances, or in any exit or passage that will in any manner obstruct the safe exit of the assemblage. Clear passage from all exits and on sidewalks must at all times be maintained outside of all theaters and other places of public assemblage. No aisle, passageway or stairway in any store shall be obstructed with tables, show cases, or other obstruction during hours said store is open to the public, and no obstruction shall be permitted at any time in any hallway, stairway or exit of any apartment house or tenement house. It shall be the duty of every person, whether as owner, proprietor, manager, superintendent, lessee, agent or otherwise, in charge of any building used as a store or place of public assemblage to see that the provisions of this section are complied with. The Fire Marshal shall be the enforcing officer. (Prior code § 2-5.17)

**Chapter 8.42****CERTIFIED UNIFIED PROGRAM AGENCY  
(CUPA)****Sections:**

- 8.42.010 Certified unified program agency (CUPA).**
- 8.42.020 Findings and purpose.**
- 8.42.030 Adoption of provisions of the act.**
- 8.42.040 Adoption of provisions of six hazardous materials and waste management programs consolidated by under the unified program.**
- 8.42.050 Enforcement responsibility—Delegation of authority.**
- 8.42.060 Definitions.**
- 8.42.070 Filing of a hazardous material disclosure form.**
- 8.42.080 Content of disclosure form.**
- 8.42.090 Exemptions from disclosure.**
- 8.42.100 Review of disclosure forms.**
- 8.42.105 Hazardous materials assessment report and remediation plan.**
- 8.42.110 Closure and redemption.**
- 8.42.120 Community right to know—Trade secrets.**
- 8.42.130 Fees and penalties.**
- 8.42.140 Inspections.**
- 8.42.150 Enforcement.**
- 8.42.160 Relation to existing laws.**

**8.42.010 Certified unified program agency (CUPA).**

A. The city of Oakland (“city”), pursuant to the state of California Environmental Protection Agency’s (“Cal EPA”) approval of the city’s application to serve as the certified unified program agency (“CUPA”) for the city, assumes authority and responsibility for the administration and enforcement within the city of the unified hazardous waste and hazardous materials management regulatory program (“unified program”) established by

Chapter 6.11 of the California Health and Safety Code (section 25404, et seq.), (hereinafter referred to as the “Act”) to consolidate the administration and enforcement of the six following hazardous materials management programs and ensure the coordination and consistency of any regulations adopted pursuant to such program requirements:

1. Hazardous waste generator requirements (Chapter 6.5 of Health and Safety Code, Section 25100; et seq.);
2. Aboveground storage tanks (spill prevention control and countermeasure plan only) (Health and Safety Code Section 25270.5(c));
3. Underground storage tanks (Chapter 6.7 of Health and Safety Code, Section 25280; et seq.);
4. Hazardous materials release response plans and inventories (commonly referred to as hazardous materials business plans (“HMBP”)) (Chapter 6.95 of Health and Safety Code, Section 25501 et seq.);
5. Requirements concerning acutely hazardous materials; (commonly referred to as accidental release prevention program (“CalARP”)) (Chapter 6.95 of Health and Safety Code, Section 25531, et seq.); and
6. State Uniform Fire Code requirements concerning, hazardous material management plans and inventories (Section 80.103 of the Uniform Fire Code as adopted by the State Fire Marshal pursuant to Health and Safety Code, Section 13143.9.).

B. Pursuant to the Act, the city has exclusive, local jurisdiction within its boundaries to administer and enforce the requirements of the unified program. Notwithstanding any provision of this chapter to the contrary, the Alameda County District Attorney shall continue to be responsible for any civil and criminal prosecution of violations of the requirements of the unified program, unless otherwise agreed to by the city and the county of Alameda in writing.

C. The city’s assumption of responsibility for the implementation of the unified program is in accordance with the Act and pursuant to that certain agreement dated January 28, 1997, between the city and the county of Alameda, entitled “Coordinating Agencies Agreement.” (Ord. 12057 § 1 (part), 1998)

**8.42.020 Findings and purpose.**

The City Council finds and declares:

A. Hazardous materials and hazardous waste in the community may be hazardous to the environment and the health of individuals who visit, reside or work in the city if they are exposed to such substances as a result of fire, spills, industrial accidents, releases, emissions or other incidents.

B. Businesses that safely handle, use, store and dispose of hazardous materials and waste benefit the community by protecting the environment and the health and welfare of residents, workers and visitors. It is the intent of the City Council that the administration and enforcement of the unified program requirements will facilitate safe business practices with respect to hazardous materials and waste.

C. It is the intent of the City Council that the administration and enforcement of the unified program will reduce the likelihood of fires, spills, emissions, releases and other incidents that could detrimentally affect the lives of residents, visitors and workers and the environment by establishing an inspection procedure, disclosure requirements, and permitting procedures for businesses that handle, store, use, and dispose of hazardous materials and waste in the city.

D. It, further is the intent of the City Council that information will be provided to residents, workers and visitors regarding the appropriate handling, use, storage and disposal of hazardous materials and waste.

E. The City Council acknowledges the community's right and need to know basic information about the handling, use, storage and disposal of hazardous materials and waste in the city. Therefore, this chapter identifies the persons in the city who will provide public information pertaining to businesses that are covered by the unified program. (Ord. 12057 § 1 (part), 1998)

**8.42.030 Adoption of provisions of the act.**

The city adopts and incorporates by reference as if fully set forth herein, the provisions of the Act, (California Health and Safety Code, Section 25404, et seq.) as it may be amended from time to time,

which established the unified program and pursuant to which the city was approved as the certified unified program agency ("CUPA") to administer and enforce the unified program for the city. The city further adopts and incorporates by reference as if fully set forth herein the regulations promulgated under the Act, as they may be amended from time to time. (Ord. 12057 § 1 (part), 1998)

**8.42.040 Adoption of provisions of six hazardous materials and waste management programs consolidated by under the unified program.**

A. The following provisions of the California Health and Safety Code and applicable regulations, as they may be amended from time to time, which establish the requirements of the six hazardous waste and materials management programs that are consolidated by the unified program hereby are incorporated by reference as if fully set forth herein:

1. Chapter 6.5 of the Health and Safety Code, Section 25100, et seq. — hazardous waste generator requirements;
2. Health and Safety Code Section 25280.5(c) — aboveground storage tanks (spill prevention control and countermeasure plan only);
3. Chapter 6.7 of the Health and Safety Code, Section 25280, et seq. — underground storage tanks;
4. Chapter 6.95 of the Health and Safety Code, Section 25501, et seq. — hazardous materials release response plans and inventories (commonly referred to as hazardous materials business plans ("HMBP"));
5. Chapter 6.95 of the Health and Safety Code, Section 25531, et seq. — requirements concerning acutely hazardous materials; (commonly referred to as the accidental release prevention program ("CalARP")); and
6. Section 80.103 of the Uniform Fire Code as adopted by the State Fire Marshal pursuant to Health and Safety Code, Section 13143.9 state Uniform Fire Code requirements concerning, hazardous material management plans and inventories.

B. This chapter shall be implemented and enforced in compliance with the Act, the provisions set forth in subsection A of this section, any other applicable laws and regulations, as they may be amended from time to time, and the following:

1. Uniform Fire and Building Codes of the city pertaining to hazardous materials and waste management, as they may be adopted and amended from time to time;

2. In accordance with Health and Safety Code Section 25500, which authorizes local agencies to adopt more stringent regulations than those established under state law with respect to businesses handling hazardous materials, this chapter contains local requirements that are stricter than the state requirements (see Section 8.42.090(B).);

3. This chapter shall be implemented and enforced in accordance with any other requirements which are applicable to the unified program, but are not specifically incorporated by reference in this chapter, any new federal, state or local laws and/or regulations that may be enacted from time to time and any amendments to any such requirements. (Ord. 12057 § 1 (part), 1998)

#### **8.42.050 Enforcement responsibility— Delegation of authority.**

A. The city's Fire Services Agency, Office of Emergency Services ("OES") is designated as the administering agency responsible for the administration and enforcement of the unified program and this chapter. The City Manager delegates to the Director of Fire Services of the Fire Services Agency the authority to take any and all actions that may be necessary for the Fire Services Agency, OES to administer and enforce the unified program requirements and this chapter. All city employees designated by the Fire Chief are authorized to make inspections and take any actions on behalf of the Fire Chief as may be required to administer and enforce the requirements of the unified program and this chapter.

B. The OES Emergency Services manager or his/her designee shall be the administrator ("Administrator") of the unified program and this chapter.

C. The Fire Services Agency, OES may, for purposes consistent with this chapter, undertake actions, including but not limited to public educational programs regarding hazardous materials and waste, the requirements of this chapter, and promotion of pollution prevention, and recycling of waste products. (Ord. 12057 § 1 (part), 1998)

#### **8.42.060 Definitions.**

The definitions of terms included in the applicable laws (see sections 8.42.030 and 8.42.040) shall apply to this chapter. Definitions of certain terms that are used herein, are set forth in this section for easy reference. However, the following definitions are not intended, nor shall they be construed to change the definition of any term defined in the Act or the other provisions of law that apply to the unified program. In the event of conflict between the definitions in this chapter and applicable state and/or federal law, the definition in the state or federal law, as the case may be shall govern.

"Administrator" means the unified program administrator, who shall be the OES, Emergency Services Manager or his/her designee.

"Closure" of a storage unit or facility that has received a permit under the unified program to handle hazardous materials or waste means the termination of handling of such hazardous materials and/or waste, and shall include the preparation and implementation of a closure plan that will meet the following objectives:

1. Eliminate the need for further monitoring of the closed unit or facility;
2. Ensure that there is no residual threat to public health or safety or the environment from possible release of hazardous materials and/or waste from the unit or facility; and
3. Ensure that the removal, disposal and neutralization or reuse of the hazardous materials and/or waste handled by or released from the unit or facility, are accomplished in an appropriate manner.

"Handle" means to use, generate, process, package, treat, store, emit, discharge or dispose of a hazardous material in any manner.

"Handler" means a business that handles hazardous materials and/or generates wastes, and is subject to the provisions of the unified program and this chapter.

"Hazardous material or waste" means any of the following:

1. Any material classified as a hazardous material or hazardous substance by any of the provisions of law and applicable regulations incorporated by reference in this chapter pursuant to Sections 8.42.030 and 8.42.040, hereof;
2. Any waste classified as a hazardous waste by any of the provisions incorporated by reference in this chapter pursuant to Section 8.42.030 and 8.42.040, hereof;
3. Any material defined by the U.S. Environmental Protection Agency as an ozone depleter in Title 40 of the Code of Federal Regulations, part 82; or
4. Any other material or waste designated as hazardous for purposes of this chapter by the Administrator, upon a finding by the Administrator that the material or waste meets the requirements of Health and Safety Code Sections 25501 and 25501.4. (Ord. 12057 § 1 (part), 1998)

#### **8.42.070 Filing of a hazardous material disclosure form.**

A. Any business or facility in the city that handles a hazardous material or waste, must submit its initial disclosure form at the time it begins operations, or at the time it first begins to handle or generate a hazardous material or waste that must be disclosed. In accordance with the requirements of this chapter, including but not limited to Health and Safety Code Sections 25531 through 25543.2, a risk management plan must be completed and submitted to the Administrator prior to the issuance of the certificate of occupancy for acutely hazardous materials that exceed the applicable threshold planning quantity. The form and content of the disclosure shall conform to the requirements of Section 8.42.080 of this chapter.

B. In addition to the requirement set forth in subsection A of this section, each handler/generator

shall submit a completed disclosure form annually, or when required to do so under the terms of subsection C of this section. The Administrator shall have the authority to amend or change the applicable form from time to time as he or she deems appropriate in his or her sole discretion to accomplish the purposes of the unified program and this chapter. Handlers shall complete the form that is in effect at the time they are required to submit such form. It shall be the responsibility of the handler to obtain from the Administrator the applicable form.

C. A handler shall file a revised disclosure form within fifteen (15) days after any of the following:

1. Introduction of a new hazardous material or waste, or an increase of fifty percent (50%) or more of the total quantity of a hazardous material or waste previously disclosed, unless the material or waste is subject to any of the exemptions set forth in Section 8.42.090;
2. Change of business address;
3. Change of business ownership; or
4. Change of business name. (Ord. 12057 § 1 (part), 1998)

#### **8.42.080 Content of disclosure form.**

A. A hazardous materials/waste disclosure form shall be developed by the Administrator. The standard disclosure form shall include, but not be limited to, the following:

1. All information required to be submitted under the authority of California Health and Safety Code Sections 25503, 25503.5, 25504 and 25509;
2. Sufficient and timely information on how and where the hazardous materials and wastes disclosed, subject to subsection (A)(1) of this section, are handled in order to permit fire and safety personnel to prepare adequate emergency responses to potential releases of the hazardous materials and wastes;
3. Assurance that any disposal of hazardous materials and wastes will be accomplished in compliance with the requirements of this chapter and the unified program; and
4. Sufficient and timely information about any releases of hazardous materials or wastes into the

air, water, sewers or land to permit the Administrator and the public to understand the sources and content of the releases.

B. The Administrator may develop a short form, hazardous materials disclosure form for use by one or more handlers of similar types of materials, instead of the standard form. Any short form shall include, but not be limited to, the following:

1. A facility description;
2. An inventory of the hazardous materials and wastes handled;
3. Information describing how the hazardous materials and wastes will be handled in a suitable manner in accordance with the requirements of the unified program and will be appropriately contained, segregated and monitored;
4. Description of emergency equipment to be maintained;
5. A map and drawing showing the location of all hazardous material and waste handling, and indicating the hazardous class or classes and physical state, and the location of any equipment or safety features designed to prevent, contain, or respond to releases of hazardous materials and/or wastes; and
6. Assurance that any disposal of hazardous materials and wastes will be in an appropriate manner in accordance with the requirements of the unified program and this chapter.

C. The Administrator may charge a site plan review fee or fees for reviewing and processing a disclosure form in accordance with Section 8.42.100 of this chapter.

D. A handler shall supply to the Administrator upon request additional information determined by the Administrator to be necessary to protect health and safety and/or the environment. (Ord. 12057 § 1 (part), 1998)

#### **8.42.090 Exemptions from disclosure.**

A. Hazardous substances contained solely in consumer products packaged for distribution to, and used by, the general public shall be exempt from disclosure under this chapter, unless the Administrator provides notice that the handling of certain quantities of specified consumer products requires dis-

closure under this chapter in response to public health concerns.

B. In accordance with Health and Safety Code Section 25503.5(a), any business handling less than five hundred (500) pounds of all solid hazardous materials or wastes, or less than thirty (30) gallons of all liquid hazardous materials or wastes, or less than two hundred (200) cubic feet at standard temperature and pressure of all gaseous hazardous materials or wastes, at all times during a year, shall be exempt from the requirement to disclose that handling, unless:

1. The material or waste is a hazardous material, as defined in Section 25532 of the Health and Safety Code; or
2. The material or waste is a radioactive material, as defined in Section 25501(o)(2) of the Health and Safety Code; or
3. The material or waste is, or contains, a chemical known to the state of California to cause cancer or reproductive toxicity, as listed in 22 CCR Section 13000.

C. Handlers shall disclose the total quantity of hazardous materials or wastes in each hazard class. Unless required by the Administrator under the authority of subsection B of this section, or subsection D of Section 8.42.080, the disclosure shall identify, by container, only those containers with a capacity of at least one hundred (100) pounds of a solid, twenty (20) gallons of a liquid, or fifty (50) cubic feet of a compressed gas measured at standard temperature and pressure. (Ord. 12057 § 1 (part), 1998)

#### **8.42.100 Review of disclosure forms.**

The Administrator or his or her designee shall review each disclosure form and shall either (1) accept the disclosure form if it conforms to the requirements of this chapter and the unified program, and provides complete and adequate information necessary for the protection of safety and health, and the environment; or (2) return the form to the handler describing additional information that must be included in the form before it will be accepted. (Ord. 12057 § 1 (part), 1998)

**8.42.105 Hazardous materials assessment report and remediation plan.**

A. This section shall apply to the following entities that are located within one thousand (1,000) feet of a residence, school, hospital, or other sensitive receptor:

1. A handler; or
2. An applicant for a business tax license for a change of ownership of an industrial facility (hereinafter referred to as "applicant").

B. This section shall not supercede any other disclosure requirements set forth in this chapter.

C. Each applicant described in subsection (A)(2) of this section, shall, within ten (10) days of its application, make written disclosure of whether it will handle, store, or produce any substance presenting a threat to public health listed pursuant to Section 44321 of the California Health and Safety Code ("hazardous substance"). For purposes of this section "release" shall be defined as in Section 44303 of the Health and Safety Code.

D. At the discretion of the Administrator, each handler described in subsection (A)(1) of this section or each applicant described in subsection (A)(2) of this section shall prepare a hazardous materials assessment report and remediation plan (HMARRP). The HMARRP shall be prepared by a qualified and properly licensed engineer, specialist, laboratory or fire safety specialty consultant as directed by the Administrator.

E. The HMARRP shall, at a minimum, set forth (a) identification of hazardous substances handled and stored on a property and suitability of the site; (b) analysis of off-site consequences caused by a release (including on-site fire) of hazardous substances; and (c) remedial measures to reduce or eliminate on-site and off-site hazards; and (d) a health risk assessment (HRA) performed in accordance with the guidelines established by the Office of Health Hazard Assessment pursuant to Health and Safety Code Section 44360(b)(2). Identification of trade secret information shall be identified as set forth in Section 8.42.120 of this code.

F. Upon submission of the HMARRP, the Administrator shall review the HMARRP to determine

if all the elements required are included and complete. The Administrator shall provide preliminary written notice of deficiencies, if any. The handler or applicant shall have sixty (60) calendar days from receipt of the notice of deficiencies to make any corrections. The handler or applicant may request, in writing, a one-time thirty (30) calendar day extension to correct administrative or technical deficiencies. By the end of the sixty (60) calendar days or any extension period, the revised HMARRP shall be resubmitted to the Administrator. After the Administrator makes a preliminary determination that the HMARRP is complete, the Administrator shall schedule a public meeting on the handler's or applicant's HMARRP to explain its contents to the public and take public comments. The Administrator shall make portions of the HMARRP, which are not protected trade secret information, available to the public for the public meeting.

G. After receiving the written response from the handler or applicant, the Administrator shall issue a public notice per the city's public participation policy and make portions of the HMARRP, the preliminary determination and the handler's or applicant's responses, which are not protected trade secret information, available for public review. For the purpose of consideration in approving the final plan, public comments on the HMARRP shall be taken by the Administrator for a period of forty-five (45) days after preliminary approval of the HMARRP. The preliminary determination and handler's or applicant's responses shall be made available to the public. The Administrator shall schedule a public meeting on the applicant's HMARRP during the forty-five (45) day comment period. The public meetings shall be held in the affected community on evenings or weekends.

H. The Administrator can direct any or all responsible parties to implement the recommendations set forth in the hazardous materials assessment report and remediation plan. (Ord. 12323 § 1, 2001)



**8.42.110 Closure and redemption.**

A. It shall be unlawful for any person to abandon, remove, or close a unit or facility, or other area regulated by this chapter until a closure plan has been submitted to the Administrator and determined by the Administrator to be complete and satisfactory. The Administrator may charge a fee or fees for reviewing and processing the closure plan, and for overseeing closure, in accordance with the provisions of this chapter.

B. Closure shall be accomplished by complying with the following requirements:

1. A closure plan shall be submitted by a responsible person (handler and/or owner) to the Administrator at least thirty (30) days prior to the date scheduled for closure of the storage unit or facility. The closure plan shall demonstrate to the satisfaction of the Administrator that regulated hazardous materials and wastes, that are or have been handled or released in the storage unit or facility, will be transported, disposed of or reused in a manner that protects public health and safety and the environment; that any residual contamination and/or material will be removed before closure is complete; and that closure process will be accomplished in compliance with the unified program requirements.

2. The Administrator shall notify the applicant that the closure plan is complete and has been accepted, or shall notify the applicant of any deficiencies in the closure plan that must be corrected prior to closure.

3. Each unit or facility scheduled for closure shall be subject to inspection before and after closure by the Administrator or his/her designee, to confirm that closure will be undertaken or was undertaken, as the case may be, in conformity with the closure plan accepted by the Administrator, and that any contamination has been removed.

4. If contamination at the facility cannot be removed prior to closure, then the closure plan shall include a specific plan detailing the plan to assess, monitor and remove any contamination, and a binding commitment by the handler to clean up such contamination in accordance with the accepted closure plan and the time lines determined by the Ad-

ministrator. The Administrator may accept a plan under this subdivision only upon a finding that the plan provides adequate protection of public health and safety and the environment and is in compliance with the requirements of the unified program and this chapter.

C. The handler, its employees, and authorized representative, upon discovery, shall immediately report any release or threatened release of a hazardous material or waste by calling "911." Releases required to be reported under this subsection shall include, but shall not be limited to, all releases that the handler is required to report to any agency under any law governing the handling of hazardous materials or wastes. The requirement of this subsection is in addition to any other requirements to report releases; and compliance with this subsection does not constitute compliance with any other such requirements.

D. The handler and any person responsible for handling a hazardous material or waste subject to this chapter shall institute and complete all actions necessary to remedy the effects of any unauthorized release, whether such release is sudden or gradual. This subsection shall not affect any rights of the responsible party or third parties to recover appropriate costs and expenditures from any party.

E. All or any part of any real property, or any building or structure located thereon, at which contamination from hazardous materials or wastes is found, which contamination is not being managed in compliance with the provisions of this section, is declared a public nuisance and may be abated by rehabilitation, removal, demolition, or repair under procedures and standards provided in this chapter (including provisions incorporated by reference in Sections 8.42.030 and 8.42.040.) Whenever the city determines that property in the city constitutes a nuisance as provided in this section and that abatement of such nuisance is required, the city shall provide written notice to abate to the owner and any handler who holds a permit under this chapter to handle hazardous materials or wastes at the site.

1. The notice shall state the property, street address of the subject property, and shall be served

on the owner and the handler that holds a permit issued under this chapter either personally or by first class mail, postage prepaid.

2. The notice shall advise the owner and the handler of the deadline to take corrective action to remedy the nuisance.

3. The notice shall specify the corrective action required. When the exact nature and extent of contamination cannot be determined based on information available at the time the notice is served, the notice may require the owner and the handler to undertake measures to identify and characterize the contamination by performing an analysis of samples of such contamination, and present the results of such analysis to the Administrator with a plan for corrective action. (Ord. 12057 § 1 (part), 1998)

#### **8.42.120      Community right to know—Trade secrets.**

A. Subject to the subparts of this section regarding trade secrets, all disclosure forms and permits are public records and will be publicly available during normal business hours in the office of the Fire Service Agency, OES, Hazardous Materials Management Program in accordance with the requirements of the California Public Records Act (Government Code Section 6250 et seq.) and the city of Oakland Sunshine Ordinance (Ordinance No. 11957 C.M.S.)

B. If a handler believes that information required to be disclosed on the disclosure form, a permit application, or under the terms of this chapter involves the release of a trade secret, the handler shall notify the Administrator in writing of the information that the handler believes involves the release of a trade secret. As used in this chapter, trade secret shall have the meaning given by Health and Safety Code Sections 25290 (for underground storage tank systems) and 25511 (hazardous materials release response plans and inventories), and of Section 6254.7 of the Government Code (Public Records Act), and Section 1060 of the Evidence Code when applicable.

C. Upon receipt of a request for the release of information to the public which includes information

identified by the handler to the Administrator as a trade secret under subsection B of this section, the Administrator shall notify the handler in writing of the request by certified mail, return receipt requested. The Administrator shall release the information forty-five (45) days after the mailing of such notice, unless prior to the expiration of such forty-five (45) days, the handler institutes an action in an appropriate court for a declaratory judgment that such information is subject to protection under subsection B of this section and/or obtains an injunction prohibiting disclosure. The handler and the member(s) of the public requesting disclosure shall be considered the real parties in interest in any such action, and the city of Oakland, if named, will be the disinterested party.

D. Any information reported to or otherwise obtained by the Administrator that is exempt from disclosure, shall not be disclosed to anyone except as may be required or permitted by applicable law.

E. Any person who receives information protected from disclosure by this section because they qualify under subsections D(1) and (2) of this section, who, knowing that disclosure of this information is prohibited, knowingly and wilfully, discloses such information in any manner to any person not entitled to receive it, shall be guilty of a misdemeanor.

F. Information certified by appropriate officials of the United States Government as exempt from disclosure for national security purposes shall be accorded the full protection against disclosure as specified by such officials in accordance with the laws of the United States.

G. The provisions of this section shall not permit a handler of hazardous materials to refuse to disclose to the Administrator information required by this chapter. (Ord. 12057 § 1 (part), 1998)

#### **8.42.130      Fees and penalties.**

The City Council shall establish, from time to time, a schedule of fees for each class of permits issued under this chapter, for additional late fees, and for additional services provided by the city to administer and enforce this chapter. The fees estab-

lished by the City Council shall be sufficient to allow the city to recover its costs of administering this chapter. Such fees shall take effect upon adoption by the City Council. (Ord. 12057 § 1 (part), 1998)

#### **8.42.140 Inspections.**

A. In order to carry out the purposes of this chapter, the Administrator or designee has the authority to inspect any place/site where hazardous materials or wastes are handled, or any place/site where the Administrator has reason to believe that an unauthorized release of a hazardous material has occurred, is occurring, or may occur. This authority extends to any property within two thousand (2,000) feet of property on which hazardous materials or wastes are handled. The authority conferred by this section includes the authority to conduct any monitoring or testing of any aboveground or underground storage tank system. This right of entry shall be exercised only at reasonable hours unless otherwise required by an emergency, and entry shall be made to any establishment or property only with the consent of the owner or tenant thereof, or with property inspection warrant or other remedy provided by law to secure entry.

B. All inspections under this chapter shall be at the discretion of the Fire Services Agency, OES and nothing in this chapter shall be construed to require that the OES conduct any inspection, nor shall any inspection by OES create a duty to conduct any other inspection. Furthermore, nothing in this chapter shall be construed to hold the OES or any officer, employee or representative of the OES or the Fire Services Agency responsible for any damage to persons or property by reason of making an inadequate or negligent inspection, or by reason of any failure to make an inspection or reinspection, or take any enforcement or remedial action. (Ord. 12057 § 1 (part), 1998)

#### **8.42.150 Enforcement.**

A. Any party that violates any provision of this chapter shall be liable for civil and criminal penalties, as appropriate, to the full extent provided by

state law, and this chapter. Such liability may include, but shall not be limited to, liability for administrative civil penalties as provided in Health and Safety Code Section 25514.5. The remedies provided for under this section are in addition to any the city or any person might have under other applicable laws.

B. Any person who violates or causes the violation of this chapter shall be guilty of a misdemeanor and shall be subject to the penalties provided therefor in Title 1, Section 1.28.020(A) of this code; in addition to any other remedies provided for in this chapter or under other applicable law. Failure to pay by the date due any fee or fine levied under this chapter shall be a violation of this chapter.

C. The Administrator may cooperate with the Office of the City Attorney and/or the Alameda County District Attorney's Office of Environmental Affairs in bringing judicial and/or administrative action to enforce any provision of this chapter. Such judicial and/or administrative actions may seek the penalties and relief to the full extent provided under law, including but not limited to the reasonable cost of the city of Oakland and/or the District Attorney's Office in prosecuting the enforcement action to the extent authorized by applicable law. (Ord. 12057 § 1 (part), 1998)

#### **8.42.160 Relation to existing laws.**

A. To the extent that the requirements of applicable law are amended from time to time, the Administrator shall have the power to enforce same.

B. The disclosure of hazardous materials information in accordance with the provisions of this chapter shall not in any way affect any other liability or responsibility of a handler with regard to safeguarding the health and safety of any employee, or any other person or the environment. (Ord. 12057 § 1 (part), 1998)



## Chapter 8.44

### SECURITY FOR EVENTS AT THE OAKLAND-ALAMEDA COUNTY COLISEUM COMPLEX

#### Sections:

- 8.44.010      Purpose and intent.**
- 8.44.020      Definitions.**
- 8.44.030      Activities prohibited within the stadium and arena.**
- 8.44.040      Activities prohibited within the parking facility.**
- 8.44.050      Penalties.**

#### **8.44.010      Purpose and intent.**

This chapter shall regulate security at the Oakland-Alameda County Coliseum Complex and is enacted for the purpose and intent of protecting the public health, welfare and safety of the spectators and participants at events held at the facilities regulated by this chapter. (Ord. 12003 § 2 (part), 1997)

#### **8.44.020      Definitions.**

Whenever in this chapter the words or phrases in this section are used, they shall have the following meanings:

“Area not open to the general public,” includes, but shall not be limited to the playing field, including the dirt track surrounding the turf, dugouts, bullpen areas, team locker rooms, office and administrative areas, roofs, signs, architectural supports and superstructure, fencing, walls, lighting supports and stands, trees, ladders, stages, backstage areas, and any elevators, stairways, tunnels or other areas which are either plainly marked as not being open to the general public or posted with police, security or other stadium or arena personnel who state that these areas are closed to the general public when such police, security, or other stadium or arena personnel are either in uniform or identify themselves as acting in such capacity.

“Arena” means that certain enclosed, multipurpose sports structure located in the city, the peripheral boundaries of which are the gates for access

and egress and the walls surrounding the outer perimeter of the building.

“Authority” means the Oakland-Alameda County Coliseum Authority, a joint powers authority established by agreement by the city of Oakland and the county of Alameda.

“Authorized representative” means the responsible officer or the person designated by the authority as responsible for the management of the complex.

“Complex” includes the stadium, the arena, the parking facility, and any other facilities or property owned or controlled jointly by the city of Oakland and the county of Alameda and generally known as the Oakland-Alameda County Coliseum Complex.

“Conclusion of any event” means the expiration of the allotted playing time or termination of play in relation to any particular sporting event. In relation to non-sporting events, the event shall be deemed concluded at the time designated by the license granted for the use of the complex or any portion thereof, or the end of any particular band performance, stage show, program, or concert, whichever is earlier.

“Event” in Section 8.44.030 shall refer to any sporting, athletic, musical, or other type of scheduled activity, conducted under contract with any authorized representative, occurring within the complex. “Event” in Section 8.44.040 shall also refer to any scheduled contractual activity occurring within the parking facility, including, but not limited to: swap meets, car sales, car shows, and other such activities where licenses have been granted by the authorized representative for non-stadium or non-arena functions.

“Outside seating area” includes all seats in the stadium or arena for which a ticket was issued and all adjacent aisleways. It does not include enclosed suite areas.

“Parking facility” means all parking areas, entrances and exits continuous from street grade and all passenger waiting areas at the complex, and all other areas which are part of the complex which are not part of the stadium or the arena.

“Parking space” means any area marked with lines designating a parking space at the parking

facility. Parking spaces may be marked for small cars or for standard size cars.

“Person” means and includes any person, association, partnership, firm or corporation.

“Press level area” includes the inside area of the stadium or arena reserved for use by members of the press or media.

“Security personnel” shall refer to all employees, contractors, employees of contractors, or other agents of the authorized representative charged with responsibility for the orderly conduct of individuals attending stadium and arena events.

“Stadium” means that certain unenclosed, multi-purpose sports structure located in the city at the complex, the peripheral boundaries of which are the gates for access and egress and the walls surrounding the outer perimeter of the building.

“Tailgate parking space” means a reserved and numbered space for parking a vehicle in a designated tailgate parking area.

“Vehicle” shall have the same meaning as that contained in Section 670 of the California Vehicle Code. (Ord. 12003 § 2 (part), 1997)

#### **8.44.030 Activities prohibited within the stadium and arena.**

The following activities are prohibited within the stadium and the arena.

A. No person shall intentionally throw, discharge, launch or spill any solid object (including footballs, baseballs, beach balls, Frisbees or other such devices) or liquid substance or otherwise cause such object or substance to be thrown, discharged, launched, spilled or to become airborne.

B. No person shall explode, set off, discharge or otherwise release or cause to be released any smoke bomb, fireworks, stink bomb, or other substance which is physically harmful or otherwise irritating, offensive, repugnant or disgusting to the eyes or sense of smell.

C. No person shall enter any area of the stadium or arena not open to the general public, or any other area set apart for the participants, performers, officials, attendants or service personnel at any time before, during, or after a stadium or arena event.

D. No person shall bring into or possess within the stadium or the arena any can or bottle or any thermos, vacuum bottle, canteen or other similar container containing alcohol unless expressly authorized by the authorized representative.

E. No person shall gain or attempt to gain admittance to the stadium or the arena except through an access gate open for public access and by presenting a valid event ticket or otherwise paying the posted charge required for admission or to enter or attempt to enter the stadium or the arena during non-event days or hours without permission.

F. No person of either sex shall enter the clearly marked and designated restroom facilities of the opposite sex at the stadium or the arena.

G. No person shall behave in so noisy, boisterous or rowdy a manner as to disturb spectators or participants at any stadium or arena event so that assigned personnel must address the person to cease or prevent a recurrence of the noisy, boisterous or rowdy behavior.

H. No person shall violate any local ordinance or state law.

I. No person shall refuse to obey an ejectment order made pursuant to enforcement of this section, or shall re-enter the stadium or arena during the event that person was ejected from by purchase of another ticket or by any other means.

J. No person shall bring into or possess within the stadium or the arena any noise-making device including but not necessarily limited to air horns, powered megaphones, bugles, drums, tambourines or other musical instruments unless expressly authorized.

K. No person shall lead, conduct or otherwise bring or allow to remain in the stadium or the arena any animal, bird, fish or reptile, except trained guide dogs or dogs for the disabled certified by the state of California and which are in actual use.

L. No person shall remain within the stadium or the arena more than one hour after the conclusion of the event for which admitted. It is unlawful for any person to refuse to obey the lawful order of law enforcement officers or stadium or arena security

personnel made pursuant to enforcement of this subsection.

M. Subsections A through L of this section shall not apply to any duly authorized employee, agent or officer of the authorized representative while acting in the course and scope of his or her employment, nor shall it apply to any duly authorized participant, performer, official, security or service personnel specifically authorized to perform such an act by the authorized representative while acting in the scope of his or her employment or participation.

N. No person shall smoke any combustible substance in the stadium or the arena.

O. During events with ticketed assigned seating, no person is to occupy a seat for which he/she does not possess a valid ticket.

P. No person shall remain standing in or block any aisle or passageway beyond the time reasonably necessary to transit the aisle or passageway. Aisle or passageway shall mean those areas immediately adjacent to the seating areas that are intended as walkways leading to or from seats or exits. Aisle or passageway shall also mean the concourse areas when large crowds have gathered in sufficient numbers so as to block such aisle or passageways. (Ord. 12091 (part), 1998; Ord. 12003 § 2 (part), 1997)

#### **8.44.040 Activities prohibited within the parking facility.**

The following activities are prohibited within the parking facility.

A. No person shall maliciously and/or in a manner that disturbs public order or causes a threat to public safety throw, discharge, launch or spill any solid object including footballs, baseballs, Frisbees and other such devices or liquid substances, or otherwise cause such objects or substances to be maliciously and/or in a manner that disturbs public order or causes a threat to public safety thrown, discharged, launched, spilled or to become airborne within the parking facility.

B. No person shall explode, set off, discharge, or otherwise release or cause to be released any smoke bomb, fireworks, stink bomb, or other substance which is physically harmful or otherwise irri-

tating, offensive, repugnant, or disgusting to the eyes or sense of smell within the parking facility.

C.1. No person shall participate in any activity, including, but not limited to vehicle driver training, running, jogging, volleyball, baseball, soccer, football, roller skating, bicycle riding, skateboarding or Frisbee within the parking facility unless expressly authorized by the authorized representative.

2. No tables, barbecues, chairs, umbrellas or other objects shall be permitted on walkways and promenades in the inner areas of the parking facility without the written permission of the authorized representative.

D. No person shall lead, conduct or otherwise bring or allow to remain in the parking facility any animal, bird, fish or reptile except trained guide dogs or dogs for the disabled certified by the state of California and which are in actual use.

E. No person shall bring or attempt to bring a vehicle into the parking facility without paying the prescribed charge required for admission. No employee of the authorized representative or any employee of any organization holding an event at the complex shall enter or attempt to enter the parking facility without presenting a valid ticket or pass to that event, or a pass or I.D. indicating that the person is an on-duty employee working the event.

F. For purposes of the California Vehicle Code, all surfaced areas of the parking facility, on which vehicles normally travel to enter and leave parking spaces or the parking facility, shall be considered "highways" as defined in California Vehicle Code Section 360.

G.1. No person shall park or stand a vehicle in more than one parking space. If the vehicle exceeds twenty (20) feet in length, the driver thereof shall park said vehicle in parking spaces for standard size vehicles and pay for the additional space and display evidence of such payment.

2. No person shall utilize in any manner more than the parking space that his or her vehicle is entitled to occupy under the provisions of this chapter. Roadways and fire lanes shall remain clear of vehicles and objects to maximize use for traffic circulation.

3. No person shall interfere in any manner with the use of an adjacent parking space.

H. Coliseum staff may set a reasonable closing time for parking facilities following an event. No person shall remain within the parking facilities after being informed by a police officer or security personnel the facilities are closed. No person shall refuse to obey the lawful order of a police officer or security personnel made pursuant to enforcement of this subsection.

I. No person shall bring, or cause to be brought, for the purposes of sale or barter, or have for sale, or sell or exchange, or offer for sale or exchange any food, drink, service, goods, wares, ticket or merchandise within any portion of the parking facility including the perimeter sidewalk of the complex without first having obtained a city business tax certificate and a permit from the authorized representative.

J. No person shall bring within the perimeter of the boundaries of the Coliseum parking lots, or cause to be brought to the parking lots, a beer keg or any type of glass container. This subsection shall not apply to patrons possessing prescribed medication in glass containers.

K. Subsections A through J of this section shall not apply to any duly authorized employee, agent or officer of the Authorized Representative while acting in the course and scope of his or her employment, nor shall it apply to any duly authorized participant, performer, official, security or service personnel specifically authorized to perform such an act by the authorized representative while acting in the scope of his or her employment or participation. (Ord. 12290 (part), 2000; Ord. 12091 (part), 1998; Ord. 12003 § 2 (part), 1997)

8.44.030H or I is a misdemeanor punishable by imprisonment not to exceed six months, or by fine not to exceed one thousand dollars (\$1,000.00), or both. A violation of any other section is an infraction, punishable by a fine of one hundred dollars (\$100.00) for the first offense, two hundred fifty dollars (\$250.00) for the second offense, and five hundred dollars (\$500.00) for the third offense. (Ord. 12003 § 2 (part), 1997)

#### **8.44.050      Penalties.**

A. Any person violating any provision of this chapter may be ejected from the complex by any Oakland Police Department officer, Alameda County Sheriff or other security personnel of the authorized representative.

B. In addition to the penalties described in subsection A of this section, a violation of Section

## Chapter 8.46

### MEDICAL CANNABIS

**Sections:**

- 8.46.010      Findings and purposes.**
- 8.46.020      Definitions.**
- 8.46.030      Medical cannabis distribution program.**
- 8.46.040      No liability.**
- 8.46.050      Qualified patients, primary caregivers, and medical cannabis provider associations.**
- 8.46.060      Physician-patient confidentiality.**
- 8.46.070      Transportation of medical cannabis.**
- 8.46.080      Miscellaneous applications.**
- 8.46.090      Violations and penalties.**

**8.46.010      Findings and purposes.**

A. On November 5, 1996, the voters of the state of California adopted by initiative the compassionate Use Act of 1996, codified at Health and Safety Code Section 11362.5, pertaining to medical use of marijuana. As stated therein, the purposes of the Compassionate Use Act of 1996 are in part to "ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief" and to "ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction." The city of Oakland supports the use of medical cannabis in accordance with the Compassionate Use Act of 1996. The purposes of the Compassionate Use Act of 1996 are herewith also made purposes of this Chapter.

B. Long before the passage of the Compassionate Use Act of 1996, the city of Oakland was on record as being in support of medical cannabis and in support of Oakland medical cannabis providers as exemplified by unanimously passed Oakland City Council Resolution numbered 72379 C.M.S. and 72516 C.M.S.

C. The purpose of this chapter is to recognize and protect the rights of qualified patients, their caregivers, physicians, and medical cannabis provider associations, and to ensure access to safe and affordable medical cannabis pursuant to the Compassionate Use Act of 1996. In support of this purpose, the city of Oakland recognizes that a medical cannabis provider association, as defined herein, may provide educational information concerning access to safe, affordable, and lawful medical cannabis, and may also distribute safe and affordable medical cannabis in a consistent, reliable, and legal fashion.

D. An additional purpose of this chapter is to provide immunity to medical cannabis provider associations pursuant to Section 885(d) of Title 21 of the United States Code, which provides that no liability shall be imposed under the federal Controlled Substance Act upon any duly authorized officer of a political subdivision of a state lawfully engaged in the enforcement of any municipal ordinance relating to controlled substances. (Ord. 12077 § 1 (1), 1998)

**8.46.020      Definitions.**

The following words and phrases, whenever used in this chapter, shall be construed as herein defined:

"Cannabis" means marijuana and all parts of the plant Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seeds of the plant are incapable of germination.

“Medical cannabis provider association” means a cooperative, affiliation, association, or collective of persons who are qualified patients or primary caregivers, the main purpose of which are to provide education, referral, or network services, and to facilitate or assist in the lawful production, acquisition, and distribution of medical cannabis. An entity may function as a medical cannabis provider association only if designated as such by the city of Oakland pursuant to Section 8.46.030 of this chapter.

“Officer” means designee and shall not have the meaning of that term used in Section 400 of the Oakland City Charter.

“Primary caregiver” means the person or persons designated by a qualified patient who have consistently assumed responsibility for the housing, health, or safety of that qualified patient.

“Qualified patient” means a person who obtains a written or oral recommendation or approval from a physician to use cannabis for personal medical purposes. (Ord. 12077 § 1 (2), 1998)

#### **8.46.030      Medical cannabis distribution program.**

The city of Oakland establishes a Medical Cannabis Distribution Program. Such program shall be administered by medical cannabis provider associations. The City Manager shall designate not more than one entity as a medical cannabis provider association. Any designated medical cannabis provider association shall enforce the provisions of this chapter, including enforcing its purpose of insuring that seriously ill Californians have the right to obtain and use marijuana for medical purposes. For the purposes of this chapter only, a medical cannabis provider association, and its agents, employees and directors while acting within the scope of their duties on behalf of the association, shall be deemed officers of the city of Oakland. (Ord. 12584, 2004; Ord. 12077 § 1 (3), 1998)

#### **8.46.040      No liability.**

To the fullest extent permitted by law, the city of Oakland shall assume no liability whatsoever, and expressly does not waive sovereign immunity, with

respect to the Medical Cannabis Distribution Program established herein, or for the activities of any medical cannabis provider association. Each medical cannabis provider association designated by the city shall (a) indemnify the city of Oakland; (b) carry insurance in the amounts and of the types that are acceptable to the city’s Risk Manager; and (c) name the city as an additional insured. (Ord. 12077 § 1 (4), 1998)

#### **8.46.050      Qualified patients, primary caregivers, and medical cannabis provider associations.**

In order to ensure that qualified patients and primary caregivers are not subject to criminal prosecution or sanction, and to ensure that only qualified patients and primary caregivers have access to medical cannabis, the city of Oakland, or medical cannabis provider associations on behalf of the city of Oakland, may issue valid identification cards to qualified patients and primary caregivers upon receipt of a physician’s recommendation or approval for medical cannabis. (Ord. 12077 § 1 (5), 1998)

#### **8.46.060      Physician-patient confidentiality.**

Certification processes conducted pursuant to this chapter shall preserve to the maximum extent possible all legal protections and privileges, consistent with reasonably verifying the qualifications and status of qualified patients and primary caregivers. Disclosure of any patient information to assert facts in support of a qualified status shall not be deemed a waiver of confidentiality of that information under any provision of law. (Ord. 12077 § 1 (6), 1998)

#### **8.46.070      Transportation of medical cannabis.**

All activities entailing the transportation of medical cannabis, in accordance with this chapter, shall be lawful when conducted by qualified patients, primary caregivers, or medical cannabis provider associations where the quantity transported and the method, timing, and distance of the transportation

are reasonably related to the medical needs of qualified patients. (Ord. 12077 § 1 (7), 1998)

**8.46.080      Miscellaneous applications.**

Possession and use of the following items shall be lawful when used in accordance with the Compassionate Use Act of 1996 or this chapter:

- A. Pipes, papers, water pipes, vaporizers, and other related paraphernalia;
- B. Cannabis products, such as baked goods, tinctures, concentrated cannabis, infusions, oils, salves, and any other cannabis derivatives. (Ord. 12077 § 1 (8), 1998)

**8.46.090      Violations and penalties.**

A violation of any provision of this chapter shall be a misdemeanor. (Ord. 12077 § 1 (9), 1998)



## Chapter 8.48

### VEHICLE-BASED SOLICITATION RESTRICTIONS

#### Sections:

- 8.48.010 Title.**
- 8.48.020 Definitions.**
- 8.48.030 Prohibition of solicitation in the public right-of-way.**
- 8.48.040 Prohibition of solicitation in unauthorized locations within commercial parking areas.**
- 8.48.050 Penalty—Misdemeanor.**
- 8.48.060 Severability.**

#### **8.48.010 Title.**

This chapter shall be known as the ordinance to prohibit solicitation of persons for employment, business or contribution between vehicles in the roadway and persons within the public right-of-way and unauthorized locations within commercial parking areas. (Ord. 12352 § 2 (part), 2001)

#### **8.48.020 Definitions.**

The definitions set forth in this section shall govern the application and interpretation of this chapter:

“Business” shall mean and include any type of product, good, services, performance or activity which is provided or performed, or offered to be provided or performed, in exchange for money, labor, goods or any other form of consideration.

“Commercial parking area” shall mean and include privately-owned property which is designed or used primarily for the parking of vehicles and which adjoins one or more commercial establishments.

“Employment” shall mean and include services, industry or labor performed by a person for wages or other compensation or under any contract of hire, written, oral, express or implied.

“Public right-of-way” shall mean and include public streets, highways, and sidewalks, including driveways.

“Solicit” shall mean and include any request, offer, enticement, or action which announces the availability for or of employment, the sale of goods, or a request for money or other property; or any request, offer, enticement or action which seeks to purchase or secure goods or employment, or to take a contribution of money or other property. As defined herein, a solicitation shall be deemed complete when made whether or not an actual employment relationship is created, a transaction is completed, or an exchange of money or other property takes place. (Ord. 12352 § 2 (part), 2001)

#### **8.48.030 Prohibition of solicitation in the public right-of-way.**

It is unlawful for any person, while the occupant of any vehicle, to solicit, or attempt to solicit persons for employment, business or contribution of money or other property from a person who is within the public right-of-way unless otherwise licensed by the city. (Ord. 12352 § 2 (part), 2001)

#### **8.48.040 Prohibition of solicitation in unauthorized locations within commercial parking areas.**

A. It is unlawful for any person, while the occupant of any vehicle, to solicit or attempt to solicit, employment of persons, business or contribution of money or other property, from a location within a commercial parking area other than an area within or served by such parking area which is authorized by the property owner or the property owner’s authorized representative for such solicitations. This section shall not apply to a solicitation to perform employment or business for the owner or lawful tenants of the subject premises.

B. This section shall only apply to commercial parking areas where the following occurs:

1. The owner or person in lawful possession of the commercial parking area establishes a written policy which provides area(s) for the lawful solicitation of employment of persons, business, or contributions of money or other property, in locations which are accessible to the public and do not inter-

fere with normal business operations of the commercial premises;

2. A copy of such policy is submitted to the City Manager to be maintained in city files; and
3. The owner or person in lawful possession of the commercial parking area has caused a notice to be posted in a conspicuous place at each entrance to such commercial parking area not less than eighteen (18) by twenty-four (24) inches in size with lettering not less than one inch in height and not to exceed in total area, six square feet. The notice shall be in substantially the following form:

It is a misdemeanor for any person, while the occupant of any vehicle, to engage in the solicitation of persons for employment, business or contributions of money or other property in areas of this commercial parking lot which are not approved for such activity by the property owner.

(Ord. 12352 § 2 (part), 2001)

**8.48.050 Penalty—Misdemeanor.**

A violation of this chapter is a misdemeanor and shall be punishable by fines or imprisonment in the county jail as provided in Oakland Municipal Code, Title 1, Chapter 1.28, Section 1.28.010. (Ord. 12352 § 2 (part), 2001)

**8.48.060 Severability.**

This chapter shall be enforced to the full extent of the authority of the city of Oakland. If any section, subsection, sentence, clause, phrase or portion of the ordinance codified in this chapter is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of the ordinance codified in this chapter. The City Council of the city of Oakland declares that it would have adopted the ordinance codified in this chapter and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more section, subsection, sentence, clause, phrase or portion may be declared invalid or unconstitutional. (Ord. 12352 § 2 (part), 2001)

## Chapter 8.50

### **EMERGENCY MANAGEMENT BOARD AND DISASTER PREPAREDNESS COUNCIL**

**Sections:**

- 8.50.010      Establishment of Emergency Management Board and Disaster Preparedness Council.**
- 8.50.020      Definitions.**
- 8.50.030      Composition of Emergency Management and Disaster Preparedness Council.**
- 8.50.040      Emergency Management and Disaster Preparedness Council powers, structure, process, duties and functions.**
- 8.50.050      City of Oakland emergency organization.**
- 8.50.060      Emergency plan.**
- 8.50.070      Expenditures.**
- 8.50.080      Obstruction or hindrance of emergency operations, violation of emergency laws or regulations, unauthorized wearing, carrying or displaying of emergency identification, punishment of violations.**
  
- 8.50.010      Establishment of Emergency Management Board and Disaster Preparedness Council.**

The City Council hereby establishes the Emergency Management Board and Disaster Preparedness Council. The declared purposes of this chapter are to (a) facilitate the development and implementation of programs and plans that protect persons and property within Oakland on a day-to-day basis as well as during times of emergencies or disasters; (b) establish and define the powers, structure and processes of Oakland's Emergency Management and Disaster Preparedness Council, including the city's overall emergency organization; and (c) encourage coordination of emergency functions of Oakland with other public agencies, governments, corporations and organizations.

This chapter is enacted pursuant to the permissive language in Sections 8610 and 8580 of the Government Code. (Ord. 12841 § 1 (part), 2007)

**8.50.020      Definitions.**

As used in this chapter, "emergency" shall mean the actual or threatened existence of conditions of disaster or of extreme peril to the safety of persons and property within Oakland caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, earthquake, drought, hazardous materials incident, sudden and severe energy shortage, plant or animal infestation, terrorism, the Governor's warning of an earthquake or other conditions, including conditions resulting from war or imminent threat of war. (Ord. 12841 § 1 (part), 2007)

**8.50.030      Composition of Emergency Management and Disaster Preparedness Council.**

The Oakland Emergency Management and Disaster Preparedness Council (EMDPC) hereby replace the city's previous Emergency Management Board, and shall consist of the following executive officers and members:

A. The Mayor, who shall serve as Chair. During declared disasters/emergencies the Mayor shall be the official spokesperson for the city, establishing executive policies for management of the emergency, and providing oversight and leadership during the response and recovery process.

B. The City Administrator, who shall serve as Vice Chair. During declared disaster, the City Administrator shall serve as the city's Director of Emergency Services, providing direction for formulating policy, recommendations and decisions to facilitate the response and recovery process. The City Administrator shall have the authority to commandeer any and all resources located within the political jurisdiction of Oakland for the protection of life and property and provide compensation for private assets in accordance with local government regulations.

C. The Emergency Services Manager, who shall serve as Secretary. During declared disaster, s/he shall serve as the city's Assistant Director of

Emergency Services providing overall management of the city's Emergency Operations Center. During non-emergency times, the Emergency Services Manager shall also serve as Secretary in conducting quarterly meetings of the Emergency Management Disaster Preparedness Council.

D. City Agency Directors (as identified in Oakland's current NIMS/SEMS Emergency Plan) shall serve as general members. General members are expected to attend the Emergency Management and Disaster Preparedness Council's quarterly meetings and, if unable to attend, identify an alternate representative. During declared disasters these members shall direct and coordinate predesignated departmental emergency functions according to the National Incident Management System (NIMS) and the State's Standardized Emergency Management System (SEMS) and the city's SEMS Emergency Plan (California Government Code Section 8607 effective January 1, 1993); also the integrated National Incident Management System (NIMS) in accordance with Homeland Security Presidential Directive (HSPD-5) effective September 30, 2006.

E. Other members of the Emergency Management and Disaster Preparedness Council shall be persons with necessary expertise from other local, federal, state, and county government level agencies, special districts, transportation/utility agencies, school/college districts, disaster response agencies that provide direct services to the public, and military agencies. These members shall serve as necessary. Current non-government members serving on the Emergency Management Board shall be automatically appointed to the Mutual Assistance Task Force.

F. Chairperson of the Mutual Assistance Task Force. The City Administrator shall establish a City Mutual Assistance Task Force. The Task Force members will be selected by Executive Officers of the Emergency Management and Disaster Preparedness Council. The Chairperson of the Mutual Assistance Task Force shall be a voting member of the Emergency Management Disaster Preparedness Council. The Mutual Assistance Task Force under the direction of the Chairperson shall establish and

adopt rules for limiting the term the Chairperson shall serve.

The City Mutual Assistance Task Force will support the efforts and objectives of the city's Emergency Management and Disaster Preparedness Council. The Executive Officers of the Emergency Management and Disaster Preparedness Council shall recommend representatives from the general public, businesses, civic organizations, community based non-profits, faith based organizations, neighboring cities and local outside agencies that provide mutual assistance during disaster periods and provide support and expertise in the development and implementation of emergency preparedness projects and plans. Directors and/or managers of these organizations may be asked to attend the Emergency Management and Disaster Preparedness Council meetings whenever warranted to represent the segment of the community their organizations serve. (Ord. 12841 § 1 (part), 2007)

#### **8.50.040      Emergency Management and Disaster Preparedness Council powers, structure, process, duties and functions.**

The Oakland Emergency Management and Disaster Preparedness Council is hereby empowered to do the following duties and functions:

A. The Emergency Management and Disaster Preparedness Council (EMADPC) shall submit regular status reports describing the city's overall emergency preparedness to the City Council committee designated as liaison to the Emergency Management and Disaster Preparedness Council. The regular status reports shall be submitted semi-annually, or more frequently as directed by the Chairperson of the City Council committee to which the Emergency Management and Disaster Preparedness Council reports.

B. Each year, the Oakland Emergency Management and Disaster Preparedness Council shall review the annual goals and objectives of the City Council for review and approval. Review of City Council goals and objectives and the Mayor's goals and objectives shall be undertaken to provide the

Emergency Management and Disaster Preparedness Council the opportunity to better integrate the activities of the city's Emergency Management and Disaster Preparedness Council with the city's overall goals and objectives.

C. The Oakland Emergency Management and Disaster Preparedness Council is hereby empowered to develop and recommend for adoption or purchase by the City Council, emergency programs, projects, equipment and supplies, emergency and mutual aid plans and agreements and such ordinances and resolutions and rules and regulations as may be necessary to implement such plans and agreements.

D. The Emergency Management and Disaster Preparedness Council shall convene not less than quarterly to identify, prioritize, review and recommend to the City Council emergency preparedness, mitigation, response and recovery activities that are required to develop and implement a comprehensive public safety program for Oakland in the event of a major disaster.

E. The work of the Oakland Emergency Management and Disaster Preparedness Council shall consist of the four phases of emergency management, and also include fiscal/funding and mutual assistance in accord with the following objectives:

Preparedness: Identify and implement plans, standard operating procedures and training programs that prepare the city (employees, citizens, community based organizations, and local businesses) for major emergencies.

Mitigation: Identify, evaluate and prioritize projects that can reduce or eliminate threats that face the City of Oakland and to minimize the city's hazards.

Response: Identify and implement operating systems that will provide emergency assistance, reduce probabilities of additional injuries, speed recovery activities, and ensure effective field response and Emergency Operations Center functions.

Recovery: Identify and/or establish resources, relationships and agreements in advance of any emergency that will enable the city to return to normalcy as quickly as possible.

Fiscal/Funding: Identify and procure funds to implement projects recommended by members of the

Emergency Management and Disaster Preparedness Council and ensure adoption of an annual budget to support emergency programs/projects, ensuring all financial resources are explored that can assist in recovering from a major disaster.

Mutual Assistance: The Mutual Assistance Task Force will augment the city's Emergency Management and Disaster Preparedness Council. The Task Force will provide a forum for the non-city agencies, businesses and civic organizations that provide essential support and assistance to the city during non-emergency times and during declared emergencies so as to provide the Emergency Management and Disaster Preparedness Council with expertise, recommendations, data and other information necessary for a coordinated and comprehensive emergency response. The Mutual Assistance Task Force will meet as needed or required. (Ord. 12841 § 1 (part), 2007)

#### **8.50.050      City of Oakland emergency organization.**

All officers and employees of the City of Oakland (disaster service workers), together with those volunteer forces enrolled to aid them during an emergency, and all groups, organizations, and persons who may by agreement or operation of law, including persons pressed into service pursuant to this chapter, be charged with duties incident to the protection of life and property in this city during such emergency, shall constitute the emergency organization of the City of Oakland. (Ord. 12841 § 1 (part), 2007)

#### **8.50.060      Emergency plan.**

The Emergency Services Manager shall be responsible for the development, maintenance, testing and training associated with the Oakland NIMS/SEMS Emergency Plan to ensure and provide for the effective mobilization of all of the resources of Oakland according to Resolution No. 80021 C.M.S. dated July 18, 2006, and approved by City Council. Such NIMS/SEMS Emergency Plan shall be reviewed on an annual basis and revised as needed by the Emergency Services Manager. (Ord. 12841 § 1 (part), 2007)

**8.50.070      Expenditures.**

Any expenditure made in connection with emergency activities, including mutual aid activities, shall be deemed conclusively to be for the direct protection and benefit of the inhabitants and property of the City of Oakland. (Ord. 12841 § 1 (part), 2007)

**8.50.080      Obstruction or hindrance of  
                  emergency operations, violation of  
                  emergency laws or regulations,  
                  unauthorized wearing, carrying or  
                  displaying of emergency  
                  identification, punishment of  
                  violations.**

It shall be a misdemeanor, punishable by a fine not to exceed one thousand dollars (\$1,000.00), or by imprisonment not to exceed six months, or by both, for any person during an emergency to:

A. Willfully obstruct, hinder or delay any member of the emergency organization in the enforcement of any lawful rule or regulation issued pursuant to this chapter, or in the performance of any duty imposed upon him by virtue of this chapter.

B. Do any act forbidden by any lawful rule or regulation issued pursuant to this chapter, if such act is of such a nature as to give or be likely to result in imperiling the lives or property of inhabitants of Oakland, or to prevent, hinder or delay the defense or protection thereof.

C. To wear, carry or display, without authority, any means of identification specified by the emergency agency of the state. (Ord. 12841 § 1 (part), 2007)

## Chapter 8.52

### ACCESS TO REPRODUCTIVE HEALTH CARE FACILITIES

#### Sections:

- 8.52.010      Title and purpose.**
- 8.52.020      Definitions.**
- 8.52.030      Prohibited harassment of individuals seeking access to health care facilities.**
- 8.52.040      Enforcement.**
- 8.52.050      Accommodation of competing rights.**
- 8.52.060      Severability.**

#### **8.52.010      Title and purpose.**

This chapter shall be known as the “Access to Reproductive Health Care Facilities Ordinance.” The City Council finds that every person in the City of Oakland has a basic and fundamental right to privacy protected by the United States Constitution and explicitly guaranteed in California’s Constitution, Article 1, Section 1, including the right to seek and obtain all health care services permitted under the laws of this State. Central to this right is the need to secure access to all reproductive health care services. Access to these services is a matter of critical importance not only to the individual, but also to the health and welfare of all residents of the City of Oakland and the region. Intentional efforts to harass an individual or prevent that individual from exercising his or her right to seek and obtain reproductive health care services are therefore contrary to the interests of the people of Oakland.

This chapter is not intended to create any limited, designated, or general public fora. Rather it is intended to protect those who seek access to constitutionally protected reproductive health services from conduct which violates their rights. (Ord. 12849 § 1, 2007)

#### **8.52.020      Definitions.**

A. “Reproductive health services” refers to all medical, surgical, counseling, referral, and informational services related to the termination of a preg-

nancy, whether such services are provided in a clinic, physician’s office, or other facility other than a licensed hospital, but not if provided at a clinic or other facility owned and/or operated licensed hospital.

B. “Reproductive health care facility” refers to a facility licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2 of the Health and Safety code or any other facility that provides reproductive health services that is not licensed as a hospital, and is not owned, and/or operated by a licensed hospital.

C. “Harassing” means the non-consensual and knowing approach within eight feet of another person or occupied motor vehicle for the purpose of passing a leaflet or handbill, to display a sign to, or engage in oral protest, education, or counseling with such other person in a public way or on a sidewalk area within one hundred (100) feet of the entrance of a reproductive health care facility.

D. “Interfering” means to restrict a person’s freedom of movement or access to or egress from a reproductive health care facility providing reproductive health services.

E. “Counseling” means engaging in conversation with, displaying signs to, and/or distributing literature to individuals seeking access to, passage from, or services within the reproductive health care facility.

F. “Eight feet” shall be measured from any extension of the body of the individual seeking access to, passage from, or services within the reproductive health care facility, and/or the exterior of any occupied motor vehicle, to any extension of the body of, or any sign or object held by another person.

G. “Providing reproductive health services” shall include doctors, nurses, any employee of a reproductive health care facility and volunteers who, with the consent of the reproductive health care facility, assist in conducting patients of such facility safely into the facility. (Ord. 12860 § 2, 2008; Ord. 12849 § 2, 2007)

**8.52.030 Prohibited harassment of individuals seeking access to health care facilities.**

A. It shall be unlawful to use force, threat of force, or physical obstruction to intentionally injure, harass, intimidate, or interfere with or attempt to injure, harass, intimidate, or interfere with any person because that person will be, is, or has been, providing or obtaining reproductive health services.

B. Within one hundred (100) feet of the entrance of a reproductive health care facility, it shall be unlawful to willfully and knowingly approach within eight feet of any person seeking to enter such a facility, or any occupied motor vehicle seeking entry, without the consent of such person or vehicle occupant, for the purpose of counseling, harassing, or interfering with such person or vehicle occupant.

C. Within one hundred (100) feet of the entrance of a reproductive health care facility, it shall be unlawful to willfully and knowingly approach within eight feet of any person seeking to enter such a facility, or any occupied motor vehicle seeking entry, for the purpose of injuring or intimidating such person or vehicle occupant in connection with seeking reproductive health services. (Ord. 12860 § 3, 2008; Ord. 12849 § 3, 2007)

**8.52.040 Enforcement.**

A. Any person who shall be convicted of a violation of Section 8.52.030 above shall be deemed guilty of a misdemeanor and shall be punishable by imprisonment in the County jail for not more than one year, or by a fine not to exceed two thousand dollars (\$2,000), or by both such fine and imprisonment.

B. Civil Remedies:

1. Any person providing, seeking to provide, or seeking reproductive health services who is aggrieved by conduct prohibited by this chapter may commence a civil action in the Courts of the State of California.

2. In any action commenced under subsection A of this section, the court may award appropriate relief, including temporary, preliminary, or permanent injunctive relief and compensatory and exem-

plary damages and reasonable fees for attorneys and expert witnesses. With respect to damages, at any time before final judgment, plaintiff may elect to recover, in lieu of compensatory damages, an award of statutory damages in the amount of five thousand dollars (\$5,000) per violation. (Ord. 12849 § 4, 2007)

**8.52.050 Accommodation of competing rights.**

In adopting this legislation, the Oakland City Council recognizes both the fundamental constitutional right to assemble peacefully and to demonstrate on matters of public concern, as well as the right to seek and obtain health care. This legislation promotes the full exercise of these rights and strikes an appropriate accommodation between them.

Nothing in this chapter shall be construed to prohibit any expressive conduct (including peaceful picketing or other peaceful demonstration) protected from legal prohibition by the First Amendment to the United States Constitution, the California Constitution or any federal or California statute. (Ord. 12849 § 5, 2007)

**8.52.060 Severability.**

If any part, provision, or clause of this chapter or the application thereof to any person or circumstance is held to be invalid by a court of competent jurisdiction, all other provisions and clauses hereof, including the application of such provisions and clauses to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this chapter are severable. (Ord. 12849 § 6, 2007)

## Chapter 8.54

### **FORECLOSED AND DEFAULTED RESIDENTIAL PROPERTY REGISTRATION AND ABATEMENT PROGRAM\***

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#### **Article I.**

##### **Intent**

##### **8.54.010 Title.**

This Chapter 8.54 and the provisions herein shall be known as the "Foreclosed and Defaulted Residential Property Registration and Abatement Program" and may be cited as such, and will be referred to herein as "this chapter."

(Ord. No. 13126, § 2, 6-19-2012)

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\*Editor's note—Ord. No. 13126, § 2, adopted June 19, 2012, amended Chapter 8.54 in its entirety to read as herein set out. Formerly, Chapter 8.54, Articles I—V, pertained to vacant building registration, and derived from Ord. No. 12991, § 2, adopted February 2, 2010, and Ord. No. 13107, § 2, adopted February 21, 2012.

**8.54.020 Purpose and intent.**

The purpose of this chapter is to promote the health, safety, and general welfare of the residents, workers, visitors, property owners, and proprietors of the City and the economic stability and viability, and livability of neighborhoods in the City by requiring the registration and monitoring of foreclosed and defaulted residential properties. This program will protect and preserve the livability, appearance, and social fabric of the City and will also protect the public from health and safety hazards and the impairment of property values resulting from the neglect and deterioration of real property and improvements.

It is the intent of the City Council, through the adoption of this chapter, to establish a mechanism to protect neighborhoods from becoming blighted through the lack of maintenance and security of occupied and vacant foreclosed and vacant defaulted residential properties; to establish a foreclosed and defaulted residential property registration and abatement program; and to set forth guidelines for the maintenance of occupied and vacant and/or distressed residential properties. In addition, this chapter provides for the registration and inspection of occupied defaulted residential properties to aid on foreclosure prevention efforts and because such properties have an increased potential to become vacant or blighted.

(Ord. No. 13126, § 2, 6-19-2012)

**8.54.030 Scope.**

A. The provisions of this chapter shall apply to the following properties in the City:

1. Vacant residential properties that are the subject of a recorded notice of default;
2. Lawfully occupied residential properties that are distressed (notice of default recorded); and
3. Vacant and occupied residential properties that have been foreclosed upon.

(Ord. No. 13126, § 2, 6-19-2012)

**8.54.040 Authority.**

The Building Official and his or her designees are authorized to enforce the provisions of this chapter.

(Ord. No. 13126, § 2, 6-19-2012)

**8.54.050 Exclusions.**

The provisions of this chapter shall not apply to properties owned by the United States of America, the State of California, the County of Alameda, the City, or to any of their respective agencies or political subdivisions, except those over which the City has authority to assert jurisdiction; nor shall it apply to the Oakland Housing Authority. It is the intent of this chapter to apply to and not exclude any property in which entities, including, but not limited, to the Federal National Mortgage Association (FNMA), the Government National Mortgage Association (GNMA), California Housing Finance Agency (CHFA), or any similar entity, has any financial or legal interest, ownership or otherwise, unless such entity can demonstrate to the City's satisfaction or to a court that it is exempt from this chapter or otherwise is not subject to City regulation on the basis of preemption or other legal basis.

(Ord. No. 13126, § 2, 6-19-2012)

**Article II.****Definitions****8.54.100 Construed meanings.**

For the purposes of this chapter, certain words and phrases are defined and certain provisions shall be construed as set forth herein, unless it shall be apparent from the context that they have different meanings. Words in the singular include the plural and the plural the singular. Words used in the masculine gender include the feminine and the feminine the masculine.

"Abandoned" means any building, structure or real property that is vacant or occupied by a person or persons without a legal right of occupancy.

"Accessible" means a property or structure that unauthorized persons may gain access or entry to

through a compromised/breached/unsecured gate, door, fence, wall, window, or other point of entry.

"Agreement" means any agreement or written instrument which provides that title to real property shall be transferred or conveyed from one owner to another owner after the sale, trade, transfer or exchange.

"Beneficiary" means a lender or other person or entity holding, owning, participating in, or otherwise having an interest in the proceeds for a loan represented by a note secured by a deed of trust.

"Blighted" has the same meaning as set forth in Chapter 8.24.

"Boarded" means the partial or full covering, securing, or reinforcing with plywood, lumber, or comparable materials of windows, skylights, doors/sidelights/transoms, underfloor access, and similar exterior openings in buildings or portions thereof which is intended to dissuade, mitigate, and prevent vandalism and unauthorized entry.

"Building Official" has the same meaning as set forth in the Oakland Building Construction Code, and includes his or her designee, and his or her successor in title or successor position.

"Building Services Division" means that division or other part of the City administration delegated with enforcing building and housing codes and property blight or its successor or other division later delegated with these duties.

"Certified property manager" means a licensed property manager who has received additional training in the field of residential property management and has a certification in property management such as a California Certified Residential Manager (CCRM), Certified Property Manager (CPM®), Certified Apartment Manager (CAM), or the equivalent certification, or can demonstrate the equivalent training and experience in managing residential rental property in Oakland, including knowledge of State and Oakland rent and eviction laws pursuant to standards established by the City administration.

"Days" means consecutive calendar days, unless otherwise stated.

"Deed in lieu of foreclosure" means a recorded document that transfers property from the trustor to the holder of a deed of trust upon consent of the beneficiary of the deed of trust, without completion of a foreclosure proceeding.

"Deed of trust" means an instrument by which title to real estate is transferred to a third party trustee as security for a real estate loan. This definition applies to any and all subsequent deeds of trust, i.e. second trust deed, third trust deed, etc.

"Default" means the failure to fulfill a contractual obligation, monetary or conditional.

"Distressed" means any property that is subject to a current notice of default and/or notice of trustee's sale, pending tax assessors lien sale and/or any real property conveyed via a foreclosure sale resulting in the acquisition of title by an interested beneficiary of a deed of trust, and/or any real property conveyed via a deed in lieu of foreclosure/sale, regardless of vacancy or occupancy by a person with no legal right to occupancy.

"Evidence of occupancy" means any condition visible from the exterior that on its own, or combined with other conditions present, would lead a reasonable person to believe that the property is legally occupied. Such conditions include but are not limited to secured/locked structures; active utility services; the absence of overgrown and/or dead vegetation; the absence of an accumulation of newspapers, circulars, flyers and/or mail; the absence of an accumulation of shutters; the presence of furnishings and/or personal items consistent with residential habitation; statements by neighbors, passersby, delivery agents, or government employees that the property is legally occupied; or actual contact with occupants.

"Evidence of vacancy" means any condition visible from the exterior that on its own or combined with other conditions present would lead a reasonable person to believe that the property is vacant. Such conditions include, but are not limited to, overgrown and/or dead vegetation; accumulation of newspapers, circulars, flyers and/or mail; past due utility notices and/or disconnected utilities; accumulation of trash, junk, and/or de-

bris; the absence of window coverings such as curtains, blinds, and/or shutters; the absence of furnishings and/or personal items consistent with residential habitation; and statements by neighbors, passersby, delivery agents, or government employees that the property is vacant.

"Foreclosure" means the process by which a property, placed as security for a real estate loan, is sold to satisfy the debt of a defaulting trustor (borrower), including a transfer by deed in lieu of foreclosure.

"Inspection" means a physical investigation at a property to obtain evidence of occupancy or vacancy, or the physical condition of the property and/or to verify compliance with this chapter and any other applicable code or law. In the case of a property that is the subject of a notice of default, but has not yet been foreclosed, the inspection need only consist of a visual inspection of the exterior of the property.

"Local property management company" means a property management company and/or certified property manager that is either based or maintains an office within 20 miles of City limits and has a current business tax certificate issued by the City.

"Notice of default" means a recorded notice that a default has occurred under a deed of trust and that the beneficiary intends to proceed with a trustee's sale.

"Oakland Building Construction Code" means Chapter 15.04, as may be amended from time to time.

"Occupied" means lawful habitation of the property by trustor or tenants.

"Openings" mean a window, skylight, door/sidelight/transom, underfloor access, or similar exterior opening in a building which is broken; or cannot be fully closed; or has an improperly functioning, unapproved, or missing securing device; or is partially or fully missing; or any combination of these conditions.

"Out-of-area" means in excess of 20 miles from City limits.

"Owner" means any real person, partnership, association, corporation, limited liability company, limited partnership, fiduciary, estate, or any other legal entity having a legal or equitable title in the property.

"Owner of record" means the person holding recorded title to the residential real property on question at any point in time when official records are produced by the Alameda County Clerk-Recorder's Office.

"Property" means any unimproved or improved real property, or portion thereof, situated in the City including the buildings, structures, or other improvements located on the property regardless of condition.

"Residential" means property which only contains a residential occupancy, as set forth in the Oakland Building Construction Code, except for attached storage and automobile parking facilities.

"Responsible party" means the owner of the property, or the beneficiary and/or trustee pursuing foreclosure of a property subject to this chapter secured by a mortgage, deed of trust or similar instrument, or the owner of the property following a foreclosure, if the owner is the beneficiary, subsidiary or affiliate of the beneficiary, or is otherwise associated with the beneficiary. Responsible party excludes the pre-foreclosure property owner(s).

"Securing" means such measures as may be directed by the Building Official or his or her designee so that the property is not accessible to unauthorized persons, including but not limited to the repairing of fences and walls, chaining/padlocking of gates, the repair or boarding of door, window and/or other openings.

"Shall/will" means a definitive directive which includes the ordinary accepted meaning of the word "must."

"Substitution of beneficiary of deed of trust" means an instrument that transfers the beneficial interest under a deed of trust from one beneficiary to another.

"Trustee" is the person, firm, entity, or corporation holding a deed of trust secured by the property.

"Trustor" is a borrower under a deed of trust, who deeds property to a trustee as security for the payment of a debt.

"Turf stain" means the application of an environmentally safe stain or dye that colors dead/dormant vegetation green.

"Vacant" means any building, structure or real property that is unoccupied or occupied by a person without a legal right to occupy.

(Ord. No. 13126, § 2, 6-19-2012)

#### **8.54.110 Accepted meanings.**

Where terms are not defined in this chapter, they shall have their ordinary accepted meanings within the context with which they are used.

(Ord. No. 13126, § 2, 6-19-2012)

### **Article III.**

#### **Registration**

#### **8.54.200 Properties subject to registration.**

The following properties must be registered with the City as part of the Foreclosed and Defaulted Residential Property Registration and Abatement Program:

A. Vacant and Occupied Residential Properties with a Recorded Notice of Default.

1. Within 30 days of recording a notice of default with the Alameda County Clerk-Recorder's Office, a responsible party or its designee shall perform an inspection of the property that is the security for the deed of trust the notice of default is recorded against.

2. If the property is found to be vacant or shows sufficient evidence of vacancy that it is deemed to be abandoned, by this chapter or under the deed of trust, the responsible party shall, within 30 days of the inspection, register with the City and pay the required registration fee pursuant to O.M.C. Section 8.54.20. If the property is deemed abandoned, the Beneficiary shall invoke an abandonment or any other appropriate provision ex-

press or implied in the deed of trust to permit the beneficiary to assume possession or control of the property sufficient to permit the beneficiary or other responsible party to comply with the requirements of this chapter.

3. If the property is occupied and a notice of default has been recorded against the property, the responsible party or its designee shall:

a. Register the property pursuant to O.M.C. Subsection 8.54.200.A.2., but shall not be required to pay a registration fee; and

b. Inspect the property pursuant to O.M.C. Section 8.54.310 until:

i. The notice of default is withdrawn or rescinded; or

ii. The property becomes vacant and/or shows sufficient evidence of vacancy, at which time the responsible party or their designee shall, within 30 days of that inspection, register the property as vacant and pay the required registration fee described in O.M.C. Section 8.54.230 for vacant and defaulted properties.

c. If the property subject to a recorded notice of default is occupied by a tenant or tenants, any responsible party or its designee shall provide the tenant(s) with a written statement of his/her/their rights in a form approved by the Building Official. The written statement shall be either mailed to the tenants at the physical address of the property or securely posted on the property. If the written statement is posted on the property, the paper used shall be weather-resistant.

B. Vacant and Occupied Foreclosed Residential Properties.

1. All residential property that has been the subject of a foreclosure where the title was transferred to the beneficiary of a deed of trust involved in the foreclosure or through a deed in lieu of foreclosure.

2. Such properties must be registered within 30 days of transfer to the beneficiary.

3. Foreclosed properties lawfully occupied by tenants under leases entered into by the previous landlord (i.e. trustor) shall register with the City,

pay the registration fee under this chapter, and comply with all applicable Oakland and State landlord-tenant laws.

4. If the property is found to be vacant or shows sufficient evidence of vacancy and has already been registered, the responsible party shall, within 30 days of the vacancy, change the status of the property to vacant on the City's registration, without paying an additional fee.

C. A responsible party shall ensure that the utilities of lawfully occupied properties are not terminated and if terminated shall ensure that the utilities are reinstated, unless the responsible party has written, credible evidence that the tenant is responsible under a valid rental agreement to pay for the cost of utilities or any individual utility.

D. It is the obligation of the responsible party to inform the City of any pending action, such as bankruptcy, other court or administrative action that would prohibit the responsible party from taking any of the actions required in this chapter.  
(Ord. No. 13126, § 2, 6-19-2012)

#### **8.54.210 Recordation of transfer of loan/deed of trust/substitution of beneficiary of deed of trust.**

Within ten days of a property transaction involving a change in the identity of an owner or the owner of record, a transfer/assignment of a loan or deed of trust, or alternatively a substitution of beneficiary of deed of trust secured by property located within Oakland, each beneficiary and trustee engaged in said transaction or transfer/assignment/substitution shall record, via the Alameda County Clerk-Recorder's Office, an instrument reflecting the identity, mailing address and telephone number of the trustee and beneficiary responsible for receiving payments associated with the loan or deed of trust in question. This duty/obligation shall be joint and several among and between all trustees and beneficiaries and their respective agents. This section applies only to residential properties that would be subject required to register pursuant to this chapter if a notice of default is recorded.

(Ord. No. 13126, § 2, 6-19-2012)

#### **8.54.220 Registration procedure.**

A. Registration may be accomplished by either or both of the following methods:

1. By completing and returning to the Building Official a City-provided registration form with required fee; and/or
2. Registering online at a website established by the City for the purpose of registering properties under this chapter.

B. The registration shall contain the name, direct contact information including telephone number, direct street/mailing address (no P.O. boxes) of the responsible party/parties. If, pursuant to this chapter, the hiring of a local property management company is required, the name, direct street/mailing address (no P.O. boxes) and telephone number of the local property management company responsible for inspecting, securing, and maintaining the property shall also be disclosed on the registration form.

C. The registration shall also include a written report in an approved format of an interior and exterior inspection of the premises by an approved local individual or firm attesting to the conditions of the property, including exterior blight, interior habitability, utility service, and secured openings, and a written plan detailing the means, methods, and times for periodic inspections and the local individual or firm who shall be responsible for assuring compliance with provisions of this chapter.

D. The registration shall be renewed annually until the subject property is no longer subject to registration under this chapter. Any changes to the information required on the registration shall be reported to the permit center in writing within ten days of the change. The City is not responsible for verifying the accuracy of the information provided.

E. Responsible parties are affirmatively required to deregister properties once these properties are no longer subject to registration pursuant to this chapter.

F. The registration or deregistration may also require such information as may be deemed important by the Building Official to implement this chapter.

(Ord. No. 13126, § 2, 6-19-2012)

#### **8.54.230 Fees.**

Fees for registration of all properties required to be registered pursuant to this chapter are set out in the master fee schedule. In the case of hard copy registration under Subsection 8.54.220.A.1., initial registration fee shall accompany the registration form. The City may provide for electronic payment of fees that are registered through the City's website. Otherwise, fees must be received by the City within ten days of the date of registration. Fees shall be fully paid at the time of submitting the statement of registration to the City and annually thereafter on the anniversary date of submittal, unless a subsequent ordinance of the City Council to amend the master fee schedule otherwise specifies.

(Ord. No. 13126, § 2, 6-19-2012)

#### **8.54.240 Status.**

The responsible party shall immediately advise the City in writing of a material change in the status of a property subject to this chapter, including, but not limited to, becoming blighted, unsecured, fire damaged, hazardous, or uninhabitable, occupied, or having a change in ownership.

(Ord. No. 13126, § 2, 6-19-2012)

#### **8.54.250 Special provisions where property is encumbered with the security interests of multiple beneficiaries.**

A. In the event that a property is encumbered by the security interests of more than one beneficiary at the time when a notice of default is recorded, the beneficiary who first causes a notice of default for its security interest to be recorded shall be responsible for registering the property with the City as provided in O.M.C. Section 8.54.220.

B. Upon recordation of a notice of default on a property by any beneficiary, regardless of the

security lien interest priority of such beneficiary in the property in relation to the priority of the security interests of the other beneficiaries in the same property, the City, in its discretion may elect to enforce the provisions of the chapter against one or more beneficiaries who have not separately recorded a notice of default against the property.

(Ord. No. 13126, § 2, 6-19-2012)

### **Article IV.**

#### **Inspection, Maintenance, and Security Requirements**

##### **8.54.300 Retention of management company.**

A. If any of the following is applicable, the responsible party shall, at his or her or its own expense, hire a local property management company that will be responsible for the inspection, maintenance, management, and security of the property:

1. The owner of the property that [was] acquired through a foreclosure sale resides or has a principal place of business or headquarters that is located out-of-area;

2. The owner of the property that was acquired through a deed in lieu of foreclosure or sale resides or has a principal place of business or headquarters that is located out-of-area; or

3. Both the beneficiary and trustee of a property upon which a notice of default has been recorded reside have a principal place of business or headquarters that is located out-of-area.

B. The local property management company shall be licensed to do business in the City. The local property management company is required to conduct regular inspections of an occupied or vacant property, pursuant to the requirements of Section 8.54.310, to ensure that the property remains in compliance with all applicable laws and regulations. The local property management company shall verify that the property has been inspected pursuant to this chapter via the Building Services' website on or before the first day of each calendar month for which the real property remains vacant.

C. Properties for which the retention of a local property management company is required under this chapter shall be posted with the name and 24-hour contact telephone number of the local property management company in accordance with the standards established by the City. Additionally, the local management company must be authorized to 1) comply with the code enforcement orders issued by the City, and 2) provide a trespass authorization upon request of local law enforcement authorities if the property is unlawfully occupied.

D. For inspection, maintenance, management, and security of occupied foreclosed properties the responsible party shall utilize a certified property manager. Inspection, maintenance, management, and security of vacant properties or occupied properties, that are the subject of a notice of default but not yet foreclosed, and subject to registration pursuant to this chapter are not required to be carried out by a certified property manager.

(Ord. No. 13126, § 2, 6-19-2012)

#### **8.54.310      Inspection requirements.**

##### **A. Foreclosed Properties.**

1. A vacant foreclosed property or a foreclosed property that shows sufficient evidence of vacancy shall be inspected weekly.
2. An occupied foreclosed property ("real estate owned") shall be inspected monthly.
3. Inspection includes, but is not limited to, a physical investigation of the property subject to registration pursuant to this chapter to ensure compliance with all applicable laws, including Title 8, Chapter 8.24 of this Code.

##### **B. Properties Subject to a Recorded Notice of Default.**

1. A vacant or occupied property in default or distressed shall be inspected monthly.
2. Inspection includes, but is not limited to, a physical investigation of the property subject to registration pursuant to this chapter to ensure compliance with all applicable laws, including Title 8, Chapter 8.24 of this Code.

C. On the first business day of each month, the party who conducted the inspection (the local property management company or the local responsible party) shall verify the required inspection either on the website set up for registration or on forms provided by the Building Official.

(Ord. No. 13126, § 2, 6-19-2012)

#### **8.54.320      Maintenance requirements.**

A. It is declared a public nuisance for any person, partnership, association, corporation, fiduciary, or other legal entity that owns, leases, occupies, controls, or manages any property subject to the registration requirement of this chapter, to cause, permit, or maintain any property condition contrary to any provision of this chapter. Consequently, the following maintenance requirements as to any property subject to the registration requirement of this chapter.

B. Properties registered pursuant to this chapter, including a property that has been issued a notice of default and deemed abandoned, shall be maintained according to the following standards:

1. Any property subject to this chapter must comply with the requirements of Chapter 8.24 of this Code entitled, "Property Blight."
2. The property shall be kept free of weeds, dry brush, dead vegetation, trash, junk, debris, building material, any accumulation of newspaper, circulars, flyers, notices (except those required by Federal, State or local law), discarded personal items including, but not limited to, furniture, mattresses, automobile tires, clothing, large and small appliances, printed material or any other items that give the appearance that the property is abandoned.
3. The property shall be maintained free of graffiti, tagging or similar marking. Any removal or painting over of graffiti shall be with an exterior grade paint that matches the color of the exterior structure. Removal shall occur within 48 hours of placement on property.
4. Landscaping includes, but is not limited to, grass, turf stain, ground covers, bushes, shrubs,

hedges or similar plantings, decorative rock or bark, or artificial turf/sod designed specifically for residential installation.

5. Landscape does not include weeds, gravel, broken concrete, asphalt, decomposed granite, plastic sheeting, mulch (unless applied in conjunction with reseeding of turf areas), indoor-outdoor carpet or any similar material.

6. Maintenance includes, but is not limited to, regular watering, irrigation, staining, restaining, cutting, pruning and mowing of required landscape and removal of all trimmings.

7. Pools and spas shall be kept in working order so that water remains clear and free of pollutants and debris, or alternatively shall be drained and kept dry. In either case, properties with pools and/or spas must comply with the minimum security fencing requirement of State or other law.

8. Adherence to this section does not relieve the responsible party of any obligations set forth in any portion of the Oakland Municipal Code or in any covenants, conditions, and restrictions and/or homeowners' association rules and regulations which may apply to the property.

9. Utility services to residential property subject to registration shall not be terminated if the property is lawfully occupied by tenants who are currently under a valid rental agreement with the trustor. Nothing in this section precludes an owner from recovering such costs from a tenant who is obligated to pay utility costs pursuant to a valid rental agreement.

10. Nothing in this chapter relieves any responsible party of the need to obtain approvals, permits, and/or licenses as otherwise required by the Oakland Municipal Code or other governmental entities.

(Ord. No. 13126, § 2, 6-19-2012)

#### **8.54.330 Security requirements.**

A. Properties subject to this chapter, including a property that has been issued a notice of default and deemed abandoned, but not including occupied properties that have been issued a notice of

default but not yet foreclosed, shall be maintained in a secure manner so as not to be accessible to unauthorized persons.

B. Secure manner includes, but is not limited to, closing and locking of windows, doors (walk-through, sliding, and garage), gates/fences and any other opening that may allow access to the interior of the property and/or structure(s). In the case of broken windows, "securing" means reglazing or boarding the windows(s).

C. If the property is owned by a corporation and/or out-of-area beneficiary/trustee/owner, a local property management company shall be contracted to perform weekly inspections to verify that the requirements of this section, and any other applicable laws, are being met. If the local property management company determines the property is not in compliance, it is the responsible party's responsibility, on its own or through the local property management company to bring the property into compliance.

D. The property shall be posted with the name and 24-hour contact telephone number of the local property management company or the responsible party if local. The posting shall be no less than 18 inches by 24 inches, shall be of a front that is legible from a distance of 45 feet, and shall contain the following words, "THIS PROPERTY IS MANAGED BY \_\_\_\_\_" and "TO REPORT ANY PROBLEMS OR CONCERNS CALL \_\_\_\_\_".

E. The posting shall be placed on the interior of a window facing the street to the front of the property so it is visible from the street, or secured to the exterior of the building/structure facing the street of the front of the property so it is visible to the street. If no such area(s) exist, the posting shall be on a stake of sufficient size to support the posting, in a location that is visible from the street to the front of the property, and to the extent possible, not readily accessible to potential vandalism. Exterior posting must be constructed of and printed with, or contained in, weather-resistant materials.

F. The Building Official shall have the authority to require additional maintenance and/or security measures including, but not limited to, securing any and all doors, windows or openings, installing additional security lighting, increasing on-site inspection frequency, employment of an on-site security guard or other measures as may be reasonably required to better secure and/or reduce the visual decline of the property.

G. The duties/obligations specified in this section shall be joint and several among and between all trustees and beneficiaries and their respective agents.

(Ord. No. 13126, § 2, 6-19-2012)

## **Article V.**

### **Enforcement**

#### **8.54.400 Compliance.**

The responsible party of all properties subject to this chapter shall comply fully and in all instances with the provisions of this chapter and with all other applicable requirements of ordinances of the City, regulations of this Code, statutes of the State and the United States Code of Regulations, and decisions, rulings, and orders of courts of competent jurisdiction.

(Ord. No. 13126, § 2, 6-19-2012)

#### **8.54.410 Violations.**

A. General. The failure of a responsible party to comply fully with the provisions of this chapter shall be a separate violation which shall be immediately subject to abatement actions and fees, assessment of penalties and fines, and collection actions provided herein. Each and every day a violation of any provision of this chapter exists shall constitute a separate and distinct offense. The owner shall remain liable for any violation of this chapter even though the owner, by agreement, has imposed such duties on another individual, group, firm, or other entity.

B. Remedies. Remedies provided in this chapter for violations are in addition to and do not supersede or limit any other remedies, whether

civil or criminal, whether by Federal, State or local law. The remedies provided for herein shall be cumulative and not exclusive.

C. Notification. The owner shall be notified of a violation in accordance with the provisions for notification for abatement of violations, as set forth in Article II of Chapter 15.08 and shall have at least 30 days to correct prior to the assessment of any fines or penalties.

D. Defaulted Properties. If the property has received a notice of default, but has not been transferred to the beneficiary or other person through foreclosure, deed in lieu of foreclosure, or other transfer, no fine or penalty may be imposed against the beneficiary unless the owner of record has been first notified of the violation and given at least 30 days to cure and the beneficiary has been notified that the owner of record failed to cure and has been given at least 30 days to cure. The 30-day notice period shall not apply if the Building Services Division determines that a specific condition of the property threatens public health or safety.

E. Fines or Penalties. The City may assess penalties pursuant to O.M.C. Chapter 1.08, 1.12, and/or 1.16 as appropriate to the violation. A failure to register, or permitting blight or a nuisance to exist on any property subject to this chapter is considered a major violation and subject to the penalties set out in Chapter 1.08.

(Ord. No. 13126, § 2, 6-19-2012)

#### **8.54.420 Assessments.**

A. Penalties and Fines. The assessment of penalties as set forth in Chapters 1.08 or 1.12, or fines as set forth in Section 2929.3 of the California Civil Code shall apply to the enforcement of the provisions of this chapter. For properties cited pursuant to California Civil Code Section 2929.3 fines and penalties shall be assessed pursuant to that Code Section and the procedures and requirements of that Section and O.M.C. Section 8.54.450.

B. Interest. Unpaid amounts shall be subject to the assessment of accruing interest as established in the master fee schedule.

C. Collection. The City may serve a demand (invoice) to the owner for payment of fees, costs, penalties, and accruing interest by mailing with regular postage to the address identified on the statement of registration, or when such statement has not been filed, to the address as it appears on the last equalized assessment roll of the Alameda County Assessor, or as otherwise may be known to the City. Whenever such amounts are not fully paid within 14 calendar days of service, the City may recover unpaid amounts by all available legal means including, but not limited to, civil and small claims court action, and may undertake collection by one or more of the following means:

1. Priority Lien. The City may file a priority lien with the Alameda County Clerk-Recorder for recordation on the property title which shall be remain as a financial encumbrance until such unpaid amounts with accrued interest have been fully paid. The amount of such lien shall draw interest thereon at a rate as established in the master fee schedule or such higher rate as may be established by the Alameda County Assessor for collection of municipal and county taxes from and after the date of service of such demand. The statute of limitations shall not run against the right of the City to enforce payment.

2. Special Assessment of the General Levy. The City may transmit such unpaid amounts with accrued interest to the Alameda County Assessor, who shall thereupon enter a special assessment of the general levy taxes on the County Assessment Book opposite the description of the particular lot or parcel of land, and such special assessment shall be collected together with all other taxes levied against the property. Such special assessment shall be subject to the same penalties and interest and to the same procedure under foreclosure and sale, in the case of delinquency, as provided for all other municipal and county taxes against the property, and all laws applicable to the levy, collection, and enforcement of general property taxes are hereby made applicable to such special assessment.

3. Nuisance Abatement Lien. The City may file a nuisance abatement lien with the Alameda

County Clerk-Recorder for recordation on the property title which shall, from the date of recordation, have the force, effect, and priority of a judgment lien. Such nuisance abatement lien may be foreclosed by an action brought by the City for a money judgment.

D. Pursuant to California Civil Code Section 2929.45, the City of Oakland shall not:

1. Impose an assessment or lien unless the costs that constitute the assessment or lien have been adopted by the City Council at a public hearing; and

2. The assessment or lien to recover the costs of nuisance abatement measures taken by the City with regard to property that is subject to a notice of default, that is purchased at a foreclosure sale, or that is acquired through foreclosure under a mortgage or deed of trust, shall not exceed the actual and reasonable costs of nuisance abatement.

E. The City may recover from the responsible party the costs incurred for processing such demands and liens and non-sufficient funds checks, recording such liens, transferring such special assessments, providing notice for court, collection or foreclosure actions, for other recovery actions, and for reasonable attorneys' fees.

(Ord. No. 13126, § 2, 6-19-2012)

#### **8.54.430 Actual and constructive notice.**

Pursuant to State law, actual notice of the assessment of fees, penalties, and fines shall be established on the date the City notifies the owner of such assessment. Constructive notice of the pendency of a collection action for an assessment to all other interested parties shall be established on the date a lien is recorded by the Alameda County Clerk-Recorder. A subsequent owner of a property subject to this chapter without actual or constructive notice of the assessment under this chapter shall not be liable for such assessment.

(Ord. No. 13126, § 2, 6-19-2012)

#### **8.54.440 Additional remedies.**

A. Any violation of this chapter shall be treated as a strict liability offense; a violation shall be deemed to have occurred regardless of a violator's intent.

B. Any person, partnership, association, corporation, fiduciary or other legal entity, that owns, leases, occupies, controls or manages any property subject to this chapter, and causes, permits, or maintains a violation of this chapter as to that property, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished as provided in Chapter 1.28 of this Code.

C. This chapter is intended to be cumulative to, and not in place of, other rights and remedies available to the City pursuant to the Oakland Municipal Code or available under State or Federal law. The City Attorney or a duly authorized enforcement official may pursue any other right or remedy permitted by the Oakland Municipal Code, including, but not limited to, commencement of any civil action, or administration action to abate the condition of a property as a public nuisance.

D. In the event that the City takes administrative action to abate the condition of a property subject to the registration requirement contained in this chapter, above and beyond the rights and remedies specified in Chapters 1.08, 1.12, 1.16 and 15.08 the following administrative penalties shall apply:

1. In each instance when a party becomes subject to a penalty specified in this section, a Building Official shall issue an order providing written notice of that party's obligation to make payment of said penalty. Each such order shall constitute a special assessment against the property in question having the same legal status as an order determining the cost of abatement of a public nuisance pursuant to the provisions of Chapter 15.08. (Ord. No. 13126, § 2, 6-19-2012)

#### **8.54.450 Alternative monetary penalties for violations of California Civil Code Section 2929.3.**

A. This section is intended to carry out the provisions of California Civil Code Section 2929.3. Nothing in this section shall be interpreted or implemented in a manner that is inconsistent with State law. If there is a conflict between the provisions of State law and this section, State law shall control.

B. The City may elect to impose monetary penalties on a legal owner, pursuant to California Civil Code Section 2929.3, if that legal owner fails to maintain vacant residential property that is either purchased at a foreclosure sale or acquired through foreclosure under a mortgage or deed of trust.

1. For purposes of this section, "fails to maintain" means failing to care for the exterior of the property, including, but not limited to, permitting excess foliage growth that diminishes the value of surrounding properties, failing to take action to prevent trespassers, squatters or other unauthorized persons from remaining on the property, or failing to take action to prevent mosquito larvae from growing in standing water, or other conditions that create a public nuisance.

C. The City may impose a fine of up to \$1,000.00 per day for each day that the legal owner fails to maintain the property as required by this section, commencing on the day following the expiration of the period to remedy the violation, as established by the City in Subsection D.

1. In determining the amount of the fine, the City shall take into consideration any timely and good faith efforts by the legal owner to remedy the violation.

2. Fines and penalties collected pursuant to this section shall be directed toward local nuisance abatement programs.

3. Pursuant to Section 2929.3 of the California Civil Code, the City may not impose fines on a legal owner under both this section and any other local ordinance. However, Section 2929.3 of the California Civil Code shall not preempt any local ordinance.

4. Notwithstanding Subsection C.3. above, the rights and remedies provided in this section are cumulative and in addition to any other rights and remedies provided by law.

D. If the City imposes a fine pursuant to this section, the City shall give notice of the alleged violation to the owner of record. The notice shall include a description of the conditions that gave rise to the alleged violations, and state the City's

intent to assess a civil fine if action to correct that violation is not corrected within a period of not less than 30 days.

1. The notice shall be mailed to the address provided in the deed of trust or other instrument as specified in subdivision (a) of Section 27321.5 of the Government Code, or if none to the return address provided on the deed or other instrument.

2. If the violation(s) are not corrected after the City has mailed the notice of violation pursuant to Subsection 8.54.340.D.1., the responsible party or the beneficiary and/or trustee as appropriate shall remedy the violations contained in the notice. All measures to remedy the violations contained in the notice shall comply with the Oakland Municipal Code.

3. The City may provide less than 30 days' notice to remedy a condition, if the City determines that a specific condition of the property threatens public health or safety and the notice of violation states that there is a threat to public health or safety and lists the required time to correct the violation.

(Ord. No. 13126, § 2, 6-19-2012)

## **Article VI.**

### **Appeal**

#### **8.54.500      Appeal.**

The responsible party may appeal a notice of a violation or the assessment of fees for the abatement of a violation in accordance with the provisions for appeals of deteriorated conditions, as set forth in Article II of Chapter 15.08. Appeals of the assessment of penalties shall be in accordance with the provisions set forth in Chapter 1.08 or 1.12, as appropriate.

(Ord. No. 13126, § 2, 6-19-2012)

#### **8.54.510      Review of appeal.**

The limitation period provided pursuant to California Code of Civil Procedure Section 1094.6 shall apply to all petitioners seeking judicial review of administrative determinations.

(Ord. No. 13126, § 2, 6-19-2012)

## **Article VII.**

### **Miscellaneous**

#### **8.54.600      Severability.**

Should any provision, section, paragraph, sentence or word of this chapter be determined or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this chapter shall remain in full force and effect.

(Ord. No. 13126, § 2, 6-19-2012)

#### **8.54.610      Regulations.**

The City Administrator is authorized to promulgate regulations to further the intents and purposes of this chapter not inconsistent with the chapter.

(Ord. No. 13126, § 2, 6-19-2012)

#### **8.54.620      Use of fines and penalties.**

Fines and penalties collected pursuant to this section shall be used first for costs of administration of the provisions of this chapter, to the extent that such costs cannot be covered by fee revenue. Any amounts remaining shall be deposited to the affordable housing trust fund provided for in Section 15.68.100 and shall be appropriated for foreclosure prevention programs and such other purposes as permitted by Section 15.68.100, unless collected under State law or the Oakland Municipal Code and required to be put towards a different purpose.

(Ord. No. 13126, § 2, 6-19-2012)

## Chapter 8.56

### EMERGENCY RESPONSE SERVICES FEES PROGRAM

**Sections:**

**8.56.010 Purpose.**

**8.56.020 Fees; master fee schedule.**

**8.56.030 Alcohol and drug intoxicated drivers; criminally negligent drivers.**

**8.56.040 Collection.**

**8.56.050 Revisions.**

**8.56.010 Purpose.**

The City shall establish user fees for the delivery of Oakland Fire Department fire and rescue services, personnel, supplies and equipment to the scene of motor vehicle accidents and other incidents on the highways ("emergency response user fees"), to be charged as permitted under Government Code Sections 53150, et seq. and this Chapter.

(Ord. No. 13029, § 1, 7-20-2010)

**8.56.020 Fees; master fee schedule.**

The rate of emergency response user fees shall be that which is usual, customary and reasonable (UCR) as shown in "Exhibit A" to Ord. No. 13029, which may include any services, personnel, supplies and equipment, with baselines established by addendum to this document. The City Administrator may adjust such fees periodically to reflect changes in actual costs for such services. The Master Fee Schedule shall be amended to include emergency response user fees and amended periodically to update said fees.

(Ord. No. 13029, § 1, 7-20-2010)

**8.56.030 Alcohol and drug intoxicated drivers; criminally negligent drivers.**

Emergency response user fees will apply and be charged to:

A. Drivers who are non-residents and deemed "at-fault" by investigators at the accident scene, or

otherwise determined to be responsible, for a motor vehicle accident requiring an Oakland Fire Department emergency response;

B. Drivers who are under the influence of alcohol and/or drugs, and/or who engage in intentionally wrongful conduct, regardless of residency, that are liable for emergency response expenses under Government Code Section 53150, et seq.;

C. Drivers who operate a motor vehicle in any criminally negligent manner, regardless of residency, who may not be liable for emergency response expenses under Government Code Section 53150, et seq.; and

D. Utilities causing safety problems to highway areas in the event services are required relating to equipment problems of a utility that are/were the cause for an emergency services response, and if the area is deemed unsafe by emergency responders.

(Ord. No. 13029, § 1, 7-20-2010)

**8.56.040 Collection.**

The user fee shall be charged to persons or entities identified in Section 8.56.030. The fees shall represent an add-on cost of the City's claim for damages of the vehicles, property and/or injuries. In the event services are required relating to utilities causing safety problems to highway areas, and if the area is deemed unsafe by emergency responders, the same billing process shall apply to said utility, whose equipment related problems are/were the cause for an emergency services response. For persons chargeable with expenses under Government Code Sections 53150, et seq., the City will, at its discretion, pursue collection of claim costs through all legal means. The claim costs against all other persons liable for charges under this Chapter shall be submitted to the insurer of the owner of a vehicle, owner of property, or responsible parties.

(Ord. No. 13029, § 1, 7-20-2010)

**8.56.050 Revisions.**

The City may make rules or regulations and from time to time may amend, revoke, or add rules

and regulations, not consistent with this Section, as they may deem necessary or expedient with respect to billing for emergency response user fees or the collection thereof.

(Ord. No. 13029, § 1, 7-20-2010)

**Chapter 8.58****NON-OWNER OCCUPIED RESIDENTIAL  
BUILDING REGISTRATION****Article I.****Title and Purpose****Sections:****8.58.010 Title.****8.58.020 Purpose.****8.58.030 Authority.****Article II.****Definitions****8.58.100 Construed meanings.****8.58.110 Accepted meanings.****Article III.****Scope and Exclusions****8.58.200 Scope.****8.58.210 Exclusions.****Article IV.****Registration, Inspection, and Abatement****8.58.300 Registration.****8.58.310 Inspection by City, abatement,  
and supplemental reporting.****8.58.320 Fees.****Article V.****Enforcement****8.58.400 Compliance.****8.58.410 Violations.****8.58.420 Fees and assessments.****8.58.430 Actual and constructive notice.****Article VI.****Appeal****8.58.500 Appeal.****8.58.510 Review of appeal.****Article I.****Title and Purpose****8.58.010 Title.**

This chapter and the provisions herein shall be known as the "Non-Owner Occupied Residential Building Registration" program and may be cited as such, and will be referred to herein as "this chapter."

(Ord. No. 13141, § 2, 11-13-2012)

**8.58.020 Purpose.**

The purpose of this chapter is to promote the health, safety, and general welfare of the residents, workers, visitors, owners, and proprietors of the City and the economic stability and viability of neighborhoods in the City by requiring the registration and inspection of newly acquired residential buildings which are not occupied by the new owners and the abatement of health and safety violations. This program will protect and preserve the livability, appearance, and social fabric of the City and will also protect the public from health and safety hazards and the impairment of property values resulting from the neglect and deterioration of real property and improvements. More specifically, this chapter is intended to address problems of residential one to four unit properties that are acquired by persons who do not occupy the property, but leave the property in a substandard, blighted condition. This is accomplished by requiring registration and inspection of such properties. This chapter should also have the indirect effect of promoting the sale of properties to homeowners who are more likely to rehabilitate and maintain the property in a lawful condition.

(Ord. No. 13141, § 2, 11-13-2012)

**8.58.030 Authority.**

The Building Official and his or her designees are authorized to enforce the provisions of this chapter, and for such purposes, shall have the powers of a law enforcement officer. The Building Official is authorized to establish standards, poli-

cies, and procedures for the implementation of the provisions of this chapter to further the purpose set forth herein.

(Ord. No. 13141, § 2, 11-13-2012)

## Article II.

### Definitions

#### **8.58.100      Construed meanings.**

For the purposes of this chapter, certain words and phrases are defined and certain provisions shall be construed as set forth herein, unless it shall be apparent from the context that they have different meanings. Words in the singular include the plural and the plural the singular. Words used in the masculine gender include the feminine and the feminine the masculine.

"Building" means a roofed structure that exceeds 120 square feet in gross floor area (orthogonal planer projection) for which the Building Official is authorized to determine and assign an occupancy category as set forth in the Oakland Building Construction Code.

"Building department" has the same meaning as set forth in the Oakland Building Construction Code.

"Building Official" has the same meaning as set forth in the Oakland Building Construction Code.

"Building—Residential" means a building which only contains a Group R - Division 2, 3, or 7 occupancy category, as set forth in the Oakland Building Construction Code, except for attached storage and automobile parking facilities.

"City" means the City of Oakland.

"Date of acquisition" means the date that fee title to property is transferred to an owner, including, but not limited to, recording of the deed transferring ownership, the closing date of escrow or, in cases where the property is sold pursuant to a Claim and Tax Lien Law, the first day following the right of redemption period authorized under the Claim and Tax Lien Law.

"Fire department" has the same meaning as set forth in the Oakland Fire Code.

"Foreclosure" means the property has been sold at a judicial or non-judicial (trustees) foreclosure sale pursuant to the power of sale under a mortgage or deed of trust, or the mortgagee or beneficiary of the deed of trust has acquired the property through a deed in lieu of foreclosure.

"Foreclosure process" means the property received a notice of default (NOD) from a lender and the default was not cured by the property owner or completed a foreclosure (real estate owned or REO), as well as properties that were sold through trustee sale (strict foreclosure), short sale (preceded by a notice of default), judicial foreclosure, or transferred to the lender or other party through a deed in lieu of foreclosure, or other similar transfers, notwithstanding that the property may have been transferred to another party after the foreclosure process.

"Immediate family" means a child, spouse, sibling, grandchild, grand parent, parent of a title holder to the property, including adoptive and step relationships.

"Oakland Building Construction Code" means Chapter 15.04 of the Oakland Municipal Code, as may be amended from time to time.

"Oakland Building Maintenance Code" means Chapter 15.08 of the Oakland Municipal Code, as may be amended from time to time.

"Oakland Fire Code" means Chapter 15.12 of the Oakland Municipal Code, as may be amended from time to time.

"Oakland Planning Code" means Title 17 of the Oakland Municipal Code, as may be amended from time to time.

"Oakland Property Maintenance Code" means Chapter 8.24 of the Oakland Municipal Code, as may be amended from time to time.

"Occupancy category" has the same meaning as set forth in Chapter 2 - Definitions of the Oakland Building Construction Code.

"Occupant" means one or more individuals having legal right to occupy a specific building or portion thereof.

"Occupied" means the lawful physical presence of an occupant on a continuing and non-transient basis.

"Owner" means any individual, group of individuals, co-partnership, association, corporation, limited liability company, trustor fiduciary having legal or equitable title or any interest in the acquired property or portion thereof.

"Owner-occupied" means that a property was acquired with the intent to occupy within six months of the date of acquisition and for at least a year thereafter as the primary residence by any of the following:

- An individual who holds title to the property;
- By a member of the immediate family of an individual who holds title to the property;
- By an individual who is the trustor or beneficiary of a trust established for estate planning purposes that owns the property.

"Primary residence" means that the occupant would be eligible for a homeowner property tax exemption and does not have an equivalent exemption on any other real property.

"Property" means a single parcel with four or fewer lawful dwelling units that are building-residential.

"Purchaser" means the new owner.

"Shall/will" means a definitive directive which includes the ordinary accepted meaning of the word "must."

"Substandard violation" means an unsafe condition as set forth in Article X - Substandard and Public Nuisance Definitions of the Oakland Building Maintenance Code.

(Ord. No. 13141, § 2, 11-13-2012)

#### **8.58.110 Accepted meanings.**

Where terms are not defined in this chapter, they shall have their ordinary accepted meanings within the context with which they are used.

(Ord. No. 13141, § 2, 11-13-2012)

### **Article III.**

#### **Scope and Exclusions**

##### **8.58.200 Scope.**

The provisions of this chapter shall apply solely to real properties that meet all of the following:

- A. Improved residential properties that have four or fewer dwelling units on the same parcel;
- B. That have been acquired for valuable, not nominal, consideration, or transfers for estate planning purpose or through probate; and
- C. That are not owner-occupied.

- D. That have gone through a foreclosure process during or after the six years prior to the effective date of this chapter, irrespective of whether the property was sold [or] transferred to by the lender or former owner during the six years prior to the effective date.

(Ord. No. 13141, § 2, 11-13-2012)

##### **8.58.210 Exclusions.**

The provisions of this chapter shall not apply to properties:

- A. Which are owned by the United States of America, the State of California, the County of Alameda, the City, or to any of their respective agencies or political subdivisions; nor shall it apply to the Oakland Housing Authority or to utilities regulated by the California Public Utilities Commission, or

- B. Which are regulated by Oakland Municipal Code Chapter 8.54 - Vacant Buildings, or

- C. Which are regulated by the California Department of Real Estate as a residential common interest subdivision (condominiums, planned developments, stock cooperatives, community apartments), or are occupied by the owners under a tenancy-in-common arrangement, or

- D. Which are owned by an entity regulated by the Internal Revenue Service as a 501(c) nonprofit corporation formed for charitable or religious purposes, whereby the nonprofit serves as the sole

owner or as the managing general partner in a partnership with entities that are not 501(c) non-profit corporations, or

E. Where the owner has applied for a City building permit in order to rehabilitate the property within 90 days from the date of acquisition of the property. Should the property be occupied by tenants and access to the property delayed due to issues with the tenants, the owner can seek additional time through a request to the Building Official. If the permits expire without the permitted work being completed, this exclusion no longer applies and the owner must register the property with 30 days following the expiration of the permits.

(Ord. No. 13141, § 2, 11-13-2012)

#### **Article IV.**

#### **Registration, Inspection, and Abatement**

##### **8.58.300 Registration.**

A. Within 90 days following the date of acquisition and annually thereafter on the anniversary date of submittal if all blighted or substandard conditions have not been cured, the owner shall separately register each property with the City which is not occupied by the owner and pay all fees as established in the master fee schedule for registering such properties. Should the property be occupied by tenants and access to the property delayed due to issues with the tenants, the owner can seek additional time through a request to the Building Official.

B. Initial registration and annual re-registration shall be accomplished by completing an electronic form at a website established by the City for the purpose of registering properties under this chapter.

C. Initial registration shall include providing information attesting to the conditions of the property, including readily apparent violations of the Oakland Building Construction Code, Building Maintenance Code, Property Maintenance Code, Fire Code, and Planning Code, as listed in Attachment A and subject to change from time to time as

State and local building codes and standards change. For the annual registration, the owner need only report any new substandard conditions and an inspection by the City is not required unless there are reported or otherwise discovered substandard conditions.

D. Registration shall also include providing such additional information as may be determined by the Building Official to be necessary to implement this chapter.

E. Failure to register a property completely within the required time duration shall be a violation of this chapter and subject to administrative citation or civil penalties pursuant to Oakland Municipal Code Chapters 1.08 and 1.12, as appropriate for the number of violations or repeated violations by the owner.

(Ord. No. 13141, § 2, 11-13-2012)

##### **8.58.310 Inspection by City, abatement, and supplemental reporting.**

A. Within 30 days of the initial registration and any annual re-registration of a property, the owner shall schedule an inspection with the Building Department or the Fire Department or both, as applicable, and pay all fees as established in the master fee schedule to determine the existence or non-existence of substandard violations.

B. Within 60 days following registration and annual re-registration, the owner shall abate all violations not otherwise identified as substandard violations and file a supplemental property report with the Building Department or Fire Department, as applicable, attesting to abatement of violations.

C. Within six months following confirmation by the City of substandard violations, the owner shall fully abate all substandard violations to the satisfaction of the Building Official and the Fire Marshal either by repair, replacement, or removal in compliance with the law, unless a lesser or greater time is deemed reasonable and necessary by the appropriate City officer based on the severity of the violations, life safety issues, or other factors.

D. Failure to abate violations within the required time durations shall be a violation of this chapter and subject to administrative citations or civil penalties pursuant to Oakland Municipal Code Chapters 1.08 and 1.12, depending on the Building Official's determination as to whether the unabated violations constitute a major violation of the applicable code. Any failure to abate or disclose a substandard condition is considered a major violation and subject to civil penalties. Should the property be occupied by tenants and access to the property delayed due to issues with the tenants, the owner can seek additional time through a request to the Building Official.

E. If the property has no blight or substandard violations or owner abated all violations to the satisfaction of the Building Department, the property is no longer be subject to registration and inspection requirements under this chapter. If there are changed conditions that make the property blighted or substandard, the owner must re-register, and the owner schedule an inspection with the Building Department or Fire Department, or both as applicable. If the owner fails to register and report any blighted or substandard conditions within the time requirements, the owner shall be subject to administrative or civil penalties.

F. If a property subject to registration under this chapter is transferred to an owner-occupant, the former owner shall notify the Building Department within 30 days of such transfer.

(Ord. No. 13141, § 2, 11-13-2012)

#### **8.58.320 Fees.**

Fees for implementation and administration of this chapter shall be as established in the master fee schedule. Fees shall be fully paid at the time of registration and annually thereafter on the anniversary date of submittal and when scheduling inspections by the City.

(Ord. No. 13141, § 2, 11-13-2012)

#### **Article V.**

##### **Enforcement**

###### **8.58.400 Compliance.**

The owner shall comply fully and in all instances with the provisions of this chapter and with all other applicable requirements of ordinances of the City, regulations of the Oakland Municipal Code, statutes of the State of California and the United States Code of Regulations, and decisions, rulings, and orders of courts of competent jurisdiction, including, but not limited to, Oakland Municipal Code Chapters 8.22 - Residential Rent Adjustments and Evictions, and 15.60 - Code Enforcement Relocation Program.

(Ord. No. 13141, § 2, 11-13-2012)

###### **8.58.410 Violations.**

A. General. The failure of an owner to comply fully with the provisions of this chapter shall be a separate violation for each property and shall be immediately subject to abatement actions and fees, assessment of penalties and fines, and collection actions provided herein. Each and every day a violation of any provision of this chapter exists shall constitute a separate and distinct offense. The owner shall remain liable for any violation of this chapter even though the owner, by agreement, has imposed such duties on another individual, group, firm, or other entity and shall remain responsible for any violation that occurred during the period of ownership, notwithstanding that owner transfers the property.

B. Remedies. Remedies provided in this chapter for violations are in addition to and do not supersede or limit any other remedies, whether civil or criminal, including demolition or receivership of any property by the City. The remedies provided for herein shall be cumulative and not exclusive.

C. Notification. The owner shall be notified of a violation in accordance with the provisions for notification for abatement of violations, as set forth in Article II of Chapter 15.08 of this Code.

D. Recordation. Notice of violations of the provisions of this chapter may be filed with the Alameda County Clerk-Recorder for recordation on the property's title.

E. Right of Entry. When it is necessary to make an inspection to enforce the provisions of this chapter, or when the Building Official has reasonable cause to believe that there exists on the building or upon a premises a condition that is contrary to or in violation of this chapter that makes the property unsafe, dangerous or hazardous, the Building Official and the Fire Marshal may enter the building or premises at reasonable times to inspect or to perform the duties imposed by this chapter, provided that if such building or structure or premises be occupied that credentials be presented to the occupant and entry requested. If such building or premises be unoccupied and secured against entry, the Building Official and the Fire Marshal shall first make a reasonable effort to locate the record owner of the property or other adult person having lawful charge or control of the building or structure or premises and request entry. If such entry is refused, the Building Official and the Fire Marshal shall have recourse to the remedies provide by law to secure entry.

No person authorized by this chapter to enter buildings shall enter an occupied unit or space or other non-public area without the consent and presence of the owner or the owner's designated agent or the lawful and adult occupant of the unit or space or other non-public area or without a proper written order executed and issued by a court having jurisdiction to issue the order.

F. Inspection. Buildings, structures, or portions thereof, and real property within the scope of this chapter and all construction or work for which a permit is required shall be subject to inspection by the Building Official and the Fire Marshal in accordance with and in the manner provided by this chapter, the Oakland Building Maintenance Code, the Oakland Building Construction Code, the Oakland Property Maintenance Code, the Oakland Fire Code, and the Oakland Planning Code. (Ord. No. 13141, § 2, 11-13-2012)

#### **8.58.420 Fees and assessments.**

A. Fees. The fees and costs incurred and the interest accrued in repairing, cleaning, remediating, removing, or demolishing a building, structure, or real property, including costs incurred in securing a building, structure, or real property from unauthorized access, and in ascertaining violations or affecting abatement thereof and in collecting such fees, costs, penalties, citations, and accruing interest shall be charged against the property and owner.

Such fees, costs, and accruing interest shall be as established in the master fee schedule and may be recovered by all appropriate legal means, including, but not limited to, nuisance abatement lien, priority lien and special assessment of the general tax levy, and civil and small claims court action brought by the City and combinations of such actions.

The City may recover from the owner all costs incurred for processing and recording of such notices, liens, and special assessments authorized by this chapter and for providing notice to the owner as part of its abatement action or for other actions to enforce such liens and special assessments and to recover costs incurred, including attorneys' fees.

B. Penalties. The assessment of civil penalties as set forth in Chapter 1.08 and administrative citations as set forth in Chapter 1.12 of this Code shall apply to the enforcement of violations of the provisions of this chapter.

C. Interest. Unpaid amounts shall be subject to the assessment of accruing interest as established in the master fee schedule.

#### **D. Collection.**

1. The City may serve a demand (invoice) to the owner for payment of fees, costs, penalties, citations, and accruing interest by mailing with regular postage to the address identified on the statement of registration, or when such statement has not been filed, to the address as it appears on the last equalized assessment roll of the Alameda County Assessor, or such address as otherwise may be known to the City. Whenever such amounts are not fully paid within 14 calendar days of ser-

vice, the City may recover unpaid amounts by all available legal means including, but not limited to, civil and small claims court action, and may undertake collection by one or more of the following means:

a. Priority Lien. The City may file a priority lien with the Alameda County Clerk-Recorder for recordation on the property title which shall be remain as a financial encumbrance until such unpaid amounts with accrued interest have been fully paid. The amount of such lien shall draw interest thereon at a rate as established in the master fee schedule or such higher rate as may be established by the Alameda County Assessor for collection of municipal and county taxes from and after the date of service of such demand. The statute of limitations shall not run against the right of the City to enforce payment.

b. Special Assessment of the General Levy. The City may transmit such unpaid amounts with accrued interest to the Alameda County Assessor, who shall thereupon enter a special assessment of the general levy taxes on the County Assessment Book opposite the description of the particular lot or parcel of land, and such special assessment shall be collected together with all other taxes levied against the property. Such special assessment shall be subject to the same penalties and interest and to the same procedure under foreclosure and sale, in the case of delinquency, as provided for all other municipal and county taxes against the property, and all laws applicable to the levy, collection, and enforcement of general property taxes are hereby made applicable to such special assessment.

c. Nuisance Abatement Lien. The City may file a nuisance abatement lien with the Alameda County Clerk-Recorder for recordation on the property title which shall, from the date of recordation, have the force, effect, and priority of a judgment lien. Such nuisance abatement lien may be foreclosed by an action brought by the City for a money judgment.

2. The City may recover from the owner the costs incurred for processing such demands and

liens and non-sufficient funds checks, recording such liens, transferring such special assessments, providing notice for court, collection or foreclosure actions, for other recovery actions, and for reasonable attorneys' fees.

(Ord. No. 13141, § 2, 11-13-2012)

#### **8.58.430 Actual and constructive notice.**

Pursuant to State law, actual notice of the assessment of fees, costs, penalties, and citations shall be established on the date the City notifies the owner of such assessment. Constructive notice of the pendency of a collection action for an assessment to all other interested parties shall be established on the date a lien is recorded by the Alameda County Clerk-Recorder. A subsequent owner of a building without actual or constructive notice of the assessment under this chapter shall not be liable for such assessment.

(Ord. No. 13141, § 2, 11-13-2012)

### **Article VI.**

#### **Appeal**

##### **8.58.500 Appeal.**

The owner may appeal a notice of a violation or the assessment of fees for the abatement of a violation in accordance with the provisions for appeals of deteriorated conditions, as set forth in Article II of Chapter 15.08 of this Code. Appeals of the assessment of penalties and citations shall be in accordance with the provisions set forth in Chapters 1.08 and 1.12 of this Code.

(Ord. No. 13141, § 2, 11-13-2012)

##### **8.58.510 Review of appeal.**

The limitation period provided pursuant to California Code of Civil Procedure Section 1094.6 shall apply to all petitioners seeking judicial review of administrative determinations.

(Ord. No. 13141, § 2, 11-13-2012)

## Title 9

### PUBLIC PEACE, MORALS AND WELFARE

#### Chapters:

- |             |   |
|-------------|---|
| <b>9.04</b> | <b>Offenses Against Public Officers and Government</b>                |
| <b>9.08</b> | <b>Offenses Against Public Peace and Decency</b>                      |
| <b>9.12</b> | <b>Offenses By or Against Minors</b>                                  |
| <b>9.16</b> | <b>Property Offenses</b>  |
| <b>9.20</b> | <b>Ammunition Sales Registration</b>                                  |
| <b>9.24</b> | <b>Gambling</b>   |
| <b>9.28</b> | <b>Nude Dancing</b>   |
| <b>9.32</b> | <b>Trespass Upon Certain Classes of Property</b>                      |
| <b>9.36</b> | <b>Weapons</b>  |
| <b>9.40</b> | <b>Discrimination Based on AIDS</b>                                   |
| <b>9.44</b> | <b>Discrimination Based on Sexual Orientation</b>                     |
| <b>9.48</b> | <b>Housing Discrimination on the Basis of Children</b>                |
| <b>9.52</b> | <b>Special Event Permits</b>  |
| <b>9.56</b> | <b>Nuisance Vehicles</b>  |
| <b>9.58</b> | <b>Loitering for the Purpose of Engaging in Illegal Drug Activity</b> |
| <b>9.60</b> | <b>Slavery Era Disclosure</b>   |



## Chapter 9.04

### OFFENSES AGAINST PUBLIC OFFICERS AND GOVERNMENT

#### **Sections:**

- 9.04.010      Penalty for false statements on mortgage loan applications.**
- 9.04.020      Falsely representing to be an officer.**
- 9.04.030      Gas and electric meters.**
- 9.04.040      Altering and falsifying public records.**
- 9.04.050      Defacing notices.**
- 9.04.060      False reports to law enforcement agencies.**
- 9.04.070      Defeating order of council.**
- 9.04.080      Obtaining personal data by unauthorized persons from CORPUS.**

**9.04.010      Penalty for false statements on mortgage loan applications.**

It shall be a misdemeanor, punishable by a fine not to exceed five hundred dollars (\$500.00) and/or imprisonment not to exceed six months, to make any false statement or certification on any mortgage loan application or other mortgage loan documentation submitted in connection with the city multi-lender mortgage purchase program. (Prior code § 1-3.03)

**9.04.020      Falsely representing to be an officer.**

It is unlawful for any person in the city to falsely represent himself or herself to be, or to wear a badge of, any officer of either the Police or Fire Department of the city of Oakland, or the Sheriff's Office of the county of Alameda, or of any constable's office, with intent to deceive, or to use any sign, badge or device used by the Police Department or the Fire Department of the city of Oakland with such intent to deceive. (Prior code § 3-4.07)

**9.04.030      Gas and electric meters.**

It is unlawful for any person in the city, with intent to injure or defraud, to have in his or her possession any machine, appliance, contrivance or device of any character used, designed or intended to be used to prevent a gas or electric meter from correctly registering gas or electricity passing through it, or to divert gas or electricity that should pass through it. (Prior code § 3-8.01)

**9.04.040      Altering and falsifying public records.**

It is unlawful for any person to wilfully alter, falsify, deface, mutilate, destroy, secrete, or, without the consent of the officer having custody of the same, to remove the whole or any part of any book, map, paper, instrument, document or record filed, deposited or recorded in any public office or with any public office of the city. (Prior code § 3-8.02)

**9.04.050      Defacing notices.**

It is unlawful for any person to wilfully alter, falsify, deface, mutilate, remove or destroy, without the consent of the city, any official public notice posted in any public place in the city by said city before the date of hearing as set forth in said notice. (Prior code § 3-8.03)

**9.04.060      False reports to law enforcement agencies.**

It is unlawful for any person to report either orally or in writing to any officer or employee of any law enforcement agency of the city, county of Alameda, or state of California, that a felony or a misdemeanor has been committed, knowing such report to be false, or to give information to any officer or employee of any of said law enforcement agencies, either orally or in writing, concerning a felony or misdemeanor knowing such information to be false. (Prior code § 3-8.05)

**9.04.070      Defeating order of council.**

It is unlawful for any person to resist, obstruct, defeat or attempt to defeat, the enforcement or execution of any lawful order of the Council of the

**9.04.070**

city, or of any person lawfully acting under the authority of the said Council. (Prior code § 3-11.01)

**9.04.080      Obtaining personal data by unauthorized persons from CORPUS.**

It is unlawful for any unauthorized person to wilfully and maliciously obtain personal data from the Criminal Oriented Records Production Unified System (CORPUS). (Prior code § 3-11.06)

## Chapter 9.08

### OFFENSES AGAINST PUBLIC PEACE AND DECENCY

#### Sections:

- 9.08.010 Picketing.**
- 9.08.030 Obscenity.**
- 9.08.040 Immoral exhibitions—Abatement—Appeal.**
- 9.08.050 Picture arcades—Visibility of interior.**
- 9.08.060 Display of materials harmful to minors.**
- 9.08.070 Masks and disguises.**
- 9.08.080 Immoral dress.**
- 9.08.090 Bathing.**
- 9.08.100 Drunkenness.**
- 9.08.110 Dispersal of disorderly persons in park and recreation areas.**
- 9.08.120 Minors in rented lodging quarters.**
- 9.08.130 Pornographic material—Possession in public places prohibited.**
- 9.08.140 Canned goods or bottled beverages prohibited at sporting events.**
- 9.08.150 Throwing or kicking objects in public places.**
- 9.08.160 Sitting or lying on streets.**
- 9.08.170 Obstructing pedestrians.**
- 9.08.180 Alcoholic beverages on public streets or on adjacent private property thereto.**
- 9.08.190 Open alcoholic beverage containers.**
- 9.08.200 Reserved.**
- 9.08.210 Unlawful entry into places of amusement.**
- 9.08.220 Solicitation of tort claims.**

- 9.08.230 Soliciting on streets prohibited.**
- 9.08.240 Food and drink establishments—Solicitation and annoyance of customers prohibited.**
- 9.08.250 Loitering about property owned by the Housing Authority of the city.**
- 9.08.260 Prohibition of prostitution and prostitution related offenses.**

#### **9.08.010 Picketing.**

The following ordinance is an initiative measure adopted May 15, 1917:

**AN ORDINANCE PROHIBITING LOITERING, PICKETING, CARRYING OR DISPLAYING BANNERS, BADGES, SIGNS OR TRANSPARENCIES, OR SPEAKING IN PUBLIC STREETS, SIDEWALKS, ALLEYS OR OTHER PUBLIC PLACES IN A LOUD OR UNUSUAL TONE, FOR CERTAIN PURPOSES THEREIN NAMED, AND PROVIDING A PENALTY FOR ANY VIOLATION THEREOF.**

**BE IT ORDAINED** by the People of the City of Oakland as follows:

**SECTION 1.** It is unlawful for any person, in or upon any public street, sidewalk, alley or public place in the City of Oakland, to make any loud or unusual noise, or to speak in a loud or unusual tone, or to cry out or proclaim, for the purposes of inducing or influencing, or attempting to induce or influence, any person to refrain from entering any works or factory or any place of business or employment, or for the purpose of inducing or influencing or attempting to induce or influence any person to refrain from purchasing or using any goods, wares, merchandise, or other article or articles, or for the purpose of inducing or influencing or attempting to induce or influence any person, to refrain from doing or performing any service or

labor in any works, factory, place of business or employment, or for the purpose of intimidating, threatening or coercing, or attempting to intimidate, threaten or coerce, any person who is performing, seeking or obtaining service or labor in any works, factory, place of business or employment.

**SECTION 2.** It is unlawful for any person, in or upon any public street, sidewalk, alley or other public place in the City of Oakland, to loiter in front of, or in the vicinity of, or to picket in front of or in the vicinity of, or to carry, show or display any banner, transparency, badge or sign in front of, or in the vicinity of, any works, or factory, or any place of business or employment, for the purpose of inducing or influencing or attempting to induce or influence, any person to refrain from entering any such works or factory or place of business, or employment, or for the purpose of inducing or influencing, or attempting to induce or influence, any person to refrain from purchasing or using any goods, wares merchandise, or other articles, manufactured, made or kept for sale therein, or for the purpose of inducing or influencing or attempting to induce or influence, any person to refrain from doing or performing any service or labor in any works, factory, place of business or employment, or for the purpose of intimidating, threatening or coercing, or attempting to intimidate, threaten or coerce any person who is performing, seeking or obtaining service or labor in any such works, factory, place of business or employment.

**SECTION 3.** That any person violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than One Hundred (\$100) Dollars nor less than Twenty-five (\$25) Dollars or by imprisonment in the City Jail for a period of

not more than fifty (50) days nor less than twelve (12) days or by both such fine and imprisonment.

(Prior code § 3-3.01)

#### **9.08.030 Obscenity.**

It is unlawful for any person to exhibit publicly, or offer for public exhibition, or keep or place accessible to the public, within the city, any lewd, vulgar, obscene or licentious picture or pictures, or to keep or maintain, or place accessible to the public any mechanical device rendering any lewd, vulgar, obscene or licentious song, speech, jest, monologue, dialogue, or any reproduction of the human voice uttering immoral, obscene, lewd, vulgar, licentious or profane words.

(Prior code § 3-4.02)

#### **9.08.040 Immoral exhibitions—Abatement—Appeal.**

A. It is unlawful for any person engaged in conducting or operating, either as owner, proprietor, operator, manager, lessee, agent or employee, any theater, arcade, entertainment or exhibition, or for any person whatsoever to give or cause or permit to be given, or to advertise or cause or permit to be advertised or to participate in, any obscene, indecent, immoral, or crime-depicting play, production, picture, show, entertainment or exhibition, or any delineation or illustration of any nude human figure, or any lewd, indecent or lascivious act, or any matter or thing of an obscene, indecent or immoral nature, or any boxing or prize fight exhibition when the same is in such manner or detail as tends to corrupt public morals.

B. At any time that it shall be brought to the attention of the Mayor or the Chief of Police that the provisions of subsection A of this section are being violated, it shall be the duty of either of said officers or both of them to visit the place where it is reported that such violation exists and there to examine into the same; and should either of said officers upon such examination be of the opinion

that such violation does exist, it shall be his or her duty to notify some person in charge of the exhibition, production or representation in question, that the objectionable parts or features must be forthwith eliminated and no longer exhibited, produced or represented; and upon such notification it shall be the duty of the person so notified to immediately comply therewith and to then and there and at all times thereafter, except as herein-after provided, expunge and eliminate from such exhibition, production or representation, such objectionable parts or features, or the whole thereof. In the event that said notification is not immediately complied with, it shall be the duty of said Mayor or Chief of Police to forbid and prevent the further continuance of the exhibition, production or representation in question until said notification shall be complied with, and said person so neglecting or refusing to comply with said notification and all persons participating in the production of such exhibition, production or representation, shall be deemed guilty of a misdemeanor and shall be immediately arrested by any police officer by direction of said Mayor or said Chief of Police as for an offense committed in the immediate presence of said police officer, with or without any warrant.

C. Any person aggrieved by the action of the Mayor or the Chief of Police under the provisions of subsection B of this section and who shall have complied with the notification in said subsection provided, or on whose behalf such compliance was made, may appeal the action of said Mayor or Chief of Police to the City Council for review and action. A hearing upon such appeal shall be set by the Council at the earliest convenient time, and at such hearing, evidence shall be adduced and the decision of the Council in such matter shall be final. The Council may from time to time prescribe rules of procedure to be observed in such hearings for the purpose of facilitating such reviews and the elimination of damage which may result to the appellant by the delay resulting from the action appealed therefrom.

(Prior code §§ 3-4.03, 3-4.04, 3-4.05)

#### **9.08.050 Picture arcades—Visibility of interior.**

It is unlawful for any person to own, operate, or maintain a picture arcade unless the complete interior of the arcade where pictures, movies or videotapes are viewed is continuously open and fully visible to any person entering the picture arcade. Partially or fully enclosed booths or partially or fully concealed booths are prohibited.

For the purposes of this section "picture arcade" means as any room or place to which the public can gain admittance wherein one or more coin- or slug-operated, or electronically, electrically or mechanically controlled still or motion picture machines, projectors, video machines, or other image-producing devices are designed, operated or maintained to show still or motion pictures or videos to five or fewer persons per machine, projector or monitor at any one time.

(Prior code § 3-4.031)

#### **9.08.060 Display of materials harmful to minors.**

It is unlawful for any person to knowingly display material which is harmful to minors, as defined in the California Penal Code, Title 9, Chapter 7.6, in a public place, other than a public place from which minors are excluded, unless a device commonly known as a blinder rack is placed in front of the material, so that the lower two-thirds of the material is not exposed to view.

(Prior code § 3-4.032)

#### **9.08.070 Masks and disguises.**

It is unlawful for any person in the city to appear in public in any mask, cap, cowl, hood or other thing concealing the identity of the wearer; excepting, however, persons attending or taking part in carnivals conducted in accordance with law or under permission of the proper authorities of the city and persons holding a written permit to so conceal their identity, which permit is issued by the Chief of Police.

(Prior code § 3-4.06)

**9.08.080 Immoral dress.**

It is unlawful for any person in the city to appear in any public place nude or in any indecent or lewd attire.

(Ord. No. 13014, § 3, 5-18-2010; Prior code § 3-4.08)

**9.08.090 Bathing.**

It is unlawful for any person to bathe or swim in the waters of Lake Merritt in the city. It is unlawful for any person to bathe or swim in the waters of the Estuary of San Antonio or the Oakland Harbor, or any of the waters tributary thereto, within the limits of the city, unless such person is clad in a bathing suit, or for any persons to disrobe at any place in the city for the purpose of bathing or swimming except under some shelter reasonably protecting such person from public view.

(Prior code § 3-4.09)

**9.08.100 Drunkenness.**

It is unlawful for any person to appear in any public place, or place open to public view in the city in an intoxicated or drunken condition.

(Prior code § 3-4.10)

**9.08.110 Dispersal of disorderly persons in park and recreation areas.**

Any person, whether singularly or as part of an assembly of two or more persons, who shall, on any property under the jurisdiction of the Oakland Park or Recreation Commission, or on public property in the immediate vicinity thereof, commit any act in violation of rules promulgated by the Board of Park Commissioners or Board of Recreation Commissioners for the use of said areas, and who shall refuse or fail to disperse or move on away from said area when commanded by a public officer to so disperse or move on shall be guilty of a misdemeanor. For the purposes of this section the term "public officer" shall be construed to include, but not be limited to, authorized employee representatives of the Park and Recreation Commission.

(Prior code § 3-4.14)

**9.08.120 Minors in rented lodging quarters.**

Every person in the city managing, maintaining or conducting, whether as owner, agent or employee, any apartment house, hotel, motel, tourist court, rooming house or other place or establishment where living rooms or sleeping quarters are rented, shall immediately report to the Oakland Police Department the occupancy of any room therein at any time by any person under the age of eighteen (18) years unless such person is accompanied by the parent, guardian or other person having the legal care or custody of such person under the age of eighteen (18) years.

In any criminal prosecution or other proceeding based upon a violation of this section, proof that the owner, his or her agent or employee demanded and was shown, at the time the person under the age of eighteen (18) years first entered the place or establishment hereinabove referred to for the purposes of occupancy, bona fide documentary evidence that said person had attained the age of eighteen (18) years issued by a federal, state, county or municipal government or subdivision or agency thereof, shall be a defense.

(Prior code § 3-4.15)

**9.08.130 Pornographic material—Possession in public places prohibited.**

It is unlawful for any person knowingly to have in his or her possession in any public place in the city any lewd, obscene or indecent writing, book, pamphlet, picture, photograph, drawing, figure molded, cut, cast or otherwise made or prepared, motion picture film, phonograph recording, wire recording, tape recording or transcription or other device of any kind for the recording of sight or sound.

For the purposes of this section, a "public place" means any place or premises except a bona fide private dwelling or any apartment, suite or room which is used in good faith as the residence of one or more persons.

(Prior code § 3-4.16)

**9.08.140 Canned goods or bottled beverages prohibited at sporting events.**

No person shall bring into any public place wherein a regularly scheduled sporting event or exhibition is being held any canned goods or bottled beverages other than any vacuum bottle, canteen or other similar reusable container, except if such persons be the suppliers of, or the agents or servants of such suppliers or the agents or servants of the person or corporation allowed by the department or agency in charge of said public facility to sell or otherwise make use of, the aforesaid articles in said public facility.

(Prior code § 3-4.17)

**9.08.150 Throwing or kicking objects in public places.**

A. No person shall throw, kick or cause to be thrown or kicked or otherwise placed in motion any ice, liquid, paper, can, bottle, container or other object in any public place wherein a regularly scheduled sporting event or exhibition is being held.

B. The prohibition of subsection A of this section shall not apply to employees of the city, to employees of the public facility, and to employees or persons or corporations presenting said sporting event or exhibition, who are regularly engaged in the performance of their duties under direction of appropriate authority.

(Prior code § 3-4.18)

**9.08.160 Sitting or lying on streets.**

A person shall not sit, lie or sleep in or upon any public highway, alley, sidewalk or crosswalk or other place open for pedestrian travel, except when necessitated by physical disability of such person.

(Prior code § 3-4.19)

**9.08.170 Obstructing pedestrians.**

A person shall not loiter or stand in or upon any public highway, alley, sidewalk or crosswalk or other public way open for pedestrian travel or otherwise occupy any portion thereof in such manner as to obstruct or unreasonably interfere with

the free passage of pedestrians or as to obstruct or unreasonably interfere with the normal use of the use of the entrance to any house of worship, hall, theater, moving picture theater or place of public assemblage.

(Prior code § 3-4.20)

**9.08.180 Alcoholic beverages on public streets or on adjacent private property thereto.**

A. No person shall drink any alcoholic beverage: (1) on any public street, sidewalk, alley, highway, city park, city recreation area, city open space or playground; or (2) within fifty (50) feet of any public street, sidewalk, alley, highway, city park, city recreation area, city open space, or playground while on private property open to public view without the express permission of the owner, his or her agent, or the person in lawful possession thereof.

B. This section shall not apply to persons participating in events for which a short-term encroachment permit has been granted as provided in Section 12.08.060 of this code, or a park use permit issued by the Office of Parks and Recreation allowing for use of alcoholic beverages under specified conditions, and which shall contain the following conditions:

1. Alcoholic beverages consumed or possessed at such events or entertainment shall not be in glass or metal containers except as specified.

2. Sponsors of such events shall comply with all state laws relating to the sale of alcoholic beverages.

3. Sponsors of special events or entertainments shall provide toilet facilities as provided for in Section 12.64.360 of this code.

4. Except as exempted in subdivisions (5) and (6) of this subsection, the sale, distribution and/or consumption of alcoholic beverages in any city park area, city recreation area, city open space or playground shall be restricted to fully enclosed perimeter areas (not requiring a roof), buildings, tents or structures.

5. The following city park facilities shall be exempted from the enclosed space requirements of subdivision (4) of this subsection, Camron Stan-ford House (within enclosed garden area only), Dunsmuir House and Garden, Knowland Park Zoo (within fenced zoological park area only).

6. The consumption of beer and wine (not including ales, malt liquors or fortified wines) shall be exempted from the enclosed space requirements of subdivision (4) of this subsection, at designated picnic grounds in Joaquin Miller Park, provided that a valid park use permit shall be required for all such consumption.

7. Sponsors of events shall comply with all other conditions as required by the Director of Parks, Recreation and Cultural Services and by rules promulgated by the Chief of Police. Ord. 12067 § 1, 1998: prior code § 3-4.21)

#### **9.08.190 Open alcoholic beverage containers.**

A. Prohibited Conduct. No person in possession of any bottle, can or other receptacle containing any alcoholic beverage which has been opened, or has a seal broken, or the contents of which have been partially removed, shall enter or remain on the posted premises of, including the posted parking lot or on any public sidewalk immediately adjacent to, any retail package off-sale alcoholic beverage licensee licensed pursuant to Division 9 (commencing with Section 2300) of the Business and Professions Code. Any person violating this provision shall be guilty of an infraction.

B. Posting of Signs. All retail package off-sale alcoholic beverage licensees licensed pursuant to Division 9 of the Business and Professions Code to operate in the city shall post such licensed premises with permanent signs which shall include language stating that possession of any opened alcoholic beverage container in or outside the store is prohibited by law. Signs required to be posted pursuant to this section must be clearly visible to: (1) patrons of the licensees; (2) persons using the parking lot immediately adjacent to the licensed premises; and (3) persons on the public sidewalk immediately adjacent to the licensed premises.

Any licensee who does not acquire, post and maintain signs pursuant to this provision is guilty of an infraction. Upon payment for the cost of the signs, signs shall be provided to the licensee by the Office of Public Works. Signs damaged, stolen or otherwise removed must be reported by the licensee within three working days from the date of damage or removal to the Office of Public Works. Signs damaged, stolen or otherwise removed must be replaced by the licensee within ten working days from the date of damage or removal.

#### **C. Definitions.**

"Parking lot immediately adjacent to the licensed premises" means any parking lot which is contiguous to the licensed premises and is utilized by the patrons of the licensed premises.

"Posted premises" means those premises which are subject to licensure under any retail off-sale alcoholic beverage license, the parking lot immediately adjacent to the licensed premises, and any public sidewalk immediately adjacent to the licensed premises which are posted with notices pursuant to subsection B of this section.

(Prior code § 3-4.22)

#### **9.08.200 Reserved.**

**Editor's note**—Ord. No. 13138, § 2, adopted November 13, 2012, repealed the former Section 9.08.200 in its entirety, which pertained to marathons and derived from the prior code § 3-6.03.

#### **9.08.210 Unlawful entry into places of amusement.**

It is unlawful for any person to enter or to attempt to enter, or to assist any other person to enter or attempt to enter any theater, moving picture theater, dance hall, skating rink, or place where athletic contests, boxing contests, sparring or wrestling matches or exhibitions are being held or are to be held, or any place of amusement or other place of assemblage in the city, for entrance to which an admission fee is charged or demanded, or a ticket or permit to enter is required, without having paid such admission fee or without having surrendered or displayed such ticket or permit,

unless such entrance is made with the express consent or approval of the owner, proprietor or management of the place sought to be entered.  
(Prior code § 3-8.04)

**9.08.220      Solicitation of tort claims.**

It is unlawful for any person to solicit employment for himself or herself or for any other person, either directly or through some other person acting



on his or her behalf, to prosecute, collect, settle, compromise, or to negotiate for the settlement, compromise or collection of, any tort claim, on behalf of any tort claimant, in which he or she has no pecuniary interest arising from such tort.

The provisions of this section shall not be construed to prevent joint tort claimants from negotiating with each other for the purpose of combining respective claims or actions against the tortfeasor.

(Prior code § 3-11.02)

#### **9.08.230      Soliciting on streets prohibited.**

It is unlawful for any person to solicit, on any public street or sidewalk, park or other public place or in any doorway or entrance way immediately abutting thereon, the sale of any subscription to any magazine, periodical or other publication, except newspapers, or the sale of any tangible personal property for delivery at a subsequent time.

(Prior code § 3-11.03)

#### **9.08.240      Food and drink establishments— Solicitation and annoyance of customers prohibited.**

It is unlawful, in any place of business where food or drink is sold to be consumed upon the premises, for any person who loaf or loiters about such place, or who is employed therein, to beg, solicit or importune any patron or customer or visitor in such establishment to purchase any article of food or drink for the one begging, soliciting, or importuning, or to be consumed by any employee, frequenter, habitue, or any vagrant or idle person about such place, and no person shall enter any such place, or remain therein, for the purpose of so begging, soliciting or importuning patrons, customers or visitors therein to purchase articles of food or drink.

Any person who owns, manages or otherwise controls any such place of business who himself or herself begs, solicits, or importunes, or permits or allows other persons to beg, solicit or importune patrons, customers or visitors thereof to purchase

food or drink for himself or herself, for the ones begging, soliciting, or importuning, or for employees, frequenters, habitues or any idle or vagrant persons about such place, is guilty of an infraction.

For the purpose of this section the word "drink" means any nonalcoholic beverage which contains less than one-half of one percent of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed or combined with other substances.

(Prior code § 3-11.05)

#### **9.08.250      Loitering about property owned by the Housing Authority of the city.**

Every person who loiters, prowls, wanders or is present without lawful business on the property of the Housing Authority of the city and who fails to leave upon request of a peace officer or authorized agent of the Housing Authority of the city or returns within seventy-two (72) hours after being asked to leave by a peace officer or authorized agent of the Housing Authority of the city, is guilty of an infraction.

As used in this section "loiter" means to delay, to linger, or to idle about any such Housing Authority of the city property without a lawful purpose for being present.

(Prior code § 3-13.10)

#### **9.08.260      Prohibition of prostitution and prostitution related offenses.**

A. Definitions. The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

"Commit prostitution" means to engage in sexual conduct for money or other consideration, but does not include sexual conduct engaged in as a part of any stage performance, play or other entertainment open to the public.

"Knowingly" means having or showing awareness or understanding of a fact or circumstance that lead a reasonable person to inquire further or

use reasonable care or diligence and should have known and therefore attributable by law to a given person.

"Lewd act" means any act which involves the touching of the genitals, buttocks, or female breast of one person by any part of the body of another person and is done with the intent to sexually arouse and gratify.

"Loiter" means to delay or linger without a lawful purpose for being on the property and for the purpose of committing a crime as opportunity may be discovered.

"Public place" means an area open to the public, or an alley, plaza, park, driveway, or parking lot or an automobile, whether moving or not, or a building open to the general public, including one which serves food or drink, or provides entertainment or the doorways and entrances to a building or dwelling, or the grounds enclosing a building or dwelling.

"Soliciting" means to entice, advise, incite, order, command, encourage or requests another person to engage in specific conduct which would constitute a crime or commit such crime of prostitution. The crime solicited need not actually be committed for solicitation to occur.

**B. Loitering for the Purpose of Engaging in Prostitution, a Misdemeanor.** It is unlawful for any person to loiter in any public place with the intent to commit prostitution. This intent is evidenced by acting in a manner and under circumstances which openly demonstrate the purpose of inducing, enticing, or soliciting prostitution, or procuring another to commit prostitution.

1. Among the circumstances that may be considered in determining whether a person loiters with the intent to commit prostitution are that the person:

(a) Repeatedly beckons to, stops, engages in conversations with, or attempts to stop or engage in conversations with passerby, indicative of soliciting for prostitution.

(b) Repeatedly stops or attempts to stop motor vehicles by hailing the drivers, waving arms, or making any other bodily gestures, or engages or

attempts to engage the drivers or passengers of the motor vehicles in conversation, indicative of soliciting for prostitution.

(c) Has been convicted of violating this section, subdivision (a) or (b) of California Penal Code Section 647, or any other offense relating to or involving prostitution under state law or the Oakland Municipal Code within five years of the arrest under this section.

(d) Circles an area in a motor vehicle and repeatedly beckons to, contacts, or attempts to contact or stop pedestrians or other motorists, indicative of soliciting for prostitution.

(e) Has engaged, within six months prior to the arrest under this section, in any behavior described in this section, with the exception of paragraph (3), or in any other behavior indicative of prostitution activity.

2. The list of circumstances set forth in subdivision (a) is not exclusive. The circumstances set forth in subdivision (a) should be considered particularly salient if they occur in an area that is known for prostitution activity. Any other relevant circumstances may be considered in determining whether a person has the requisite intent. Moreover, no once circumstance or combination of circumstances is in itself determinative of intent. Intent must be determined based on an evaluation of the particular circumstances of each case.

**C. Engaging in the Act of Prostitution or Solicitation for the Purpose of Engaging in Prostitution, a Misdemeanor.** It is unlawful for any person who solicits or who agrees to engage in or who engages in any act of prostitution. A person agrees to engage in an act of prostitution when, with specific intent to so engage, he or she manifests an acceptance of an offer or solicitation to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in prostitution. No agreement to engage in an act of prostitution shall constitute a violation of this subdivision unless some act, in addition to the agreement, is done within this State in furtherance of the commission of an act of prostitution by the person agreeing to engage in

that act. As used in this subdivision, "prostitution" includes any lewd acts between persons for money or other consideration.

1. A person agrees to engage in an act of prostitution when, with specific intent to engage, he or she manifests an acceptance of an offer or solicitation to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in prostitution.

2. An agreement to engage in an act of prostitution by itself does not constitute a violation of law unless some act, in addition to the agreement, be done in furtherance of the commission of an act of prostitution by the person agreeing to engage in that act. An act in furtherance can consist of words only, if the statements made are unambiguous and unequivocal in conveying that the agreed act of prostitution will occur and move the parties toward completion of the act. However, the timing of the act is immaterial. It may precede, coincide with, or follow the agreement.

3. In order to prove the crime of solicitation to engage in an act of prostitution, each of the following elements must be proved:

(a) A person solicited another person to engage in any act of prostitution or agreed with another person to engage in an act of prostitution; and

(b) That person did so with the specific intent to engage in an act of prostitution;

(c) In addition to the agreement, the person did an act in furtherance of prostitution.

D. Controlling, Overseeing, Directing, Supervising, Recruiting, Aiding, or Otherwise Soliciting a Prostitute, a Misdemeanor.

1. It is unlawful for any person to do either of the following:

(a) Direct, control, oversee, supervise, recruit, or otherwise aid another person in the commission of a violation of subdivision (b) of section 647 or subdivision (a) of Section 653.22 of the California Penal Code or Subsection 9.08.260 B of the Oakland Municipal Code.

(b) Collect or receive all or part of the proceeds earned from an act or acts of prostitution committed by another person in violation of subdivision (b) of Section 647 of the California Penal Code or Subsection 9.08.260 B of the Oakland Municipal Code.

2. Among the circumstances that may be considered in determining whether a person is in violation of subdivision (a) are that the person does the following:

(a) Repeatedly speaks or communicates with another person who is acting in violation of subdivision (a) of Section 653.22 of the California Penal Code or Subsection 9.08.260 B of the Oakland Municipal Code.

(b) Repeatedly or continuously monitors or watches another person who is acting in violation of subdivision (a) of Section 653.22 of the California Penal Code or Subsection 9.08.260 B of the Oakland Municipal Code.

(c) Repeatedly engages or attempts to engage in conversation with pedestrians or motorists to solicit, arrange or facilitate an act of prostitution between the pedestrians or motorists and another person who is acting in violation of subdivision (a) of Section 653.22 or subdivision (b) of Section 647 of the California Penal Code or Subsection 9.08.260 B of the Oakland Municipal Code.

(d) Repeatedly stops or attempts to stop pedestrians or motorists to solicit, arrange or facilitate an act of prostitution between pedestrians or motorists and another person who is acting in violation of subdivision (a) of Section 653.22 of the California Penal Code or Subsection 9.08.260 B of the Oakland Municipal Code.

(e) Circles an area in a motor vehicle and repeatedly beckons to, contacts, or attempts to contact or communicate, or stop pedestrians or other motorists to solicit, arrange, or facilitate an act of prostitution between the pedestrians or motorists and another person who is acting in violation of subdivision (a) of Section 653.22 of the California Penal Code or Subsection 9.08.260 B of the Oakland Municipal Code.

(f) Receives or appears to receive money or any consideration from another person who is acting in violation of subdivision (a) of Section 653.22 of the California Penal Code or Subsection 9.08.260 B of the Oakland Municipal Code.

(g) Engages in any of the behavior described in paragraphs (1) to (6), inclusive, in regard to or on behalf of two or more persons who are in violation of subdivision (a) of Section 653.22 of the California Penal Code or Subsection 9.08.260 B of the Oakland Municipal Code.

(h) Has been convicted of violating this section, subdivision (a) or (b) of Section 647 subdivision (a) of Section 653.22, Section 266h or 266i of the California Penal Code or Subsection 9.08.260 B of the Oakland Municipal code, or any other offense relating to or involving prostitution within five years of the arrest under this section.

(i) Has engaged, within six months prior to the arrest under subdivision (a), in any behavior described in this subdivision, with the exception of paragraph (8), or in any other behavior indicative of prostitution activity.

3. The list of circumstances set forth in subdivision (b) is not exclusive. The circumstances set forth in subdivision (b) should be considered particularly salient if they occur in an area that is known for prostitution activity. Any other relevant circumstances may be considered. Moreover, no one circumstance or combination of circumstances is in itself determinative. A violation of subdivision (a) shall be determined based on an evaluation of the particular circumstances of each case.

4. Nothing in this section shall preclude the prosecution of a suspect for a violation of Section 266H or 266i of the California Penal Code or Subsection 9.08.260 B of the Oakland Municipal Code or for any other offense, or for a violation of this section in conjunction with a violation of Section 266h or 266i of the California Penal Code or Subsection 9.08.260 B of the Oakland Municipal Code.

**E. Places of Prostitution Prohibited; Constitute a Public Nuisance; Subject to Injunction, Abatement, and Contempt of Court; Violations a Misdemeanor.**

1. Every building or place used for the purpose of lewdness, assignation or prostitution, and every building or place in or upon which acts of lewdness, or prostitution are held or occur, is prohibited and constitutes a nuisance which may be enjoined, abated, and prevented, and for which damages may be recovered, whether it is a public or private nuisance.

(a) A public nuisance is anything which is injurious to health, 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 by an entire community or neighborhood, or by any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner of any public park, square, street, or highway is a public nuisance.

(b) An act which affects an entire community or neighborhood, or any considerable number of persons, as specified above is not less a nuisance because the extent of the annoyance or damage inflicted upon individuals is unequal.

(c) Whenever there is reason to believe that a nuisance, as defined in this section is kept, maintained, or is in existence within the City, the City Attorney may maintain an action in equity to abate and prevent the nuisance and to perpetually enjoin the person conducting or maintaining it, and the owner, lessee, or agent of the building or place, in or upon which the nuisance exists, from directly or indirectly maintaining or permitting it.

2. Every person who knowingly owns, operates, maintains, permits, or allows a building or place to be used for the purpose of lewdness, or prostitution, and every person occupying or leasing the property or premises of another who op-

erates, maintains, permits or allows a building or place to be used for lewdness, or prostitution is guilty of a misdemeanor.

(Ord. No. 13057, § 2, 3-1-2011)

**Editor's note**—Ord. No. 13057, § 2, adopted March 1, 2011, amended Section 9.08.260 in its entirety to read as herein set out. Formerly, Section 9.08.260 pertained to the prohibition of loitering for the purposes of engaging in prostitution and derived from the prior code, §§ 3-19.01, 3-19.02.



## Chapter 9.12

### OFFENSES BY OR AGAINST MINORS

**Sections:**

- 9.12.010      Pool rooms.**
- 9.12.020      Minors in public places.**
- 9.12.030      Responsibility of parents,  
guardians and other persons.**
- 9.12.040      Smoking.**

**9.12.010      Pool rooms.**

It is unlawful for any person conducting or maintaining any public pool or billiard room in the city or any servant or employee of such person, to permit, suffer or allow any person under the age of eighteen (18) years to enter, visit or remain in such public pool or billiard room; or for any person under the age of eighteen (18) years to enter or remain in any public pool or billiard room in the city, or for such person, for the purpose of gaining entrance to any such public pool or billiard room in violation of the provisions of this section, to falsely represent to the person conducting such pool or billiard room, or to any servant or employee of such person, that such person so representing is eighteen (18) years of age. (Prior code § 3-10.01)

**9.12.020      Minors in public places.**

Every person under the age of eighteen (18) years who loiters in or about any public street or other public place or any place open to the public in the city, between the hour of ten p.m. and the time of sunrise of the following day when not accompanied by his or her parent, guardian or other adult person having the legal care, custody or control of such person, or spouse of such person over twenty-one (21) years of age, is guilty of a misdemeanor. (Prior code § 3-10.02)

**9.12.030      Responsibility of parents,  
guardians and other persons.**

Every parent, guardian, or other person having the legal care, custody, or control of any person under the age of eighteen (18) years who permits

such person to violate the provisions of Section 9.12.020, is guilty of a misdemeanor. (Prior code § 3-10.021)

**9.12.040      Smoking.**

It is unlawful for any minor under the age of sixteen (16) years to smoke in any railway car, street car or other public conveyance, or upon any street, square, public building or public place in the city. (Prior code § 3-10.03)

## Chapter 9.16

### PROPERTY OFFENSES

**Sections:**

- 9.16.010      Public grounds.**
- 9.16.020      Defacing or injuring public buildings or fixtures.**
- 9.16.030      Removal of monuments.**
- 9.16.040      Watercourses.**
- 9.16.050      Leaks in gas pipes.**
- 9.16.060      Lighting—Approval of city before energy is supplied.**

**9.16.010      Public grounds.**

Any person who shall enter upon any of the public squares, waterfront or submerged lands or any other lands, belonging to or held by the city, and dig up the earth, or deposit any earth, rock or other substance thereon, or shall erect or attempt to erect any building, wharf, or structure of any kind, by driving or setting up posts or piles, or in any other manner appropriate or encumber any portion of the real estate belonging to or held by the city, unless such person shall have first obtained property authority so to do, shall be deemed guilty of an infraction. (Prior code § 6-3.10)

**9.16.020      Defacing or injuring public buildings or fixtures.**

It is unlawful for any person to deface, mar, break or in any way destroy or injure any portion of any public building, or the fixtures or contents thereof, which building is owned by the city. (Prior code § 3-4.13)

**9.16.030      Removal of monuments.**

It is declared to be unlawful for any person to remove or disturb, or cause to be removed or disturbed, any monument of granite, concrete, iron or other lasting material set for the purpose of locating or preserving the lines of any street or property subdivision within the city, without first obtaining permission in writing (a copy of which is to be filed by the applicant therefor in the Office of the City

Engineer before it becomes effective) from the City Manager so to do; said permission to be granted upon the condition that the person applying therefor shall cause to be replaced at his expense, by the City Engineer of this city, the monument so removed or otherwise disturbed. (Prior code § 7-3.09)

**9.16.040      Watercourses.**

It is unlawful for any person to place, install, construct or maintain, or to cause or permit the installation, construction or maintenance of, any structure or obstruction, within, contiguous to, or across, or to change the course or meander lines of, or to discharge any industrial wastes or processing waters into, any watercourse within the city without first having obtained a permit therefor from the Director of Public Works/Superintendent of Streets upon written application therefor. Such permit shall be granted only after the completion by the applicant of all the conditions of Section 12.20.020 of this code.

For the purpose of construing this section, the term "watercourse" shall include any stream or stream bed, creek, canal, lake or other water flow. (Prior code § 6-5.01)

**9.16.050      Leaks in gas pipes.**

It shall be the duty of any person owning, maintaining or operating any gas pipes or gas mains beneath the surface of any public street to prevent leaks in such pipes or mains and to repair the same immediately. In the event that said person refuses or neglects to repair said leaks within five days after written notice from the Board of Park Directors to repair the same, it shall be lawful for the Director of Public Works/Superintendent of Streets, at the request of the Board of Park Directors, to make the necessary repairs thereto, and the cost and expense of making said repairs shall be paid to the city by the person owning, maintaining or operating said gas pipes or gas mains. (Prior code § 6-3.05)

**9.16.060      Lighting—Approval of city before energy is supplied.**

No person shall make any electric service connec-

tion to, or supply any electrical energy to, any ornamental street lighting installation until the Electrical Department shall have inspected and approved such installation as conforming to this Code and to ordinances, rules and regulations of the city thereto pertaining.

(Prior code § 6-2.40)

## Chapter 9.20

### **AMMUNITION SALES REGISTRATION Sections:**

**9.20.010 Title.**

**9.20.020 Findings and purpose.**

**9.20.030 Definitions.**

**9.20.040 Record of ammunition sales.**

**9.20.050 Violation—Penalty.**

**9.20.060 Severability.**

**9.20.010 Title.**

This Chapter shall be known as the ammunition sales registration ordinance.

(Ord. No. 12995, 2-16-2010; Ord. 11848 § 1 (part), 1995; prior code § 2-12.01)

**9.20.020 Findings and purpose.**

The intent of the City Council in enacting the ordinance codified in this Chapter is to implement a requirement that ammunition vendors within the City record and maintain records with respect to each individual purchase of ammunition for use by law enforcement in identifying ineligible purchasers of ammunition and removing firearms and ammunition from persons ineligible to possess them.

The City Council further finds that, with the passage of AB 962 imposing statewide requirements for recording handgun ammunition sales, that after February 1, 2011, there will be no need for a local registry to record the purchase of ammunition principally used in handguns.

The City Council further finds that, despite the passage of AB 962, there will remain the need to maintain a record of ammunition sales involving ammunition not principally used in handguns that is not covered under AB 962.

The City Council further finds that the requirement for ammunition purchasers to submit a thumbprint at the time of sale will allow more effective screening of purchasers who are not eligible to possess firearms.

(Ord. No. 12995, 2-16-2010; Ord. 11848 § 1 (part), 1995; prior code § 2-12.02)

**9.20.030 Definitions.**

As used in this Chapter, "ammunition" means projectiles, cartridge cases, primers, bullets, or propellant powder designed for use in any firearm, and any component thereof, but shall not include blank cartridges or ammunition that can be used solely in an "antique firearm" as that term is defined in section 921(a)(16) of Title 18 of the United States Code.

As used in this Chapter, "ammunition principally used in handguns" means ammunition designed or suited for use in revolvers, pistols or other firearms capable of being concealed upon the person, as that term is defined in Penal Code section 12001(a).

"Vendor" means any individual, person, gun dealer, store, firm or corporation engaged in the business of selling ammunition within the City. (Ord. No. 12995, 2-16-2010; Ord. 11848 § 1 (part), 1995; prior code § 2-12.03)

**9.20.040 Record of ammunition sales.**

The requirements of this Section shall apply to all ammunition sales in Oakland up until February 1, 2011. Effective February 1, 2011, the requirements of this Section shall not apply to the sale or transfer of ammunition that is principally for use in pistols, revolvers, or other firearms capable of being concealed upon the person, as that term is defined in Penal Code section 12001(a).

Every vendor who sells ammunition in the City shall maintain a record of ammunition sales as prescribed by this Chapter. The record shall be maintained on the vendor's premises, on forms supplied by, or approved by, the Oakland Police Department (OPD). All ammunition sales must be conducted with the actual purchaser present in a face-to-face transaction. An ammunition purchaser must provide to the vendor and the vendor shall record the following information:

- A. The date of the transaction;
- B. The purchaser's name, address and date of birth;
- C. The purchaser's valid driver's license number or other government issued identification number from a valid photographic I.D. such as a passport;

- D. The brand of ammunition purchased;
- E. The type and amount of ammunition purchased; and
- F. The purchaser's signature and vendor's initials.
- G. The thumbprint of the purchaser on the above record.

The information required to be recorded shall be maintained in chronological order by date of sale of the ammunition and shall be retained on the business premises of the vendor for a period not less than five years following the date of the recorded sale of the ammunition. In addition, the required information in Subsections A—G above shall be transmitted electronically within five business days of sale to OPD by means determined by the Chief of Police.

Federal, State or local law enforcement officers may enter a vendor's premises during regular business hours for the purpose of examining, inspecting or copying records required by this Chapter.

This Section shall not apply if the purchaser is a "peace officer" as that term is defined in Penal Code Section 830 et seq., or a federal law enforcement officer or a person licensed as a dealer or collector in firearms pursuant to Chapter 44 (commencing with Sec. 921) of Title 18 of the United States Code and the regulations pursuant thereto. (Ord. No. 12995, 2-16-2010; Ord. 11848 § 1 (part), 1995; prior code § 2-12.04)

#### **9.20.050      Violation—Penalty.**

It is unlawful for any vendor engaged in the retail sale of ammunition in Oakland to knowingly make a false entry in, or fail to make appropriate entry, or fail to properly maintain any such record, or refuse to immediately provide the ammunition sales log for inspection to a federal, State or local law enforcement officer upon request.

Violation of any provision of this Chapter shall be a misdemeanor, subject to fines and penalties as provided by law. Additionally, failure to abide by the requirements of this Chapter shall be grounds for the revocation of a vendor's permit, pursuant to Chapter 5.26.

(Ord. No. 12995, 2-16-2010; Ord. 11848 § 1 (part), 1995; prior code § 2-12.05)

#### **9.20.060      Severability.**

This Chapter shall be enforced to the full extent of the authority of the City. If any section, subsection, paragraph, sentence or word of this Chapter is deemed to be invalid or beyond the authority of the City, either on its face or as applied, the remaining sections, subsection, paragraphs, sentences, or words of this Chapter shall remain in full force and effect, and to that end the provisions of this shall be deemed severable.

(Ord. No. 12995, 2-16-2010; Ord. 11848 § 1 (part), 1995; prior code § 2-12.06)

**Chapter 9.24****GAMBLING****Sections:**

- 9.24.010 Definitions.**
- 9.24.020 Gambling and betting.**
- 9.24.030 Betting tips.**
- 9.24.040 Card games.**
- 9.24.050 Barricaded rooms.**
- 9.24.060 Permit for barricaded rooms.**
- 9.24.070 Revocation of permit for barricaded rooms—Appeals—Hearings.**
- 9.24.080 Building permit—Barricaded rooms.**
- 9.24.090 Pinball machines.**

**9.24.010 Definitions.**

For the purposes of this chapter certain words and phrases are defined, and certain provisions shall be construed as herein set out, unless it shall be apparent from their context that a different meaning is intended:

"Bet" and "betting" mean an agreement, expressed or implied, between two or more persons that money or some valuable thing contributed by those so agreeing shall become the property of one or some of them upon the happening or not happening in the future of an event which at the time is an uncertainty, or upon the ascertainment of the fact in dispute.

Gambling. "To gamble" and "gambling" mean the playing at a game, device or contrivance in which the element of chance is the controlling factor, for stakes, or the betting on the result of any game, device or contrivance, whether it be one of skill or chance.

"Public place" means any place or premises except a bona fide private dwelling or an apartment, suite or room which is used in good faith as the residence of one or more persons.

"Stake" means a fund or valuable thing or things contributed by two or more persons on an under-

standing, express or implied, that each one so contributing is to have a chance to gain a portion or all of such fund, thing or things, dependent upon the happening or not happening of some uncertain event.

(Prior code §§ 3-5.01—3-5.05)

**9.24.020 Gambling and betting.**

It is unlawful for any person in any public place within the city to gamble at cards, dice or any other game, device or contrivance, or to bet money upon the result of any game, or upon the occurring of a future contingency; or to knowingly visit any public place where gambling or betting is being carried on or conducted; or to knowingly keep, maintain or conduct, or contribute to the support of, any public place where gambling or betting is being carried on or conducted; or to knowingly let, or sub-let, or transfer the possession of, any premises for use for said purposes; or to entice or persuade any person or persons to visit any public place known by the person so inviting or enticing or persuading to be a place where gambling or betting is being carried on or conducted; or to buy or sell anything of value won in any game, or as the result of any bet, or as the result of the determination of any uncertain event. (Prior code § 3-5.06)

**9.24.030 Betting tips.**

It is unlawful for any person to print, publish, distribute, circulate, sell, or give away, in the city, any chart, table, list, sheet, circular, or publication of any kind, giving, or purporting to give, or represented as giving any list, or probable or possible list, of entries for any horse race thereafter anywhere to take place, if there be printed as part thereof, or in connection therewith, or in any other publication, printing or writing accompanying the same, or referring thereto, or connected therewith, any tip, information, prediction, or selection or advice, as to any key, cipher or cryptogram indicating, containing or giving a tip, information, publication or selection of, or advice as to the winner or probable winner, or loser or probable

loser, or the result or probable result of any such race, or the standing or probable standing of any horse therein, or any statement as to, or comment upon, or reference to, the form, condition or standing of, or the actual, probable or possible standing, past, present or future of the betting, wagering or odds upon or against any horse named in such list, or probable or possible list of entries, or to print, publish, distribute, circulate, sell or give away in the city any printed or written information, or pretended informational comment, tip, prediction, or reference, concerning any horse or horse race which will or may, or is designed to, aid, enable, encourage or assist any person to bet or wager, or to establish odds, or to lay a basis upon which to bet or wager, at any time thereafter, against any horse or upon any horse race.

(Prior code § 3-5.08)

#### **9.24.040 Card games.**

It is unlawful for any person, or any social club or other club, in the city, to conduct or participate in any card game in any public place, or to which an admission fee is charged, unless such person, social club or other club shall have first obtained a permit from the Chief of Police of the city to conduct such card game. Such permit shall be granted by the Chief of Police only after an application therefor in writing has been made. Such permit shall be granted within seven days after such application is made unless it shall appear to said Chief of Police that the applicant is not a fit and proper person to hold such a permit, or the moral conditions associated with such applicant are detrimental to public morals. Such permit shall continue in full force and effect for a period of one year from and after the date it is issued unless within such period it shall be revoked for good cause by the Chief of Police; provided, further, that nothing herein shall prevent granting by the Chief of Police of a temporary permit to be effective for a period of seven days after the granting thereof.

(Prior code § 3-5.11)

#### **9.24.050 Barricaded rooms.**

It is unlawful for any person, whether as owner, agent, lessor, lessee or tenant, or otherwise, without first obtaining a permit so to do, to erect, construct or maintain any barred or barricaded house, or room, or a room or hall with double doors, or other place so built, constructed or protected as likely to be difficult of access or ingress to police officers or members of the Fire Department in the performance of their official duties, or to erect, hang or maintain, in or upon any building, any door made wholly of metal, or metal and wood, or any door composed of wood, or of wood, nails and glass, over two inches in thickness. No door or room shall without a permit be fastened by any bar or bars, prop or props, behind or across the same, or be secured otherwise than by a lock or locks, bolt or bolts.

(Prior code § 3-5.12)

#### **9.24.060 Permit for barricaded rooms.**

Application for a permit provided for in Section 9.24.050 shall be in writing, specifying the purpose or reason for which it is sought, the location and character of, the premises involved, and the address of the applicant, and shall be filed with the City Clerk. Immediately upon filing, it shall be referred to the Chief of the Fire Department and the Chief of Police for investigation and report. Unless the Chief of the Fire Department or the Chief of Police shall within seven days after receipt of said application file with the City Clerk a written report that it should be denied on the grounds that such house or room or door by reason of its nature, location or purpose, specifying the objections thereto, has become or is likely to become a serious and needless or unreasonable obstruction or obstacle to members of the Fire Department or of the Police Department in extinguishing fires, making arrests or raids, or otherwise discharging their public duties, the permit shall be granted. Such permit may also be granted before the expiration of the seven-day period when-

**9.24.060**

ever the Chief of Police and the Chief of the Fire Department shall each file a written approval thereof.

(Prior code § 3-5.13)

**9.24.070 Revocation of permit for barricaded rooms—Appeals—Hearings.**

Whenever any barred or barricaded house, or room, or door referred to in Section 9.24.050 shall be erected, maintained, or kept, under the authority of or by a permit provided for in Section 9.24.060, and the Chief of the Fire Department, or the Chief of Police shall file a written report with the Council setting forth reasons for revocation of such permit, the Council shall fix a time for the hearing of the same, and shall send notice to the holder of such permit to appear at such time and show cause why the said permit should not be revoked.

Within seven days after the denial of any application in the manner set forth in Section 9.24.060, the applicant may renew the application by filing it with the City Council and the Council shall fix the time for the hearing of the same.

In revoking, confirming, denying or granting any permit, the Council shall consider the application, the reports of the Chief of the Fire Department and the Chief of Police, and other attending facts and circumstances, and shall exercise a reasonable and sound discretion in the premises.

(Prior code § 3-5.14)

**9.24.080 Building permit—Barricaded rooms.**

The permit provided for in Section 9.24.060 shall be in addition to any building permit which may be required under the building laws of the city. The granting of a permit by the Council to erect or maintain a public garage shall be understood to include authority to install necessary automatic fire doors of metal or of metal and other material.

(Prior code § 3-5.15)

**9.24.090 Pinball machines.**

A. It is unlawful for any person to keep or use in any public place any pinball machine equipped with any device which cancels and records the cancellation of free games won without the actual playing of said free games by the player.

B. It is unlawful for any person to keep or use in any public place any pinball machine game which permits the insertion of more than one coin per game.

(Prior code §§ 3-5.17, 3-5.18)

**Chapter 9.28****NUDE DANCING****Sections:**

- 9.28.010 Legislative authorization.**
- 9.28.020 Theater defined.**
- 9.28.030 Prohibition against the display of female breasts.**
- 9.28.040 Prohibition against display of private parts.**
- 9.28.050 Accessories.**
- 9.28.060 Exceptions.**

**9.28.010 Legislative authorization.**

This chapter is adopted pursuant to Sections 318.5 and 318.6 of the Penal Code. All words used in this chapter which also are used in the said Section 318.5 and 318.6 are used in the same sense and mean the same as the same respective words used in the said Sections 318.5 and 318.6 of the Penal Code. (Prior code § 3-15.01)

**9.28.020 Theater defined.**

As used in this chapter, and in Section 318.5 and 318.6 of the Penal Code, the phrase "theater, concert hall, or other similar establishment which is primarily devoted to theatrical performances" shall mean a building, playhouse, room, hall or other place having permanently affixed seats so arranged that a body of spectators can have an unobstructed view of the stage, upon which theatrical or vaudeville or similar performances are given, and in which the serving of food and/or beverages is clearly incidental to such performances. This definition does not supersede the provisions of Section 9.28.010. (Prior code § 3-15.02)

**9.28.030 Prohibition against the display of female breasts.**

Every female is guilty of a misdemeanor who, while participating in any live act, demonstration, or exhibition in any public place, place open to the public, or place open to public view, or while serving food or drink or both to any customer:

A. Exposes any portion of either breast below a straight line so drawn that both nipples and all portions of both breasts which have a different pigmentation than that of the main portion of the breasts are below such straight line; or

B. Employs any device or covering which is intended to simulate such portions of the breast below such line; or

C. Wears any type of clothing so that any portion of such part of the breast may be observed. (Prior code § 3-15.03)

**9.28.040 Prohibition against display of private parts.**

Every person is guilty of a misdemeanor who:

A. Exposes his or her private parts or buttocks, or employs any device or covering which is intended to simulate the private parts or pubic hair of such person, while participating in any live act, demonstration, or exhibition in any public place, place open to the public, or place open to the public view, or while serving food or drink or both to any customer; or

B. Permits, procures, or assists any person to so expose himself or herself, or to employ any such device. (Prior code § 3-15.04)

**9.28.050 Accessories.**

Every person is guilty of a misdemeanor who permits, counsels, or assists any person to violate any provision of this chapter. (Prior code § 3-15.05)

**9.28.060 Exceptions.**

This chapter does not apply to:

A. A theater, concert hall, or similar establishment which is primarily devoted to theatrical performances;

B. Any act authorized or prohibited by any state statute. (Prior code § 3-15.06)

## Chapter 9.32

### **TRESPASS UPON CERTAIN CLASSES OF PROPERTY**

**Sections:**

- 9.32.010      Declaration of purpose.**
- 9.32.020      Posting—Manner of, prescribed.**
- 9.32.030      Posting—Where permitted.**
- 9.32.040      Trespassing—An infraction.**
- 9.32.050      Loitering—An infraction.**
- 9.32.060      Exemptions.**
- 9.32.070      Damaging signs.**
- 9.32.080      Construction of chapter.**

**9.32.010      Declaration of purpose.**

Public safety is declared to require that the uninterrupted operation of certain industries essential to national defense, such as the aircraft manufacturing industry, and of companies or agencies supplying water, gas, electric and other essential services, be protected by preventing the intrusion upon the properties thereof of idle, curious or malicious persons and of persons whose presence thereon is not necessary, and by prohibiting the loitering about such places by persons capable of inflicting harm or of impeding the operation conducted thereon. (Prior code § 3-13.01)

**9.32.020      Posting—Manner of, prescribed.**

Every person, governmental agency, department or instrumentality having possession or control of any of the facilities, plants or utility properties enumerated in Section 9.32.030, may post, at each entrance to any structure devoted to any use so enumerated, at each entrance to any fenced or enclosed area devoted to any such use, and at intervals of not more than three hundred (300) feet around any area devoted to such use, substantial signs not less than one square foot in area, displaying prominently in addition to such other information as may be deemed desirable, the words, "TRESPASSING - LOITERING - FORBIDDEN BY LAW" in legible letters not less than two inches in height; provided,

however, that any public waiting room, dining room, office or other portion of any such structure or premises to which general public access is required in the normal use and operation thereof or where materials are delivered to or received by the public, shall not be so posted.

The "posted boundary" of any area shall be a line running from sign to sign, and such line need not conform to the legal boundary or legal description of any lot, parcel or acreage of land. (Prior code § 3-13.02)

**9.32.030      Posting—Where permitted.**

The places which may be so posted are the following:

- A. Every airport, and every plant, field and structure used for the manufacture, assembling or testing of aircraft;
- B. Every tank-farm, refinery, compressor-plant or absorption plant, marine terminal, pipeline pumping station and reservoir, used for the bulk treatment, bulk handling or bulk storage of petroleum or petroleum products;
- C. Every reservoir, dam, pumping station, aqueduct, main canal or pipeline, of a public water system;
- D. Every reservoir, dam, generating plant, receiving station, distributing station and transmission line of a company or agency furnishing electrical energy;
- E. Every gas generating plant, compressor plant, gas holder, gas tank, and gas main used for the production, storage and distribution of gas;
- F. Every plant or vital part thereof or other principal property essential to rendering telephone to telegraph services;
- G. Every radio broadcasting central plant or station;
- H. Every railroad bridge or tunnel;
- I. Every plant for the bulk storage of dynamite, giant powder, gunpowder or other explosive. (Prior code §§ 3-13.03, 3-13.04)

**9.32.040 Trespassing—An infraction.**

When any such premises are posted as provided in this chapter, it is unlawful for any person to go upon or to remain upon any place within the posted boundary of any such premises, or to enter or remain in any such posted structure, without having upon his or her person the express written consent of the person, department or agency lawfully in possession or control thereof, and he or she shall exhibit said consent upon request of any peace officer, or person guarding or in possession or control of such premises; provided, however, the provisions of this section shall not apply to any labor representative having jurisdiction over the employees in any of the plants or other places mentioned in this chapter. (Prior code § 3 13.05)

**9.32.050 Loitering—An infraction.**

It is unlawful for any person to loiter in the immediate vicinity of any premises posted as provided in this chapter while having in his or her possession any explosive, tool, or device, of whatever character capable of doing harm or damage to any structure, machinery, equipment or other property of a similar or dissimilar character, installed or located upon such posted premises. (Prior code § 3 13.06)

**9.32.060 Exemptions.**

This chapter does not apply to any entry in the course of duty of any peace officer nor to any person traversing an established and existing public sidewalk, street or highway. (Prior code § 3 13.07)

**9.32.070 Damaging signs.**

Every person who tears down, defaces or destroys, or causes to be torn down, defaced or destroyed, any sign placed or posted under the provisions of this chapter without the consent of the person, governmental agency, department or instrumentality having possession or control of the premises on which such sign has been erected is guilty of an infraction. (Prior code § 3 13.08)

**9.32.080 Construction of chapter.**

Notwithstanding any provision contained in this chapter, nothing shall be construed as applicable to, or prohibiting, or impairing the right of persons individually or in concert, to peacefully picket, or conduct or participate in a primary or secondary boycott insofar as the same is not prohibited by law. (Prior code § 3 13.09)

**Chapter 9.36****WEAPONS****Sections:****Article I. Dangerous Weapons**

- 9.36.010** **Dangerous weapon defined.**  
**9.36.020** **Carrying dangerous weapon.**  
**9.36.030** **Disorderly conduct.**  
**9.36.040** **Sale, transfer or possession of spring-blade, switch-blade, snap-blade, or other similar type knives prohibited.**

**Article II. Firearms and Weapons****Violence Prevention**

- 9.36.050** **Title.**  
**9.36.060** **Findings.**  
**9.36.070** **Definitions.**  
**9.36.080** **Firing of projectile weapons and discharge of firearms.**  
**9.36.090** **Enforcement.**  
**9.36.100** **Parental responsibility for minors.**  
**9.36.110** **Firearms and weapons—Confiscation and disposal.**  
**9.36.120** **Firearms and projectile weapons—Exceptions.**  
**9.36.130** **Projectile weapons—Possession of by minors.**  
**9.36.131** **Theft or loss of firearms — Reporting of stolen and/or lost firearms required.**  
**9.36.140** **Severability.**  
**9.36.141** **Penalty — Misdemeanor.**

**Article III. Prohibition on the Sale of Saturday Night Specials, Also Known as Junk Guns**

- 9.36.150** **Title.**  
**9.36.151** **Severability and Validity.**  
**9.36.160** **Purpose and intent.**  
**9.36.170** **Saturday night special defined.**  
**9.36.180** **Roster of Saturday night specials.**

- 9.36.190** **Notification.**  
**9.36.200** **Reconsideration by the Chief of Police.**  
**9.36.210** **Appeal of classification.**  
**9.36.220** **Publication of the roster.**  
**9.36.230** **Effective date of roster.**  
**9.36.240** **Additions to the roster.**  
**9.36.250** **Sale prohibited.**  
**9.36.260** **Exemptions.**  
**9.36.270** **Penalty.**  
**9.36.280** **Severability and validity.**

**Article IV. Reserved****Article V. Prohibition on the Sale of Compact Handguns**

- 9.36.400** **Title.**  
**9.36.410** **Purpose and intent.**  
**9.36.420** **Definitions.**  
**9.36.430** **Prohibition on the sale of compact handguns.**  
**9.36.440** **Penalties.**

**Article I. Dangerous Weapons****9.36.010 Dangerous weapon defined.**

As used in this article, “dangerous weapon” means and includes, but is not limited to:

- A. Any knife having a blade three inches or more in length, or any snap-blade or spring-blade knife regardless of the length of the blade;
- B. Any ice pick or similar sharp stabbing tool;
- C. Any straight edge razor or any razor blade fitted to a handle;
- D. Any cutting, stabbing or bludgeoning weapon or device capable of inflicting grievous bodily harm;
- E. Any dirk or dagger or bludgeon. (Prior code § 27.01)

**9.36.020 Carrying dangerous weapon.**

It is unlawful for any person to carry upon his or her person or to have in his or her possession or under his or her control any dangerous weapon; provided that it shall be a defense to any prosecution for

a violation of this section if, at the time of the alleged violation, the instrument or device alleged to be a dangerous weapon was in good faith carried upon the person of the accused or was in good faith in his or her possession or control for use in his or her lawful occupation or employment or for the purpose of lawful recreation; and provided, further, that the provisions of this section shall not apply to the commission of any act which is made a public offense by any law of this state. (Prior code § 2 7.02)

#### **9.36.030      Disorderly conduct.**

It is unlawful for any person who has upon his or her person or in his or her possession or control any dangerous weapon to engage in any fight or participate in any rough or disorderly conduct upon any public place or way or upon the premises of another. (Prior code § 2 7.03)

#### **9.36.040      Sale, transfer or possession of spring-blade, switch-blade, snap-blade, or other similar type knives prohibited.**

Notwithstanding any provisions in this article to the contrary, no person shall sell, offer for sale, expose for sale, keep, carry, possess, loan, transfer, or give any other person any spring-blade, switch-blade, snap-blade, or other similar type knife, or any knife the blade of which is automatically released by a spring mechanism or other mechanical device. (Prior code § 2 7.04)

### **Article II. Firearms and Weapons Violence Prevention**

#### **9.36.050      Title.**

This article shall be known as the firearms and weapons violence prevention ordinance. (Prior code § 2 11.01)

#### **9.36.060      Findings.**

The City Council of the city finds that:

A. Firearms are used in nearly eighty (80) percent of the homicides committed in the city; and

B. Since June of 1990, Highland Hospital in Oakland has treated an average of thirty-two (32) Oakland residents a month for gunshot wounds, an average of one a day; and

C. The average cost for treatment of a gunshot wound in the United States is thirty-three thousand dollars (\$33,000.00), most of the cost borne by taxpayers. Nearly four hundred (400) gunshot wounds were treated at Highland Hospital in 1991; and

D. Because of the range and effectiveness of firearms, the use of firearms in violent crimes is more likely to lead to the death or injury of bystanders; and

E. Serious injury has resulted from the use of devices and projectiles other than firearms within the city; and

F. Certain varieties of air guns which fire BBs or pellets can fire projectiles at a velocity of over seven hundred (700) feet per second, well above the velocity required to cause injury to persons or property; and

G. Airguns alone account for an estimated fifteen thousand (15,000) childhood injuries nationally per year.

H. One recent national study of injuries resulting from the use of nonpowder guns (air rifles, BB guns, etc.) found that two-thirds of the victims were less than sixteen (16) years old.

I. Close to half of the firearms used in unintentional ("accidental") shootings of children nationally were acquired by children from their parents, who left the firearms loaded and unsecured in a place accessible to children.

J. The state of California has not sufficiently addressed the problems resulting from the increased availability and use of firearms in urban areas of the state, forcing cities to enact, within the limits of state law, local measures. (Prior code § 2 11.02)

#### **9.36.070      Definitions.**

The following words and phrases, wherever used in this article, shall be construed as defined in this section:

A. "Firearms" means any device, designed to be used as a weapon or modified to be used as a weapon, from which is expelled through a barrel a

projectile by the force of an explosion or other form of combustion.

B. "Projectile weapon" means any device or instrument used as a weapon which launches or propels a projectile by means other than the force of an explosion or other form of combustion with sufficient force to cause injury to persons or property. A projectile weapon shall include, but not be limited to, air gun, air pistol, air rifle, gas-operated gun, BB gun, pellet gun, flare gun, dart gun, bow, cross-bow, sling-shot, wrist rocket, blow gun, paint gun, or other similar device or instrument. (Prior code § 2 11.03)

#### **9.36.080      Firing of projectile weapons and discharge of firearms.**

It is unlawful for any person to at any time fire or discharge, or cause to be fired or discharged, any firearm or any projectile weapon as defined in this chapter, within the limits of the city. (Prior code § 2 11.04)

#### **9.36.090      Enforcement.**

Violations of this article shall result in arrest as a misdemeanor. The District Attorney shall review the circumstances surrounding the violation and shall charge the violation either as an infraction or as a misdemeanor, except that:

A. Violation of this article for a second or subsequent offense shall be chargeable as a misdemeanor only, and the penalty for conviction of the same shall be punishable by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment in the county jail for a period of not more than one year, or by both.

B. Violation of this article occurring within one thousand five hundred (1,500) feet of a day care center, school or school yard, whether public or private, shall be a misdemeanor, and the penalty for conviction of the same shall be punishable by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment in the county jail for a period of not more than one year, or by both.

C. A person shall be guilty of a separate offense for each and every firing of a projectile weapon or

discharge of a firearm, and shall be punished accordingly.

D. Juveniles arrested pursuant to this section shall be subject to Section 602 of the Welfare and Institutions Code. (Prior code § 2 11.05)

#### **9.36.100      Parental responsibility for minors.**

Any parent or legal guardian, of a person over the age of eighteen (18), is also guilty of an offense punishable in accordance with Section 9.36.090 if he or she knows or reasonably should know that a minor is likely to gain access to a firearm or a projectile weapon kept within any premises or vehicle which is under his or her custody or control, and a minor obtains and fires or discharges the firearm or projectile weapon within the city, in violation of Section 9.36.080. (Prior code § 2 11.06)

#### **9.36.110      Firearms and weapons—Confiscation and disposal.**

Any firearm or projectile weapon discharged within the boundaries of the city in violation of the provisions of Section 9.36.080 is declared to be a nuisance, and shall be surrendered to the Police Department of the city. The Chief of Police, except upon the certificate of a judge of a court of record, or of the District Attorney of Alameda county that the preservation thereof is necessary or proper to the ends of justice, shall destroy or cause to be destroyed such firearms and projectile weapons, provided however, that in the event any such firearm or projectile weapon is determined to have been stolen, the same shall not be destroyed but shall be returned to the lawful owner as soon as its use as evidence has been served, upon identification of the firearm or projectile weapon and proof of ownership thereof. (Prior code § 2 11.07)

#### **9.36.120      Firearms and projectile weapons—Exceptions.**

A. The provisions of Section 9.36.080 relative to the use of firearms and projectile weapons shall not apply to or affect sheriffs, constables, marshals, police officers, or other duly appointed peace officers in the performance of their official duties, nor to any

person summoned by such officer to assist in making arrests or preserving the peace while said person so summoned is actually engaged in assisting such officer; nor to persons who are by the United States Federal Government authorized to use such firearms and projectile weapons, nor to persons using said firearms and projectile weapons in necessary self defense.

B. Use of firearms and projectile weapons within the city shall be unlawful pursuant to Section 9.36.080, except that use of firearms and projectile weapons may be permissible when integral to the pursuit of specific competitive and sporting events, including but not limited to events such as take place at shooting ranges, archery ranges and skeet shooting, upon issuance of a permit from the Chief of Police to persons conducting the event or engaged in the business of providing the location upon which such activities are to take place. The Chief of Police shall formulate criteria for the application, issuance, and renewal of such permits, and may require as a condition of approval the posting of any bond, or proof of adequate liability insurance.

C. The city, through the Department of Parks and Recreation or other city departments, may sponsor specific competitive and sporting events, including but not limited to events such as take place at shooting ranges, archery ranges, and skeet shooting, and is exempt from provisions of subsection B of this section for these purposes. Any person who seeks to conduct such an event on property under the jurisdiction of the city shall obtain approval from both the Chief of Police and the City Manager or a designee, prior to the issuance of a permit for engaging in such activities.  
(Prior code § 2 11.08)

#### **9.36.130      Projectile weapons—Possession of by minors.**

A. It is unlawful for any person under the age of eighteen (18) to have in his or her possession within the city limits of Oakland any projectile weapon, as defined in Section 9.36.070. Violation of this provision shall be punishable in the manner provided in Section 9.36.090D.

B. It is unlawful for any parent or legal guardian, or any person over the age of eighteen (18) years, to sell, give or loan to any minor in the city under the age of eighteen (18) years, or to allow such minor to possess, any device or instrument capable of launching a projectile, and/or the projectiles specifically intended to be launched by said device or instrument, as defined hereinabove. Violation of this provision shall be punishable in the manner provided in Section 9.36.090.

C. Any device or instrument capable of launching a projectile, and/or the projectiles specifically intended to be launched by said device or instrument, which is in possession of a minor in violation of this article, is declared to be a nuisance, and shall be surrendered to the Police Department of the city. The Police Department, except upon the certificate of a judge of a court of record or of the District Attorney of Alameda county that the preservation thereof is necessary or proper to the ends of justice, shall destroy any such device or instrument.

(Prior code § 2 11.09)

#### **9.36.131      Theft or loss of firearms— Reporting of stolen and/or lost firearms required.**

A. Any person owning a firearm or in possession of a firearm is required to report the theft or loss of such firearm to the Oakland Police Department when:

1. Owner resides in Oakland, AND/OR
2. The theft or loss of the firearm occurs in Oakland.

B. A person subject to the reporting requirements in Subsection A. is required to report the theft or loss of a firearm within 48 hours of when he or she knew or reasonably should have known that the firearm was stolen or lost.

C. A person who has experienced the theft or loss of a firearm between August 1, 1992 and July 30, 2002 and who otherwise meets the reporting requirements in subsection A is required to report the loss or theft of such firearm to the Oakland

Police Department within sixty (60) days of the effective date of the Amendment under which this new section was adopted.

(Ord. No. 12996, 2-16-2010; Ord. 12529 § 1 (part), 2003)

#### **9.36.140 Severability.**

This Article shall be enforced to the full extent of the authority of the City. If any section, subsection, paragraph, sentence or word of this Chapter is deemed to be invalid or beyond the authority of the City, either on its face or as applied, the invalidity of such provision shall not affect the other sections, subsections, paragraphs, sentences, or words of this Article, and the applications thereof; and to that end the section, subsections, paragraphs, sentences and words of this Article shall be deemed severable.

(Ord. No. 12996, 2-16-2010; Prior code § 2 11.10)

#### **9.36.141 Penalty—Misdemeanor.**

A. Failure to report within 48 hours the theft or loss of a firearm pursuant to this Subsection B. of Section 9.36.131, when the owner or person in possession knew or reasonably should have known of the theft or loss, shall be a misdemeanor subjecting the owner to prosecution.

B. Failure to report firearms theft or loss within the timeframe set forth within Subsection C. of Section 9.36.131 shall be a misdemeanor subjecting the owner to prosecution.

(Ord. No. 12996, 2-16-2010; Ord. 12529 § 1 (part), 2003)

### **Article III.**

#### **Prohibition on the Sale of Saturday Night Specials, Also Known as Junk Guns**

#### **9.36.150 Title.**

This article shall be known as the city Saturday night special/junk gun sales prohibition and may be so cited.

(Ord. 11903 § 1 (part), 1996: prior code § 2 12.01)

#### **9.36.151 Severability and Validity.**

If any provision of this section is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction within the State of California, such decision shall not affect the validity of the remaining provisions and the City Council hereby declares that it would have adopted the remaining provisions irrespective of the fact that a provision or provisions are declared invalid or unconstitutional.

#### **9.36.160 Purpose and intent.**

The purpose of this article is to ensure the health, safety, and general welfare of city citizens by eliminating the sale of cheaply made, inadequately designed and poorly manufactured handguns in the city.

(Ord. 11903 § 1 (part), 1996: prior code § 2 12.02)

#### **9.36.170 Saturday night special defined.**

A. Except as provided in subsection B of this section, term "Saturday night special" as used in this article means any of the following:

1. A pistol, revolver, or firearm capable of being concealed upon the person, as those terms are defined in the California Penal Code Section 12001(a), which contains a frame, barrel, breechblock, cylinder or slide that is not completely fabricated of heat treated carbon steel, forged alloy or other material of equal or higher tensile strength;

2. A semi-automatic pistol which:

- a. Is not originally equipped by the manufacturer with a locked-breech action, and

- b. Is chambered for cartridges developing maximum permissible breech pressures above twenty-four thousand one hundred (24,100) Copper Units of Pressure as standardized by the Sporting Arms and Ammunition Manufacturers Institute,

- c. For purpose of subsection (A)(2)(b) of this section, "semi-automatic pistol" means a firearm, as defined in California Penal Code Section 12001(b), which is designed to be held and fired with one hand, and which does the following upon discharge: (i) fires the cartridge in the chamber, (ii)

ejects the fired cartridge case, and (iii) loads a cartridge from the magazine into the chamber. "Semi-automatic pistol" shall not include any assault weapons designated in California Penal Code Section 12276;

3. A pistol, revolver, or firearm capable of being concealed upon the person, as those terms are defined in California Penal Code Section 12001(a), which:

a. Uses an action mechanism which is substantially identical in design to any action mechanism manufactured in or before 1898 that was originally chambered for rimfire ammunition developing maximum safe permissible breech pressures below nineteen thousand (19,000) Copper Units of Pressure as standardized by the Sporting Arms and Ammunition Manufacturers Institute, and

b. Is chambered to fire either centerfire ammunition or rimfire ammunition developing maximum permissible breech pressures above nineteen thousand (19,000) Copper Units of Pressure as standardized by the Sporting Arms and Ammunition Manufacturers Institute, and

c. Is not originally equipped by the manufacturer with a nondetachable trigger guard, or

d. If rimfire, is equipped with a barrel of less than twenty (20) bore diameters in overall length protruding from the frame,

e. For purposes of this subsection (A)(3), "action mechanism" means the mechanism of a firearm by which it is loaded, locked, fired and unloaded commonly known as the cycle of operation.

B. Exclusions. The term "Saturday night special" does not include any of the following:

1. Any pistol which is an antique or relic firearm or other weapon falling within the specifications of paragraphs (5), (7) and (8) of subsection (b) of California Penal Code Section 12020; or

2. Any pistol for which the propelling force is classified as pneumatic, that is, of, or related to, compressed air or any other gases not directly produced by combustion; or

3. Children's pop guns or toys; or

4. An "unconventional pistol" as defined in California Penal Code Section 12020(c)(12); or

5. Any pistol which has been modified to either: render it permanently inoperable, or permanently to make it a device no longer classified as a Saturday night special.

(Ord. 11903 § 1 (part), 1996: prior code §§ 2 12.03, 2 12.04)

### **9.36.180 Roster of Saturday night specials.**

On or before January 1, 1997, the Chief of Police or his or her designee shall compile, publish, and thereafter maintain a roster of Saturday night specials. The roster shall list those firearms, by manufacturer and model number, which the Chief of Police or his or her designee determines fit the definition of Saturday night special set forth in Section 9.36.170A.

(Ord. 11903 § 1 (part), 1996: prior code § 2 12.05)

### **9.36.190 Notification.**

A. Upon completion of a list of firearms to be placed on the roster for the first time, the Police Chief or his or her designee shall endeavor to send written notification to:

1. The manufacturer of every firearm on said list; and



2. Every dealer within the city who is licensed to sell and transfer firearms pursuant to Section 12071 of the Penal Code of the state of California and Chapter 5.26 of this code.

B. Such notification shall do the following:

1. Identify the model number of the firearm which has been classified as a Saturday night special within the meaning of Section 9.36.170A; and

2. Advise the recipient that the recipient may apply for reconsideration of the classification of the firearm as a Saturday night special; and

3. Advise the recipient that the burden of proving a firearm does not constitute a Saturday night special within the meaning of Section 9.36.170A shall be on the recipient. (Ord. 11903 § 1 (part), 1996: prior code § 2-12.06)

#### **9.36.200 Reconsideration by the Chief of Police.**

A. The Chief of Police, or his or her designee, shall, prior to the effective date of the ordinance codified in this article establish standards and procedures for the form and content of an application, conducting an administrative hearing and evaluating evidentiary testimony relating to the decision of the Chief of Police or his or her designee to classify the firearm in question as a Saturday night special as defined in Section 9.36.170A.

B. Upon timely filing of one or more complete applications for reconsideration, the Chief of Police or his or her designee shall evaluate the evidence submitted by the applicant(s). The applicant(s) shall have the burden of demonstrating that the firearm does not constitute a Saturday night special within the meaning of Section 9.36.170A. (Ord. 11903 § 1 (part), 1996: prior code § 2-12.07)

#### **9.36.210 Appeal of classification.**

A. If the Chief of Police or his or her designee determines that the firearm under reconsideration has been properly classified as a Saturday night special, then the applicant(s) shall have the right to appeal such decisions to the City Manager, and the applicant(s) shall have the right to a hearing before

the City Manager or his or her designee prior to inclusion of the firearm in question on the roster.

B. The City Manager, or his or her designee, is authorized to establish standards and procedures for the form and content of an appeal, conducting an administrative hearing and evaluating evidentiary testimony relating to the decision of the Chief of Police or his or her designee to classify the firearm in question as a Saturday Night Special as defined in Section 9.36.170A.

C. The burden of proof shall be on the appellant(s) to demonstrate that the firearm does not constitute a Saturday night special within the meaning of Section 9.36.170A.

D. All parties involved shall have the right to offer testimonial, documentary and tangible evidence bearing on the issues and to be represented by counsel.

E. The City Manager or his or her designee shall hear and consider all relevant evidence. Upon the conclusion of the hearing, the City Manager or his or her designee shall, based on the evidence presented, determine whether the firearm constitutes a Saturday night special within the meaning of Section 9.36.170A.

F. In all instances, the decision of the City Manager or his or her designee whether to classify the firearm in question as a Saturday night special as defined in the Section 9.36.170A and to place said firearm on the roster is final. (Ord. 11903 § 1 (part), 1996: prior code § 2-12.08)

#### **9.36.220 Publication of the roster.**

The Chief of Police or his or her designee shall place on the roster those firearms which have been determined to constitute a Saturday night special within the meaning of Section 9.36.170A. The Chief of Police or his or her designee shall cause the roster to be published in the following manner:

A. Notification of the roster's completion shall be published at least once in the official newspaper as designated by the city and circulated in the city within fifteen (15) days after its completion; and

B. A copy of the roster, certified as a true and correct copy thereof, shall be filed in the office of the City Clerk of the city; and

C. A copy of the roster, certified as a true and correct copy thereof, shall be distributed to every dealer within the city who is licensed to sell and transfer firearms pursuant to Section 12071 of the Penal Code of the state of California and Chapter 5.26 of the municipal code. (Ord. 11903 § 1 (part), 1996: prior code § 2-12.09)

**9.36.230 Effective date of roster.**

The roster shall become effective on the fifteenth day after its publication. (Ord. 11903 § 1 (part), 1996: prior code § 2-12.10)

**9.36.240 Additions to the roster.**

Additions to the roster shall be made in accordance with the following:

A. Semiannual Determination. On a semiannual basis, the Chief of Police or his or her designee shall determine the need to place firearms on the roster. Upon identifying one or more firearms as a Saturday night special, the City Manager or his or her designee shall prepare a draft list of the additions to the roster.

B. Notification of Additions to Roster. In the event that a draft list of firearms to be added to the roster is prepared, the Chief of Police or his or her designee shall endeavor to send written notification in accordance with the aforementioned provisions of Section 9.36.190.

C. Reconsideration by the Chief of Police. Any person who the Chief of Police or his or her designee notifies pursuant to subsection B of this section may apply for reconsideration of the classification of that firearm as a Saturday night special in accordance with the provisions of Section 9.36.200.

D. Appeal of Classification. Whenever a firearm has been determined to be properly classified as a Saturday night special after reconsideration, the applicant may file an appeal to the City Manager and the City Manager or his or her designee shall hold a hearing in accordance with the provisions of Section 9.36.210.

E. Additions of Firearms to Roster. After all appeals have been exhausted, the Chief of Police or his or her designee shall place on the roster those additional firearms which have been determined to constitute a Saturday night special within the meaning of Section 9.36.170A. The Chief of Police or his or her designee shall cause the roster, as amended to include these additional firearms, to be published in accordance with Section 9.36.220.

F. Effective Date of Additions to the Roster. The addition of new firearms to the roster shall not operate to preclude the enforcement of the roster with respect to firearms previously listed thereon. The publication of the roster, as amended to include new firearms, shall be effective as to those newly added firearms on the fifteenth day after its publication as set forth in Section 9.36.230. (Ord. 11903 § 1 (part), 1996: prior code § 2-12.11)

**9.36.250 Sale prohibited.**

After January 1, 1997, no wholesale or retail firearms dealer as licensed by the city in Chapter 5.26 of the municipal code shall sell, offer or display for sale, give, lend or transfer ownership of, any firearm listed on the roster of Saturday night specials. This section shall not preclude a wholesale or retail gun dealer from processing firearm transactions between unlicensed parties pursuant to Section 12072(d) of the Penal Code of the state of California. (Ord. 11903 § 1 (part), 1996: prior code § 2-12.12)

**9.36.260 Exemptions.**

Nothing in this article relative to the sale of Saturday night specials shall prohibit the disposition of any firearm by sheriffs, constables, marshals, police officers, or other duly appointed peace officers in the performance of their official duties, nor to persons who are authorized by the United States Federal Government for use in the performance of their official duties; nor shall anything in this article prohibit the use of any firearm by the above-mentioned persons in the performance of their official duties. (Ord. 11903 § 1 (part), 1996: prior code § 2-12.13)

**9.36.270 Penalty.**

Any person violating any of the provisions of this article shall be guilty of a misdemeanor. Any person convicted of a misdemeanor under the provisions of this article shall be punishable by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment for a period not exceeding six months, or by both such fine and imprisonment. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this article is committed, continued or permitted by such person and shall be punishable accordingly. In addition, any person found to be in violation of this Article shall be considered in noncompliance with the requirements of Chapter 5.26 of this code, and subject to the suspension and or revocation of a firearms dealer permit. (Ord. 11903 § 1 (part), 1996: prior code § 2-12.14)

**9.36.280 Severability and validity.**

This article shall be enforced to the full extent of the authority of the city. If any section, subsection, paragraph, sentence or word of this article is deemed to be invalid or beyond the authority of the city, either on its face or as applied, the invalidity of such provision shall not affect the other sections, subsections, paragraphs, sentences or words of this article, and the applications thereof; and to that end the section, subsections, paragraphs, sentences and words of this article shall be deemed severable. (Ord. 11903 § 1 (part), 1996: prior code § 2-12.15)

**Article IV. Reserved****Article V. Prohibition on the Sale of Compact Handguns****9.36.400 Title.**

This article shall be known as the City of Oakland Compact Handgun Sales Limitation Act. (Ord. 12210 § 1(part), 2000)

**9.36.410 Purpose and intent.**

The purpose and intent of this article is to pro-

vide for the health, safety, and general welfare of the citizens of Oakland by prohibiting the sale of compact firearms in Oakland. (Ord. 12210 § 1(part), 2000)

**9.36.420 Definitions.**

A. "Dealer" means a retail firearms dealer licensed by the city.

B. "Compact handgun" means a pistol, revolver, and any handgun designed to be concealed upon the person that has a length of six and three quarter inches (6.75") or less or a height of four and one-half inches (4.5") or less, measured with the magazine detached. (Ord. 12210 § 1(part), 2000)

**9.36.430 Prohibition on the sale of compact handguns.**

As of the effective date of this article:

A. No firearms dealer in Oakland shall transfer the title of any compact handgun as defined herein to any person. This section shall not preclude a wholesale or retail gun dealer from processing firearms transactions between unlicensed parties pursuant to Section 12072(d) of the Penal Code of the state of California.

B. For the purposes of this section, the redemption of a compact handgun covered by this article pledged to a pawnbroker prior to the effective date of this ordinance shall not be deemed the sale or transfer of title of that handgun. However, a dealer may not rely on this exemption unless the transaction involved the redemption of a handgun pawned to a pawnbroker by the purchaser.

C. Each dealer shall post a sign in a conspicuous place with letters at least one inch high stating the obligations and restrictions of dealers under this ordinance, pursuant to direction by the Oakland Police Department.

D. The provisions of this section shall not apply to the following:

1. Any law enforcement agency;
2. Any agency duly authorized to perform law enforcement duties;
3. Any state or local correctional facility;

4. Any private security company licensed to do business in the state of California;
5. Any person who is properly identified as a full-time paid peace officer, as defined in Section 830.1, 830.2, 830.4, or 830.5 of the Penal Code of the state of California, and who is authorized to carry a firearm during the course and scope of his or her employment as a peace officer;
6. Any antique firearm, as defined in paragraph (16) of subsection (a) of Section 921 of Title 18 of the United States Code;
7. Any motion picture, television, or video production company, or entertainment or theatrical company whose production involves the use of an ultracompact firearm, and which secures such from unauthorized use;
8. Any person who is exempt from the provisions of subdivision (d) of Section 12072 of the Penal Code of the state of California;
9. Any person or entity conducting a transaction described in subdivision (k) of Section 12078 of the Penal Code of the state of California;
10. Any person who is licensed as a collector pursuant to Chapter 44, (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, and who has a current certificate of eligibility issued to him or her by the Department of Justice pursuant to Section 12071 of the Penal Code of the state of California;
11. Any person or entity acquiring a compact handgun by bequest or intestate succession. (Ord. 12210 § 1(part), 2000)

**9.36.440      Penalties.**

Violation of this article by a firearms dealer shall subject the dealer to civil penalties as provided for in Chapter 1.8 and 1.12 of the OMC, and in addition shall subject the dealer to suspension or revocation of the dealer's firearms dealer permit. Each instance wherein a compact handgun is sold, conveyed, transferred or distributed in violation of this article shall be deemed a distinct and separate offense. (Ord. 12210 § 1(part), 2000)

## Chapter 9.40

### DISCRIMINATION BASED ON AIDS

**Sections:**

- 9.40.010      Purpose.**
- 9.40.020      Findings.**
- 9.40.030      Definitions.**
- 9.40.040      Employment.**
- 9.40.050      Housing.**
- 9.40.060      Business establishments and public accommodations.**
- 9.40.070      City facilities and services.**
- 9.40.080      Educational institutions.**
- 9.40.090      Affirmative defenses.**
- 9.40.100      Testing and disclosure.**
- 9.40.110      Association and retaliation.**
- 9.40.120      Posting of notices.**
- 9.40.130      Liability.**
- 9.40.140      Enforcement.**
- 9.40.150      Limitation on actions.**
- 9.40.160      Exceptions.**
- 9.40.170      Nonwaiverability.**

**9.40.010      Purpose.**

The purpose of this chapter is to prohibit discrimination in the city against persons who have the medical condition known as Acquired Immune Deficiency Syndrome (AIDS) or AIDS related conditions (ARC) or any other related conditions; or who are suspected of or are perceived as having AIDS, ARC or related conditions; or against persons who are believed to be at risk of having AIDS, ARC or related conditions; or against persons who associate with, or who are suspected of or perceived to associate with persons having AIDS, ARC or related conditions. (Prior code § 3-21.01)

**9.40.020      Findings.**

The City Council finds and declares that:

A. The medical condition described as Acquired Immune Deficiency Syndrome and commonly known as AIDS is a life-threatening disease which has the potential to affect every segment of our city's population.

B. AIDS was first recognized by the Federal Centers for Disease Control in 1981 based on a study report by the UCLA Medical Center.

C. It is the opinion of the scientific and medical community that AIDS is caused by a virus, variously known as human T-lymphotropic virus type III (HTLV-III) or lymphadenopathy-associated virus (LAV), or AIDS-associated retrovirus, which attacks the body's immune system by killing T-helper lymphocytes, thereby leaving the body vulnerable to opportunistic infections and malignancies.

D. A person afflicted with AIDS may suffer a variety of viral, bacterial, fungal and protozoal infections and malignancies which debilitate the body resulting in a high mortality rate within three years after diagnosis.

E. The spread of the virus has occurred only through the exchange of bodily fluids between individuals, i.e., blood, blood by-products, or semen.

F. No evidence exists to indicate the spread of the virus or AIDS or ARC by casual contact between individuals.

G. Medical studies of family groups in which one or more persons have been diagnosed with AIDS or ARC indicate no transmission of the virus other than through sexual intimacy or through the exchange of blood (i.e., mother to fetus). Medical studies of hospital personnel caring for AIDS patients indicate no transmission of the virus other than by the puncturing of medical personnel with needles previously inserted in persons having the virus.

H. The virus can thrive only in favorable conditions, and cannot exist for a significant period of time outside the body, and can be prevented by the application of regular practices of hygiene, such as the use of chlorine in swimming pools or spas, and the use of household bleach when washing garments or cleaning contaminated surfaces.

I. The public health danger represented by the virus and its subsequent manifestation as AIDS or ARC is caused by the lengthy incubation period, during which period an apparently healthy individual may transmit the disease to other persons through the exchange of blood, blood by-products or semen.



J. AIDS, ARC and the presence of the virus in individuals constitute a national public health emergency. The reported number of AIDS and ARC cases in the nation has been concentrated in urban areas such as Oakland, with the Bay Area being a section of the country reporting high numbers of cases.

K. The 1985 Alameda County AIDS Response Plan reported that AIDS cases in Alameda County are doubling every nine to twelve (12) months, and that for every case of AIDS there exist two or three individuals with ARC or other related, nonfatal illnesses. The report states that as of June 14, 1985, there were one hundred thirteen (113) diagnosed AIDS cases in Alameda County, and estimates that by the end of 1989 there could be nearly eight thousand (8,000) diagnosed AIDS cases in the county. The report indicates that as of June 14, 1985, there were sixty-seven (67) diagnosed AIDS cases in Oakland.

L. AIDS and ARC have created a discrete and insular minority of our citizens who are afflicted with a seriously disabling condition whose ultimate outcome is often fatal. Individuals infected with the virus represent a segment of our population particularly victimized due to the nature of the disease and to the present climate of misinformation, ignorance and fear in the general population.

M. Discrimination against persons having AIDS and ARC exists in the city. This discrimination may occur with regard to employment, housing, business establishments, services, and accommodations. This discrimination affects persons in all racial, ethnic, and economic groups, and poses a substantial threat to the health, safety and welfare of the community.

N. Existing state and federal restraints on such arbitrary discrimination are inadequate to meet the problems of discrimination in this city.

O. The City Council, therefore, determines that there is a need to prohibit discrimination on the basis of AIDS, ARC and related conditions. (Prior code § 3-21.02)

#### **9.40.030 Definitions.**

As used in this chapter:

“AIDS” means the condition which occurs when an individual is infected with the virus known as lymphadenopathy-associated virus or human T-lymphotropic virus type III or AIDS-associated retrovirus including, but not limited to, Acquired Immune Deficiency Syndrome (AIDS), AIDS-related complex (ARC), progressive generalized lymphadenopathy, lymphadenopathy syndrome, asymptomatic infection, and seropositive. The term AIDS shall also include within its meaning anyone who has any medical condition as a result of being infected by any of the above. The term AIDS and the protections of this chapter shall also apply to: any individual who is suspected of, or perceived as having any of the conditions listed herein; any individual who is believed to be at risk of contracting any of the conditions listed herein; or any individual who is believed to associate with persons who have any of the conditions listed herein.

“Business establishment” means any person, organization or entity, however organized, which provides or offers goods, services or accommodations to the general public. An otherwise qualifying establishment which has membership requirements is considered to furnish services to the general public if its membership requirements: (1) consist only of payment of fees; (2) consist of requirements under which a substantial portion of the residents of the city could qualify; (3) consist of an otherwise unlawful business practice.

“Commercial units” means and includes all real properties that are not housing units, and are rented or offered for rent for business, retail, office, industrial, and other commercial purposes, the land and buildings appurtenant thereto, and all privileges, furnishings, and facilities supplied in connection with the use and occupancy thereof, including garage and parking facilities.

“Employer” means every person, organization or entity, including the city and any other public service corporation, and the legal representative of any deceased employer, employing one or more persons, or any person acting as an agent of an employer, directly or indirectly.

**"Employment agency"** means any person undertaking for compensation to procure employees or opportunities to work.

**"Housing services"** means and includes services connected with the use or occupancy of a rental unit including, but not limited to, utilities (including light, heat, water, telephone, refuse service), ordinary repairs or replacement, and maintenance, including painting. This term shall also include the provision of elevator service, laundry facilities, janitorial services, resident management, furnishings, food service, parking and any other benefits, privileges or facilities.

**"Housing units"** means and includes all dwelling units, efficiency units, guest rooms, and suites in the city as defined by other city enactments, rented or offered for rent for living or dwelling purposes, the land and buildings appurtenant thereto, and all housing services, privileges, furnishings, and facilities supplied in connection with the use or occupancy thereof, including garage and parking facilities.

**"Labor organization"** means any organization which exists and is constituted for the purpose, in whole or in part, or collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection.

**Person — Anyone.** "Person" and "anyone" mean any natural person, firm, corporation, partnership, or other organization, association or group of persons, however organized.

**"Rent"** means the consideration, including any bonus, benefits or gratuity, demanded or received by a landlord for or in connection with the use or occupancy of a commercial or rental unit, including but not limited to moneys demanded or paid for the following: meals where required by the landlords as a condition of the tenancy; parking; furnishings; other housing services of any kind; subletting; or security deposits. (Prior code § 3-21.03)

#### **9.40.040 Employment.**

**A. Unlawful Employment Practices.** It shall be an unlawful employment practice for any employer, employment agency or labor organization, or any

agent or employee thereof, to do, attempt to do, or threaten to do any of the following acts as a result, in whole or in part, of another person having AIDS, ARC or other related condition (as defined in this chapter):

1. By an employer: To fail or refuse to hire; to discharge any person; to discriminate against any person with respect to compensation, terms, conditions, or privileges of employment, including promotion, training, and employee benefits; or to limit, segregate or classify employees in any way that would deprive or tend to deprive any person of employment opportunities, or otherwise adversely affect her or his status as an employee;

2. By an employment agency: To fail or refuse to refer for employment any person; to fail or refuse to offer to a prospective employer any otherwise qualified person; or otherwise to discriminate against any person;

3. By a labor organization: To exclude or expel from its membership or to otherwise discriminate against any person; to limit, segregate or classify its membership; to classify or fail or refuse to refer for employment any person in any way that would deprive or tend to deprive such person of employment opportunities, or would limit such employment opportunities, or otherwise adversely affect his or her status as an employee or as an applicant for employment;

4. By an employer, employment agency or labor organization:

a. To discriminate against any person in admission to, or employment in, any program established to provide apprenticeship or other training or re-training including any on-job-training program,

b. To print, publish, advertise or disseminate in any way, or cause to be printed, published, advertised or disseminated in any way, any notice or advertisement with respect to employment, membership in, or any classification or referral for employment or training by any such organization, which indicates an unlawful discriminatory act or preference.

**B. Affirmative Defenses.** The exceptions set forth in Section 9.40.090A shall constitute affirma-

tive defenses to any otherwise unlawful employment practice described in this chapter. (Prior code § 3-21.04)

#### **9.40.050      Housing.**

A. Unlawful Practices. It is unlawful for any person or any authorized agent or employee of such person to do, attempt to do, or threaten to do any of the following as a result, in whole or in part, of a person having AIDS (as defined in this chapter):

1. Interrupt, terminate, or fail or refuse to initiate or conduct any transaction in real property; to require different terms for such transaction; or falsely to represent that an interest in real property is not available for transaction;
2. Refuse to rent or lease a commercial or housing unit; refuse to negotiate for the rental or lease of a unit; evict from a unit; or otherwise deny to or withhold a unit from any person;
3. Rent or lease a commercial or housing unit on less favorable terms, conditions, or privileges, or discrimination in the provision of housing services to any person;
4. Represent to any person that a commercial or housing unit is not available for inspection, rental or lease when such unit is, in fact, available;
5. Include in the terms or conditions of a transaction in real property any clause, condition, or restriction, which would discriminate against a person who has AIDS (as defined in this chapter);
6. Make, print, publish, advertise or disseminate, or cause to be made, printed, published, advertised or disseminated, any notice, statement, sign, advertisement, application, or contract with regard to a commercial or housing unit that indicates any preference, limitation, or discrimination with respect to the fact that a person has AIDS (as defined in this chapter);
7. Refuse to lend money, guarantee the loan of money, accept a deed of trust or mortgage, or otherwise refuse to make available funds for the purchase, acquisition, construction, alteration, rehabilitation, repair or maintenance of real property; or impose different conditions on such financing; or

refuse to provide title or other insurance relating to the ownership or use of any interest in real property;

8. Refuse or restrict facilities, services, repairs, or improvements for any tenant or lessee;

9. Make, print, publish, advertise or disseminate in any way, or cause to be made, printed or published, advertised or disseminated in any way, any notice, statement or advertisement with respect to a transaction or proposed transaction in real property, or with respect to financing related to any such transaction, which unlawfully indicates preference, limitation or discrimination based on the fact that a person has AIDS (as defined by this chapter);

10. Tell any person expressing interest in a real estate transaction, commercial unit or housing unit that any prior or current tenant or holder of any interest in the real estate affected by the proposed transaction has or had AIDS (as defined by this chapter).

#### **B. Exemptions.**

1. Owner Occupied. Nothing in this chapter shall be construed to apply to the rental or leasing of any housing unit in which the owner or any member of his or her family occupies the same unit in common with the prospective tenant.

2. Effect on Other Laws. Nothing in this chapter shall be deemed to permit any rental or occupancy of any housing unit or commercial space otherwise prohibited by law.

3. Rent Arbitration Ordinance. Nothing in this chapter shall override the provisions of the city's rent arbitration ordinance.

C. Affirmative Defense. The health and safety exception set forth in Section 9.40.090B shall constitute an affirmative defense in any action brought under this section.

D. Presence of AIDS Not a Material Factor. In the conduct of any transaction in real property, including the renting and leasing of commercial and housing units, the sale of commercial and housing units, and the financing of real property transactions, whether or not any participant or proposed participant in the transaction has or had, in whole or in part, AIDS (as defined by this chapter) is declared

not to be a material factor in the city. (Prior code § 3-21.05)

**9.40.060 Business establishments and public accommodations.**

A. Unlawful Business Practice. It shall be an unlawful business practice to deny any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of any business establishment including, but not limited to, medical, dental, health care and convalescent services of any kind whatsoever, on the basis, in whole or in part, that such person has AIDS (as defined in this chapter).

B. Affirmative Defense. The health and safety exception set forth in 9.40.090B shall constitute an affirmative defense in any action brought under this section. (Prior code § 3-21.06)

**9.40.070 City facilities and services.**

A. Unlawful Practices. It shall be an unlawful practice to deny any person the full and equal enjoyment of, or to impose different terms and conditions on the availability of any of the following:

1. Use of any city facility or city service on the basis, in whole or in part, that a person has AIDS (as defined in this chapter);

2. Any service, program or facility, wholly or partially funded or otherwise supported by the city, as a result, in whole or in part, that a person has AIDS (as defined in this chapter).

B. Affirmative Defense. The health and safety exception set forth in Section 9.40.090B shall constitute an affirmative defense in any action brought under this section. (Prior code § 3-21.07)

**9.40.080 Educational institutions.**

A. Unlawful Educational Practices. It shall be an unlawful educational practice for any person to do any of the following:

1. To deny admission or continued enrollment, or to impose different terms or conditions on admission, or continued enrollment, on the basis, in whole or in the part, of such person having AIDS (as defined in this chapter);

2. To deny any person the full and equal enjoyment of, or to impose different terms or conditions upon the availability of, any facility owned or operated or any service or program offered by an educational institution on the basis, in whole or in part, of such person having AIDS (as defined in this chapter).

B. Exemption. It shall not be an unlawful discriminatory practice under this section for a religious or denominational institution to limit admission, or give other preference, to applicants of the same religion.

C. Affirmative Defense. The health and safety exception set forth in Section 9.40.090B shall constitute an affirmative defense in any action brought under this section. (Prior code § 3-21.08)

**9.40.090 Affirmative defenses.**

A. Affirmative Defenses — Employment Practices. The affirmative defenses described herein shall be applicable to Section 9.40.040. Any party asserting these defenses shall have the burden of proving their affirmative defense.

1. Nothing in this chapter shall be deemed to prohibit employment selection or rejection based upon a bona fide occupational qualification. A bona fide occupational qualification exists under this chapter where a defendant can demonstrate that the absence of AIDS (as defined in this chapter) is reasonably necessary to the essence of the employer's business and that all or substantially all persons with AIDS are unable to perform the duties of the position in question without endangering their health or safety or the health and safety of others.

2. Nothing in this chapter shall be deemed to prohibit employment selection, rejection or assignment where, because a person has AIDS (as defined in this chapter), he or she is unable to perform his or her duties, or cannot perform such duties in a manner that would not endanger her or his or her health or safety or the health and safety of others.

3. Nothing in this chapter shall be deemed to prohibit employment selection or rejection where it can be demonstrated that the employer, employment agency or labor organization is unable reasonably to

accommodate a person who has AIDS (as defined in this chapter) without undue hardship on the conduct of the employer's business.

B. Affirmative Defenses — Housing, Accommodations, City Facilities and Services and Educational Institutions. The affirmative defenses described herein shall be applicable to Sections 9.40.050 through 9.40.080, inclusive. In any action brought under Sections 9.40.050 through 9.40.080, if a party asserts that an otherwise unlawful discriminatory practice is justified as necessary to protect the health or safety of a person who has AIDS (as defined in this chapter) or the health and safety of the general public, that party has the burden of proving:

1. That the discriminatory act is necessary to avoid an imminent and substantial risk to the person who has AIDS; or
2. That the discriminatory act is necessary to avoid a danger to others significantly greater than that posed by persons without AIDS; and
3. That there exists no less discriminatory means of protecting the health and safety of the person with AIDS or of the general public. (Prior code § 3-21.09)

#### **9.40.100 Testing and disclosure.**

A. No person shall require another person to take any test or undergo any medical procedure designed to show or help show that a person does or does not have AIDS, ARC, or any other related condition as set forth in this chapter.

B. Subsection A of this section does not apply to an employer who can prove that the absence of AIDS is a bona fide occupational qualification.

C. No person may disclose to another that a person has AIDS (as defined by this chapter) for the purpose of aiding in any act which would violate this chapter.

D. Nothing in this section shall be construed to prohibit any act which is specifically authorized by the laws or regulations of the state of California or of the United States. (Prior code § 3-21.10)

#### **9.40.110 Association and retaliation.**

A. Association. It is unlawful for any person to

do any of the acts described in Sections 9.40.040 through 9.40.100, inclusive, as a result of the fact that a person associates with anyone who has AIDS, ARC or any other related conditions as defined by this chapter.

B. Retaliation. It is unlawful for any person to do any of the acts described in Sections 9.40.040 through 9.40.100, inclusive, or to retaliate against a person because a person has opposed any practice made unlawful by this chapter or because he or she has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter or any other law prohibiting discrimination against persons who have AIDS, ARC, or other related conditions. (Prior code § 3-21.11)

#### **9.40.120 Posting of notices.**

A. Posting Requirement. Every employer with fifteen (15) or more employees, every labor organization with fifteen (15) or more members, every employment agency, and every landlord who rents three or more commercial units or five or more housing units shall keep posted in conspicuous places upon the premises where notices to employees, applicants for employment, members and tenants are customarily posted, the following notice:

Discrimination is prohibited by Chapter 9.40 of the Oakland Municipal Code, against persons who have the medical condition known as Acquired Immune Deficiency Syndrome (AIDS) or AIDS Related Conditions (ARC) or any other related conditions; or against persons who are suspected of or are perceived as having AIDS, ARC, or related conditions; or against persons who are believed to be at risk of having AIDS, ARC or related conditions; or who are suspected of or perceived to associate with persons having AIDS, ARC or related conditions.

B. Alternative Compliance. Notwithstanding the above, the provisions of this subsection may be complied with by adding to all nondiscrimination notices required by federal, state or other local law

language indicating on the notice that discrimination on the basis of AIDS, ARC and other related conditions is prohibited by Chapter 9.40 of the Oakland Municipal Code. (Prior code § 3-21.12)

#### **9.40.130 Liability.**

Any person who violates any of the provisions of this chapter, or who aids in the violation of any provisions of this chapter shall be liable for each violation as follows:

- A. For actual damages, including compensatory damages for pain and suffering;
- B. For a civil penalty which can be up to three times the amount of actual damages, but in no case will the civil penalty be less than one thousand dollars (\$1,000.00).
- C. For court costs and attorneys' fees;
- D. For any equitable relief determined by a court to be necessary to remedy the wrong to the person whose rights are violated, and to prevent or end any act or practice which would violate this chapter, and for equitable relief in the form of affirmative action as may be appropriate;
- E. For any punitive damages as a court may deem appropriate and proper. (Prior code § 3-21.13)

#### **9.40.140 Enforcement.**

A. Civil Action. Any aggrieved person may enforce the provisions of this chapter by means of a civil action.

##### **B. Injunctive Relief.**

1. Any person who commits, or proposes to commit, an act in violation of this chapter may be enjoined therefrom by a court of competent jurisdiction.

2. Actions for injunctive relief under this subsection may be brought by an aggrieved person, by the City Attorney, or by any person or entity which will fairly and adequately represent the interests of the class protected herein.

C. Nonexclusive. Nothing in this chapter shall preclude any aggrieved person from seeking any other remedy provided by law.

D. No Criminal Penalties. Notwithstanding any provision of this code to the contrary, no criminal

penalties shall attach for any violation of the provisions of this chapter. (Prior code § 3-21.14)

#### **9.40.150 Limitation on actions.**

Actions under this chapter must be filed within two years of the alleged discriminatory acts. (Prior code § 3-21.15)

#### **9.40.160 Exceptions.**

Nothing in this chapter shall be construed to prohibit any act which is specifically required by the laws of the state of California or the laws of the United States. (Prior code § 3-21.16)

#### **9.40.170 Nonwaiverability.**

Any written or oral agreement which waives any provision of this chapter is against public policy and void. (Prior code § 3-21.17)

## Chapter 9.44

### DISCRIMINATION BASED ON SEXUAL ORIENTATION

**Sections:**

- 9.44.010      Definitions.**
- 9.44.020      Unlawful practices.**
- 9.44.030      Civil remedy.**
- 9.44.040      Criminal liability.**
- 9.44.050      Civil enforcement.**
- 9.44.060      Limitation on action.**
- 9.44.070      Nonwaiverability.**
- 9.44.080      Severability clause.**

**9.44.010      Definitions.**

“Business establishment” means any entity, however organized, which furnishes goods, services or accommodations to the general public. An otherwise qualifying establishment which has membership requirements is considered to furnish services to the general public if its membership requirements: (1) consist only of payment of fees; (2) consist of requirements under which a substantial portion of the residents of this city could qualify; or (3) consist of an otherwise unlawful business practice.

“Discrimination” means any act, policy or practice which, regardless of intent, has the effect of subjecting any person to differential treatment as a result of that person’s sexual orientation or gender identity or expression. The phrase “differential treatment” includes any limitation on a person’s full, unsegregated and equal access to or enjoyment of, employment, real estate transactions, business establishments, and municipal services.

“Gender identity or expression” means having or being perceived as having a gender-related identity or expression whether or not stereotypically associated with a person’s actual or perceived sex.

“Person” means any natural person, firm, corporation, partnership or other organization, association or group of persons however organized.

“Real estate transactions” means and includes the sale, repair, improvement, lease, rental, or occupancy of any interest or portion of any interest in real prop-

erty and shall also include the extension of credit, financing, insurance or services in connection with the sale, repair, improvement, lease, rental, or occupancy of any such interest in real property.

“Sexual orientation” means actual or perceived homosexuality, heterosexuality, or bisexuality. (Ord. 12573 (part), 2004: prior code § 3-20.01)

**9.44.020      Unlawful practices.**

A. In General. It is unlawful for any person to do anything which has the effect of discriminating against any person as a result of that person’s sexual orientation or gender identity or expression, with respect to any of the following activities:

1. Employment. Any aspect of employment, opportunities for employment, or union membership;
2. Real Estate. Any real estate transaction;
3. Business Establishments. The availability of goods, facilities or services from any business establishment;
4. City Services and Facilities. The use or availability of any municipal service or facility;
5. City Supported Services and Facilities. The use or availability of any service or facility wholly or partially funded or otherwise supported by the city.

B. Exceptions.

1. Employment.
  - a. Bona fide Occupational Qualification.

1. Bona fide Occupational Qualification. Nothing contained in subsection (A)(1) of this section shall be deemed to prohibit selection or rejection based upon a bona fide occupational qualification.

2. Burden of Proof. In any action brought under Section 9.44.040 or 9.44.050 if a party asserts that an otherwise unlawful act of discrimination is justified as a bona fide occupational qualification, that party shall have the burden of proving: (1) that the discrimination is in fact a necessary result of a bona fide occupational qualification; and (2) that there exists no less discriminatory means of satisfying the occupational qualification.

b. Seniority Systems. It shall not be unlawful discriminatory practice under subsection (A)(1) of this section for an employer to observe the conditions of a contractual seniority system provided such sys-

tem is not a subterfuge to evade the purposes of this chapter; provided further that no such system shall provide an excuse for failure to hire any individual.

## 2. Real Estate Transactions.

a. Owner Occupied Dwellings. Nothing in subsection (A)(2) of this section shall be construed to apply to the rental or leasing of any housing unit in which the owner or lessor or any member of his or her family occupies one of the living units and it is necessary for the owner, lessor or family member to use either a bathroom facility or a kitchen facility in common with the prospective tenant.

b. Effect on Other Laws. Nothing in subsection (A)(2) of this section shall be deemed to permit any rental or occupancy of any dwelling unit or commercial space otherwise prohibited by law.

3. City Supported Services and Facilities. Subsection (A)(5) of this section does not apply to facilities or services which only receive assistance from the city which is provided to the public generally.

## C. Notices.

1. Requirements. Every employer with fifteen (15) or more employees, every labor organization with fifteen (15) or more members, and every employment agency shall post and keep posted in conspicuous place upon its premises where notices to employees, applicants for employment and members are customarily posted, the following notice:

Discrimination on the basis of sexual orientation and/or gender identity or expression is prohibited by law. Chapter 9.44 of the Oakland Municipal Code.

2. Alternate Compliance. Notwithstanding the above, the provisions of this subsection may be complied with by adding the words "sexual orientation and/or gender identity or expression" to all notices required by federal or state law, and indicating on the notice that discrimination on the basis of sexual orientation is prohibited by Chapter 9.44 of the Oakland Municipal Code.

D. Advertising. It is unlawful for any person to make, publish or disseminate any notice or statement which indicates that such person engages in or will

engage in any practice prohibited by this chapter. (Prior code § 3-20.02)

E. It shall be an unlawful practice for any person to deny any individual access to the full and equal enjoyment of privileges, benefits, goods, services and facilities, including dressing and bathroom facilities, consistent with the person's gender identity. (Ord. 12573 (part), 2004: prior code § 3-20.02)

## **9.44.030 Civil remedy.**

A. Any person who violates any provision of Section 9.44.020A, shall be liable in civil damages including costs and attorney's fees, as provided by California Civil Code Section 52.

B. Any person who wilfully violates Section 9.44.020C, may be punished by a fine of not more than fifty dollars (\$50.00) for each offense (punishable as an infraction). (Prior code § 3-20.03)

## **9.44.040 Criminal liability.**

A. Anyone who violates Section 9.44.020(A)(1) through (5) or who aids or incites such violation shall be deemed guilty of an infraction.

B. Each violation of the notice provisions, Section 9.44.020(C)(1), shall be punishable as an infraction. (Prior code § 3-20.04)

## **9.44.050 Civil enforcement.**

A. Civil Action. Any aggrieved person may enforce this chapter in a civil action in any court of competent jurisdiction.

B. Injunctions. Any person may bring a civil action in any court of competent jurisdiction to enjoin any person who commits or proposes to commit any act in violation of this chapter. (Prior code § 3-20.05)

## **9.44.060 Limitation on action.**

Judicial actions under this chapter must be filed within two years of the alleged discriminatory acts. (Prior code § 3-20.06)

## **9.44.070 Nonwaiverability.**

Any written or oral agreement whereby any provision of this chapter is waived or modified, is against public policy and void. (Prior code § 3-20.08)

**9.44.080      Severability clause.**

If any of the provisions of this article or the application thereof to any person or circumstances is held invalid, the remainder of this chapter, including the application of such a part or provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this chapter are severable. (Ord. 12573 (part), 2004)



## Chapter 9.48

### **HOUSING DISCRIMINATION ON THE BASIS OF CHILDREN**

**Sections:**

- 9.48.010      Purpose and findings.**
- 9.48.020      Definitions.**
- 9.48.030      Prohibited activities.**
- 9.48.040      Exemptions.**
- 9.48.050      Compliance with other local and state laws required.**
- 9.48.060      Criminal penalty.**
- 9.48.070      Civil remedy.**
- 9.48.080      Injunctive relief.**
- 9.48.090      Defense.**

**9.48.010      Purpose and findings.**

It is the purpose of this chapter to prohibit discrimination in housing on the basis of pregnancy or the tenancy of a minor child or children. After public hearings with the reception of testimony and documentary evidence, the Oakland City Council finds that discrimination against families with minor children in the leasing or renting of housing accommodations exists within the city. The Council further finds that the existence of such discrimination poses a substantial threat to the health and welfare of a sizable segment of the community, namely families with minor children.

The Council also finds that a low vacancy rate exists in all rental housing throughout Oakland. The existence of discrimination against families with minor children results in a shortage of housing suitable for families with children.

The Council further finds that promoting the welfare of children is essential to the future well-being of Oakland and that discrimination in housing against children and their families has an overall detrimental effect on the composition of the city, the stability of neighborhoods, the preservation of family life within the city, the living conditions of our children, the quality of our schools, and the viability of children's activities and organizations. (Prior code § 7-9.01)

**9.48.020      Definitions.**

As used in this chapter:

“Housing accommodation” means a residential rental unit consisting of one or more rooms in which cooking facilities are available.

“Minor child” means a child under the age of eighteen (18) years.

“Senior adult” means a person fifty-five (55) years of age or older. (Prior code § 7-9.02)

**9.48.030      Prohibited activities.**

It is unlawful for the owner, lessee, sublessee, real estate broker, assignee or other person having the right to rent or lease any housing accommodations, or any agent or employee of such person to:

A. Refuse to rent or lease, or refuse to negotiate for the rental of, or otherwise deny to or withhold from any person such housing accommodations on the basis of pregnancy or the tenancy of a minor child;

B. Represent to any person on the basis of pregnancy or the tenancy of a minor child that housing accommodations are not available for inspection or rental when such dwelling is in fact so available;

C. Discriminate against any person in the terms, conditions or privileges of the rental of housing accommodations or in the provision of services or facilities in connection therewith, because of pregnancy or the tenancy of a minor child;

D. Include in any lease or rental agreement of housing accommodations a clause providing that as a condition of continued tenancy the tenants shall remain childless, shall not bear children, or shall maintain a household with a person or persons of a certain age;

E. Charge additional rent or deposits or change the manner of payment for persons living in a housing accommodation on the basis of pregnancy or the tenancy of a minor child;

F. Evict or otherwise demand surrender of housing accommodations from any person because of pregnancy or the tenancy of a minor child;

G. Establish unreasonable rules or conditions of occupancy which have the effect of excluding households with children;

## **9.48.030**

H. Inquire as to the number of occupants or the ages, parenthood or family composition of prospective tenants prior to stating that a rental unit has already been rented.

It is also unlawful for any newspaper, rental listing agency, publisher, advertiser, or any other person to make, print, or publish or cause to be made, printed, or published any notice, statement, or advertisement with respect to the lease or rental of a housing accommodation in the city that indicates any preference or limitation that would violate the prohibitions of this section. (Prior code § 7-9.03)

### **9.48.040 Exemptions.**

The following classifications of housing accommodations are exempt from this chapter:

A. Rooms without their own kitchen facilities or rooms with the use of common or shared kitchen facilities;

B. Units where the owner has publicly established and implemented a policy of renting exclusively to senior adults;

C. Units in nursing, convalescent, and retirement homes and federally subsidized housing for the elderly. (Prior code § 7-9.04)

### **9.48.050 Compliance with other local and state laws required.**

No provision of this chapter shall be construed to supersede any provision of a local ordinance or state law relating to health, safety, or housing occupancy. (Prior code § 7-9.05)

### **9.48.060 Criminal penalty.**

Any person who violates any provision of Section 9.48.030A through H or who aids or incites such violation shall be deemed guilty of an infraction. (Prior code § 7-9.06)

### **9.48.070 Civil remedy.**

Any person who violates any provision of Section 9.48.030A through G shall be liable in civil damages as provided by California Civil Code Section 52. (Prior code § 7-9.07)

### **9.48.080 Injunctive relief.**

Any person who commits, or proposes to commit, an action in violation of this chapter may be enjoined therefrom by any court of competent jurisdiction.

Any action for injunctive relief under this chapter may be brought by the City Attorney, by any aggrieved person, by other law enforcement agencies, by the District Attorney or by any person or entity which will fairly and adequately represent the interests of the protected class. (Prior code § 7-9.08)

### **9.48.090 Defense.**

Refusal to rent to families with minor children will be permitted on the basis of the number of occupants only if that number exceeds the maximum allowed under the Uniform Housing Code. In addition, an affirmative defense to any alleged violation(s) of this chapter shall be established if the defendant(s) can prove that the housing accommodation was denied because to rent or lease the premises to the plaintiffs would violate the superficial floor space requirements of the current Uniform Housing Code. (Prior code § 7-9.09)

## Chapter 9.52

### SPECIAL EVENT PERMITS\*

#### Sections:

- 9.52.010      Title.**
- 9.52.020      Purpose.**
- 9.52.030      Permit required.**
- 9.52.040      Definitions.**
- 9.52.050      Application procedure—Fee.**
- 9.52.060      Contents of application form.**
- 9.52.070      Action on application.**
- 9.52.080      Conditional approval of permit.**
- 9.52.090      Grounds for denial of application.**
- 9.52.100      Revocation of event permit.**
- 9.52.110      Penalties for violation of event permit requirements.**
- 9.52.120      Extraordinary police costs and/or traffic control fees.**

\* Prior code history. Prior code Sections 3-6.10 (§§ 1—9)

#### **9.52.010      Title.**

This chapter shall be known as the Oakland special events ordinance. (Ord. 12132 § 1 (part), 1999)

#### **9.52.020      Purpose.**

This chapter establishes the procedures for applying for extraordinary police services for special events in the city, and authorizes the Chief of Police to deny permit applications or impose additional permit conditions to protect the public from potential adverse impacts, and to provide for additional penalties and for the recoupment of extraordinary police services expended in enforcing permit requirements. (Ord. 12132 § 1 (part), 1999)

#### **9.52.030      Permit required.**

It is unlawful for any person, entity, business or group (including community, social, fraternal, religious and charitable groups), to conduct a special event unless there exists a valid permit therefor, granted and existing in compliance with the requirements set forth herein. The investigating official re-

ferred to in this chapter, to who the application is referred, shall be the Chief of Police. (Ord. 12132 § 1 (part), 1999)

#### **9.52.040      Definitions.**

As used in this chapter:

“Applicant” means any person, firm, association, corporation, organization, club or ad hoc committee who or which seeks a special event permit from the city, through the Chief of Police, to conduct or sponsor a special event governed by this chapter. An applicant must be eighteen (18) years of age or older. The applicant shall be the individual who is directly responsible for organizing and/or conducting the event and/or the facility manager.

“Attended bicycle parking” means a service provided by the event sponsor or qualified bicycle parking service provider where at least one attendant is present throughout the event to receive, return and guard bicycles, and where a safe and sufficiently large area has been set aside for event attendees to leave their bicycles.

“Entertainment” means providing to the public food and/or beverages; live or recorded music; dancing; mechanical, animal or carnival rides; games of chance; performances and/or plays; audiovisual presentations; amplified sound; competitive or sporting events; and/or promotional events.

“Chief of Police” means the Chief of the Oakland Police Department or his or her designee.

“Extraordinary police services” means responsive police services which are in addition to and in excess of the normal police services provided to the facility or off-site as a direct result of the event at the facility.

“Facility” means the building, room or place where the special event is to take place.

“Open to the public” means an event not limited to invitees and otherwise open to any member of the public with or without an admission fee or charge.

“Permit application fee” means the nonrefundable fee to be paid by the permit applicant at the time the application is filed with the Chief of Police. A fee schedule shall be set by the City Council and shall cover the actual costs of processing and investigation

special event applications, and administering the special events permit program.

“Responsible party” means, for the purpose of determining liability for damage to city or public facilities as a result of a special event and liability for the cost of extraordinary police services pursuant to Section 9.52.120G, any event sponsor(s) and/or promoter(s) and/or facility operator(s) and/or facility owner(s) and their respective designees.

“Security officer” means a person who possesses a valid state guard permit and who is currently licensed by the city as a private watchman in accordance with the Oakland Municipal Code.

“Special event” (hereinafter “event”) means, for the purpose of this chapter, an event sponsored by any person, entity, business or group including but not limited to the Oakland Unified School District, the Port of Oakland, the Oakland Coliseum complex, the Paramount Theater, and at any event venue within the city and open to the public:

A. Which is held in any public park and/or facility or on any property and/or facility which is open to the public, and

B. At which fifty (50) or more participants (including sponsors and guests) are present, and

C. At which entertainment is provided by or for any person, and/or made available to any person, and/or

D. For-profit entertainment activities of persons, entities and businesses who or which are currently licensed to regularly provide specified entertainment activities at fixed locations in the city but which holds an event that will foreseeably result in impacts on public safety, health, welfare, and police resources.

Exclusions: “Special Event,” as defined in this section, shall not include:

A. An event held in a private residence where no admission is charged, the event is not open or advertised to the public, and no extraordinary police services are required;

B. An event held in a members-only facility at which the only participants are the members (and their invited nonpaying guests) and no extraordinary police services are required;

C. Events sponsored by religious entities held in the religious entity’s facility which only members by permission attend and no extraordinary police services are required;

D. For-profit entertainment activities of persons, entities and businesses such as cabarets who or which are currently licensed to regularly provide specified entertainment activities at fixed locations in the city and no extraordinary police services are required;

E. Any entertainment for which other special permits have previously been obtained, such as, but not limited to, parade permits, dance permits, short-term encroachment permits and city sponsored events otherwise permitted when the Chief of Police determines such other permits are more appropriate for the particular event.

F. Any event, series of events and/or specific type of event may be exempted at the discretion of the Chief of Police, based upon evidence that the event or events will not impact police services and will not affect public health, safety and welfare.

G. An event held at an East Bay Regional Park facility which is subject to existing permit application procedures adopted by the East Bay regional park district, provided the East Bay regional park district notifies all applicants that any person or entity issued a permit for an event at an East Bay regional park facility is liable for the provision by the Oakland Police Department of extraordinary police services that may be required as a result of the event. (Ord. 12884 § 3 (part), 2008; Ord. 12132 § 1 (part), 1999)

## **9.52.050 Application procedure—Fee.**

A. Application shall be made to the Oakland Police Department, at least twenty-one (21) calendar days prior to the event; however, if the event will require extraordinary police services, the applicant must apply to the Chief of Police for a permit thirty (30) days in advance of the special event, and must execute a written agreement in which applicant agrees to pay the costs of such services, pursuant to Section 9.52.110.

B. Application forms submitted pursuant to subsection A of this section shall be fully and truthfully completed by the applicant. Failure to fully and truth-

fully complete the application form shall be grounds for denial;

C. If admission fees or donations are to be collected and/or food, liquid refreshments or physical articles are to be sold at the event, the applicant must present proof of federal and/or state tax exemption status or present a copy of a valid city of Oakland business license and tax certificate and a food handling permit if applicable before the permit may be issued;

D. If music, dance or any other form of entertainment activity requiring sound amplification equipment is to be provided or allowed at the event, the applicant must so state on the application form and must provide assurance that the city's noise ordinance will not be violated as a result of the activity.

E. Upon application, the applicant shall state the name and address of the facility, and identify the type of facility, where the event will take place. Before the permit may be issued, the applicant shall be required to present a photocopy of a valid city of Oakland dance hall, cabaret, or other applicable permit or license which authorizes the use of the facility for this type of activity or event. Further, the applicant shall complete the portions of the application which require identification of any occupancy restrictions or other conditions for use imposed by the city on the designated facility; and

F. Upon application, the applicant shall pay a fee as established by the city master fee schedule. The Chief of Police shall have the discretion to waive this fee for nonprofit organizations. (Ord. 12132 § 1 (part), 1999)

#### **9.52.060      Contents of application form.**

The application for a special event shall provide the following information:

A. All events: The name, address, telephone number, and date of birth of applicant and an alternative contact person. If the special event is proposed to be sponsored by one or more organizations, the name, address and telephone number of the organizations, and the president(s) of the organization. If requested by the Chief of Police, written authorization

to apply for the special event shall be provided by an officer of the requesting organization;

B. The name, address and telephone number of the person who will be present and in charge at the time of the special event;

C. The nature and purpose of the event;

D. The proposed date, location and estimated starting and ending time of the event;

E. Estimated number of persons anticipated at the event;

F. Description of any sound amplification equipment which will be used at the event;

G. Whether any food or alcoholic and/or nonalcoholic beverages will be sold at the event;

H. Whether monitors or security persons will be utilized at the event;

I. Parking contingencies planned for the event;

J. A description of the provisions to be made for attended bicycle parking, pursuant to Section 9.52.080;

K. Any supplementary information which the Chief of Police shall find reasonably necessary, under the particular circumstances of the special event application to determine whether to approve or conditionally approve the permit. (Ord. 12884 § 3 (part), 2008; Ord. 12132 § 1 (part), 1999)

#### **9.52.070      Action on application.**

A. The Chief of Police shall approve, conditionally approve, or deny the application based on the grounds specified in Sections 9.52.080 to 9.52.090. Such action shall be taken not later than fifteen (15) calendar days after the filing of a complete application. The applicant shall be notified of any conditions of approval pursuant to Section 9.52.080 at the time the action on the application is taken.

B. If the application is denied or conditionally approved, at the time of taking action on the application, the Chief of Police shall inform the applicant in writing of the grounds for denial, or of the reason for the imposition of conditions.

C. If the Chief of Police relied upon information regarding the event other than that which was contained in the application, he or she shall inform the

applicant of the additional information considered. (Ord. 12132 § 1 (part), 1999)

#### **9.52.080 Conditional approval of permit.**

The Chief of Police may impose additional conditions to a 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 retain or hire one or more security officers to provide security at and during the event, said security officers present and on duty at all times during the event;
- B. Requiring the applicant to be personally present at all times during the event;
- C. Requiring the applicant to provide a working telephone where he or she can be reached directly at all times during the event;
- D. Requiring the posting of the event permit at the event facility;
- E. Requiring a refundable security deposit before issuance of the permit toward the costs of city services and/or cost of damages to public facilities that may be associated with such an event;
- F. Requiring provision of medical services on-site on a case-by-case basis and/or in consideration of the applicant's previous history;
- G. Requiring in the case of live performances the actual name and stage name of every act performing;
- H. 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;
- I. Requiring a proof of liability insurance in the amount required by the city;
- J. Requiring the event promoter to provide attended bike parking service for events that expect five thousand (5,000) or more attendees, and for smaller events at the discretion of the Chief of Police. The promoter must advertise the service to potential attendees in all outreach and advertising materials and media, and place the bike parking area in an accessible location;

K. 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. (Ord. 12884 § 3 (part), 2008; Ord. 12132 § 1 (part), 1999)

#### **9.52.090 Grounds for denial of application.**

Permits for special events will be granted at the discretion of the Chief of Police. A special events 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 provide a complete application form after having been notified of the requirement of producing additional information or documents; or
- C. The applicant has not submitted a completed application form in the time provided pursuant to Section 9.52.050.
- D. The applicant has previously had a permit revoked, in Oakland or in another jurisdiction, for violation of permit conditions or for unlawful conduct relating thereto and it is reasonably believed that similar violations or unlawful conduct will again occur;
- E. The granting of the permit will have a substantial adverse impact upon the public health, safety, or order; and/or
- F. The granting of the 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.
- G. Another complete special event application has been previously filed for a different event at the same time and place requested by the applicant, or so close in time and place as to cause traffic congestion or a demand for police services which the Police Department is unable to meet; or
- H. The time or size of the event will substantially interrupt the safe and orderly movement of pedestrian or vehicular traffic in the immediate vicinity of the event, or disrupt the use of a street at a time

when it is usually subject to great traffic congestion; or

I. The concentration of persons, animals and vehicles at the site of the event will prevent proper police, fire, ambulance, or other essential public services to areas contiguous to the event; or

J. The size or duration of the event 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

K. The event 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

L. The event will occur at a time and place where the noise created by the activities of the event will substantially disturb or disrupt the activities of such institutions as schools and hospitals; or

M. Sponsors have failed to pay the city for previous special events or parade fees and costs.

N. The applicant has previously had a permit revoked, in Oakland or in another jurisdiction, for violation of permit conditions or for unlawful conduct relating thereto and it is reasonably believed that similar violations or unlawful conduct will again occur;

O. The sponsor fails, or has failed in the past, to make provisions for attended bicycle parking, pursuant to Section 9.52.080; or

P. The granting of the 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 special event resulting in a call for a police emergency response.

Q. The Chief of Police shall state, in writing, the reasons for any denial of the event permit. Any applicant whose application is denied shall have the right to request reconsideration of the denial. Reconsideration must be submitted to the Chief of Police or his designee within five 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 Chief of Police's stated reasons for denial are in error. Within five days of receipt of said re-

quest for reconsideration, the Chief of Police shall send written notice of his/her decision and or notice of hearing on the reconsideration request to the applicant. (Ord. 12884 § 3 (part), 2008; Ord. 12132 § 1 (part), 1999)

#### **9.52.100 Revocation of event permit.**

An event permit may be revoked at any time during the event by the Patrol Division Commander, or his designee, for;

A. Violation of any of the imposed permit conditions; or

B. Failure to obtain and post any permit required by the State Alcoholic Beverage Control Board to serve alcoholic beverages; or for

C. The occurrence of unlawful or criminal activity during the event.

Revocation shall be immediately effective upon public announcement of the revocation thereof by any police officer designated by the Patrol Division Commander to so act. (Ord. 12132 § 1 (part), 1999)

#### **9.52.110 Penalties for violation of event permit requirements.**

A. Any violation of this chapter may be charged as a civil penalty or an infraction, as provided for in Title 1 of the Oakland Municipal Code, except as specified in subsection B of this section. 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.

B. It shall be a misdemeanor for the event sponsor or his or her designee to refuse to terminate an event for violation of event conditions, or for holding an event without benefit of permit. (Ord. 12132 § 1 (part), 1999)

#### **9.52.120 Extraordinary police costs and/or traffic control fees.**

A. Prepayment of Fees. Before a special event permit may be issued the Chief of Police shall pro-

vide the applicant with a statement of the estimated cost of providing extra police officers for the event. The applicant/sponsor shall be required to pay these fees at a minimum two weeks in advance of the event.

B. Computing Extra Police Services. The extra police services shall be computed by determining the number of police officers who will be required for the special event beyond that which would otherwise be required at that time, multiplied by the number of hours for which such additional service is rendered at the rate of the city's full cost of providing officers on an hourly basis as established by the master fee schedule. Such personnel to perform the additional police services shall be determined by the Chief of Police in the number he or she determines is reasonably necessary for the event. Police personnel assigned to special events are city employees while so engaged and are under the sole direction of the Chief of Police.

C. Refunds or Additional Charges. If the actual cost for extra police services on the date of the event is less than the estimated cost pursuant to subsection A of this section, the applicant/sponsor will be promptly refunded the difference by the city from the general fund. If more police hours are required than originally charged, the event sponsor will be billed the additional costs. Payment of additional costs shall be due within fifteen (15) days of the date the bill is deposited in the mail. If full payment is not received within the required time for payment, the event sponsor is subject to interest charges at the maximum legal rate computed from the date the payment period expires. If the event is cancelled less than five business days prior to the scheduled event, a cancellation fee will be assessed.

D. Failure to Reimburse for Additional Police Services. The cost of any additional extraordinary police services pursuant to subsection C of this section shall be collected from the event sponsor in any manner prescribed by law, including but not limited to placement of a lien on the event sponsor's property and/or an action in small claims court. This remedy is in addition to all other civil and criminal remedies available to the city.

E. The costs assessed against an event sponsor and/or promoter and/or facility operator for recoupment of the cost of additional extraordinary police services pursuant to subsection C of this section shall include: (1) the actual cost of salaries, benefits, and administrative overhead of the police personnel providing the services; (2) the cost of medical treatment for police personnel injured while providing services; (3) the cost to replace or repair city property damaged while providing the services; and (4) the cost incurred in making arrests while providing the services.

F. Any event sponsor and/or promoter and/or facility operator billed for additional extraordinary police services pursuant to subsection C of this section may request a hearing on the matter before a hearing examiner designated by the City Manager. In order to obtain a hearing, the event sponsor shall file a written request therefor within ten days of the date of the invoice mailed to the sponsor that shall state the grounds for appeal. When a written appeal is filed by the applicant, a hearing shall be set at a date and time not less than ten and not more than forty-five (45) days following the filing of the appeal. The event sponsor shall be notified of the date, time and place of the hearing. Upon conclusion of a hearing, the hearing examiner shall render a decision within fifteen (15) days. The hearing examiner's decision shall be final.

G. The event sponsor(s) and/or promoter(s) and/or facility operator(s) and/or facility owner(s) and their respective designees are all and each severally liable for the cost of additional extraordinary police services. (Ord. 12132 § 1 (part), 1999)

## Chapter 9.56

### NUISANCE VEHICLES

**Sections:**

**9.56.010 Definitions.**

**9.56.020 Nuisance vehicles.**

**9.56.030 Responsibility of towing and storage cost.**

**9.56.040 Security interest holder.**

**9.56.050 State law requirements.**

**9.56.060 Promulgation of administrative instructions and protocols.**

**9.56.010 Definitions.**

For the purpose of this chapter the following words and phrases shall mean and include:

"Illegal dumping" means to dump or to cause to be dumped waste matter in or upon a public or private highway or road, as defined in California Penal Code Section 374.3.

"Nuisance vehicle" means any vehicle used to agree to or engage in an act of prostitution, pandering, or pimping or to illegally dump; such vehicle is a nuisance.

"Pandering" means procuring another person for the purpose of prostitution, a crime pursuant to California Penal Code Section 266i.

"Pimping" means deriving support or maintenance from the earning or proceeds of a prostitute, a crime pursuant to California Penal Code Section 266h.

"Prosecuting Agency" means the District Attorney or the City Attorney.

"Prostitution" means the solicitation of, agreement to engage in, or engaging in any act of prostitution, as defined in California Penal Code Section 647(b).

(Ord. No. 13058, 3-1-2011)

**9.56.020 Nuisance vehicles.**

Any vehicle used to agree to or engage in an act of prostitution, or procure another person for the purpose of prostitution (pandering), or derive financial support or maintenance from the earnings

or proceeds of prostitution (pimping), or illegally dumps, is declared a public nuisance, subject to seizure and an impoundment period of up to 30 days if the owner or operator of the vehicle has had a prior conviction for the same offense within the past three years.

(Ord. No. 13058, 3-1-2011)

**9.56.030 Responsibility of towing and storage cost.**

The registered owner or his or her agent shall be responsible for all towing and storage charges related to the impoundment. However, notwithstanding any provision of law, if a motor vehicle is released prior to the conclusion of the impoundment period because the driver was arrested without probable cause, neither the arrested person nor the registered owner of the motor vehicle shall be responsible for the towing and storage charges.

(Ord. No. 13058, 3-1-2011)

**9.56.040 Security interest holder.**

A. A vehicle removed and seized under Section 9.56.020 shall be released to the legal owner of the vehicle or the legal owner's agent prior to the end of the impoundment period if both of the following conditions are met:

1. The legal owner is a motor vehicle dealer, bank, credit union, acceptance corporation, or other licensed financial institution legally operating in this state, or is another person who is not the registered owner and holds a security interest in the vehicle.

2. The legal owner or the legal owner's agent pays all towing and storage fees related to the seizure and impoundment of the vehicle.

B. No lien sale processing fees shall be charged to the legal owner who redeems the vehicle prior to the 15th day of the impoundment period. Neither the impounding authority nor any person having possession of the vehicle shall collect from the legal owner as described in Section 9.56.040, or the legal owner's agent, any administrative charges

**9.56.040**

imposed pursuant to Vehicle Code Section 22850.5, unless the legal owner voluntarily requested a post-storage hearing.

(Ord. No. 13058, 3-1-2011)

**9.56.050 State law requirements.**

During the enforcement of any section or subsection of this chapter, the City will follow the relevant vehicle code's requirements for notice, post-storage hearings, vehicle release, storage facilities, and rental cars.

(Ord. No. 13058, 3-1-2011)

**9.56.060 Promulgation of administrative instructions and protocols.**

The City Administrator or his designee shall promulgate vehicle impoundment administrative procedures to ensure the implementation of this chapter complies with state law and with the City Council's policy directives.

(Ord. No. 13058, 3-1-2011)

## Chapter 9.58

### **LOITERING FOR THE PURPOSE OF ENGAGING IN ILLEGAL DRUG ACTIVITY**

#### **Sections:**

**9.58.010 Definitions.**

**9.58.020 Loitering for purposes of illegal  
drug activity.**

**9.58.030 Violation—Infraction.**

**9.58.040 Expiration.**

\* **Editor's Note:** The section headings in this chapter were created by the editorial staff of the publisher.

**9.58.010 Definitions.**

As used in this chapter, the following terms have the following meanings:

(a) "Loiter" means to delay or linger without a lawful purpose for being on the property and for the purpose of committing a crime as opportunity may be discovered.

(b) "Public place" means an area open to the public or exposed to public view and includes streets, sidewalks, bridges, alleys, plazas, parks, driveways, parking lots, automobiles, whether moving or not, and buildings open to the general public, including those which serve food or drink, or provide entertainment, and the doorways and entrances to buildings or dwellings and the grounds enclosing them.

(Ord. 12470, 2003)

**9.58.020 Loitering for purposes of illegal  
drug activity.**

(a) It is unlawful for any person to loiter in any public place in a manner and under circumstances manifesting the purpose and with the intent to commit an offense specified in Chapter 6 (commencing with Section 11350) and Chapter 6.5 (commencing with Section 11400) of the California Health and Safety Code.

(b) Among circumstances that may be considered in determining whether a person has the requisite intent to engage in drug-related activity are that the person:

(1) Acts as a "look-out." For the purposes of this chapter the term lookout means one who uses signals or language to warn others that law enforcement officers are in the area.

(2) Transfers small objects or packages for currency in a furtive fashion.

(3) Tries to conceal himself or herself or any object that reasonably could be involved in an unlawful drug-related activity.

(4) Uses signals or language indicative of summoning purchasers of illegal drugs.

(5) Repeatedly beckons to, stops, attempts to stop, or engages in conversations with passersby, whether on foot or in motor vehicle, indicative of summoning purchasers of illegal drugs.

(6) Repeatedly passes to or receives from passersby, whether on foot or in a motor vehicle, money or small objects.

(7) Is under the influence of a controlled substance or possesses narcotic or drug paraphernalia. For the purpose of this paragraph, "narcotic or drug paraphernalia" means any device, contrivance, instrument, or apparatus designed or marketed for the use of smoking, injecting, ingesting, or consuming marijuana, hashish, PCP, or any controlled substance, including, but not limited to, roach clips, cigarette papers, and rollers designed or marketed for use in smoking a controlled substance.

(8) Has been convicted in any court within this state, within five years prior to the conviction under this section, of any violation involving the use, possession, or sale of any of the substances referred to in Chapter 6 (commencing with Section 11350) of Chapter 6.5 (commencing with Section 11400) of the California Health and Safety Code, or has been convicted of any violation of those provisions or substantially similar laws of any political subdivision of this state or any other state.

(9) Is currently subject to any order prohibiting his or her presence in any high drug activity geographic area.

(10) Has engaged, within six months prior to the date of violation of this section, in any behavior described in this subdivision, with the exception of paragraph (8), or in other behavior indicative of illegal drug-related activity.

(c) The list of circumstances set forth in subdivision (b) is not exclusive. The circumstances set forth in subdivision (b) should be considered particularly salient if they occur in an area that is known for unlawful drug use and trafficking, or if they occur on or in premises that have been reported to law enforcement as a place suspected of unlawful drug activity. Any other relevant circumstances may be considered in determining whether a person has the requisite intent. Moreover, no one circumstance or combination of circumstances is in itself determinative of intent. Intent must be determined based on an evaluation of the particular circumstances of each case.

(d) No officer shall be authorized to issue a citation for a violation of this chapter until that officer has received formal training on the ordinance from the Oakland Police Department.

(Ord. 12470, 2003)

**9.58.030 Violation—Infraction.**

Violation of Section 9.58.020 is an infraction and punishable as provided in Section 1.28.020(B) of the Oakland Municipal Code.

(Ord. 12470, 2003)

**9.58.040 Expiration.**

This chapter shall expire on March 4, 2004 unless a vote to either extend or make this chapter permanent has been passed by a majority vote of the City Council.

(Ord. 12470, 2003)

## Chapter 9.60

### SLAVERY ERA DISCLOSURE

#### Sections:

**9.60.010 Slavery era disclosure.**

**9.60.010 Slavery era disclosure.**

Title. This chapter shall be known and may be officially cited as the “City of Oakland Slavery Era Disclosure Ordinance” and shall be codified as Chapter 9.60 of Title 9 of the Oakland Municipal Code, entitled “Public Peace, Morals and Welfare.”

**Findings and Purpose.**

A. Insurance policies from the American slavery era have been discovered in the archives of several insurance companies documenting insurance coverage to slaveholders for damage to or death of people subjected to slavery, and were issued by current or a predecessor insurance firm. Further, records may exist that show that companies:

1. Providing insurance services;
2. Providing financial services; and
3. Textile, tobacco, railroad, shipping, rice and sugar companies;

Either directly or through their parent entities, subsidiaries or predecessors in interest or otherwise, bought or sold people subjected to slavery, used as collateral for insurance policies or other transactions, provided loans to purchase people subjected to slavery, insured such transactions or the people subjected to slavery, and/or provided related or other services to aid and abet such transactions.

B. These insurance policies, loan documents and other documents and records provide evidence of ill-gotten profits from slavery, which profits in part capitalized insurers, financial services providers, textile companies, tobacco companies, railroads, shipping companies, rice, sugar industry and other entities, whose successors remain in existence today, and such profits from the uncompensated labor of enslaved Africans represent a continuing legacy of slavery.

C. The city of Oakland finds and declares that the fact that slavery was legal in certain parts of the

United States at the time these compatible practices occurred does not make the practices any less repugnant, abhorrent or deplorable, nor in any way diminish the gravity of these wrongs or the importance of rectifying and remediating these travesties.

D. Many Oakland residents are descendants of people subjected to slavery, whose ancestors were defined as private property, dehumanized, snatched from their families, coerced into performing labor without appropriate compensation or benefits and whose ancestors’ owners were compensated for damages by insurers and were used as collateral for insurance policies, loans and other transactions.

E. Appropriate compensation to Africans for their labor otherwise would have been bequeathed to their descendants to assist them in developing a solid economic base, providing a level playing field and pursuing equal opportunity in this country.

F. The aforesaid residents as well as all of the residents of Oakland are entitled to full disclosure of the information regarding the above-described transactions that compensated slaveholders for damages to and death of people subjected to slavery and provided other compensation and profits.

G. The city of Oakland acknowledges the loss of assets that rightfully should be the property of descendants of African people subjected to slavery and extends its apologies to their descendants who continue to suffer the legacy of slavery.

H. The City Council finds that full disclosure of the facts and acknowledgement of the depth and scope of the shameful commerce in slavery furthers the public interest in that it promotes public health, safety and welfare and healing in the Oakland community both on the part of those who have been and are continuing to be harmed as well as those who profited from this abhorrent practice. The City Council further finds that the establishment of a fund to which contractors subject to this chapter and others may make voluntary contributions will promote healing and assist the City in rectifying and remedying some of the legacies of the shameful commerce in slavery, thereby protecting and promoting the public health, safety and welfare of Oakland residents and the Oakland community.

I. The purpose of this chapter is to promote full and accurate disclosure to the public of (1) slavery insurance policies, (2) evidence of purchase and sale of people subjected to slavery, (3) use of people subjected to slavery as collateral for insurance policies, loans or other transactions, (4) provision of loans to purchase people subjected to slavery, (5) insuring transactions or the people subjected to slavery, and/or (6) provision of any related or other services to aid and abet such transactions by (i) any contractors providing insurance services or financial services to the city and (ii) any textile, tobacco, railroad, shipping, rice and sugar companies doing business with the city.

J. The purpose of this chapter also is to establish a fund to which contractors subject to this chapter can make voluntary contributions to promote healing and assist in remedying the depressed economic conditions, poverty, unequal educational opportunity and other legacies of slavery, which will serve to promote the public health, welfare and safety.

**Slavery Era Disclosure.** Each contractor providing (1) insurance services or (2) financial services to the city of Oakland (including, but not limited to, any bank in which the city deposits public funds and any investment managers), whether subject to competitive bid or not, and (3) each textile, tobacco, railroad, shipping, rice and/or sugar company doing business with the city, including but not limited to, such businesses with a city franchise, must complete an affidavit verifying that the contractor has searched through any and all records in the possession, control and/or knowledge of the company, its parent entities, subsidiaries and any predecessors in interest, for records that the contractor, its parent entities, subsidiaries and any predecessors in interest bought or sold people subjected to slavery, used people subjected to slavery as collateral, provided loans to purchase people subjected to slavery, insured such transactions or the people subjected to slavery during the slavery era and/or provided related or other services to aid and abet such transactions.

The names of each slave and slaveholder described in the records and/or information must be

disclosed in the affidavit, as well as the evidence of transactions that benefited/profited from American slavery. The City Administrator after consultation with the City Attorney shall (1) provide this information to the public upon request, (2) provide an initial report to the Mayor and City Council at an open and public meeting no later than January 2006, and (3) annually provide a report to the Council regarding the information.

Disclosure shall be made as follows:

A. Insurance companies shall provide the disclosure within sixty (60) days of the effective date of this chapter.

B. Banks and other financial institutions and other contractors covered by this chapter, shall have six months from the effective date of this chapter to file such written disclosure with the city.

C. Contractors who enter into contracts with the city after the effective date of this chapter to provide insurance, financial or other services or goods covered by this chapter, shall provide the required disclosure in conjunction with and prior to the execution of a contract with the city, provided that in no event shall a contractor be required to provide the required disclosures earlier than the periods set forth in subsections (A) and (B) above.

**Establishment of Fund to Include but no be Limited to Support for Education Support and Economic Development in the Economically Depressed Areas of the City.** The city shall establish a fund under the oversight of the City Administrator. The fund will be used for purposes, including but not limited to, providing educational support and to support economic development in the economically depressed areas of the city. The City Administrator will prepare guidelines for the use of the funds and present same to the City Council for approval no later than the end of October 2005. Thereafter, the City Administrator shall make funding decisions in accordance with the guidelines and provide an annual report to the Council identifying the fund recipients.

**Remedies.** Any contractor subject to this chapter who willfully or recklessly files a false affidavit or other statement or fails to file the required disclosure shall be subject to termination of the contract with

the city. The City Administrator may take action to terminate the contract.

The following may bring an action against a person or entity subject to this chapter to enforce its provisions: (1) the City Attorney (2) any Oakland resident. Relief shall include, but not be limited to, an injunction to mandate the disclosure required under this chapter or to correct any misstatement as well as reasonable attorney's fees and costs.

(Ord. 12686, 2005)



## Title 10

### VEHICLES AND TRAFFIC

#### Chapters:

- 10.04 General Provisions**
- 10.08 Administration and Enforcement**
- 10.12 Traffic Control Devices**
- 10.16 Miscellaneous Traffic Control Regulations**
- 10.17 Motorized Scooters and Pocket Bikes**
- 10.20 Speed Limits**
- 10.24 Pedestrians**
- 10.28 Stopping, Standing and Parking Generally**
- 10.32 Stopping, Standing and Parking in Specific Streets and Places**
- 10.36 Parking Meter Zones**
- 10.40 Stopping for Loading and Unloading Only**
- 10.44 Residential Permit Parking Program**
- 10.45 Interim Mixed Use Permit Parking Program for the Jack London District**
- 10.48 Parking Fines**
- 10.52 Commercial Vehicles and Vehicle Size and Weight Limits**
- 10.53 Extralegal Load Transportation Permits**
- 10.56 Airport Ground Traffic Regulations**
- 10.57 Oakland International Airport 200-yard Marine Security Zone**
- 10.60 Vision Obscurement at Intersections**
- 10.64 Abandoned, Wrecked, Dismantled or Inoperative Vehicles**
- 10.68 Employer-Based Trip Reduction Program**
- 10.70 Southeast Oakland Area Traffic Impact Fee**



## Chapter 10.04

### GENERAL PROVISIONS

**Sections:**

- 10.04.010      Title.**
- 10.04.020      Construction of singular and plural.**
- 10.04.030      Continuation of existing provisions.**
- 10.04.040      Definitions of words and phrases.**

**10.04.010      Title.**

This title shall be known and may be officially cited as the "Oakland Traffic Code." (Prior traffic code § 1)

**10.04.020      Construction of singular and plural.**

The singular number includes the plural and the plural number includes the singular. (Prior traffic code § 3)

**10.04.030      Continuation of existing provisions.**

The provisions of this title, insofar as they are substantially the same as existing provisions of this municipal code relating to the same subject matter, shall be construed as restatements and continuations thereof and not as new enactments. (Prior traffic code § 4)

**10.04.040      Definitions of words and phrases.**

The following words and phrases when used in this title shall, for the purpose of this title, have the meanings respectively ascribed to them in this chapter. Whenever any words or phrases used in this title are not defined herein, but are defined in the Vehicle Code of the state of California, such definitions are incorporated herein and shall be deemed to apply to such words and phrases used herein as though set forth herein in full:

"Bicycle" means every device propelled by human power upon which any person may ride, having

two tandem wheels either of which is over twenty (20) inches in diameter, and including any device generally recognized as a bicycle though equipped with two front or two rear wheels.

"Central traffic district" means all streets and portions of streets within the area described as follows: all that area bounded by the east line of Harrison Street, the South line of 9th Street, the West line of Grove Street and the north line of West Grand Avenue and Grand Avenue.

"Curb" means the lateral physical boundary of the roadway of a street whether marked by curbing construction or not so marked.

"Holiday" means every Sunday, January 1st, February 12th, third Monday in February, last Monday in May, July 4th, first Monday in September, second Monday in October, fourth Monday in October, December 25th, Good Friday from twelve noon until three p.m., the Thursday in November appointed as "Thanksgiving Day," the Friday following the Thursday in November appointed as "Thanksgiving Day." If any of the foregoing days, except Sunday, falls upon a Sunday, the Monday following is a holiday.

"Limited access highway" means every highway, street, or roadway in respect to which owners or occupants of abutting property or land and other persons have no legal right of access to or from the same, except at such points only and in such manner as may be determined by the public authority having jurisdiction over such highway, street or roadway.

"Loading zone" means the space adjacent to a curb reserved for the exclusive use of vehicles during the loading and unloading of passengers or materials.

**Official Time Standard.** Whenever certain hours are named herein, they mean standard time or daylight saving time as may be in current use in this city.

"Official traffic control devices" means all signs, signals, markings and devices, except directional signs, not inconsistent with this title or the Vehicle Code of this state, placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning or guiding traffic.

“Official traffic signals” means any device, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and proceed and which is erected by authority of a public body or official having jurisdiction.

“Park” means to stand or leave standing any vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading of passengers or materials.

“Parkway” means that portion of a street other than a roadway or a sidewalk.

“Passenger loading zone” means the space adjacent to a curb reserved for the exclusive use of vehicles during the loading or unloading of passengers.

“Pedestrians” means any person afoot.

“Person” means every natural person, co-firm, partnership, association or corporation.

“Police officer” means every officer and member of the Police Department of the city of Oakland.

“Resolution” means resolution of the Council of the city of Oakland.

Stop.

1. When required means complete cessation of movement.

2. Stop or standing. When prohibited means any stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or official traffic control device.

“Traffic” means pedestrians, ridden or herded animals, vehicles, bicycles and other conveyances either singly or together while using any street for purposes of travel. (Prior traffic code §§ 15, 17—34)

## Chapter 10.08

### **ADMINISTRATION AND ENFORCEMENT**

#### **Sections:**

##### **Article I. Traffic Administration**

- 10.08.010      Police administration.**
- 10.08.020      Duty of Traffic Division.**
- 10.08.030      Traffic accident studies.**
- 10.08.040      Traffic accident reports.**
- 10.08.050      Traffic Division to submit annual traffic safety report.**
- 10.08.060      Duties of Traffic Engineer.**
- 10.08.070      Regulation of speed by traffic signals.**

##### **Article II. Enforcement and Obedience to Traffic Regulations**

- 10.08.080      Authority of Police and Fire Department officers and members.**
- 10.08.100      Obedience to Fire Department officials.**
- 10.08.110      Persons other than officials shall not direct traffic.**
- 10.08.120      Public employees to obey traffic regulations.**
- 10.08.130      Exemptions to certain vehicles.**
- 10.08.140      Report of damage to certain property.**

##### **Article III. Penalties**

- 10.08.160      Penalties.**
- 10.08.170      Penalties for violations of Section 10.12.110 and Chapters 10.24, 10.28, 10.40 and 10.56.**

#### **Article I. Traffic Administration**

##### **10.08.010      Police administration.**

There is established in the Police Department a Traffic Division to be under the control of an officer of the Police Department designated by the Chief of Police. (Prior traffic code § 40)

##### **10.08.020      Duty of Traffic Division.**

It shall be the duty of the Traffic Division with such aid as may be rendered by other members of the Police Department to enforce the street traffic regulations of this city and all the state vehicle laws applicable to street traffic in this city, to make arrests for traffic violations, to investigate traffic accidents and to cooperate with the Traffic Engineer and other officers of the city in the administration of the traffic laws and in developing ways and means to improve traffic conditions, and to carry out those duties specially imposed upon said Division. (Prior traffic code § 41)

##### **10.08.030      Traffic accident studies.**

Whenever the accidents at any particular location become numerous, the Traffic Division shall cooperate with the Traffic Engineer in conducting studies of such accidents and determining remedial measures. (Prior traffic code § 42)

##### **10.08.040      Traffic accident reports.**

The Traffic Division shall maintain a suitable system of filing traffic accident reports. Such reports shall be available for the use and information of the Traffic Engineer. (Prior traffic code § 43)

##### **10.08.050      Traffic Division to submit annual traffic safety report.**

The Traffic Division shall annually prepare a traffic report which shall be filed with the City Council. Such report shall contain information on traffic matters in this city as follows:

A. The number of traffic accidents, the number of persons killed, the number of persons injured, and other pertinent traffic accident data;

B. The number of traffic accidents investigated and other pertinent data on the safety activities of the police;

C. The plans and recommendations of the Division for future traffic safety activities. (Prior traffic code § 44)

**10.08.060 Duties of Traffic Engineer.**

It shall be the general duty of the Traffic Engineer, under this title, to determine the installation and proper timing and maintenance of traffic control devices and signals, to conduct engineering analyses of traffic accidents and to devise remedial measures, to conduct engineering investigation of traffic conditions, and to cooperate with other city officials in the development of ways and means to improve traffic conditions, and to perform such other duties hereunder as may be required by the City Manager. (Prior traffic code § 45)

**10.08.070 Regulation of speed by traffic signals.**

The Traffic Engineer is authorized to regulate the timing of traffic signals so as to permit the movement of traffic in an orderly and safe manner at speeds slightly at variance from the speeds otherwise applicable within the district or at intersections, and may erect appropriate signs giving notice thereof. (Prior traffic code § 46)

**Article II. Enforcement and Obedience to Traffic Regulations****10.08.080 Authority of Police and Fire Department officers and members.**

A. It shall be the duty of the officers of the Police Department, or such officers as are assigned by the Chief of Police, to enforce all street traffic laws of this city and all of the state vehicle laws applicable to street traffic in this city.

B. Officers of the Police Department, or such officers as are assigned by the Chief of Police, are authorized to direct all traffic by voice, hand or signal in conformance with traffic laws, provided that in the event of a fire or other emergency, or to expedite traffic or to safeguard pedestrians, officers of the Police Department may direct traffic as conditions may require, notwithstanding the provisions of the traffic laws.

C. Officers and members of the Fire Department, when at the scene of a fire, may direct or assist

the police in directing traffic thereat or in the immediate vicinity.

D. Civilian employees of the city, when designated by the Chief of Police, shall enforce those provisions of the Oakland Traffic Code and the State Vehicle Code relating to the standing or parking of vehicles that legally may be enforced by persons other than peace officers.

E. Officers, inspectors and engineers of the Fire Department, as designated by the Director of Fire Services, may enforce Vehicle Code Sections 21708, Fire Hoses, and 22514, Fire Hydrants. (Prior traffic code § 50)

**10.08.100 Obedience to Fire Department officials.**

No person shall wilfully fail or refuse to comply with any lawful order of a member of the Fire Department when directing traffic. (Ord. 12607 § 2 (part), 2004: Prior traffic code § 52)

**10.08.110 Persons other than officials shall not direct traffic.**

No person other than an officer of the Police Department, or a person authorized by the Chief of Police or person authorized by law, shall direct or attempt to direct traffic by voice, hand or other signal (except that persons may operate any mechanical pushbutton signal erected by order of the Traffic Engineer). (Prior traffic code § 53)

**10.08.120 Public employees to obey traffic regulations.**

The provisions of this title shall apply to the driver of any vehicle owned by or used in the service of the United States Government, this state, any county or city, and it is unlawful for any said driver to violate any of the provisions of this title except as otherwise permitted in this title or by state statute. (Prior traffic code § 54)

**10.08.130 Exemptions to certain vehicles.**

A. The provisions of this title regulating the operation, parking, and standing of vehicles shall not apply to any vehicle of the Police or Fire Depart-

ments, any private ambulance, which public utility vehicle or private ambulance has qualified as an authorized emergency vehicle, when any vehicle mentioned in this section is operated in the manner specified in the Vehicle Code in response to an emergency call.

B. The foregoing exemptions shall not, however, protect the driver of any such vehicle from the consequences of his or her wilful disregard of the safety of others.

C. The provisions of this title regulating the parking or standing of vehicles shall not apply to any vehicle of a city department or public utility while necessarily in use for construction or repair work or any vehicle owned by the United States while in use for the collection, transportation or delivery of United States mail. (Prior traffic code § 55)

#### **10.08.140 Report of damage to certain property.**

A. The driver of a vehicle or the person in charge of any animal involved in any accident resulting in damage to any property publicly owned or owned by a public utility, including but not limited to any fire hydrant, ornamental lighting post, telephone pole, electric light or power pole, or resulting in damage to any ornamental shade tree, traffic control device or other property of a like nature located in or along any street, shall within twenty-four (24) hours after such accident, make a written report of such accident to the Police Department of this city.

B. Every such report shall state the time when and the place where the accident took place, the name and address of the person owning, and of the person driving or in charge of, such vehicle or animal, the license number of every such vehicle, and shall briefly describe the property damage in such accident.

C. A driver involved in an accident shall not be subject to the requirements or penalties of this section if and during the time such driver is physically incapable of making a report, but in such event said driver shall make a report as required in subsection A of this section within twenty-four (24) hours after

regaining ability to make such report. (Prior traffic code § 56)

### **Article III. Penalties**

#### **10.08.160 Penalties.**

Every person convicted of an infraction for a violation of this title shall be punished upon a first conviction by a fine not exceeding fifty dollars (\$50.00) and for a second conviction within a period of one year by a fine of not exceeding one hundred dollars (\$100.00) and for a third or any subsequent conviction within a period of one year by a fine of not exceeding two hundred fifty dollars (\$250.00). (Prior traffic code § 10)

#### **10.08.170 Penalties for violations of Section 10.12.110 and Chapters 10.24, 10.28, 10.40 and 10.56.**

Every person convicted of a misdemeanor for violation of any of the provisions of Section 10.12.110 and Chapters 10.24, 10.28, 10.40 and 10.56, except where a different penalty is expressly provided in said articles, shall be punished upon a first conviction by a fine not exceeding fifty dollars (\$50.00) or more or by imprisonment in the city jail or in the county jail for not exceeding five days, and for a second conviction within a period of one year by a fine of not exceed one hundred dollars (\$100.00), or by imprisonment in the city jail or in the county jail for not exceeding ten days, or by both such fines and imprisonment, and for a third or any subsequent conviction within said period of one year by a fine of not exceeding five hundred dollars (\$500.00), or by imprisonment in the city jail or in the county jail for not exceeding six months, or by both such fine and imprisonment. (Prior traffic code § 11)

**Chapter 10.12****TRAFFIC CONTROL DEVICES****Sections:**

- 10.12.010 Authority to install traffic control devices.**
- 10.12.020 When traffic control devices required for enforcement purposes.**
- 10.12.040 Installation of traffic signals.**
- 10.12.050 Lane markings.**
- 10.12.060 Authority to remove, relocate or discontinue traffic control devices.**
- 10.12.070 Traffic control devices—Hours of operation.**
- 10.12.080 Unauthorized painting of curbs.**
- 10.12.090 Turning movements.**
- 10.12.110 Special stops required.**

**10.12.010 Authority to install traffic control devices.**

A. The Traffic Engineer shall have the exclusive power and duty to place and maintain or cause to be placed and maintained official traffic control devices when and as required under the traffic regulations of this city to make effective the provisions of said regulations.

B. Whenever the Vehicle Code of this state requires, for the effectiveness of any provision thereof, that traffic control devices be installed to give notice to the public of the application of such law, the Traffic Engineer is authorized to install the necessary devices subject to any limitations or restrictions set forth in the law applicable thereto.

C. The Traffic Engineer may also place and maintain such additional traffic control devices as he or she may deem necessary to regulate traffic or to guide or warn traffic, but he or she shall make such determination only upon the basis of traffic engineering principles and traffic investigations and in accordance with such standards, limitations and rules as may be set forth in the traffic regulations of this city

or as may be hereafter determined by the legislative body of this city. (Prior traffic code § 60)

**10.12.020 When traffic control devices required for enforcement purposes.**

No provisions of the Vehicle Code or of this title for which signs are required shall be enforced against an alleged violator unless appropriate signs are in place and sufficiently legible to be seen by an ordinarily observant person, giving notice of such provisions of the traffic laws. (Prior traffic code § 61)

**10.12.040 Installation of traffic signals.**

A. Official traffic signals shall be installed and maintained at those intersections and other places where traffic conditions are such as to require that the flow of traffic be alternately interrupted and released in order to prevent or relieve traffic congestion or to protect life or property from exceptional hazard.

B. The Traffic Engineer shall ascertain and determine the locations where such signals are required by resort to field observation, traffic counts and other traffic information as may be pertinent and his or her determinations therefrom shall be made in accordance with those traffic engineering and safety standards and instructions set forth in the California Maintenance Manual issued by the Division of Highways of the State Department of Public Works. (Prior traffic code § 63)

**10.12.050 Lane markings.**

The Traffic Engineer is authorized to mark center lines and lane lines upon the surface of the roadway to indicate the course to be traveled by vehicles and may place signs temporarily designating lanes to be used by traffic moving in a particular direction, regardless of the center line of the highway. (Ord. 12607 § 2 (part), 2004; Prior traffic code § 64)

**10.12.060 Authority to remove, relocate or discontinue traffic control devices.**

The Traffic Engineer is authorized to remove, relocate or discontinue the operation of any traffic control device not specifically required by state law or

this title whenever he or she shall determine in any particular case that the conditions which warranted or required the installation no longer exist or obtain. (Prior traffic code § 65)

#### **10.12.070 Traffic control devices—Hours of operation.**

The Traffic Engineer shall determine the hours and days during which any traffic control device shall be in operation or be in effect, except in those cases where such hours or days are specified in this title. (Prior traffic code § 66)

#### **10.12.080 Unauthorized painting of curbs.**

It is unlawful for any person, without authority from the city, to place or maintain paint or other material upon any curb in the city in a manner which purports to be, or is, an imitation of or resembles official indication of parking regulations. (Prior traffic code § 67)

#### **10.12.090 Turning movements.**

##### **A. Authority to Place and Obedience to Turning Markers.**

1. The Traffic Engineer is authorized to place markers, buttons, or signs within or adjacent to intersections indicating the course to be traveled by vehicles turning at such intersections, and the Traffic Engineer is authorized to allocate and indicate more than one lane of traffic from which drivers of vehicles may make right- or left-hand turns, and such course to be traveled as so indicated may conform to or be other than as prescribed by law or this title.

B. Authority to Place Restricted Turn Signs. The Traffic Engineer is authorized to determine those intersections at which drivers of vehicles shall not make a right, left or U-turn, and shall place proper signs at such intersections. The making of such turns may be prohibited between certain hours of any day and permitted at other hours, in which event the same shall be plainly indicated on the signs or they may be removed when such turns are permitted.

C. Authority to Prohibit Right Turns Against Traffic Stop Signal. The Traffic Engineer is authorized to determine those intersections at which drivers

of vehicles shall not make a right turn against a red or stop signal and shall erect proper signs giving notice of such prohibition. No driver of a vehicle shall disobey the directions of any such sign. (Ord. 12607 § 2 (part), 2004: Prior traffic code §§ 70—73)

#### **10.12.110 Special stops required.**

A. Traffic Engineer to Erect Stop Signs. Whenever any resolution of this city designates and describes any street or portion thereof as a through street, or any intersection at which vehicles are required to stop at one or more entrances thereto, or any railroad grade crossing at which vehicles are required to stop, the Traffic Engineer shall erect and maintain stop signs as follows:

A stop sign shall be erected on each and every street intersecting such through street or portion thereof so designated and at those entrances of other intersections where a stop is required and at any railroad grade crossing so designated. Every such sign shall conform with and shall be placed as provided in Section 471 of the Vehicle Code.

##### **B. Stop at Through Street or Stop Sign.**

1. Those streets and parts of streets described in such resolution, and those streets and parts of streets heretofore designated and signed by this city as through streets until other designations are made, are declared to be through streets for the purposes of this section.

2. The provisions of this section shall also apply at one or more entrances to the intersections as such entrances and intersections have been heretofore designated and signed by this city until other designations are made or as may be hereafter described in such resolution.

3. The provisions of this section shall also apply at those railroad grade crossings as such railroad grade crossings have been heretofore designated and signed by this city until other designations are made or as may be hereafter described in such resolution. (Ord. 12607 § 2 (part), 2004: Prior traffic code §§ 90, 91)

## Chapter 10.16

### MISCELLANEOUS TRAFFIC CONTROL REGULATIONS

**Sections:**

- 10.16.010** **Traffic regulations in parks.**
- 10.16.020** **Driving through funeral processions.**
- 10.16.060** **Limited access.**
- 10.16.090** **Parking on grades.**
- 10.16.100** **Intoxicated persons in or about vehicles.**
- 10.16.110** **Obedience to barriers and signs.**
- 10.16.130** **Regulations of traffic on freeways.**
- 10.16.140** **Cruising.**
- 10.16.150** **Bicycles prohibited—General.**
- 10.16.160** **Coasters, roller skates, skateboards, motorized skateboard and similar devices.**
- 10.16.170** **Metal-tired vehicles prohibited on Park and High Street Bridges.**
- 10.16.180** **Advertising vehicles.**
- 10.16.190** **Animal-drawn vehicles.**
- 10.16.200** **Solicitation at location of certain occurrences.**

**10.16.010 Traffic regulations in parks.**

It is unlawful for any person to drive or ride within the boundaries of any public park in the city at a rate of speed exceeding fifteen (15) miles per hour, or for any person to ride or drive within the limits of said parks other than upon the avenues and roads provided therefor. (Prior traffic code § 100)

**10.16.020 Driving through funeral processions.**

No driver of a vehicle shall drive between vehicles comprising a funeral procession while they are in motion and when the vehicles in such processions are conspicuously so designated. (Prior traffic code § 101)

**10.16.060 Limited access.**

No person shall drive a vehicle onto or from any limited access highway except at such entrances and exits as are established by or with the consent of public authority. (Prior traffic code § 105)

**10.16.090 Parking on grades.**

It is unlawful for any person driving, or in control of, or in charge of, a motor vehicle to permit it to stand on any highway unattended when upon any grade exceeding three percent within any business or residence district without blocking the wheels of said vehicles by turning them against the curb or by other means. (Prior traffic code § 108)

**10.16.100 Intoxicated persons in or about vehicles.**

It is unlawful for any person who is under the influence of intoxicating liquor or narcotic drugs to be in or about any vehicle to which he or she has right of access or control while such vehicle is in or upon any street or any other public place in the city, unless the same is under the immediate control or operation of a person not under the influence of intoxicating liquor or narcotic drugs. (Prior traffic code § 109)

**10.16.110 Obedience to barriers and signs.**

No person, public utility or any department of this city shall erect or place any barrier or sign on any street unless of a type first approved by the Traffic Engineer. It is unlawful for any person to disobey the instructions of any barrier or sign placed in any street by any public utility or by any department of this city, provided the type of barrier or sign so erected has been first approved by the Traffic Engineer. (Prior traffic code § 110)

**10.16.130 Regulations of traffic on freeways.**

No person shall drive or operate any bicycle, motor driven cycle, or any vehicle which is not drawn by a motor vehicle upon any street established as a freeway or limited access highway, nor shall any pedestrian walk across or along any such street so established except in space set aside for the use of pe-

destrians, provided official signs are in place giving notice of such restrictions. (Prior traffic code § 113)

#### **10.16.140 Cruising.**

A. **Cruising Defined.** “Cruising” means the driving of or being a passenger in a motor vehicle driven two times within a four-hour period past a traffic control point which has been posted as a no cruising zone.

B. **Cruising—Traffic Control Point.** The ranking peace officer on duty within an area affected by traffic congestion may establish one or more traffic control points at or near the area of traffic congestion by the posting of signs.

C. **Cruising—Signs.** Signs shall be placed at the beginning and end of the portion of any street subject to cruising controls. The signs shall state that the area is a no cruising zone pursuant to Oakland Traffic Code Section 10.16.140 and Vehicle Code Section 21100(k).

D. **Cruising—Written Notice.** Any person who, as the operator of, or passenger in, a motor vehicle driven past a traffic control point established pursuant to subsection B of this section may be given written notice on that person’s first time past a traffic control point that the person’s second or any subsequent trips past the control point within a four-hour period will be a violation of Section 10.16.140.

E. **Cruising Prohibited.** No person, having driven or having been a passenger in a motor vehicle who has received a written notice pursuant to subsection D of this section shall drive or be a passenger in a vehicle driven past a traffic control point within a four-hour time period. Each successive trip past the traffic control point shall constitute a separate violation of this section, and no additional written notice shall be required for such separate violation. Each successive violation shall be punishable by an increased fine as provided for by law. (Ord. 11790 § 1, 1995: prior traffic code § 113.1)

#### **10.16.150 Bicycles prohibited—General.**

A. No person shall ride a bicycle which has wheels of twenty (20) inches or greater in diameter or

a frame of fourteen (14) inches or greater in length on any sidewalk within the city.

This prohibition shall not be applicable to Oakland police officers operating a bicycle while engaged in their assigned duties.

B. When appropriate signs are in place giving notice thereof, no person shall ride or otherwise propel any bicycle in or through that portion of the lower tunnel between the city and Contra Costa County which lies within the corporate limits of the city. (Prior traffic code § 116)

#### **10.16.160 Coasters, roller skates, skateboards, motorized skateboard and similar devices.**

A. No person upon roller skates or riding in or by means of any coaster, skateboard, toy vehicle or any other similar device shall go upon any sidewalk in any business district or upon any roadway, including crosswalks, within the city.

B. No person riding by means of any motorized skateboard or any similar device shall go upon any sidewalk or roadway, including crosswalks, within the city. (Prior traffic code § 117)

#### **10.16.170 Metal-tired vehicles prohibited on Park and High Street Bridges.**

When appropriate signs are in place giving notice thereof, no person shall drive, operate or tow any metal-tired vehicle upon the Park Street Bridge or upon the High Street Bridge within that portion of each of said bridges lying within the corporate limits of the city. (Prior traffic code § 119)

#### **10.16.180 Advertising vehicles.**

No person shall operate or drive any vehicle used for advertising purposes or any advertising vehicle equipped with a sound-amplifying or loud-speaking device upon any street or alley at any time within the central traffic district. (Prior traffic code § 185)

#### **10.16.190 Animal-drawn vehicles.**

No person shall drive any animal-drawn vehicle into or within the Central Traffic District between the

hours of seven a.m. and six p.m. of any day. (Prior traffic code § 186)

**10.16.200     Solicitation at location of certain occurrences.**

No person shall, at the location of any vehicular accident, collision, or other catastrophe or calamity, solicit or offer the sale of any tow service, or the sale of any other services.

The prohibition contained in this section shall apply from the time of the happening of any of the aforesaid occurrences until a reasonable time thereafter, and at all times while law enforcement officers, public health personnel, emergency personnel, and other persons discharging duties imposed by law, are actively engaged in the performance of duty at the location of said occurrences. (Prior traffic code § 290)

**10.16.220     Double penalties for violating traffic regulations in school zones.**

A. The fine for a violation of offenses specified in Section 42011 of the California Vehicle Code shall be doubled in the case of misdemeanors, and

increased as specified in the case of infractions, if the violation is committed by the driver of a vehicle within a school zone in either of the following situations:

1. When the school building or grounds thereof are contiguous to a highway and posted with a standard "SCHOOL" warning sign and an accompanying sign notifying motorists that increased penalties apply for traffic violations that are committed within that school zone, and children are going to or leaving the school either during school hours or during the noon recess period.

2. When the school grounds are not separated from the highway by a fence, gate, or other physical barrier while the grounds are in use by children, and the highway is posted with a standard "SCHOOL" warning sign and an accompanying sign notifying motorists that increased penalties apply for traffic violations that are committed within that school zone.

B. Proceeds from the collection of fines shall be deposited in a designated Bicycle and Pedestrian School Safety Fund, with the funds used for the creation and maintenance of a comprehensive safe routes to school program, including, but not limited to, the crossing guard program, safety education programs in schools, capital improvements around schools impacting pedestrian and bicycle safety, and tracking and monitoring of safe routes activities.

C. This section shall remain in effect until January 1, 2007 unless California Vehicle Code Section 42011, that authorizes this section, is extended or made permanent by the State of California. (Ord. 12478 § 1, 2003)

## Chapter 10.17

### MOTORIZED SCOOTERS AND POCKET BIKES

**Sections:**

- 10.17.010      Definitions.**
- 10.17.020      Regulations governing pocket bikes and motorized scooters.**
- 10.17.030      Violations as infraction.**

**10.17.010      Definitions.**

As used in this chapter, the following definitions shall apply:

- A. **Retail Owner.** Any person conducting, carrying on or managing any business consisting of selling at retail, among other items, any motorized pocket bike or motorized scooter, whether new or used.
- B. **Buyer.** Any person buying, purchasing, or receiving any motorized pocket bike or motorized scooter, whether new or used.
- C. **Pocket Bike.** Any mini-motorcycle or other two-wheeled device as defined in Section 405 (gas powered) and Section 406 (electric powered) of the California Vehicle Code.
- D. **Motorized Scooter.** Any two-wheeled device as defined in Section 407.5 of the California Vehicle Code. (Ord. 12697 § 1 (part), 2005)

**10.17.020      Regulations governing pocket bikes and motorized scooters.**

A. In general, motorized scooters may only drive on city streets where the posted speed limit is twenty-five (25) MPH, in the Class II bike lane where one is provided, and only when the driver has a valid driver's license or instruction permit.

B. Retail owner shall provide to each buyer upon sale of a motorized pocket bike or motorized scooter as defined in this chapter a copy of this chapter, along with a copy of the following sections of the California Vehicle Code:

1. California Vehicle Code § 405	Motor-driven Cycle
2. California Vehicle Code § 406	Motorized Bicycle or Moped
3. California Vehicle Code § 407.5	Motorized Scooter
4. California Vehicle Code § 4000(a)	Unregistered Vehicle
5. California Vehicle Code § 12500(a)	Unlicensed Driver
6. California Vehicle Code § 16028(a)	No Proof of Insurance
7. California Vehicle Code § 21209(a)	Motor Vehicle in bike Lane
8. California Vehicle Code § 21221	Applicability of Provisions
9. California Vehicle Code § 21223	Visibility
10. California Vehicle Code § 21228	Rules of the Road
11. California Vehicle Code § 21229	Bicycle Lanes
12. California Vehicle Code § 21230	Bicycle Paths, Trails, or Bikeways
13. California Vehicle Code § 21235	Operation Restrictions
14. California Vehicle Code § 21663	Driving on a Sidewalk
15. California Vehicle Code § 24002	Vehicle Not Properly Equipped
16. California Vehicle Code § 24400	Headlight Required
17. California Vehicle Code § 24600(a)	Tail Lamps — One Required
18. California Vehicle Code § 24603(a)	Stop Lamp Required
19. California Vehicle Code § 27465(B)	Bald Tires
20. California Vehicle Code § 27803	DOT Approved Helmet Not Worn

C. Retailers shall provide the above information printed in not less than 12-point Times Roman font that contains no other information other than the above enumerated sections and their text from the California Vehicle Code. Translated versions of the information shall also be made available in Spanish and Cantonese. All information shall be translated and printed at the retailer's expense.

D. All information provided by the retail owner shall include a signed acknowledgement by the retail owner and the buyer that such information has been received. The retail owner must retain such acknowledgements for a period of thirty-six (36) months.

E. The city of Oakland shall have a right to inspect, during normal business hours, copies of the acknowledgements required in subsection D of this section. (Ord. 12697 § 1 (part), 2005)

**10.17.030 Violations as infraction.**

Any person or business violating any provision of this chapter is guilty of an infraction and may be punished as set forth in Chapter 1.28 of this code. (Ord. 12697 § 1 (part), 2005)



**Chapter 10.20****SPEED LIMITS****Sections:**

- 10.20.010      Decrease of maximum speed limit between districts.**
- 10.20.020      Prima facie speed limit of twenty-five (25) miles per hour.**
- 10.20.030      Prima facie speed limit of thirty (30) miles per hour.**
- 10.20.040      Prima facie speed limit of thirty-five (35) miles per hour.**
- 10.20.050      Prima facie speed limit of forty (40) miles per hour.**
- 10.20.060      Prima facie speed limit of forty-five (45) miles per hour.**
- 10.20.070      Prima facie speed limit of twenty (20) miles per hour for trucks.**

**10.20.010      Decrease of maximum speed limit between districts.**

Whenever by resolution it is determined on the basis of an engineering and traffic investigation that the maximum speed limit of fifty-five (55) miles per hour is more than is reasonable or safe upon any portion of a street or highway other than a state highway for a distance of not exceeding two thousand (2,000) feet in length between districts, business or residential, the prima facie speed limit, not less than twenty-five (25) miles per hour, upon that portion shall be as determined in the resolution, and shall be effective when appropriate signs giving notice thereof are erected upon said street or highway. (Prior traffic code § 112)

**10.20.020      Prima facie speed limit of twenty-five (25) miles per hour.**

The prima facie speed limit on the following streets shall be twenty-five (25) miles per hour:

Street Name	From	To
73rd Avenue	San Leandro Street	East 14th Street
82nd Avenue	East 14th Street	MacArthur Boulevard
104th Avenue	East 14th Street	Link Street
Claremont Avenue	A point 500 feet northerly of Gelston Street	Contra Costa County Line
Claremont Avenue	Berkeley City Line at Tanglewood Road	A point 1,200 feet northerly therefrom
Fruitvale Avenue	Farnam Street	Pleasant Street
Golf Links Road	98th Avenue	A point 800 feet northerly of Burgos Avenue
Grass Valley Road	Skyline Boulevard	Golf Links Road
Lakeshore Avenue	East 12th Street	Mandana Boulevard
Lakeshore Avenue	Winsor Avenue	Wala Vista Avenue
Lakeside Drive	14th Street	Harrison Street
Lincoln Avenue	Champion Street	Mountain Boulevard

<b>Street Name</b>	<b>From</b>	<b>To</b>
Mountain Boulevard	College of Holy Names	Calaveras Avenue
Park Boulevard	4th Avenue	Excelsior Avenue
Shepherd Canyon Road	Moore Drive	Skyline Boulevard
Shepherd Canyon Road	Snake Road	A point 1,700 feet north of Snake Road
Skyline Boulevard	Grass Valley Road	A point 500 feet west of Grass Valley road
Skyline Boulevard	Grizzly Peak Road	A point 3,700 feet east of Castle Drive

(Ord. 11698 § 1, 1994; prior traffic code § 114)

**10.20.030 Prima facie speed limit of thirty**

**(30) miles per hour.**

The prima facie speed limit on the following streets shall be thirty (30) miles per hour:

<b>Street Name</b>	<b>From</b>	<b>To</b>
19th Avenue	Foothill Boulevard	14th Avenue
23rd Avenue	Foothill Boulevard	Ardley Avenue
23rd Avenue	Ford Street	East 12th Street
29th Avenue	Ford Street	East 12th Street
35th Avenue	East 14th Street	Redwood Road
38th Avenue	East 14th Street	Brookdale Avenue
42nd Avenue	East 14th Street	Foothill Boulevard
55th Avenue	East 14th Street	MacArthur Boulevard
66th Avenue	Coliseum Way	East 14th Street
73rd Avenue	East 14th Street	MacArthur Boulevard
90th Avenue	East 14th Street	MacArthur Boulevard
98th Avenue	East 14th Street	MacArthur Boulevard
98th Avenue	Nimitz Freeway	E Street (south leg)
104th Avenue	East 14th Street	Link Street
105th Avenue	Edes Avenue	East 14th Street

<b>Street Name</b>	<b>From</b>	<b>To</b>
7th Street	Bay Street	Grove Street
8th Street	Cypress Street	Grove Street
11th Street	Madison Street	12th Street
12th Street	Oak Street	Lake Merritt
14th Street	Oak Street	12th Street
14th Street	Peralta Street	Grove Street
27th Street	San Pablo Avenue	Harrison Street
31st Street	Broadway	Telegraph Avenue
40th Street	Emeryville City Line	Howe Street
51st Street	Broadway	Telegraph Avenue
55th Street	Telegraph Avenue	Adeline Street
East 8th Street	Fallon	5th Avenue
East 10th Street	5th Avenue	East 8th Street
East 12th Street	Lake Merritt Channel	14th Avenue
East 14th Street	1st Avenue	26th Avenue
East 15th Street	1st Avenue	14th Avenue
East 18th Street	Park Boulevard	14th Avenue
East 21st Street	14th Avenue	23rd Avenue
Alcatraz Avenue	Berkeley City Line	Berkeley City Line
Adeline Street	Emeryville City Line	Berkely City Line
Adeline Street	3rd Street	Emery City Line
Adeline Street Overpass	Middle Harbor Road	3rd Street
Ardley Avenue	23rd Avenue	MacArthur Boulevard
Bancroft Avenue	High Street	73rd Avenue
Bond Street	High Street	Bancroft Avenue
Broadway	MacArthur Boulevard	Broadway Terrace
Broadway	27th Street	MacArthur Boulevard
Broadway Terrace	Belgrave Place	Hermosa Avenue

<b>Street Name</b>	<b>From</b>	<b>To</b>
Broadway Terrace	Hermosa Avenue	Duncan Way
Brush Street	5th Street	San Pablo Avenue
Camden Street	Seminary Avenue	Foothill Boulevard
Campus Drive	Keller Avenue	Redwood Road
Castro Street	5th Street	San Pablo Avenue
Claremont Avenue	A point 1200 feet northerly of the Berkeley City Line	A point 500 feet northerly of Gelston Street
Claremont Avenue	Telegraph Avenue	Berkeley City Line
Clarewood Drive	Broadway Terrace	Harbord Drive
Coliseum Way	High Street	66th Avenue
Coolidge Avenue	Foothill Boulevard	MacArthur Boulevard
Edes Avenue	Hegenberger Road	98th Avenue
Embarcadero Road	Oak Street	Kennedy Street
Fontaine Street	Golf Links Road	Keller Avenue
Foothill Boulevard	1st Avenue	23rd Avenue
Foothill Boulevard	High Street	MacArthur Boulevard
Foothill Boulevard	San Leadro City Limit	MacArthur Boulevard
Golf Links Road	Cosgrove Avenue	98th Avenue
Grand Avenue	Harrison Street	El Embarcadero
Grizzly Peak Boulevard	Skyline Boulevard	Berkeley City Line
Grove Street	San Pablo Avenue	Berkeley City Line
Grove-Shafter Freeway on and off ramp extension	27th Street	West Grand Avenue
Harbord Drive	Clarewood Drive	Moraga Avenue
Harrison Street	20th Street	Bayo Vista Avenue
Havenscourt Boulevard	East 14th Street	Bancroft Avenue
High Street	Foothill Boulevard	Tompkins Avenue
Kennedy Street	Dennison Street	23rd Avenue
Lakeshore Avenue	Mandana Boulevard	Winsor Avenue

<b>Street Name</b>	<b>From</b>	<b>To</b>
MacArthur Boulevard	Fairmount Avenue	Orange Street
MacArthur Boulevard	Fairmount Avenue	Sheffield Avenue
MacArthur Boulevard	High Street	San Leandro City Line
MacArthur Way	High Street	MacArthur Boulevard
Mandana Boulevard	Lakeshore Avenue	Portal Avenue
Market Street	8th Street	Berkeley City Line
Moraga Avenue	Piedmont City Line	Mountain Boulevard
Mountain Boulevard	Moraga Avenue	Jacquin Miller Road
Oakland Street	Harrison Street	Piedmont City Line
Park Boulevard	Excelsior Avenue	Everett Avenue
Peralta Street	7th Street	Emeryville City Line
Pleasant Valley Road	Broadway	Piedmont City Line
Redwood Road	35th Avenue	Mountain Boulevard
San Leandro Street	Fruitvale Avenue	Seminary Avenue
San Pablo Avenue	Emeryville City Line	Berkeley City Line
San Pablo Avenue	West Grand Avenue	Emeryville City Line
Seminary Avenue	San Leandro Street	MacArthur Boulevard
Skyline Boulevard	Grizzly Peak Road	Joaquin Miller Road
Skyline Boulevard	Joaquin Miller Road	A point 3,700 feet east of Castle Drive
Stanford Avenue	San Pablo Avenue	City line
Stanley Avenue	Foothill Boulevard	98th Avenue
Telegraph Avenue	52nd Street	Berkeley City Line
West Grand Avenue	Cypress Street	Telegraph Avenue
West MacArthur Boulevard	Grove Street	Fairmount Avenue
West Street	San Pablo Avenue	Grove Street

(Ord. 11698 §§ 2, 3, 1994; prior traffic code § 114.2)

**10.20.040 Prima facie speed limit of thirty-five (35) miles per hour.**

The prima facie speed limit on the following streets shall be thirty-five (35) miles per hour:

Street Name	From	To
14th Avenue	Foothill Boulevard	East 27th Street
73rd Avenue	East 14th Street	MacArthur Boulevard
85th Avenue	Edes Avenue	San Leandro Street
98th Avenue	Nimitz Freeway	Doolittle Drive
7th Street	Southern Pacific Underpass	Western terminus of 7th Street
East 8th Street	5th Avenue	14th Avenue
East 12th Street	14th Avenue	Fruitvale Avenue
Airport Drive	A point 3,800 feet south of Doolittle Drive	A point 6,000 feet south of Doolittle Drive
Airport Drive	Hegenberger Road and Pardee Drive	A point 1,100 feet south of Doolittle Drive
Bancroft Avenue	Durant Avenue	73rd Avenue
Broadway	Broadway Terrace	Keith Avenue
Broadway	Keith Avenue	Highway 24
Broadway Terrace	Belgrave Place	Hermosa Avenue
Cypress Street	7th Street	32nd Street
Edgewater Drive	Hegenberger Road	Westerly Terminus
Golf Links Road	A point 800 feet northerly of Burgos Avenue	Chabot Golf Course
Grass Valley Road	Skyline Boulevard	Golf Links Road
Hegenberger Road	Nimitz Freeway	A point 1,100 feet south of Doolittle Drive
Joaquin Miller Road (except as further restricted in Section 10.20.070)	Skyline Boulevard	Mountain Boulevard
Keller Avenue	Skyline Boulevard	Mountain Boulevard
Maritime Street	West Grand Avenue	7th Street

Street Name	From	To
Middle Harbor Road	Adeline Street Overpass	U.S. Naval Supply Depot
Monterey Boulevard	Palo Seco Court	Redwood Road
Mountain Boulevard	Calaveras Avenue	Kuhnle Avenue
Mountain Boulevard	Edwards Avenue	98th Avenue
Pardee Drive	Hegenberger Road	Swan Way
Park Boulevard	Everett Avenue	Mountain Boulevard
Posey Tube	Within corporate limits of city of Oakland	
Redwood Road (except as further restricted in Section 10.20.070)	Skyline Boulevard	Mountain Boulevard
San Leandro Street	Seminary Avenue	San Leandro City Line
Seminary	MacArthur Boulevard	Kuhnle Avenue
Shepherd Canyon Road	A point 1,700 feet north	Moore Drive
Skyline Boulevard	Grass Valley Road	A point 500 feet west of Grass Valley Road
Skyline Boulevard	Joaquin Miller Road	Grass Valley Road
South Coliseum Way	Hegenberger Road	66th Avenue
West MacArthur Boulevard	Easterly portal of San Pablo Avenue Underpass	Grove Street

(Prior traffic code § 114.4)

**10.20.050 Prima facie speed limit of forty  
(40) miles per hour.**

The prima facie speed limit on the following streets shall be forty (40) miles per hour:

Street Name	From	To
Oakport Street	A point 1,800 feet east of High Street	Hegenberger Road
Hegenberger Road	Nimitz Freeway	East 14th Street

(Prior traffic code § 114.6)

**10.20.060 Prima facie speed limit of forty-five (45) miles per hour.**

The prima facie speed limit on the following streets shall be forty-five (45) miles per hour:

Street Name	From	To
Airport Drive	A point 1,100 feet south of Doolittle Drive	A point 3,800 feet south of Doolittle Drive

(Prior traffic code § 114.7)

**10.20.070 Prima facie speed limit of twenty (20) miles per hour for trucks.**

The prima facie speed limit for vehicles which have a manufacturer's gross vehicle rating of ten thousand (10,000) pounds or more, in descending a grade on the streets listed below, shall be twenty (20) miles per hour. This restriction shall apply to a motor truck or truck tractor or any motor truck or truck tractor drawing any other vehicle.

Street Name	From	To
Joaquin Miller road	Skyline Boulevard	Mountain Boulevard
Redwood Road	Skyline Boulevard	Mountain Boulevard

(Prior traffic code § 114.9)

**Chapter 10.24****PEDESTRIANS****Sections:**

**10.24.010 Traffic Engineer to establish crosswalks.**

**10.24.030 Crossing at right angles.**

**10.24.010 Traffic Engineer to establish crosswalks.**

A. The Traffic Engineer shall establish, designate and maintain crosswalks at intersections and other places by appropriate devices, marks or lines upon the surface of the roadway as follows:

Crosswalks shall be established and maintained where the Traffic Engineer determines that there is particular hazard to pedestrians crossing the roadway subject to the limitation contained in subsection B of this section.

B. Other than crosswalks at intersections, no crosswalk shall be established in any block which is less than four hundred (400) feet in length. Elsewhere not more than one additional crosswalk shall be established in any one block and such crosswalk shall be located as nearly as practicable at midblock.

(Prior traffic code § 140)

**10.24.030 Crossing at right angles.**

No pedestrian shall cross a roadway at any place other than by a route at right angles to the curb or by the shortest route to the opposite curb except in a marked crosswalk.

(Prior traffic code § 142)

**Chapter 10.28****STOPPING, STANDING AND PARKING  
GENERALLY**

Sections:

- 10.28.010 Application of regulations.**
- 10.28.020 Standing in parkways prohibited.**
- 10.28.030 Use of streets for storage of vehicles prohibited.**
- 10.28.040 Parking parallel with curb.**
- 10.28.050 Signs or markings indicating angle parking.**
- 10.28.060 Permit for loading or unloading at an angle to the curb.**
- 10.28.070 Parking adjacent to schools.**
- 10.28.080 Parking prohibited on narrow streets.**
- 10.28.090 Stopping or parking prohibited—Signs required.**
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- 10.28.140 Parking commercial vehicles in certain areas designated by resolution.**
- 10.28.150 Ignition keys.**
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- 10.28.170 Parking prohibited—Tall vehicles.**
- 10.28.180 One-hour parking.**
- 10.28.190 Two-hour parking.**
- 10.28.200 Two-hour parking between certain hours.**

- 10.28.205 Three-hour parking between certain hours.**
- 10.28.210 Four-hour parking.**
- 10.28.220 Parking restrictions on municipal parking lots or areas.**
- 10.28.230 Proof of illegal parking in municipal parking lots.**
- 10.28.240 Stopping, standing or parking prohibited during certain hours.**
- 10.28.250 Parking prohibited at all times.**
- 10.28.260 Parking prohibited between certain hours.**
- 10.28.270 Removal of illegally parked vehicles where necessary for repair or construction of street or installation of underground utilities.**
- 10.28.280 Parking prohibited for street sweeping.**

**10.28.010 Application of regulations.**

A. The provisions of this title prohibiting the stopping, standing, or parking of a vehicle shall apply at all times or at those times herein specified, except when it is necessary to stop a vehicle to avoid conflict with other traffic or in compliance with the directions of a police officer or official traffic control device.

B. The provisions of this title imposing a time limit on standing or parking shall not relieve any person from the duty to observe other and more restrictive provisions of the State Vehicle Code, or the regulations of this City, prohibiting or limiting the standing or parking of vehicles in specified places or at specified times.

(Prior traffic code § 150)

**10.28.020 Standing in parkways prohibited.**

No person shall stop, stand or park a vehicle within any parkway.

(Prior traffic code § 151)

**10.28.030    Use of streets for storage of vehicles prohibited.**

A. No person who owns or has possession, custody or control of any vehicle shall park such vehicle upon any street or alley for more than a consecutive period of seventy-two (72) hours.

B. In the event a vehicle is parked or left standing upon a street in excess of a consecutive period of seventy-two (72) hours, any officer of the Police Department or any regularly employed and salaried civilian employee of the City who is engaged in the direction of traffic or enforcement of parking regulations when designated by the Chief of Police, may remove said vehicle from the street in the manner and subject to the requirements of Sections 22850 and 22856 inclusive of the Vehicle Code of the state of California.

(Prior traffic code § 152)



of seventy-two (72) hours, any officer of the Police Department or any regularly employed and salaried civilian employee of the city who is engaged in the direction of traffic or enforcement of parking regulations when designated by the Chief of Police, may remove said vehicle from the street in the manner and subject to the requirements of Sections 22850 and 22856 inclusive of the Vehicle Code of the state of California. (Prior traffic code § 152)

#### **10.28.040 Parking parallel with curb.**

A. Subject to other and more restrictive limitations, a vehicle may be stopped or parked within eighteen (18) inches of the left-hand curb facing in the direction of traffic movement upon on any one-way street unless signs are in place prohibiting such stopping or standing.

B. In the event a highway includes two or more separate roadways and traffic is restricted to one direction upon any such roadway, no person shall stand or park a vehicle upon the left-hand side of such one-way roadway unless signs are in place permitting such standing or parking.

C. The Traffic Engineer is authorized to determine when standing or parking shall be prohibited upon the left-hand side of any one-way street or when standing or parking may be permitted upon the left-hand side of any one-way roadway of a highway having two or more separate roadways and shall erect signs giving notice thereof.

D. Whenever the Traffic Engineer has caused lines or markings painted or otherwise designated upon the parkway, curb, sidewalk, roadway, driveway or street in such a manner as to identify by said markings individual parking spaces, it is unlawful to park or leave standing any vehicle across any such line or marking or in any position other than within the parking area so designated by said markings. (Prior traffic code § 154)

#### **10.28.050 Signs or markings indicating angle parking.**

A. Whenever any resolution of this city designates and describes any street or portion thereof

upon which angle parking shall be permitted, the Traffic Engineer shall mark or sign such street, indicating the angle at which vehicles shall be parked.

B. When signs or markings are in place indicating angle parking as herein provided, no person shall park or stand a vehicle at other than the angle to the curb or edge of the roadway indicated by such signs or markings. (Prior traffic code § 155)

#### **10.28.060 Permit for loading or unloading at an angle to the curb.**

No person shall back any vehicle to the curb for the purpose of loading or unloading merchandise or materials, except under authority of a permit regularly issued as in this section provided. The Traffic Engineer is authorized to issue special permits to permit the backing of a vehicle to the curb for the purpose of loading or unloading merchandise or materials subject to the terms and conditions of such permit. Such permits may be issued either to the owner or lessee of real property or to the owner of the vehicle, and shall grant to such person the privilege as therein stated and authorized herein, and it is unlawful for any permittee or other person to violate any of the special terms or conditions of any such permit. (Prior traffic code § 156)

#### **10.28.070 Parking adjacent to schools.**

A. The Traffic Engineer is authorized to erect signs indicating no parking upon that side of any street adjacent to any school property when such parking would, in his or her opinion, interfere with traffic or create a hazardous situation.

B. When official signs are erected indicating no parking upon that side of a street adjacent to any school property, no person shall park a vehicle in any such designated place. (Prior traffic code § 157)

#### **10.28.080 Parking prohibited on narrow streets.**

A. The Traffic Engineer is authorized to place signs or markings indicating no parking upon any street when the width of the roadway does not exceed

## **10.28.080**

twenty (20) feet, or upon the side of a street as indicated by such signs or markings when the width of the roadway does not exceed thirty (30) feet.

B. When official signs or markings prohibiting parking are erected upon narrow streets as authorized herein, no person shall park a vehicle upon any such street in violation of any such sign or marking. (Prior traffic code § 158)

### **10.28.090     Stopping or parking prohibited—                   Signs required.**

The Traffic Engineer may appropriately sign or mark the following places and when so signed or marked, no person shall stop, stand or park a vehicle in any of said places:

A. At any place within twenty (20) feet of a point on the curb immediately opposite the mid-block end of a safety zone;

B. At any place within twenty (20) feet of an intersection in the central traffic district or in any business district except that a bus may stop at a designated bus stop;

C. Within twenty (20) feet of the approach to any traffic signal, boulevard stop sign, or official electric flashing device;

D. At any place where the Traffic Engineer determines that it is necessary in order to eliminate unusual traffic hazard. (Prior traffic code § 159)

### **10.28.100    Emergency parking signs.**

A. Whenever the Traffic Engineer shall determine that an emergency traffic congestion is likely to result from the holding of public or private assemblages, gatherings or functions, or for other reasons, the Traffic Engineer shall have power and authority to order temporary signs, to be erected or posted indicating that the operation, parking or standing of vehicles is prohibited on such streets and alleys as the Traffic Engineer shall direct during the time such temporary signs are in place. Such signs shall remain in place only during the existence of such emergency and the Traffic Engineer shall cause such signs to be removed promptly thereafter.

B. When signs authorized by the provisions of this section are in place giving notice thereof, no person shall operate, park or stand any vehicle contrary to the directions and provisions of such signs. (Prior traffic code § 160)

### **10.28.110    Display of warning devices when                   commercial vehicle disabled.**

Every motor truck having an unladen weight of four thousand (4,000) pounds or more, and every truck tractor irrespective of weight when operated upon any street or highway during the time specified in Section 618 of the Vehicle Code shall be equipped with and carry at least two flares or two red lanterns or two warning lights or reflectors, which reflectors shall be of a type approved by the Department of California Highway Patrol.

When any vehicle above mentioned, or any trailer or semi-trailer is disabled upon streets or highways outside of any business or residence district within this city, and upon which street or highway there is insufficient street lighting to reveal a vehicle at a distance of two hundred (200) feet during any time mentioned in Section 618 of the Vehicle Code, a warning signal of the character indicated above shall be immediately placed at a distance of approximately one hundred (100) feet in advance of, and one hundred (100) feet to the rear of, such disabled vehicle, by the driver thereof. The warning signals herein mentioned shall be displayed continuously during the times mentioned in said Section 618 while such vehicle remains disabled upon such street or highway. (Prior traffic code § 161)

### **10.28.120    Parking commercial vehicles                   weighing more than ten thousand                   pounds in a residential district.**

No person shall park any truck, tractor, trailer, or other commercial vehicle of any kind whatsoever having a gross vehicle weight rating (GVWR) exceeding ten thousand (10,000) pounds on any public street or portion of street in a residential district.

A. The provisions of this section shall not apply to the driver or owner of any service vehicle owned or operated by or for or operated under contract with a utility or public utility, whether privately or publicly owned, used in the construction, operation, removal, or repair of the utility or public utility property or facilities upon, in, over, under, or adjacent to such restricted streets, whether privately, municipally, or publicly owned, if warning devices are displayed and when the vehicle is engaged in authorized work on such restricted streets.

B. The provisions of this section shall not apply to the driver or owner of any commercial vehicle making pickups or deliveries of goods, wares, and merchandise from or to any building or structure located on such restricted streets or highways, or to the driver or owner of any commercial vehicle used for the purpose of delivering materials in the actual and bona fide repair, alteration, remodeling or construction of any building or structure upon such restricted streets or highways for which a building permit or re-roofing registration has been obtained, if such building permit or re-roofing registration is required.

C. For the purpose of this chapter, "gross vehicle weight rating" or "GVWR" and "residential district" are defined in the State of California Vehicle Code, Sections 235, 240, 350(a), and 515, as such sections shall be amended. (Ord. 12404, 2002: Ord. 12038 § 1, 1998: prior traffic code § 162)

#### **10.28.130      Parking commercial vehicles weighing more than seven thousand pounds and less than ten thousand pounds.**

A. Official signs prohibiting or otherwise restricting parking of any truck, tractor, trailer, or other commercial vehicle of any kind whatsoever having a curb weight more than seven thousand (7,000) pounds but not more than ten thousand (10,000) pounds may be erected on any public street or portion of street when the City Traffic Engineer, and his or her successor in title, has determined that

the parking of such vehicles is creating a nuisance, blight, or hazard.

B. When such signs are erected upon any public street or portion of street in a residential area, no person shall park, at any restricted time, such vehicles on such restricted streets.

C. The provisions of this section shall not apply to the driver or owner of any service vehicle owned or operated by or for or operated under contract with a utility or public utility, whether privately, or publicly owned, used in the construction, operation, removal, or repair of the utility or public utility property or facilities upon, in, over, under, or adjacent to such restricted streets, whether privately, municipally, or publicly owned, if warning devices are displayed and when the vehicle is engaged in authorized work on such restricted streets.

D. The provisions of this section shall not apply to the driver or owner of any commercial vehicle making pickups or deliveries of goods, wares, and merchandise from or to any building or structure located on such restricted streets or highways, or to the driver or owner of any commercial vehicle used for the purpose of delivering materials in the actual and bona fide repair, alteration, remodeling or construction of any building or structure upon such restricted streets or highways for which a building permit or re-roofing registration is required.

E. For the purposes of this section, "curb weight" is defined as the manufacturer's gross vehicle weight rating less the payload weight carrying capacity. (Ord. 12038 § 2, 1998: Ord. 11792-A § 1, 1995: prior traffic code § 166)

#### **10.28.140      Parking commercial vehicles in certain areas designated by resolution.**

No person shall park any truck, tractor, trailer, or other commercial vehicle of any kind whatsoever, whose weight carrying capacity is one ton or more, for a period exceeding five hours, on any public street in any area of the city which, by resolution, the City Council has designated as one to which such time limitation is applicable, and one which has been

posted with signs giving notice to such parking limitation, except:

A. While loading or unloading property and time in addition to such five-hour period is necessary to complete such work; or

B. When parked in connection with, and in aid of, the performance of a service to or on a property in the block in which such vehicle is parked and time in addition to such five-hour period is reasonably necessary to complete such service. (Prior traffic code § 162.1)

#### **10.28.150 Ignition keys.**

No person shall leave a motor vehicle, except a commercial vehicle, unattended on any street, alley, used car lot, or unattended parking lot without first stopping the engine, locking the ignition and removing the ignition key therefrom. Provided, however, that any violation of these provisions shall not mitigate the offense of stealing such motor vehicle nor shall such violation be used to effect a recovery in any civil action for theft of such motor vehicle, or the insurance thereon, or have any other bearing on an civil action. (Prior traffic code § 163)

#### **10.28.160 Parking prohibited—Unattached trailers.**

A. The City Traffic Engineer is authorized to place signs indicating no parking of unattached trailers upon any street or portion of any street when the City Traffic Engineer has determined that the parking of unattached trailers is creating a nuisance, blight or hazard.

B. When official signs prohibiting unattached trailer parking are erected upon any street or portion of any street as authorized herein, no person shall park an unattached trailer at any time upon any such street or portion of any such street in violation of any such sign. (Prior traffic code § 164)

#### **10.28.170 Parking prohibited—Tall vehicles.**

A. The City Traffic Engineer is authorized to place signs indicating no parking of vehicles which are six feet or more in height (including any load

thereon) within one hundred (100) feet of any intersection upon any street when the City Traffic Engineer has determined that the parking of tall vehicles is creating a hazard.

B. When official signs prohibiting tall vehicle parking are erected upon any street as authorized herein, no person shall park a vehicle which is six feet or more in height (including any load thereon) within one hundred (100) feet of any intersection in violation of any such sign.

C. The provisions of this section shall not apply to the driver or owner of any service vehicle owned or operated by or for or operated under contract with a utility or public utility, whether privately, municipally, or publicly owned, used in the construction, operation, removal, or repair of utility or public utility property or facilities, if warning devices are displayed and when the vehicle is stopped, standing, or parked at the site of work involving the construction, operation, removal, or repair of the utility or public utility property or facilities upon, in, over, under, or adjacent to a street, whether privately, municipally, or publicly owned, if warning devices are displayed and when the vehicle is engaged in authorized work on the street. (Prior traffic code § 165)

#### **10.28.180 One-hour parking.**

When heretofore or hereafter provided by resolution, and appropriate signs are in place giving notice thereof, no person shall stop, stand or park any vehicle between the hours of eight a.m. and six p.m. of any day, except holidays, for a period of time longer than one hour on any street or any part of any street so indicated. (Prior traffic code § 180)

#### **10.28.190 Two-hour parking.**

When heretofore or hereafter provided by resolution, and appropriate signs are in place giving notice thereof, no person shall stop, stand or park any vehicle between the hours of eight a.m. and six p.m. of any day, except holidays, for a period of time

longer than two hours on any street or any part of any street so indicated.

(Ord. 12339 § 1 (part), 2001; prior traffic code § 181)

#### **10.28.200 Two-hour parking between certain hours.**

When heretofore or hereafter provided by resolution, and appropriate signs are in place giving notice thereof, no person shall stop, stand, or park any vehicle for a period of time longer than two hours between the hours indicated by said appropriate signs on any day, except holidays, on any street or any part of any street so indicated.

(Prior traffic code § 181.1)

#### **10.28.205 Three-hour parking between certain hours.**

When heretofore or hereafter provided by resolution, and appropriate signs are in place giving notice thereof, no person shall stop, stand, or park any vehicle for a period of time longer than three hours between the hours indicated by said appropriate signs on any day, except holidays, on any street or any part of any street so indicated.

(Ord. No. 12973, § 1, 10-6-2009)

#### **10.28.210 Four-hour parking.**

When heretofore or hereafter provided by resolution and appropriate signs are in place giving notice thereof, no person shall stop, stand or park any vehicle between the hours of eight a.m. and six p.m. of any day, except holidays, for a period of time longer than four hours on any street or part of any street so indicated.

(Prior traffic code § 181.7)

#### **10.28.220 Parking restrictions on municipal parking lots or areas.**

When provided by resolution, and appropriate signs are in place and visible giving notice thereof, no person shall stop, stand or park any vehicle between the hours indicated in said resolution for a period of time exceeding that set forth in said resolution on any municipal parking lot or area,

or part thereof, as so designated in said resolution; provided that notwithstanding any other provision of this title the Council may by resolution provide for the issuance of special parking permits to authorize parking upon any municipal parking lot or area for the period of time and subject to the conditions specified therefor, and the fee to be charged for said permit.

(Prior traffic code § 181.2)

#### **10.28.230 Proof of illegal parking in municipal parking lots.**

In any prosecution charging a violation of Section 10.28.220, the procedure set forth in Section 10.36.110 shall apply as if set forth in full herein, said Section 10.36.110 being incorporated in full herein by reference thereto.

(Prior traffic code § 181.3)

#### **10.28.240 Stopping, standing or parking prohibited during certain hours.**

When heretofore or hereafter provided by resolution, and appropriate signs are in place giving notice thereof, no person shall stop, stand or park any vehicle between the hours indicated of any day, except holidays, on any street or any part of any street so indicated.

(Prior traffic code § 182)

#### **10.28.250 Parking prohibited at all times.**

When heretofore or hereafter provided by resolution, and appropriate signs are in place giving notice thereof, no person shall park any vehicle at any time on any street or part of any street so indicated.

(Prior traffic code § 183)

#### **10.28.260 Parking prohibited between certain hours.**

No person shall park any vehicle between the hours of three a.m. and six a.m. of any day on any street or part of any street hereafter designated by resolution of the Oakland City Council and by appropriate signs giving notice thereof.

(Prior traffic code § 183.1)

**10.28.270 Removal of illegally parked vehicles where necessary for repair or construction of street or installation of underground utilities.**

A. Whenever the Traffic Engineer or his or her authorized representative finds and determines that the parking or standing of vehicles upon a street or highway would prohibit or interfere with the repair, or construction of a highway or street or interfere with the installation of underground utilities, he or she is authorized to erect, install or place signs, or have signs erected, installed or placed, on such street, highway or portion, in the manner required and subject to the requirements of the Vehicle Code of California, giving notice that the parking or standing of vehicles upon said street, highway or portion is forbidden, and to keep such signs thereon, temporarily or permanently, until such cleaning, repair, construction or installation is completed or discontinued.

B. Upon and after the erection or placing of signs prohibiting parking thereon, and until said signs are removed, no person who owns or has possession, custody or control of any vehicle shall park such vehicle, or leave such vehicle standing upon the street or highway or portion thereof on which said signs are erected or placed.

C. Upon and after the expiration of seventy-two (72) hours from the time signs prohibiting parking shall have been erected or placed on said street, highway or portion thereof, any peace officer, as defined in Chapter 4.5 of Title 3 of Part 2 of the Penal Code or any regularly employed and salaried employee, who is engaged in directing traffic or enforcing parking laws and regulations of the City of Oakland may remove or order removed from said street, highway or portion thereof, in the manner provided and subject to the requirements of the California Vehicle Code, any vehicle illegally parked or left standing thereof in violation of this section.

(Ord. 12449 § 2, 2002)

**10.28.280 Parking prohibited for street sweeping.**

A. No person shall park any vehicle on the side of any street on the days, except holidays, and

between the hours, designated by the Oakland City Council for the purpose of street cleaning. Each side of the street shall be posted with signs giving notice of the days, and the hours, of the parking prohibition effective on that side of the street. Any person violating the provisions of this Section shall be deemed guilty of an infraction and upon conviction thereof shall be punished by a fine as set forth in the Master Fee Schedule.

B. Notwithstanding other provisions of this title to the contrary and for the purpose of this Section only, "holidays" is defined as the following days: New Year's Day, Martin Luther King Day, President's Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day and the day after Thanksgiving, and Christmas Day.  
(Ord. 12755 § 1, 2006)

	<b>Chapter 10.32</b>	
<b>STOPPING, STANDING AND PARKING IN SPECIFIC STREETS AND PLACES</b>		
<b>Sections:</b>		
<b>10.32.010</b>	<b>Parking of vehicles in municipal parking lots controlled by coin-operated mechanical entrance and exit gates—Tampering with gates prohibited.</b>	<b>10.32.150</b> <b>Parking area for U.S. Mail vehicles.</b>
<b>10.32.020</b>	<b>Parking areas for official cars at City Hall.</b>	<b>10.32.160</b> <b>Parking for Consuls and Vice Consuls.</b>
<b>10.32.030</b>	<b>Parking area for official cars at Police Administration Building.</b>	<b>10.32.170</b> <b>Parking area for office of parks and recreation vehicles.</b>
<b>10.32.040</b>	<b>Parking area for official cars at the Port of Oakland.</b>	<b>10.32.180</b> <b>Press parking privileges.</b>
<b>10.32.050</b>	<b>Parking area for official cars at the City Hall Annex Building.</b>	<b>10.32.190</b> <b>Parking restrictions in Port of Oakland Outer Harbor Terminal Area.</b>
<b>10.32.060</b>	<b>Parking area for official cars at the Administrative Annex Building (659 - 14th Street).</b>	<b>10.32.200</b> <b>Citations and arrests.</b>
<b>10.32.070</b>	<b>Parking area for official cars at the Oakland Detention Facility Building.</b>	<b>10.32.010</b> <b>Parking of vehicles in municipal parking lots controlled by coin-operated mechanical entrance and exit gates—Tampering with gates prohibited.</b>
<b>10.32.080</b>	<b>Parking areas for official cars at the Alameda County Courthouse (1225 Fallon Street).</b>	A. It is unlawful for any person to park, or attempt to park, any vehicle in any municipal parking lot or area, entrance and exit to which is controlled by mechanical gates, without entering said lot through said entrance gate and without depositing immediately prior to such entrance, one or more coins of the United States in the coin receptacle provided therefor in accordance with the directions appearing on, near or adjacent to said mechanical entrance gate.
<b>10.32.090</b>	<b>Parking area for official cars at the Kaiser Center Building.</b>	B. It is unlawful for any person to deface, injure, tamper with, or wilfully break, destroy or impair the usefulness or normal operation of any mechanical gate, or its appurtenances, which control ingress to and egress from any municipal parking lot. (Prior traffic code §§ 127.1, 127.2)
<b>10.32.100</b>	<b>Parking for official cars of Oakland Police Department and county of Alameda.</b>	<b>10.32.020</b> <b>Parking areas for official cars at City Hall.</b>
<b>10.32.110</b>	<b>Parking for official cars of the GSA Federal Protective Service.</b>	The west side of Washington Street from 14th Street to eighty (80) feet northerly therefrom, the south side of 15th Street from Washington Street to a point seventy (70) feet westerly therefrom, and the north side of 14th Street from the west line of Washington Street to a point two hundred (200) feet westerly therefrom are set aside and reserved for parking official cars between the hours of eight a.m.
<b>10.32.120</b>	<b>Parking area for police service vehicles of the Oakland Police Department and the Bay Area Rapid Transit District.</b>	
<b>10.32.130</b>	<b>Parking area for Oakland Fire Department vehicles.</b>	
<b>10.32.140</b>	<b>Parking area for county cars.</b>	



and eight p.m. daily, holidays excepted; provided, that no parking shall be permitted on the westerly side of Washington Street immediately in front of the entrance of the City Hall at any time.

For the purpose of this section only, official cars shall be:

- A. Vehicles belonging to the city or governmental agencies;
- B. Vehicles used by elected officials of the city while on official city business;
- C. Press vehicles owned or operated by public news media while actively engaged in their business at or in the adjacent public facility; provided that each such press vehicle has a facsimile of a press card authorized by Section 5.70.010 of this code displayed within it in such a manner as to be clearly visible and capable of being read from outside the vehicle.

The maximum time for parking any vehicle described in subsection A of this section in any space described in this section shall be fifteen (15) minutes.

The City Traffic Engineer shall by appropriate signs or markings indicate the reserved spaces as set forth above.

It is unlawful for any person to park any vehicle, other than official cars for which reserved spaces are provided, in said reserved spaces during the periods above mentioned. (Prior traffic code § 130)

#### **10.32.030      Parking area for official cars at Police Administration Building.**

It is unlawful for the operator of any vehicle to leave such vehicle, excepting official vehicles as described in Section 10.32.020 in the following described areas at any time:

- A. The south side of 6th Street between Broadway and sixty (60) feet westerly of Washington Street;
- B. The north side of 6th Street from the east line of Clay Street to one hundred fifty (150) feet easterly of Washington Street;
- C. The south side of 7th Street between Broadway and Washington Street;

D. The east side of Washington Street from the south line of 7th Street to 5th Street.

The provisions of this section shall be indicated by the erection of appropriate signs. (Prior traffic code § 130.1)

#### **10.32.040      Parking area for official cars at the Port of Oakland.**

The east side of Franklin Street from the north line of Water Street to a point seventy-five (75) feet northerly thereof is set aside and reserved for parking official cars.

The provisions of this section shall be indicated by the erection of appropriate signs. (Prior traffic code § 130.2)

#### **10.32.050      Parking area for official cars at the City Hall Annex Building.**

The west side of Clay Street from the north line of Fourteenth Street to a point eighty-five (85) feet northerly thereof is set aside and reserved for parking officials cars.

For the purpose of this section only, official cars shall be:

- A. Vehicles belonging to the city or governmental agencies;
- B. Vehicles used by elected officials of the city while on official city business;
- C. Press vehicles owned or operated by public news media while actively engaged in their business at or in the adjacent public facility, provided that each such press vehicle has a facsimile of a press card authorized by Section 5.70.010 of this code displayed within it in such a manner as to be clearly visible and capable of being read from outside the vehicle.

The maximum time for parking any vehicle described in subsection A of this section in any space described in this section shall be fifteen (15) minutes.

The City Traffic Engineer shall by appropriate signs or markings indicate the reserved spaces as set forth above.

It is unlawful for any person to park any vehicle, other than official cars for which reserved spaces are

provided, in said reserved spaces during the periods above mentioned. (Prior traffic code § 130.3)

**10.32.060      Parking area for official cars at the Administrative Annex Building (659 - 14th Street).**

The south side of Fourteenth Street from a point eighty-six (86) feet west of the west line of Grove Street to a point twenty (20) feet westerly thereof is set aside and reserved for parking official cars.

For the purpose of this section only, official cars shall be:

A. Vehicles belonging to the city or governmental agencies;

B. Vehicles used by elected officials of the city while on official city business;

C. Press vehicles owned or operated by public news media while actively engaged in their business at or in the adjacent public facility; provided that each such press vehicle has a facsimile or a press card authorized by Section 5.70.010 of this code displayed within it in such a manner as to be clearly visible and capable of being read from outside the vehicle.

The maximum time for parking any vehicle described in subsection A of this section in any space described in this section shall be fifteen (15) minutes.

The City Traffic Engineer shall by appropriate signs or markings indicate the reserved spaces as set forth above.

It is unlawful for any person to park any vehicle, other than official cars for which reserved spaces are provided, in said reserved spaces during the periods above mentioned. (Prior traffic code § 130.4)

**10.32.070      Parking area for official cars at the Oakland Detention Facility Building.**

The north side of 6th Street from a point one hundred eighteen (118) feet east of the east line of Jefferson Street to a point forty-four (44) feet easterly thereof, and the south side of 7th Street from the east line of Clay Street to a point fifty-two (52) feet

easterly thereof, are set aside and reserved for parking official cars.

For the purpose of this section only, official cars shall be vehicles belonging to city or governmental agencies for the express purpose of transporting prisoners to and from the Oakland Detention Facility Building.

The City Traffic Engineer shall by appropriate signs or markings indicate the reserved spaces as set forth above.

It is unlawful for any person to park any vehicle, other than official vehicles for which reserved spaces are provided, in said reserved spaces as mentioned above. (Prior traffic code § 130.5)

**10.32.080      Parking areas for official cars at the Alameda County Courthouse (1225 Fallon Street).**

The south side of 13th Street between Oak Street and Fallon Street, both sides of Fallon Street between 12th Street and 13th Street, the north side of 12th Street between Oak Street and Fallon Street, and the east side of Oak Street between 12th Street and 13th Street shall be set aside and reserved for parking official cars between the hours of eight a.m. and six p.m., holidays excepted.

For the purpose of this section only, official cars shall be:

A. Vehicles belonging to the city, Alameda County, or governmental agencies;

B. Vehicles used by elected officials of the city while on official city business;

C. Press vehicles owned or operated by public news media while actively engaged in their business at or in the adjacent public facility, provided that each such press vehicle has a facsimile or a press card authorized by Section 5.70.010 of this code displayed within it in such a manner as to be clearly visible and capable of being read from outside the vehicle.

The maximum time for parking any vehicle described above in any space described in this section shall be three hours.

The City Traffic Engineer shall, by appropriate signs or markings, indicate the reserved spaces as set forth above.

It is unlawful for any person to park any vehicle, other than official cars for which reserved spaces are provided, in said reserved spaces during the periods mentioned above. (Prior traffic code § 130.6)

**10.32.090      Parking area for official cars at the Kaiser Center Building.**

The north side of 21st Street from a point fifty-two (52) feet west of the west line of Harrison Street to a point sixty-six (66) feet westerly thereof is set aside and reserved for parking official cars.

For the purpose of this section only, official cars shall be vehicles belonging to city or governmental agencies.

The City Traffic Engineer shall by appropriate signs or markings indicate the reserved spaces as set forth above.

It is unlawful for any person to park any vehicle, other than official vehicles for which reserved spaces are provided, in said reserved spaces as mentioned above. (Prior traffic code § 130.7)

**10.32.100      Parking for official cars of Oakland Police Department and county of Alameda.**

It is unlawful for the operator of any vehicle to leave such vehicle, excepting official vehicles of the Oakland Police Department and county of Alameda, standing in the following described street area from eight a.m. to six p.m.:

North side of 4th Street from a point ninety-five (95) feet east of Broadway to a point sixty (60) feet easterly therefrom.

The provisions of this section shall be indicated by the erection of appropriate signs. (Prior traffic code § 131)

**10.32.110      Parking for official cars of the GSA Federal Protective Service.**

It is unlawful for the operator of any vehicle to leave such vehicle, excepting official vehicles of the General Services Administration Federal Protective

Service, standing in the following described street area:

North side of 15th Street from a point twenty (20) feet west of Clay Street to a point forty-five (45) feet westerly therefrom.

The provisions of this section shall be indicated by the erection of appropriate signs. (Prior traffic code § 131.1)

**10.32.120      Parking area for police service vehicles of the Oakland Police Department and the Bay Area Rapid Transit District.**

The north side of 8th Street from the west line of Oak Street to a point eighty-one (81) feet westerly thereof is set aside and reserved for parking police service vehicles of the Oakland Police Department and the Bay Area Rapid Transit District.

The provisions of this section shall be indicated by the erection of appropriate signs. (Prior traffic code § 131.2)

**10.32.130      Parking area for Oakland Fire Department vehicles.**

It is unlawful for the operator of any vehicle to leave such vehicle, excepting vehicles owned by the city and used by the Fire Department of said city, standing in the following described street area:

East side of Grove Street between 13th and 14th Streets.

It is unlawful for the operator of any vehicle to leave such vehicle, excepting vehicles owned by the city and used by the Fire Department of said city, standing in the following described street area between the hours of eight a.m. and eight p.m., daily, Saturdays, Sundays and holidays excepted:

South side of 15th Street between a point one hundred eighty (180) feet west of Washington Street and a point sixty-five (65) feet westerly therefrom.

The provisions of this section shall be indicated by the erection of appropriate signs. (Prior traffic code § 132)

**10.32.140      Parking area for county cars.**

It is unlawful for the operator of any vehicle to

## **10.32.140**

leave such vehicle, excepting vehicles owned by the county of Alameda while on official county business, standing in the following described street areas from eight a.m. to six p.m., holidays excepted:

East side of Vallecito Place from a point one hundred (100) feet southerly of the southern line of East 31st Street to a point forty-two (42) feet southerly therefrom.

The provisions of this section shall be indicated by the erection of appropriate signs. (Prior traffic code § 133)

### **10.32.150      Parking area for U.S. Mail vehicles.**

It is unlawful for the operator of any vehicle to leave such vehicle, excepting vehicles owned by the U.S. Government and used for the transportation of U.S. Mail, standing in the following described street area from eight a.m. to six a.m., Saturdays and holidays excepted:

South side of 15th Street from a point fifty-four (54) feet easterly from eastern line of Franklin Street to a point thirty-six (36) feet easterly therefrom.

The provisions of this section shall be indicated by the erection of appropriate signs. (Prior traffic code § 134)

### **10.32.160      Parking for Consuls and Vice Consuls.**

Notwithstanding any other provisions of this title, any Consul or Vice Consul of a foreign state may park or leave a vehicle under his or her control free of charge and overtime in any area or zone during all hours subject to the following requirement:

The vehicle shall bear a small but conspicuous sticker indicating the right to park as in this section provided, the sticker to be approved by the Chief of Police and to be at all times displayed on the lower right-hand corner of the windshield. (Prior traffic code § 135)

### **10.32.170      Parking area for office of parks and recreation vehicles.**

It is unlawful for the operator of any vehicle to

leave such vehicle excepting city-owned vehicles and authorized Parks and Recreation staff vehicles parked in the following described areas between the hours of eight a.m. and five p.m., Mondays through Fridays:

The parking lot adjacent to and immediately north of the Office of Parks and Recreation at 1520 Lakeside Drive, lying between Lakeside Drive and the shore of Lake Merritt, and accessible by driveway from Lakeside Drive, together with said driveway. (Prior traffic code § 136)

### **10.32.180      Press parking privileges.**

It is not unlawful during an emergency condition and the first hour immediately following the end of said condition for any member of the press to park a press vehicle in a green zone, metered parking space or posted parking zone in excess of the time allowed by ordinance, so long as the vehicle is parked within one thousand (1,000) feet of the emergency condition.

For the purpose of this section, "member of the press" means any person lawfully possessing a press card authorized by Section 5.70.010 of this code.

For the purpose of this section, "press vehicle" means any vehicle used for the purpose of transporting members of the press or their equipment, and which has a facsimile of a press card authorized by Section 5.70.010 of this code displayed within it in such a manner as to be clearly visible and capable of being read from outside the vehicle.

For the purpose of this section, "emergency condition" means any incident which has resulted in, or is likely to imminently result in, the dispatch of police or fire personnel. (Prior traffic code § 137)

### **10.32.190      Parking restrictions in Port of Oakland Outer Harbor Terminal Area.**

For the purposes of this section, the Port of Oakland Outer Harbor Terminal Area is designated as being all that property located in the "Port Area" of the city of Oakland, county of Alameda, state of California, bounded on the north by the southerly boundary line of the property conveyed to the state

of California by the City of Oakland dated December 31, 1941, for the Bay Bridge crossing, on the northeast by the Oakland Charter Line of 1862, on the southeast by the Agreed Low Tide Line of May 4, 1852, as described in Ordinance No. 3197 of the City of Oakland approved November 23, 1910, and its extension southeasterly and southwesterly to the northerly boundary line of the parcel conveyed to United States of America by City of Oakland dated May 16, 1940, on the south by the northerly boundary line of the parcel conveyed to the United States of America and from the northwest corner of said parcel southwesterly along a line to the point of intersection of the boundary lines of the cities of Oakland, Alameda and San Francisco, on the west by the westerly line of the City of Oakland.

Also for the purposes of this section and Section 10.32.200, the following words and phrases used in this section shall be construed as herein defined, unless from the context a different meaning is intended, or unless a different meaning is specifically defined and more particularly directed to the use of such words or phrases:

"Driving area" means the paved portion of all roadways and private roadways as such are defined in this section.

"Person" means a natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business trust organization or the manager, lessee, agent, servant, officer or employee of any of them.

"Police officer" means any officer of the Police Department of the City of Oakland, or any person authorized by the Chief of Police thereof.

"Roadway" means those ways set aside for the movement of vehicular traffic.

Roadway, Private. "Private Roadway" means a roadway not open to the public.

"Sidewalk" means that portion of a roadway, if any, set apart for pedestrian movement.

"Vehicle" means a device in, upon or by which any person or property is or may be propelled, moved or drawn upon a highway or roadway, excepting a device moved by human power.

1. When provided by resolution of the Board of Port Commissioners and appropriate signs are

in place and visible giving notice thereof, no person shall stop, stand or park any vehicle between the hours indicated in said resolution for a period of time exceeding that set forth in said resolution on any street or road, or any part thereof in the Port of Oakland Outer Harbor Terminal Area; provided, that notwithstanding any other provision of this section, said Board may by resolution authorize parking for the purpose of loading or unloading upon any street or road or any part thereof in said Outer Harbor Terminal Area subject to the conditions specified therefor.

2. When provided by resolution of the Board of Port Commissioners and appropriate signs are in place and visible giving notice thereof, no person shall park any vehicle at any time on any roadway or other areas so indicated.

3. No person shall stop, stand or park any vehicle on or adjacent to any roadway or sidewalk in such a fashion as to block partially or completely or otherwise infringe upon the driving area of said roadway or the passage of pedestrians upon said sidewalk.

(Prior traffic code § 181.5)

#### **10.32.200 Citations and arrests.**

Any police officer is authorized and empowered to issue citations to any person violating any of the provisions of Section 10.32.190 on the same forms used for violation of traffic laws or ordinances by the Police Department of the City.

(Prior traffic code § 181.6)

## Chapter 10.36

### PARKING METER ZONES

**Sections:**

- 10.36.010 Parking meter defined.**
- 10.36.015 Acceptable card and pay-and-display meter defined.**
- 10.36.020 Parking meter installation—Painting of lines.**
- 10.36.030 Deposit of coins, credit card, debit card and acceptable card —Amount of time corresponds to value of coins, credit card, debit card and acceptable card.**
- 10.36.040 Deposit of substitute for legal coins prohibited.**
- 10.36.050 Parking meter indication that space is illegally in use.**
- 10.36.060 Parking in excess of parking time limits prohibited.**
- 10.36.070 Tampering with parking meters prohibited.**
- 10.36.080 Reserved.**
- 10.36.090 Holidays in parking meter zones on streets.**
- 10.36.100 Parking meter zones in municipal parking lots.**
- 10.36.110 Proof of illegal parking in parking meter zones in municipal parking lots.**
- 10.36.120 Special parking permits for municipal parking lots.**
- 10.36.130 Parking meter covers.**
- 10.36.140 Parking meter zones established.**
- 10.36.141 Parking meter locations.**

**10.36.010 Parking meter defined.**

For the purpose of this chapter, the term "parking meter" means any receptacle, instrument, device, indicator or machine which upon the deposit therein of coin of the United States or other form of payment as may be required by this title shows,

indicates, registers, displays or permits legal parking in the parking meter zone wherein or adjacent to which such receptacle, instrument, device, indicator or machine is situated. A parking meter as defined herein may or may not be a self-contained timing device; it may be manually adjusted, automatically or manually controlled, or otherwise operated either externally or internally, so as to show, indicate, register, display or permit legal parking upon the deposit of coin of the United States or other form of payment as required by this title.  
 (Ord. 12813 § 1 (part), 2007: prior traffic code § 120(b))

**10.36.015 Acceptable card and pay-and-display meter defined.**

For the purpose of this chapter, the term "acceptable card" means any payment card authorized and accepted by the City Administrator as a valid form of payment.

For the purpose of this chapter, the term "pay-and-display meter" means an electronic pay station installed within or upon the curb or sidewalk area within a designated parking zone for the purpose of controlling the period of time of occupancy of a space by a vehicle. A "pay-and-display space" means the space controlled by a pay-and-display meter.

(Ord. 12813 § 1 (part), 2007)

**10.36.020 Parking meter installation—Painting of lines.**

A. Parking meters, other than pay-and-display meters, shall be installed upon the street, parkway, curb, sidewalk or municipal parking lot area immediately adjacent to the individual parking spaces designated as herein prescribed.

The Traffic Engineer shall cause to have lines or markings painted or otherwise designated as herein prescribed.

The Traffic Engineer shall cause to have lines or markings painted or otherwise designated upon the parkway, curb, sidewalk, street or municipal parking lot area adjacent to each parking meter in such manner as to identify the parking space with

each respective parking meter. It is unlawful to park or leave standing any vehicle across any such line or marking or in any position other than within the parking area so designated.

B. Pay-and-display meters shall be installed upon the curb or sidewalk area within any designated meter zone.

(Ord. 12813 § 1 (part), 2007: prior traffic code § 121)

**10.36.030 Deposit of coins, credit card, debit card and acceptable card —Amount of time corresponds to value of coins, credit card, debit card and acceptable card.**

A. When any vehicle shall be parked in any parking space adjacent to which a coin operated parking meter is located in accordance with the provisions of this chapter, the operator of said vehicle upon so parking shall, and it is unlawful to fail to, deposit immediately one or more coins of the United States in such parking meter and, when required by the directions on the parking meter, the operator of such vehicle, after deposit of the proper coin or coins of the United States, shall also set in operation the timing mechanism, if any, on such parking meter, and failure to deposit such proper coin or coins and to set the timing mechanism, if any, in operation when so required shall be unlawful. Any such operator who, upon so parking, deposits coins in such parking meter in an amount greater than is legally required does so at his or her own convenience, and the City shall not be liable for any refund therefor.

B. Pay-and-display meters. When a vehicle shall be parked at a pay-and-display meter space, the operator of the vehicle shall, if required by the time and date restrictions for the space, locate the nearest pay-and-display meter on the block, and deposit immediately one or more coins of the United States, credit card, debit card or an acceptable card in such pay-and display meter and make selections in accordance with the instructions posted on the face of the pay-and-display meter. Upon obtaining the printed receipt from the pay-

and display meter, the operator of the vehicle shall immediately place the valid printed receipt face up on the vehicle's dashboard where the expiration time and date are readily visible from the vehicle exterior.

C. Parking meter fees shall be established annually in the City of Oakland Master Fee Schedule Ordinance.

(Ord. 12813 § 1 (part), 2007: Ord. 12775 § 1, 2006: prior traffic code § 122)

**10.36.040 Deposit of substitute for legal coins prohibited.**

It is unlawful to deposit or cause to be deposited in any parking meters, any slug, device or any substitute for legal coins of the United States.

(Prior traffic code § 125)

**10.36.050 Parking meter indication that space is illegally in use.**

A. It is unlawful for any person to park or leave standing any vehicle in any parking meter zone on any street at any time during which the parking meter shows, indicates, registers, or displays that the parking space is illegally in use except during the time necessary to deposit United States coins in said parking meter so as to show, indicate, register, display, or permit legal parking and excepting also during the time from eight p.m. to eight a.m., and excepting also all holidays as defined in Section 10.36.090 when indicated by appropriate signs located on the parking meter. When five-hour meters are installed, such meters shall show, indicate, register, display, or permit legal parking during a twenty-four (24) hour period, seven days a week, when indicated by appropriate signs located on the parking meters.

B. Pay-and-display meter. It is unlawful for any person to park or leave standing any vehicle in any pay-and-display space on any street for a period of time in excess of parking time limits designated on the receipt issued from the pay-and-display meter controlling the space.

(Ord. No. 12953, § 3, 7-7-2009; Ord. 12813 § 1 (part), 2007: Ord. 12339 § 1 (part), 2001; prior traffic code § 123)

**10.36.060     Parking in excess of parking time limits prohibited.**

It is unlawful for any person to park or leave any vehicle in any area of parking space for a period of time in excess of parking time limits designated on any parking meter or any parking meter space or as established by the City Administrator by regulation.

(Ord. 12779 § 1 (part), 2006: prior traffic code § 124)

**10.36.070     Tampering with parking meters prohibited.**

It is unlawful for any person to deface, injure, tamper with, or wilfully break, destroy, or impair the usefulness of any parking meter.

(Prior traffic code § 126)

**10.36.080     Reserved.**

**Editor's note**—Ord. No 12980, § 1, adopted November 17, 2009, repealed the former Section 10.36.080 in its entirety, which pertained to the allocation and expenditure of parking meter funds, and derived from the prior traffic code, §§ 127 and 127.01.

**10.36.090     Holidays in parking meter zones on streets.**

Notwithstanding other provisions of this title to the contrary and for the purpose of this chapter only, the following days are defined as holidays in parking meter zones, on streets in the City: every Sunday, January 1st, third Monday in January (Martin Luther King Jr.'s birthday), third Monday in February (Washington's birthday), last Monday in May (Memorial Day), July 4th, first Monday in September (Labor Day), Thanksgiving Day and December 25th. If any of the foregoing days, except Sunday, falls upon a Sunday, the Monday following is a holiday.

The provisions of this section do not apply to parking meter zones located in municipal parking lots.

(Ord. 11808 § 1, 1995: prior traffic code § 128)

**10.36.100     Parking meter zones in municipal parking lots.**

A. When any vehicle shall be parked in any parking space in a municipal parking lot adjacent

to which a parking meter is located in accordance with the provisions of this chapter, the operator of said vehicle upon so parking, shall, and it is unlawful to fail to deposit immediately one or more coins of the United States in such parking meter in accordance with directions appearing thereon.

The City Council by resolution shall establish the charge to be made for parking in City-owned off-street parking lots and other conditions thereof.

Parking meters in municipal parking lots when installed shall show and permit legal parking as provided by resolution for a definite period of time, the charge to be made therefor, and other conditions thereof, and appropriate signs shall be in place and visibly give notice thereof.

B. It is unlawful for any person to park or leave standing any vehicle in any parking meter zone in any municipal parking lot at any time during which the parking meter shows, indicates, registers or displays that the parking space is illegally in use except during the time necessary to deposit United States coins in said parking meter so as to show, indicate, register, display or permit legal parking. (Prior traffic code § 129(a), (b))

**10.36.110     Proof of illegal parking in parking meter zones in municipal parking lots.**

In any prosecution charging a violation of any regulation governing the standing or parking of a motor vehicle under any provision of this title regulating parking in municipal parking lots, proof by the people of the state of California that the particular vehicle described in the complaint was parking in violation of any such provision of this title, together with proof that the defendant named in the complaint was at the time of such parking the registered owner of such vehicle, shall constitute in evidence a *prima facie* presumption that the registered owner of such motor vehicle is the person who parked or placed such motor vehicle at the point where, and for the point where, and for the time during which, such violation occurred. The above provisions shall apply only when the following conditions are complied with:

A. During the time of such illegal parking a notice thereof shall be securely attached to said

vehicle setting forth the fact of such illegal parking including reference to the section of this title so violated, the approximate time thereof and the location where such violation occurred and fixing a time and place for appearance by registered owner in answer to such notice.

Such notice shall be attached to said vehicle either on the steering post or front door handle thereof, or in any other conspicuous place upon the vehicle as to be easily observed by the person in charge of such vehicle upon his or her return thereto. Said notice may be attached to such vehicle by any police officer who observes a violation of any of the provisions of this title regulating such parking.

B. Before any warrant of arrest shall issue following the filing of a complaint charging the offense of illegal parking in a municipal parking lot, a notice of such illegal parking must be given to the person so charged. Such notice shall contain the information required in subsection A of this section and shall inform such registered owner that unless he or she appears in court also to be designated in said notice within five days after service of such notice and answers said charge, a warrant or citation to appear will be issued against him or her.

Such notice shall be given either by personal delivery thereof to such owner or by deposit in the United States mail of an envelope with postage prepaid which said envelope shall contain such notice and shall be addressed to such owner at his or her address as shown by the records of the State Department of Motor Vehicles. The giving of notice by personal delivery is complete upon delivery of a copy of said notice to said person. The giving of notice by mail is complete upon the expiration of ten days after said deposit of such notice.

Proof of giving such notice may be made by the certificate of any traffic or police officer or affidavit of any person over eighteen (18) years of age naming the person to whom such notice was given and specifying the time, place and manner of the giving thereof.

(Prior traffic code § 129(c))

#### **10.36.120 Special parking permits for municipal parking lots.**

Notwithstanding any other provision of this title relating to parking in parking meter zones in any municipal parking lot, the Council may by resolution provide for the issuance of special parking permits to authorize parking upon any municipal parking lot or area for the period of time and subject to the conditions specified therefor, and the fee to be charged for said permit.

(Prior traffic code § 129.1)

#### **10.36.130 Parking meter covers.**

A. Issuance—Inscription. The Traffic Engineer and Director of Parking are authorized to issue parking meter covers to persons engaged in construction, repairs, or service to buildings or other like work, and who in his or her judgement require that one or more parking spaces in parking meter zones immediately adjacent to said work be reserved for and restricted to their use or that said parking spaces not be used for parking of vehicles. Each cover shall be inscribed with the expiration date, the person to whom it has been issued, and the wording "EMERGENCY NO PARKING - CITY OF OAKLAND - USE OF THIS SPACE RESTRICTED TO (name of person to whom cover issued.)"

B. Restricted Parking When Parking Meters Covered. Notwithstanding any provision of this title or any resolution of the city, it is unlawful for any person, other than a person to whom a parking meter cover has been issued as in this chapter provided, to park any vehicle in any parking meter zone on any street at any time during which the parking meter is covered by a parking meter cover issued as herein provided and displaying thereon an unexpired validation date. The privileges herein granted shall be operative only during the time when vehicles may lawfully be parking in said parking meter zones.

C. Restrictions on Use of Covers—Revocation. It is unlawful for any person to whom a parking meter cover has been issued as in this chapter provided to use said parking meter cover

in any parking meter zone other than one immediately adjacent to the work being performed or to permit said parking meter cover to remain on a parking meter beyond the time actually required for said work. In addition to other penalties imposed, the privileges herein granted shall be revoked and the parking meter cover be removed and it and the fee paid for any unexpired period thereof forfeited whenever the Traffic Engineer and Director of Parking determines that any person to whom a parking meter cover had been issued has violated the restrictions imposed on its use.

(Prior traffic code §§ 129.2, 129.4, 129.5)

#### **10.36.140      Parking meter zones established.**

Parking meter zones shall be established by ordinance of the City Council upon such streets, portions of streets or in municipal parking lots within the city as the City Council may deem necessary for traffic or parking control purposes. The City Manager shall cause parking meters to be installed and maintained in such designated parking meter zones and the existence of a parking meter installed as hereinafter prescribed shall designate its location as a parking meter zone for the purposes of this chapter.

#### **Approved Parking Meter Zones in the City of Oakland**

Street Name	From	To
2nd St.	Washington St	Broadway
2nd St.	Webster St.	Harrison St.
3rd Ave	E 17th St.	Wayne Pl.
3rd St.	Washington St.	Franklin St
3rd St.	Webster St	Harrison St
4th St	Clay St.	Webster St
5th St.	Martin Luther King Jr. Way	Broadway
6th St.	Jefferson St	Franklin St.
7th St.	Castro St.	Jackson St.
8th St	Jefferson St.	Fallon St.
9th St.	Alice St.	Harrison St.
9th St.	Clay St.	Jefferson St.

Street Name	From	To
9th St.	Franklin St.	Fallon St.
10th St	600	699
10th St.	Chestnut St.	Market St.
10th St.	Webster St.	2nd Ave.
11th St.	Martin Luther King Jr Way	Oak St
12th St	Castro St.	Oak St.
13th St.	Broadway	Fallon St.
14th St	Castro St.	Oak St.
15th St.	Castro St	Harrison St.
16th St.	Castro St	Telegraph Ave.
17th St.	Jefferson St.	Jackson St.
18th St.	Jefferson St.	Telegraph Ave.
19th St.	San Pablo Ave.	Jackson St.
21st St.	Telegraph Ave	Harrison St.
22nd St	Telegraph Ave.	Kaiser Pl.
23rd Ave.	International Blvd.	Foothill Blvd.
23rd St.	Martin Luther King Jr Way	Webster St.
24th St.	Telegraph Ave.	Valdez St
25th St.	Telegraph Ave.	Broadway
26th St	Broadway	Valdez St.
27th St.	Martin Luther King Jr. Way	Harrison St.
28th St.	Merrimac St.	Webster St
29th St.	Telegraph Ave	Broadway
30th St.	Telegraph Ave.	Broadway
31st Ave.	International Blvd.	E. 15th St.
33rd Ave	E. 12th St.	International Blvd.
34th St.	33rd St.	Broadway
35th Ave.	International Blvd.	E. 15th St.
37th St.	Telegraph Ave.	Webster St.
38th Ave	International Blvd.	Foothill Blvd
38th St.	Shafter Ave.	Cerrito Ave
39th Ave.	MacArthur Blvd.	Masterson
40th St.	Howe St.	Piedmont Ave.
40th St.	Webster St.	Broadway
40th St. Way	Broadway	Howe St.
41st St.	Opal St.	Glen Ave.
51st St	Shattuck Ave	Telegraph Ave.
51st St.	Telegraph Ave.	Shattuck Ave.
52nd St.	Martin Luther King Jr Way	Telegraph Ave.
55th St	Martin Luther King Jr. Way	Dover St.

Street Name	From	To
56th St.	Martin Luther King Jr Way	Dover St.
62nd St	College Ave	Hillegass Ave.
Alice St.	End (South)	Embarcadero West
Alice St.	6th St.	19th St.
Andover St.	34th St.	End (North)
Antioch St.	Mountain Blvd.	Lucas Ave.
Antioch St.	Mountain Blvd.	Antioch St.
Arden Pl.	Leimert Blvd.	End (North)
Bay Pl.	Grand Ave.	Harrison St.
Broadway	Embarcadero West	45th St
Chabot Rd.	Claremont Ave.	Presley Way
Champion St.	MacArthur Blvd.	Montana St
Claremont Ave.	Hillegass Ave.	Auburn Ave.
Clay St.	Water St.	Embarcadero West
Clay St.	2nd St.	San Pablo Ave
Clemens Rd.	Leimert Blvd.	Oakmore Rd
College Ave	Broadway	Berkeley City Limit
Dimond Ave.	Bienati Way	End (North)
Domingo Ave.	Russell St.	Berkeley City Limit
E. 12th St.	5th Ave.	14th Ave.
E. 18th St.	Lakeshore Ave	Park Blvd.
E. 19th St	Park Blvd	5th Ave.
Echo Ave.	Piedmont Ave.	Glen Ave.
Elm St.	Hawthorne Ave.	34th St.
Embarcadero West	Webster St.	Alice St
Embarcadero West	Jefferson St	Clay St.
Entrada Ave.	Piedmont Ave.	Arroyuelo Ave
Fallon St.	6th St.	10th St.
Florio St.	College Ave	Auburn Ave.
Forest St	Shafter St.	Miles Ave
Franklin St.	Embarcadero West	2nd St.
Franklin St.	3rd St	22nd St.
Fruitvale Ave	E. 12th St.	E. 16th St.
Fruitvale Ave	E. 19th St.	Foothill Blvd
Fruitvale Ave	International Blvd	E. 15th St.
Fruitvale Ave.	Montana St.	Coloma St.
Glen Ave	Piedmont Ave.	Panama Ct.
Glenfield Ave	Park Blvd.	Woodruff Ave.
Grand Ave.	Broadway	Jean St
Harrison St.	8th St.	27th St.
Harwood Ave	College Ave.	Auburn Ave

Street Name	From	To
Hawthorne Ave.	Telegraph Ave.	Broadway.
Howe St.	MacArthur Blvd.	40th St.
Hudson St.	College Ave.	James Ave.
International Blvd.	23rd Ave.	38th Ave.
International Blvd.	38th Ave.	High St.
International Blvd.	Lakeshore Ave.	14th Ave.
Jackson St.	8th St.	Lakeside Dr.
Jefferson St.	4th St.	San Pablo Ave.
Kaiser Pl	21st St.	22nd St.
La Salle Ave.	Mountain Blvd.	Lucas Ave
Lake Park Ave.	Grand Ave.	Wesley Way
Lakeshore (West) Ave.	Mandana Blvd	Prince St.
Lakeshore Ave.	Lake Park Ave.	Prince St.
Lakeside Dr	14th St.	17th St.
Lakeside Dr.	Jackson St.	Harrison St.
Lawton Ave.	College Ave.	McMillan St.
Leimert Blvd.	Clemens Rd.	Bridgeview Dr.
Lenox Ave	Grand Ave.	Van Buren Ave.
Lincoln	MacArthur Blvd.	Montana St.
Linda Ave.	Piedmont Ave	Glen Ave
MacArthur Blvd.	35th Avenue	Midvale
MacArthur Blvd.	Adell Ct.	May Ct.
MacArthur Blvd.	Boston Ave.	Wilson Ave.
MacArthur Blvd.	Fruitvale Ave.	May Ct.
MacArthur Blvd.	Telegraph	Martin Luther King
Madison St.	7th St.	15th St
Mandana Blvd.	Lakeshore Ave.	Paloma Ave.
Manila Ave	Clifton St	Bryant Ave.
Martin Luther King Jr. Way	11th St	16th St.
Martin Luther King Jr. Way	22nd St.	23rd St.
Martin Luther King Jr. Way	51st St.	57th St.
McClure St.	29th St	30th St.
Medau Pl.	Mountain Blvd	End (North)
Merced Ave.	Mountain Blvd.	Lucas Ave.
Miles Ave.	Forest St.	Presley Wy.
Mitchell St	International Blvd.	E. 16th St.
Montana St.	Lincoln	Fruitvale Ave.
Monte Vista Ave.	Piedmont Ave.	Wilda Ave
Moraga Ave.	Thornhill Dr.	Mountain Blvd.
Moraga Ave.	Montclair Park	Medau Pl.

Street Name	From	To
Moraga Ave.*	S. Montclair Pk.	N. Montclair Pk.
Mountain Ave.*	Snake Rd.	Scout Rd.
Mountain Blvd.	Cabot Dr.	Scout Rd.
Mountain Blvd.	Village Square	Snake Rd
Oak Grove Ave.	College Ave.	Forest St.
Oak St.	7th St	14th St.
Ocean View Dr	College Ave.	McMillan St.
Park Blvd.	Hampel St.	Wellington St.
Park View Terrace	Grand Ave.	Montecito Ave.
Piedmont Ave	Broadway	End (North)
Rand Ave	Lake Park Ave.	Cheney Ave.
Rio Vista Ave.	Piedmont Ave.	End (East)
San Pablo Ave.	16th St.	W. Grand Ave
Santa Clara Ave	Grand Ave.	Valle Vista Ave.
Shafter St.	College Ave.	Forest St.
Summit St.	28th St.	Hawthorne Ave.
Sycamore St.	Northgate Ave	Telegraph Ave
Taft Ave	College Ave.	Broadway
Telegraph Ave.	Broadway	Berkeley City Limit
Thomas L. Berkley Way	Brush St.	Harrison St.
Valdez St.	Grand Ave	28th St.
Valley St.	22nd St.	24th St.
West Grand Ave.	Martin Luther King Jr. Way	Broadway
Walker Ave.	Lake Park Ave.	Cheney Ave.
Washington St.	2nd St.	10th St
Wayne Pl	3rd Ave.	Park Blvd.
Webster St.	40th St.	41st St.
Webster St.	Embarcadero West	3rd St.
Webster St	6th St.	36th St.
Wellington St.	Park Blvd	Leach Ave.
Werner Ct	Woodminster Lane	Mountain Blvd.
Wesley Way	Lake Park Ave.	Trestle Glen Rd.
Woodminster Lanc	Werner Ct.	Joaquin Miller Rd.
Yosemite Ave.	Piedmont Ave.	Fairmount Ave

(Ord. No. 13063, § 1(Exh. A), 3-15-2011; Ord. No. 13009, § 1(Exh. A), 5-4-2010; Ord. 12779 § 1 (part), 2006; Ord. 12704 § 1, 2005; Ord. 11631 § 1, 1993; prior traffic code § 120(a))

#### 10.36.141 Parking meter locations.

City Council resolution shall be obtained prior to the installation of additional parking meters in

any new location. City Council approval of parking meter locations shall be a separate requirement from the requirement to establish parking meter zones by ordinance. Notwithstanding the foregoing, the requirements of this chapter shall not apply to the replacement of existing meters with new or updated meters or new meter technologies or systems.

(Ord. 12779 § 1 (part), 2006)

## Chapter 10.40

### STOPPING FOR LOADING AND UNLOADING ONLY

**Sections:**

- 10.40.010 Authority to establish loading zones.**
- 10.40.020 Curb markings to indicate no stopping and parking regulations.**
- 10.40.030 Authority to establish additional loading zones—Signs.**
- 10.40.040 Curb markings to indicate driveways.**
- 10.40.050 Effect of permission to load or unload.**
- 10.40.060 Standing for loading or unloading only.**
- 10.40.070 Standing in passenger loading zone.**
- 10.40.080 Standing in any alley.**
- 10.40.090 Bus zone to be established.**
- 10.40.100 Parking adjacent to curb.**
- 10.40.110 No parking in public motor vehicle stand.**

**10.40.010 Authority to establish loading zones.**

A. The Traffic Engineer is authorized to determine and to mark loading zones and passenger loading zones as follows:

- 1. At any place in the central traffic district or any business district;
- 2. Elsewhere in front of the entrance to any place of business or in front of any hall or place used for the purpose of public assembly.
- B. In no event shall more than one-half of the total curb length in any block be reserved for loading zone purposes.

C. Loading zones shall be indicated by a yellow paint line upon the top of all curbs within such zones.

D. Passenger loading zones shall be indicated by a white line upon the top of all curbs in said zones. (Prior traffic code § 170)

**10.40.020 Curb markings to indicate no stopping and parking regulations.**

A. The Traffic Engineer is authorized, subject to the provisions and limitations of this title, to place, and when required herein shall place, the following curb markings to indicate parking or standing regulations, and said curb markings shall have the meanings as herein set forth:

1. Red. Red shall mean no stopping, standing or parking at any time except as permitted by the Vehicle Code, and except that a bus may stop in a red zone marked or signed as a bus zone.

2. Yellow. Yellow shall mean no stopping, standing or parking at any time between seven a.m. and six p.m. of any day except Sundays and holidays for any purpose other than the loading or unloading of passengers or materials, provided that the loading or unloading of passengers shall not consume more than three minutes, nor the loading or unloading of materials more than thirty (30) minutes.

3. White. White shall mean no stopping, standing or parking for any purpose other than loading or unloading of passengers which shall not exceed three minutes and such restrictions shall apply between seven a.m. and six p.m. of any day except holidays and except as follows:

a. When such zone is in front of a hotel or a hospital the restrictions shall apply at all times;

b. When such zone is in front of a theater or hall or place used for the purpose of public assembly the restrictions shall apply at all times except when such theater, hall or place is closed and then a vehicle may park in said white zone for no longer than one hour.

4. Green. Green shall mean no standing or parking for longer than twelve (12) minutes at any time between eight a.m. and six p.m. of any day except Sundays and holidays.

5. Blue. Blue shall mean no stopping, standing or parking except for physically handicapped persons whose vehicles display either one of the distinguishing license plates issued to disabled persons pursuant to California Vehicle Code, Section 22511.5 or to disabled veterans, as specified in California Vehicle Code Section 9105.

B. Where curb markings have been heretofore placed by authority of this city and when the Traffic Engineer as authorized under this title, has caused curb markings to be placed, no person shall stop, stand or park a vehicle adjacent to any such legible curb marking in violation of any of the provisions of this section. (Ord. 12339 § 1 (part), 2001; prior traffic code § 171)

#### **10.40.030 Authority to establish additional loading zones—Signs.**

A. In addition to the provisions of Section 10.40.010 and in order to provide additional loading zones at those hours when they may be needed, the Traffic Engineer is authorized and directed:

1. To determine and designate loading zones for the loading and unloading of passengers or materials; and

2. To mark such loading zones by appropriate signs which shall set forth the hours during which a sign posted area is designated as a loading zone.

B. When appropriate signs are in place no person shall stop, stand or park a vehicle adjacent to a curb area posted as a loading zone except for the purpose of loading or unloading passengers or materials for such time as is permitted in Section 10.40.050, and except on Sundays and holidays. (Prior traffic code § 17.1)

#### **10.40.040 Curb markings to indicate driveways.**

Upon the request of the owner or occupant, or the agent of either, of the premises being served by a driveway, or driveways, the Traffic Engineer shall cause to be painted in red any curbs on each side of said driveway, or driveways, for a distance at least eighteen (18) linear inches. (Prior traffic code § 171.2)

#### **10.40.050 Effect of permission to load or unload.**

A. Permission herein granted to stop or stand a vehicle for purposes of loading or unloading of materials shall apply only to commercial vehicles and shall not extend beyond the time necessary therefor, and in no event for more than thirty (30) minutes.

B. The loading or unloading of materials shall apply only to commercial deliveries, also the delivery or pickup of express and parcel post packages and United States mail.

C. Permission herein granted to stop or park for purposes of loading or unloading passengers shall include the loading or unloading of personal baggage, but shall not extend beyond the time necessary therefor, and in no event for more than three minutes.

D. Within the total time limits above specified, the provisions of this section shall be enforced so as to accommodate necessary and reasonable loading or unloading, but without permitting abuse of the privileges granted. (Prior traffic code § 172)

#### **10.40.060 Standing for loading or unloading only.**

No person shall stop, stand or park a vehicle in any yellow zone for any purpose other than loading or unloading passengers or materials for such time as is permitted in Section 10.40.050. (Prior traffic code § 173)

#### **10.40.070 Standing in passenger loading zone.**

No person shall stop, stand or park a vehicle in any passenger loading zone for any purpose other than the loading or unloading of passengers for such time as is specified in Section 10.40.050. (Prior traffic code § 174)

#### **10.40.080 Standing in any alley.**

No person shall stop, stand or park a vehicle for any purpose other than the loading or unloading of persons or materials in any alley. (Prior traffic code § 175)

**10.40.090 Bus zone to be established.**

A. The Traffic Engineer is authorized to establish bus zones opposite curb space for the loading and unloading of buses or common carriers of passengers and to determine the location thereof subject to the directives and limitations set forth herein.

B. The word "bus" as used in this section means any motorbus, motor coach, trackless trolley coach, or passenger stage used as a common carrier or passengers.

C. No bus zone shall exceed sixty (60) feet in length, except that when satisfactory evidence has been presented to the Traffic Engineer showing the necessity therefor, the Traffic Engineer may extend bus zones not to exceed a total length of any one city block.

D. Bus zones shall be indicated by painting the curb red or by the erection of appropriate signs or both.

E. No person shall stop, stand or park any vehicle except a bus in a bus zone. (Prior traffic code § 176)

**10.40.100 Parking adjacent to curb.**

When stopping to load or unload passengers it is unlawful for the operator of a bus, as defined in Section 10.40.090, to stop or park said bus at any place other than at a bus zone established pursuant to Section 10.40.090, and every such bus stopping or parking upon a street in such a bus zone sixty (60) feet or more in length where there are adjacent curbs shall be so stopped or parked with the right-hand wheels of such bus parallel with and within eighteen (18) inches of the right-hand curb. (Prior traffic code § 176.1)

**10.40.110 No parking in public motor vehicle stand.**

It is unlawful for the driver of any vehicle, other than the driver of a public motor vehicle for which a stand permit has been issued, to park or leave standing such vehicle in any public motor vehicle stand. All such stands shall be distinctly identified as such. (Prior traffic code § 177)

## Chapter 10.44

### **RESIDENTIAL PERMIT PARKING PROGRAM**

**Sections:**

- 10.44.010      Legislative purpose.**
- 10.44.020      Legislative findings.**
- 10.44.030      Definitions.**
- 10.44.040      Permit parking exemption.**
- 10.44.050      Designation of a residential permit parking area.**
- 10.44.060      Modification after designation of a residential permit parking.**
- 10.44.070      Issuance of residential parking permits.**
- 10.44.080      Visitor permits.**
- 10.44.090      Parking permit fees.**
- 10.44.100      Posting of residential permit parking area.**
- 10.44.110      Revocation of permit.**
- 10.44.120      Violation—Penalty.**
- 10.44.130      Chapter interpretation.**

**10.44.010      Legislative purpose.**

The ordinance codified in this chapter is enacted in response to the serious adverse effects caused in certain areas in neighborhoods of Oakland by motor vehicle congestion, particularly the long-term parking of motor vehicles on the streets of such areas and neighborhoods by nonresidents thereof. As set forth in more specific detail in Section 10.44.020, such long-term parking by nonresidents threatens the health, safety and welfare of all of the residents of Oakland. In order to protect and promote the integrity of these areas and neighborhoods, it is necessary to enact parking regulations restricting unlimited parking by nonresidents therein, while providing the opportunity for residents to park near their homes. Uniform parking regulations restricting residents and nonresidents alike would not serve the public interest, rather such regulations would contribute to neighborhood decline while ignoring the public transit alternatives to automobile travel available to nonresidents. For the reasons set forth in this chap-

ter, a system of residential permit parking is enacted for the city. (Prior traffic code § 320)

**10.44.020      Legislative findings.**

A. General Findings. The City Council finds, as a result of evidence generated by professional studies and derived from other sources, that the continued vitality of Oakland depends on the preservation of safe, healthy and attractive neighborhoods and other residential areas therein. The Council further finds that one factor that has detracted from the safety, health and attractiveness of neighborhoods and other residential areas of the city is the excessive and burdensome practice of nonresidents of certain areas and neighborhoods parking their motor vehicles for extended periods of time therein. Since there is in Oakland at any one time a large surplus of motor vehicles over available on- and off-street parking spaces, this condition detracts from a healthy and complete urban environment. A system of residential permit parking will serve to reduce a number of strains on residents of the city and thus promote the general public welfare.

B. Specific Findings. The following specific legislative findings for the City Council in support of residential permit parking are set forth as illustrations only and do not exhaust the subject of the factual basis supporting its adoption:

1. The safety, health and welfare of the residents of Oakland can be greatly enhanced by maintenance of the attractiveness and livability of its neighborhoods and other residential areas.
2. A large portion of Oakland residents possess automobiles and as a result are daily faced with the need to store these automobiles in or near their residences.
3. Certain neighborhoods and areas of Oakland do not have sufficient on- or off-street space to accommodate the convenient parking of motor vehicles by residents thereof in the vicinity of their homes. To the extent that such facilities do exist, the program set forth herein is designed to encourage the maximum feasible utilization of off-street parking facilities.

4. Such areas as described in subsection (B)(3) of this section are often further burdened by influxes of motor vehicles owned by nonresidents which compete for the inadequate available on-street parking spaces.

5. There further exist certain parking "attractors" within Oakland, such as hospitals, BART stations, employment centers, and locations convenient for commuter parking, which further exacerbate neighborhood parking problems.

6. Unnecessary vehicle miles, noise, pollution, and strains on interpersonal relationships, caused by the conditions set forth herein, work unacceptable hardships on residents of these neighborhoods and other residential areas by causing the deterioration of air quality, safety, tranquility and other values available in an urban residential environment.

7. If allowed to continue unchecked, these adverse effects on the citizens of Oakland will contribute to a further decline of the living conditions therein, a reduction in the attractiveness of residing within Oakland and consequent injury to the general public welfare.

8. The system of residential permit parking, as enacted by the ordinance codified in this chapter, will serve to promote the safety, health and welfare of all the citizens of Oakland by (a) reducing unnecessary personal motor vehicle travel, noise, and pollution; and (b) promoting improvements in air quality, the convenience and attractiveness of urban residential living, and the increased use of public mass transit facilities available now and in the future.

(Prior traffic code § 321)

#### **10.44.030 Definitions.**

As used in this chapter:

"Address" means and includes any residential or business address. Each dwelling unit within an apartment building that is distinguished by an apartment number and each office within an office building that is distinguished by a suite number shall be considered an address.

"Block" means any street segment intersected by two other streets; street segments over eight hundred (800) feet in length, but less than one thousand six hundred (1,600) feet in length shall be considered two blocks; street segments over one thousand six hundred (1,600) feet in length shall be considered three blocks.

"Business" means an enterprise or establishment used for the purpose of conducting business located in the designated residential permit parking area.

"Day care center" means and includes any state-licensed day care center with five or more employees.

"Designated residential parking area," sometimes referred to as "residential permit parking area," means any street upon which the Council imposes parking limitations pursuant to the authority granted by this chapter.

"Fourteen (14) day visitor parking permit" means a parking permit issued pursuant to this chapter or an ordinance or resolution enacted pursuant to authority granted herein, which when displayed upon a motor vehicle, as described herein, shall exempt the motor vehicle from parking time restrictions established pursuant to this chapter for a period of fourteen (14) days, beginning upon the date indicated upon the face of said permit.

"Motor vehicle" means and includes automobile, truck, motorcycle or other motor driven form of transportation not in excess of nine thousand (9,000) pounds gross weight.

"Nonprofit public service organization" means and includes any nonprofit organization involved in public service with the exception of those nonprofit organizations who primarily provide medical care services including, but not limited to, hospitals and medical office buildings.

"Neighborhood-serving establishment" means all schools, day care centers, and nonprofit public service organizations.

"Nonresident vehicle" means a motor vehicle not eligible to be issued a residential parking permit, pursuant to the terms and conditions of this chapter, for the specific area in which it is parked.

"One-day visitor parking permit" means a parking permit issued pursuant to this chapter which when displayed upon a motor vehicle, as described herein, shall exempt the motor vehicle from parking time restrictions established pursuant to this chapter or an ordinance or resolution enacted pursuant to authority granted herein, for the date indicated upon the face of said permit.

"Parking permit" means a permit issued under this chapter which, when displayed upon a motor vehicle, as described herein, shall exempt said motor vehicle from parking time restrictions established pursuant to this chapter.

"Person" means and includes, but shall not be limited to, individuals, corporations, businesses, partnerships, hospitals and churches.

"Residence" means a legal residential address and shall exclude business addresses.

"Resident" means any person eighteen (18) years of age or older whose legal residential or business address is in the designated residential permit parking area.

"School" means and includes any state-licensed preschool, elementary, middle, junior high, or high school with five or more employees.

"Visitor" means an individual who calls upon a resident in the designated residential permit parking area with specific intent to spend time in or about that resident's residence for the purpose of social intercourse or to provide a service.

(Prior traffic code § 322)

#### **10.44.040      Permit parking exemption.**

A. A motor vehicle on which is displayed a valid residential parking permit, as provided for herein, shall be permitted to stand or be parked in the residential permit parking area for which the permit has been issued without being limited by time restrictions established pursuant to this chapter. Any motor vehicle which does not display such permit shall be subject to the residential permit parking regulation and consequent penalties in effect for such area.

B. A residential parking permit shall not guarantee or reserve to the holder thereof an on-street parking space within the designated residential permit parking area.

C. This chapter shall not be interpreted or applied in a manner which shall abridge or alter regulations established by authority other than this chapter.

D. This chapter shall not exempt the permit parking holder from other traffic controls and regulations existing in the designated residential permit parking area.

E. This chapter shall not permit the permit parking holder to leave standing his or her vehicle for more than seventy-two (72) hours.

(Prior traffic code § 323)

#### **10.44.050      Designation of a residential permit parking area.**

A. The Director of Public Works or his or her designee shall consider for designation as a residential permit parking area any proposed area for which a petition has been submitted which meets and satisfies the following requirements:

1. The petition shall contain a description or a map showing the proposed residential permit parking area.

2. Said description or map shall be followed in the petition by the following statement:

We, the undersigned, are residents and/or business owners in the proposed residential permit parking area described in this petition. We understand that, if this area is designated as a residential permit parking area, certain restrictions will be placed upon on-street parking within the designated area; that subject to the regulations and restrictions established by the City Council, visitors to residences will be eligible to obtain permits exempting them from such parking restrictions; that the annual fee for a residential parking permit will be as set forth in the City of Oakland Master Fee Schedule; that a residential parking permit may be issued to a resident of a residential or business address

and/or to each additional resident of the same address, but not more than 3 residential parking permits shall be issued to any one address except in areas where it appears that the number of permits issued would exceed the number of legal on-street parking spaces where the initial sale would be limited



to two or possibly one permit per resident; that a residential parking permit may be issued to employees of neighborhood-serving establishments, subject to certain limitations; that no more than one residential parking permit shall be issued to each motor vehicle owned or leased for which application is made; that fees for visitor parking permits (either one-day or 14-day visitor parking permits) are as set forth in the City Master Fee Schedule but that no more than 5 visitor parking permits for any one address shall be issued at any one time. We the undersigned hereby request that the Council of the City of Oakland consider this petition for establishment of the above described areas as a residential permit parking area.

3. The aforementioned statement shall be followed by a signature, printed name, address, and date of signing of the petition by residents eighteen (18) years or older representing at least fifty-one (51) percent of the addresses within each proposed area. In addition, the petition sponsor must certify that a reasonable means of inquiry was undertaken to assure the validity of petition signatures. Receipt of a petition representing at least fifty-one (51) percent of the addresses within a proposed area will initiate the residential permit parking review process. Subsequent counter petitions received from residents within a proposed area will be reviewed, but they will in no way invalidate the initial petition requesting establishment of residential permit parking or terminate the review process.

4. The proposed residential permit parking areas should include at least six adjacent block fronts and at least eighty (80) percent of the block fronts must be residentially zoned, and at a minimum, seventy-five (75) percent of all on-street parking spaces within the proposed area must be occupied during any two one-hour periods between eight a.m. and six p.m. Both sides of a street must be included in each area unless determined by the Director of Public Works or his or her designee to be impractical or undesirable. Permit stickers in a number representing at least fifty (50) percent of the ad-

dresses in a given block or fifteen (15) stickers, whichever is less, must be purchased in each block before signs will be installed designating residential permit parking in any one area. Permits purchased cannot be used until signs are installed in the designated area. If the minimum number of permits are not purchased within ninety (90) days after Council action establishing a residential permit area, money will be refunded and the designated area will be void.

5. Notwithstanding the requirements of subsections (A)(3) and (4) of this section, the Director of Public Works or his or her designee may recommend establishment of a residential permit parking area in an area which is not in a R-10, R-20 or R-30 zone and where, in his or her judgement, a significant daytime parking problem exists and it is impossible or impractical to establish an area with six or more adjacent block faces or where because accessibility to large apartments or condominiums is restricted, it is impossible to access a sufficient number of addresses to obtain signatures representing fifty-one (51) percent of the addresses. However, in no case shall an area be recommended to be established as a residential permit parking area when a petition containing signatures representing less than thirty (30) percent of the addresses within the area has been submitted for review.

B. Upon receipt by the Director of Public Works or his or her designee of a petition as described in subsection A of this section, the Director of Public Works or his or her designee shall:

1. Undertake or cause to be undertaken such surveys or studies deemed necessary;
2. Conduct a public hearing on the proposed residential permit parking area. Notice of the hearing shall be posted at least ten days prior to the hearing on all block fronts proposed to be included in the residential permit parking area. Notice of public hearing will also be advertised in a major local newspaper. Following the hearing, the director of Public Works or his or her designee may enact, amend or reject the proposed area in any manner, including, but not limited to, modification of bound-

aries of the proposed area and the restrictions imposed on such proposed area;

3. Cause to be drafted a resolution which would establish a residential permit parking area based upon the aforementioned petition, public hearing, and studies, including any regulations and time restrictions determined by the Director of Public Works or his or her designee to be reasonable and necessary in such area.

C. The City Council may approve, reject, or modify the resolution establishing a residential permit parking area. The City Council must approve the resolution in order to establish a residential permit parking area. (Prior traffic code § 324)

#### **10.44.060 Modification after designation of a residential permit parking.**

Upon satisfaction of the requirements as provided in Section 10.44.050, the City Council may, by appropriate resolution, modify an existing residential permit parking area. (Prior traffic code § 325)

#### **10.44.070 Issuance of residential parking permits.**

A. Residential parking permits shall be issued by the Office of Finance in accordance with requirements set forth in this chapter. Each such permit shall be designed to state or reflect thereon the identification of the particular residential permit parking area as well as the license number of the motor vehicle for which it is issued. No more than one residential parking permit shall be issued to each motor vehicle owned or leased for which application is made.

B. The Office of Finance shall issue residential parking permits with a term of one year from July 1st to June 30th regardless of when during the year a resident purchases the parking permit, to motor vehicles which comply with the requirements set forth in this Section. (Permits issued between January 1, 1991 and June 30, 1992, will be in effect until June 30, 1992.)

C. One residential parking permit may be issued for each vehicle owned, leased, or under the continuing custody of any person who can demonstrate

that they are currently a resident of the area for which the permit is to be issued. However, in no case shall more than three parking permits be issued for any address. In areas where it appears that the number of permits sold would exceed the number of legal on-street parking spaces, the initial sale would be limited to two or possibly one permit per address.

D. A residential parking permit may, in addition, be issued for any vehicle owned, leased, or under the continuing custody of a person who owns or leases commercial property and engages in business activity within the particular residential permit parking area. The owner and/or employees of a business located in a residential permit parking area will be allowed to obtain one permit for each motor vehicle they own, lease, or have under their continuing custody up to a maximum of two parking permits for vehicles not registered at the business address and/or up to three parking permits for vehicles registered at the business address. However, in no case shall more than three parking permits be issued for each business establishment or motor vehicles registered to or under the control of the owner and/or employees of such an establishment. In areas where it appears that the number of permits sold would exceed the number of legal on-street parking spaces, the initial sale would be limited to two or possibly one permit per business.

E. A residential parking permit may be issued for any vehicle owned, leased, or under the continuing custody of a person who is employed by or a representative of a neighborhood-serving establishment located within the particular residential permit parking area. Each employee or representative of a neighborhood-serving establishment will be allowed to obtain one permit for each vehicle they own or lease subject to the following criteria which shall be used to establish the eligibility of a neighborhood-serving establishment and the maximum number of permits to be issued:

1. An establishment for which there is inadequate off-street parking and no financially feasible way of creating adequate off-street parking on the site of the establishment;

2. The total number of permits issued under no circumstances shall exceed the lesser of sixty (60) percent of the establishment's employees present on any given weekday or the number of unrestricted parking spaces along the establishment's frontage on the street designated as residential permit parking;

3. In areas where it appears that the number of permits sold per block would exceed the number of legal on-street parking spaces per block the initial sale would be limited to two or possibly one permit per neighborhood-serving establishment;

4. Distribution of permits shall be through a designated representative of the establishment who will be responsible for allocation of the permits to employees.

F. A residential parking permit may be issued to a resident or an employee of a business located along a commercial street that has been determined by the Director of Public Works or his or her designee to be significantly impacted by the implementation of residential permit parking on adjacent residential streets. The Director of Public Works or his or her designee will determine which commercial streets will qualify and the appropriate boundaries. Any resident or employee whose business is located on a qualifying portion of a commercial street will be allowed to obtain one permit for each motor vehicle they own, lease, or have under their continuing custody up to a maximum of two permits per address. In areas where it appears that the number of permits sold would exceed the number of legal on-street parking spaces, the initial sale would be limited to one permit per address. Any resident or employee whose business is located on a qualifying portion of a commercial street and whose address is in a building that was required by the city to provide off-street parking will not be allowed to obtain a residential parking permit.

G. Renewal of residential parking permits shall be subject to the same conditions imposed on new permits.

H. The Office of Finance is authorized to issue such rules and regulations, not inconsistent with this chapter, governing the issuance and display of residential parking permits.

I. Any person to whom a residential parking permit has been issued pursuant to this section shall be deemed a parking permit holder. (Prior traffic code § 326)

#### **10.44.080 Visitor permits.**

A. The Office of Finance shall issue visitor parking permits in accordance with this section. A visitor parking permit shall be of limited duration, but shall otherwise grant to the holder thereof all the rights and privileges of a regular residential parking permit. Visitor parking permit shall be of two types:

1. One-day visitor parking permits; and
2. Fourteen (14) day visitor parking permits.

B. A visitor parking permit shall clearly display the date upon which it becomes effective, the license number of the motor vehicle for which it applies, the name of the resident, and shall designate the particular residential permit parking area for which it applies.

C. A one-day visitor parking permit shall, during the date indicated upon the face of said permit, exempt the applicable vehicle from parking time restrictions established pursuant to this chapter.

D. A fourteen (14) day visitor parking permit shall, for the period of fourteen (14) days commencing upon the date indicated upon the face of said permit, exempt the applicable vehicle from parking time restrictions established pursuant to this chapter.

E. The Office of Finance is authorized to establish rules and regulations, not inconsistent with this chapter, concerning the issuance and display of visitor parking permits to permit holders.

F. An eligible applicant for a visitor parking permit shall be any person eligible to obtain a residential parking permit pursuant to criteria set forth in Section 10.44.070, but no more than five visitor parking permits per address shall be issued at any one time. (Prior traffic code § 327)

#### **10.44.090 Parking permit fees.**

A. The initial purchase of a residential parking permit for a vehicle owned, leased, or under the continuing custody of a resident and registered at a qualifying residence or business address in addition

to vehicles owned, leased, or under the continuing custody of an owner or employee of a qualifying neighborhood serving center shall be assessed the corresponding fees set forth in the city master fee schedule. Residential parking permits sold for vehicles owned, leased, or under the continuing custody of a business owner or employee but not registered at the qualifying business address shall be assessed the higher fee set forth in the city master fee schedule. Beginning January 1, 1992, the initial fee for new permits issued between January 1st and June 30th will be the full initial annual fee less one-half the annual renewal fee.

B. Renewal of residential parking permits shall be subject to the fees set forth in the city master fee schedule.

C. Replacement of stolen, lost, or damaged residential parking permits shall be subject to the fees set forth in the city master fee schedule.

D. The fee for each visitor parking permit (one day and fourteen (14) days) will be as set forth in the city master fee schedule. (Prior traffic code § 328)

#### **10.44.100 Posting of residential permit parking area.**

Upon the adoption by the City Council of the resolution designating a residential permit parking area, and subsequent to purchase of the required minimum number of parking permits, the Director of Public Works shall cause appropriate signs to be erected in the area, indicating prominently thereon the time limitation, period of the day for its application, and conditions under which permit parking shall be exempt therefrom. (Prior traffic code § 329)

#### **10.44.110 Revocation of permit.**

The City Traffic Engineer or his or her designee is authorized to temporarily revoke (for a period of time not to exceed ten working days) the residential parking permit of any person found to be in violation of this chapter by providing written notice of the temporary revocation to the permittee. Such written notice shall include a statement outlining the grounds for revoking the permit as well as the date,

time, and place set for a hearing before the Director of Public Works or his or her representative to determine if the revocation shall be in effect until the expiration of the permit. Written notice of the date, time and place of such hearing shall be served upon the permittee five days prior to the date set for such hearing.

At the hearing before the Director of Public Works or his or her representative, the permittee shall have the right to be represented by an attorney, and/or to present evidence and a written or oral argument, or both.

No decision shall be invalidated because of the admission into the record and the use of any proof of any fact in dispute of any evidence not admissible under the common law or statutory rules of evidence.

Within five working days after close of hearing, the Director of Public Works or his or her representative shall enter his or her decision based upon the record presented and notify the permittee in writing of such decision. The decision of the Director of Public Works shall be final. Failure, when so requested, to surrender a residential parking permit so revoked shall constitute a violation of this chapter. Any such violation is a misdemeanor. There will be no refunds for revoked permits. (Prior traffic code § 330)

#### **10.44.120 Violation—Penalty.**

A. It is unlawful and shall constitute a violation of this chapter for any person to stand or park a motor vehicle, without a current residential parking permit properly displayed, at a curb within a residential permit parking area for a period of time exceeding the time limitation established by the City Council for such area. Motor vehicles identified as used by disabled persons meeting the requirements of Section 22511.5 of the California Vehicle Code shall be exempt from this subsection.

B. The following acts shall be punishable by a fine not exceeding five hundred dollars (\$500.00) and revocation of any permit currently held:

1. For any person to falsely represent himself or herself as eligible for a parking permit or to furnish false information in an application therefor;
2. For any person holding a valid parking permit issued pursuant hereto to permit use or display of or to use or display such permit on a motor vehicle other than that for which the permit was issued;
3. For any person to copy, reproduce or otherwise bring into existence a facsimile or counterfeit parking permit or permits without written authorization from the Office of Finance;
4. For any person to knowingly use or display a facsimile or counterfeit parking permit in order to evade time limitations on parking applicable in a residential parking permit area;
5. For any person holding a valid parking permit issued pursuant hereto to sell, give or exchange said permit to any other person;
6. For any person to knowingly commit any act which is prohibited by the terms of this chapter or any ordinance enacted by authority granted by this chapter.

(Prior traffic code § 331)

**10.44.130 Chapter interpretation.**

The Director of Public Works or his or her designee shall have discretion in the implementation, and/or interpretation of this chapter.

(Prior traffic code § 332)

## **Chapter 10.45**

### **INTERIM MIXED USE PERMIT PARKING PROGRAM FOR THE JACK LONDON DISTRICT**

**Sections:**

- 10.45.010 Legislative purpose.**
- 10.45.020 Legislative findings.**
- 10.45.030 Definitions.**
- 10.45.040 Permit parking exemption.**
- 10.45.050 Jack London District designated mixed use permit parking area.**
- 10.45.060 Modification after designation of the Jack London District designated mixed use permit parking area.**
- 10.45.070 Issuance of Jack London District mixed use permit parking permits.**
- 10.45.080 Visitor permits.**
- 10.45.090 Parking permit fees.**
- 10.45.100 Posting of Jack London District designated mixed use parking permit area.**
- 10.45.110 Revocation of Jack London District mixed use parking permit.**
- 10.45.120 Violation and penalty.**
- 10.45.130 Chapter interpretation.**
- 10.45.140 Three year time limit.**
- 10.45.150 Extension of the three-year time limit.**

**10.45.010 Legislative purpose.**

The ordinance codified in this chapter is enacted in response to a severe, temporary problem within the Jack London District caused by the long term parking of motor vehicles on the streets of this District. Due to historic development patterns such as lot line to lot line warehouses and the designated historic importance of the district, many properties do not have off-street parking. As set

forth in Section 10.44.020, such long term parking by people outside of the immediate area threatens the health, safety and welfare of the residents, employees and visitors to the Jack London District. This problem is exacerbated by the pending construction of a large parking structure on the land now occupied by the Amtrak surface parking lot, thereby further decreasing the overall amount of parking available to Amtrak users during the course of the construction. It is therefore temporarily necessary to manage the existing on-street parking supply more effectively through the establishment of two and four hour time restricted parking and at the same time establishing a mixed use permit parking system so that residents, employees and visitors to the District will be provided an opportunity to park near their residence, place of business or other commercial establishment. For the reasons set forth in this chapter, an interim system of mixed use permit parking shall not be applicable to any other area in the City until and unless another ordinance is enacted allowing such a system City-wide.

(Ord. 12847 § 1 (part), 2007)

**10.45.020 Legislative findings.**

A. Findings. The City Council finds, as a result of evidence and public testimony generated by staff and the Jack London District Association that the continued viability of the Jack London District depends on the preservation of safe, healthy and attractive neighborhoods and commercial areas. The City Council further finds that one factor that has detracted from the safety, health and attractiveness of the Jack London District is the excessive and burdensome practice of non-residents to the Jack London District parking motor vehicles for extended periods of time therein on the streets within the District. Since at any one time a large surplus of motor vehicles over the available on and off street parking spaces exists in the Jack London District due to construction activities, changes in development patterns and the impending temporary loss of the Amtrak surface lot, this condition temporarily detracts from a

healthy and vital urban community. An interim system of mixed use permit parking will serve to reduce the number of non-residents parking in the Jack London District and thus promote the general public welfare. The system of interim mixed use parking, as enacted by the ordinance codified in this chapter, will serve to promote the safety and health of the residents, employees, business owners and visitors to the



Jack London District by reducing vehicle travel, noise and pollution; promoting improvements in air quality, the convenience and attractiveness of urban residential living, and the increased use of mass transit facilities available now and in the future. (Ord. 12847 § 1 (part), 2007)

#### **10.45.030 Definitions.**

All definitions as used in this chapter shall reference the definitions used in Chapter 10.44.020 with the following additions:

A. "Jack London District designated mixed use permit parking area" means any street upon which the City Council imposes parking limitations pursuant to the authority granted by this chapter within the Jack London District.

B. "Employee of business" means an employee of an enterprise or establishment used for the purpose of conducting a business located in the designated Jack London District designated mixed use permit parking area. (Ord. 12847 § 1 (part), 2007)

#### **10.45.040 Permit parking exemption.**

A. A motor vehicle on which is displayed a valid Jack London District designated mixed use parking permit, as provided for herein, shall be permitted to stand or be parked within the Jack London mixed use parking permit area for which the permit has been issued without being limited by time restrictions established pursuant to this chapter. Any motor vehicle which does not display such permit shall be subject to the Jack London District designated mixed use parking permit regulation and consequent penalties in effect for such area.

B. A Jack London District designated mixed use parking permit shall not guarantee or reserve the holder thereof an on-street parking space within the Jack London District designated mixed use parking permit area.

C. This chapter shall not be interpreted or applied in a manner which shall abridge or alter regulations established by authority other than this chapter.

D. This chapter shall not exempt the permit parking holder to leave standing his or her vehicle for more than seventy-two (72) hours. (Ord. 12847 § 1 (part), 2007)

#### **10.45.050 Jack London District designated mixed use permit parking area.**

A. This chapter hereby designates the Jack London District designated mixed use permit parking area, as referenced in Exhibit A, dated March 16, 2007, of Ordinance 12864, for a period not to exceed three years from the effective date of this chapter. The effective date of this chapter shall be defined as either the date of program implementation or not later than one hundred and twenty (120) days after adoption, whichever occurs first.

B. Jack London Permit Parking Area Amended by Ordinance 12891. The Jack London Permit Parking Program Area boundaries established by Ordinance No. 12864, adopted March 4, 2008, are hereby amended to revise the program area boundaries as indicated in Exhibit B (amended, revised map) attached hereto, as follows:

1. Extend the southern boundary of the permit parking area south approximately two blocks from Embarcadero West, to the edge of the estuary, between Oak Street and Washington Street only, extending the eastern boundary in a straight line down Oak Street to the water; and

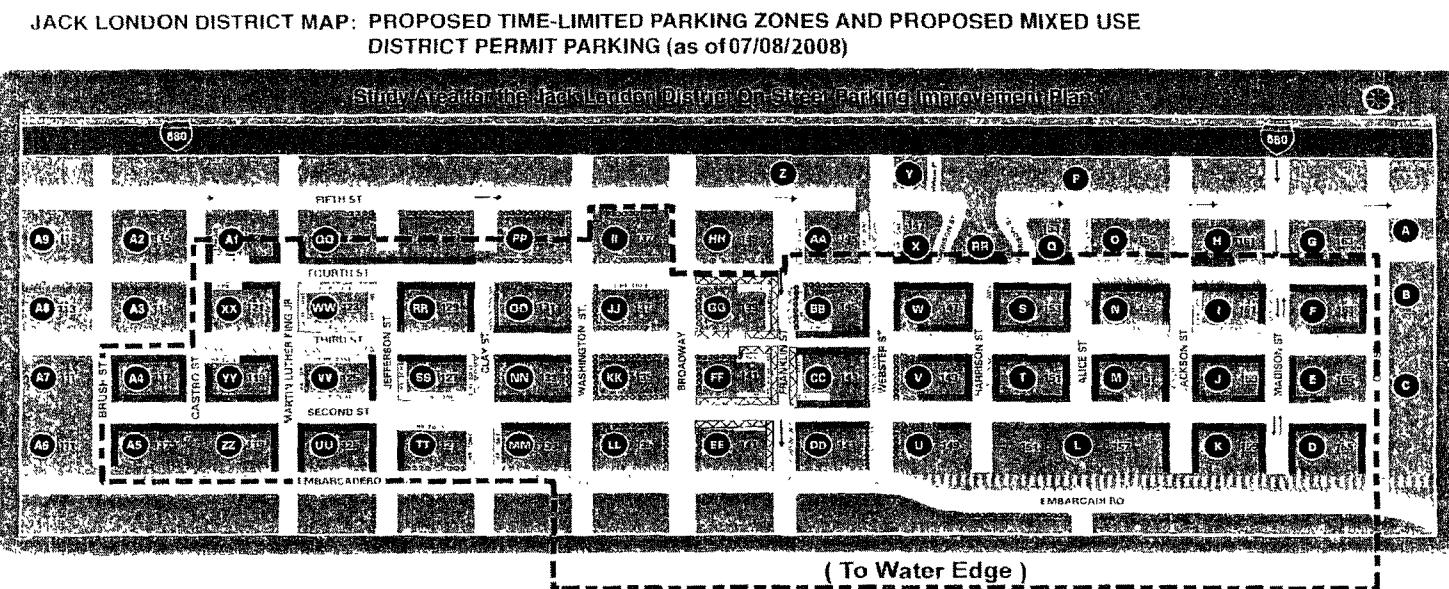
2. Extend the northern boundary of the permit parking area north one block from Fourth Street, between Washington Street and Broadway only, to include the southern side of Fifth Street only.

The streets or portions of streets where signs will be posted limiting parking to four hours from Monday to Friday, 8:00 a.m. to 6:00 p.m., with exemption to the four-hour limit given to vehicles displaying a Jack London District Mixed Used Parking Permit, are:

STREET	FROM	TO	ON
Fourth Street	Castro Street	Martin Luther King Jr. Way	Both sides of street
Fourth Street	Martin Luther King Jr. Way	Jefferson Street	North side of street
Fourth Street	Jefferson Street	Clay Street	Both sides of street
Fourth Street	Alice Street	Jackson Street	South side of street
Fourth Street	Jackson Street	Oak Street	Both sides of street
Third Street	Brush Street	Martin Luther King Jr. Way	South side of street
Third Street	Jefferson Street	Clay Street	South side of street
Third Street	Clay Street	Washington Street	Both sides of street
Third Street	Franklin Street	Alice Street	Both sides of street
Third Street	Alice Street	Madison Street	South side of street
Third Street	Madison Street	Oak Street	North side of street
Second Street	Brush Street	Martin Luther King Jr. Way	Both sides of street
Second Street	Martin Luther King Jr. Way	Jefferson Street	South side of street
Second Street	Clay Street	Washington Street	Both sides of street
Second Street	Franklin Street	Harrison Street	Both sides of street
Second Street	Harrison Street	Alice Street	North side of street
Second Street	Alice Street	Oak Street	Both sides of street
Brush Street	Third Street	Embarcadero	East side of street
Castro Street	Fifth Street	Third Street	East side of street
Castro Street	Third Street	Second Street	Both sides of street
Martin Luther King Jr. Way	Fifth Street	Fourth Street	Both sides of street
Martin Luther King Jr. Way	Fourth Street	Second Street	West side of street
Martin Luther King Jr. Way	Second Street	Embarcadero	Both sides of street
Jefferson Street	Fourth Street	Third Street	East side of street
Jefferson Street	Third Street	Second Street	West side of street
Jefferson Street	Second Street	Embarcadero	Both sides of street
Clay Street	Fourth Street	Third Street	West side of street
Webster Street	Fourth Street	Third Street	Both sides of street
Harrison Street	Fourth Street	Second Street	Both sides of street
Alice Street	Fourth Street	Second Street	Both sides of street
Jackson Street	Fourth Street	Third Street	West side of street
Jackson Street	Third Street	Embarcadero	Both sides of street
Madison Street	Fourth Street	Third Street	West side of street
Madison Street	Third Street	Embarcadero	Both sides of street
Oak Street	Fourth Street	Third Street	West side of street
Oak Street	Second Street	Embarcadero	West side of street

The streets or portions of streets where signs will be posted limiting parking to four hours from Monday to Friday, 8:00 a.m. to 6:00 p.m., with NO exemption to the four-hour limit given to vehicles displaying a Jack London District Mixed Used Parking Permit, are:

STREET	FROM	TO	ON
Fourth Street	Webster Street	Alice Street	Both sides of street



**SUMMARY OF JLDA's PERMIT PARKING PROGRAM PROPOSAL**

1. Within the boundary of the proposed Mixed-Use District Permit Parking Program (dashed red line), wherever curb and gutter has been installed and parking is currently unregulated by meters or signs, JLDA proposes that the City install signs indicating that this is a time limited parking zone.
2. Wherever parking is currently unregulated by meters or signs, JLDA proposes the City install signs indicating a default time limit of 4 hour parking (green line). Apparently this was approved June 1, 2001 by City Council agenda item 9-22, but has never been implemented.
3. JLDA proposes that business owners and residents in the district be eligible to purchase parking permits to exempt vehicles from posted 4-hour time limits. Vehicles would not be exempted from parking meter, painted curb, or street sweeping stations, or from 1-hour and 2-hour parking zones.
4. JLDA proposes new 1-hour and 2 hour parking zones be installed wherever a majority of existing restaurants, retailers, and other businesses request them. Several blocks are shown on the map where discussions have already taken place (yellow line). Others may be requested and should be considered on a case by case basis.

KEY: TIME-LIMITED PARKING & PERMIT PARKING PROGRAM	
	Existing Time-Limited Parking Zones
	Existing Parking Meters
	Proposed New 1-HR & 2-HR Parking Zones (Permit Parking Prohibited)
	Proposed 4-HR Parking Zones (Permit Parking Allowed)
	Proposed New 4 HR Parking Zones (Permit Parking NOT Allowed)
	Proposed Boundary of Mixed Use District Permit Parking Program

(Ord. 12891 § 2 (Exhibit B), 2008; Ord. 12888 § 2 (Exhibit B), 2008; Ord. 12864 §§ 1, 2, 2008; Ord. 12847 § 1 (part), 2007)



**10.45.060 Modification after designation of the Jack London District designated mixed use permit parking area.**

The City Council may, by resolution, modify the existing boundaries of the Jack London District mixed use permit parking area based upon documentation from the Traffic Engineering Services Division, the Jack London District Association or other party that it is in the public interest to modify the boundary during the three year period of operation of the Jack London mixed use parking permit program.

(Ord. 12847 § 1 (part), 2007)

**10.45.070 Issuance of Jack London District mixed use parking permits.**

A. Jack London District mixed use parking permits shall be issued by the Finance and Management Agency in accordance with requirements set forth in this chapter. Each such permit shall be designed to state or reflect thereon identification of the Jack London District mixed use parking permit area as well as the license number of the motor vehicle for which it is issued. No more than one Jack London District mixed use parking permit shall be issued to each motor vehicle owned or leased for which application is made.

B. The Finance and Management Agency shall issue Jack London District mixed use parking permits with a term of one year from the date the Jack London District designated mixed use parking permit area becomes effective.

C. One Jack London District mixed use parking permit may be issued for each vehicle owned, leased or under the continuing custody of any person who can demonstrate that they are currently a resident, employee, business owner or a representative of a neighborhood serving establishment located within the Jack London District designated mixed use parking permit area.

D. Renewal of Jack London District mixed use parking permits shall be subject to the same conditions imposed on new permits.

E. The Finance and Management Agency is authorized to issue such rules and regulations, not

inconsistent with this chapter, governing issuance and display of Jack London District mixed use parking permits.

F. Any person to whom a Jack London District mixed use parking permit has been issued pursuant to this chapter shall be deemed to be a Jack London District mixed use parking permit holder.

(Ord. 12847 § 1 (part), 2007)

**10.45.080 Visitor permits.**

The Finance and Management Agency shall issue visitor parking permits for the Jack London District designated mixed use parking permit area in accordance with chapter 10.44.080 of the Oakland Municipal Code.

(Ord. 12847 § 1 (part), 2007)

**10.45.090 Parking permit fees.**

Initial purchase, renewal, or replacement of lost, stolen or damaged Jack London mixed use parking permits shall be subject to the fees set forth in the City of Oakland master fee schedule. The fee for each visitor parking permit shall be as set forth in the City of Oakland master fee schedule.

(Ord. 12847 § 1 (part), 2007)

**10.45.100 Posting of Jack London District designated mixed use parking permit area.**

Upon adoption of this chapter, the Director of Public Works shall cause appropriate signs to be erected in the Jack London District designated mixed use parking permit area, indicating prominently thereon the time limitation, period of day for its application, and conditions under which permit parking shall be exempt therefrom.

(Ord. 12847 § 1 (part), 2007)

**10.45.110 Revocation of Jack London District mixed use parking permit.**

The revocation provision set forth in Chapter 10.44.110 shall apply to the Jack London District mixed use parking permit program.

(Ord. 12847 § 1 (part), 2007)

**10.45.120 Violation and Penalty.**

The violations and penalty provision set forth in Chapter 10.44.120 shall apply to the Jack London District mixed use parking permit program.  
(Ord. 12847 § 1 (part), 2007)

**10.45.130 Chapter interpretation.**

The Community and Economic Development Agency Director or his or her designee shall have the discretion in the implementation and interpretation of this chapter.

(Ord. 12847 § 1 (part), 2007)

**10.45.140 Three year time limit.**

This chapter shall terminate and become null and void three years after it becomes effective. The effective date of the chapter shall be defined as either the date of program implementation or not later than one hundred and twenty (120) days after adoption, whichever occurs first.

(Ord. 12847 § 1 (part), 2007)

**10.45.150 Extension of the three-year time limit.**

The three-year time limit, which expires at the end of June 2011, is hereby extended until such time when a comprehensive parking study that recommends parking strategies for the Jack London District is completed and implemented. The extension shall be at least one year in duration and shall not expire before the end of June 2012.

(Ord. No. 13069, § 1, 6-21-2011)

**Chapter 10.48****PARKING FINES****Sections:**

- 10.48.010 Schedule of parking fines.**
- 10.48.020 Assessment of fees and penalties for processing parking notices of violation.**
- 10.48.025 Imposition of county and state surcharges.**
- 10.48.030 Fee for collection of delinquent penalty payments.**

**10.48.010 Schedule of parking fines.**

A. The following schedule sets specific fines for Oakland Traffic Code violations:

<b>Oakland Traffic Code Section</b>	<b>Description</b>	<b>Fine</b>
10.08.150	Obstructing normal flow of traffic	\$28.00
10.16.070	Parking on private property	\$35.00
10.16.090	Failure to cramp wheels on grade	\$32.00
10.16.110	Obedience to signs and barriers	\$70.00
10.28.020	No parking in parkway	\$55.00
10.28.030	Abandoned/using street for storage	\$250.00
10.28.040	Parking vehicle wrong on a one-way street	\$40.00
10.28.040A	Over 18" from curb	\$60.00
10.28.040B	Parked wrong way on a two-way street	\$60.00
10.28.040D	Parking within parking space markings	\$55.00
10.28.050	Angle parking (within markings)	\$35.00
10.28.060	Angle parking unloading—Must have permit	\$32.00
10.28.070	No parking adjacent to school	\$122.00
10.28.080	No stopping/parking in signed zone (narrow street)	\$30.00
10.28.090C	No parking within 20' of signal or stop sign	\$32.00
10.28.100	Emergency—No parking (temporary signs)	\$32.00
10.28.120	Parking commercial vehicles in residential district—Over 10,000 pounds	\$270.00
10.28.130	Parking of commercial vehicles—7,000 to 10,000 pounds	\$270.00
10.28.150	Key in ignition	\$32.00
10.28.160	Parking prohibited—Unattached trailer	\$90.00
10.28.170	Parking prohibited—Tall vehicles	\$50.00
10.28.180	One-hour zone	\$70.00
10.28.190	Two-hour zone	\$70.00
10.28.210	Four-hour zone	\$70.00
10.28.240	No parking—Certain hours	\$53.00

<b>Oakland Traffic Code Section</b>	<b>Description</b>	<b>Fine</b>
10.28.250	No parking any time	\$70.00
10.28.260	No parking 3 a.m.—6 a.m.	\$32.00
10.32.020	Parking for official cars (City Hall press vehicles)	\$32.00
10.32.030	Parking for official cars (City Hall Administration Building)	\$35.00
10.32.100	Parking for official cars (OPD and county of Alameda)	\$35.00
10.32.130	Parking for official cars (Fire Department)	\$35.00
10.32.140	Parking for official cars (county cars)	\$35.00
10.32.150	Parking for official cars (U.S. mail vehicle)	\$35.00
10.32.170	Parking by permit—City cars and authorized City employees	\$35.00
10.32.180	Traffic in parks	\$32.00
10.36.020	Parking over space markings	\$55.00
10.36.030 A	Meters	\$35.00
10.36.030 B	Valid parking receipt not displayed	\$55.00
10.36.050 A and B	Parking meter violation—Expired	\$45.00
10.36.060	Meter—Overtime (meter feeding)	\$45.00
10.36.100	Meter—Expired—Off-street meter	\$45.00
10.40.020A1	No parking—Red Zone	\$70.00
10.40.020A4	No parking—Green Zone	\$80.00
10.40.030B	Special zones—Sign posted for loading/unloading passengers or materials	\$50.00
10.40.060	No parking in Yellow Zones	\$80.00
10.40.070	No parking in White Zones	\$80.00
10.40.080	Standing in alley	\$32.00
10.40.090E	No parking—Bus zone	\$252.00
10.40.100	Bus to park/stop within 18 of curb	\$40.00
10.40.110	No parking—Taxi zone	\$50.00
10.44.120A	Residential permit parking zone	\$70.00
10.52.010	Certain vehicles prohibited	\$32.00
10.56.270	Parking prohibited	\$32.00
10.56.290	No Parking in Red Zones (Airport Ground Traffic)	\$50.00
10.56.300	No Parking in Green Zones (Airport Ground Traffic)	\$50.00
10.56.310	No Parking in Yellow Zones (Airport Ground Traffic)	\$50.00
10.56.320	No Parking in White Zones (Airport Ground Traffic)	\$50.00
10.56.330	Improper parking	\$32.00
10.56.350	Parallel parking	\$32.00

<b>Oakland Traffic Code Section</b>	<b>Description</b>	<b>Fine</b>
10.56.360	Parking in Cross Walk (Airport Ground Traffic)	\$50.00
10.64.170	Misdemeanor to abandon or keep vehicles of type regulated by this chapter	\$250.00
10.64.180	Misdemeanor to fail to remove vehicles after order to do so	\$250.00

B. The following schedule sets specific fines for State Vehicle Code violations:

<b>State Vehicle Code Section</b>	<b>Description</b>	<b>Fine</b>
4461(b)	Improper lending of distinguishing placards and special license plates	\$510.00
4461(c)	Improper display of, and misuse or abuse of distinguishing placards and special license plates	\$510.00
4461(d)	Parking in designated spaces while misusing distinguishing placards and special license plates	\$510.00
4463(c)	Use of a counterfeit, forged, altered or mutilated placard or special license plate	\$510.00
5200	Missing license plates	\$90.00
5204(a)	Current tabs not attached	\$80.00
21113(a)	Parking on public grounds	\$65.00
22500	Improper parking, citation category not specified	\$110.00
22500(a)	No parking—Intersection	\$85.00
22500(b)	No parking—Crosswalk	\$85.00
22500(c)	No parking—Safety zone (red zone between stop bar and right-hand curb)	\$85.00
22500(d)	No parking within 15' of fire station driveway	\$85.00
22500(e)	No parking—Driveway	\$85.00
22500(f)	No parking—Sidewalk	\$100.00
22500(g)	No parking—Obstructing construction traffic	\$60.00
22500(h)	No parking—Double parked	\$75.00
22500(j)	No parking—Tunnel	\$60.00
22500(k)	No parking—Bridge	\$60.00
22500.1	No parking—Fire lane	\$100.00
22500.I	Bus Zone	\$280.00
22500.L	Wheelchair Access	\$280.00
22502	18" from curb (or distance from curb)	\$60.00
22505	No parking—State highway areas	\$50.00
22507.8	Disabled person parking space	\$368.00

**State Vehicle Code**

<b>Section</b>	<b>Description</b>	<b>Fine</b>
22507.8A	Disabled person parking space	\$368.00
22507.8B	Disabled person parking space	\$368.00
22507.8C	Disabled parking—Hatch marks	\$368.00
22513	No solicitation by tow truck	\$110.00
22514	No parking—Fire hydrant	\$100.00
22515	Improper parking—Wheels not blocked/brakes not set	\$70.00
22516	Locked vehicle—Person unable to escape	\$100.00
22520	No parking on freeway	\$260.00
22520.5	Vending on freeway prohibited	\$260.00
22521	No parking on/near railroad track	\$75.00
22522	Three feet from sidewalk access ramp	\$313.00
22658(a)	Removal from private property	\$50.00
22951	No street/alley parking from offstreet lot	\$40.00
23333	No parking—Vehicular crossing	\$70.00

(Ord. No. 13002, § 1, 4-20-2010; Ord. No. 13000, § 1, 4-20-2010; Ord. No. 12953, §§ 1, 2, 7-7-2009; Ord. No. 12952, § 1, 7-7-2009; Ord. 12898 § 1 (part), 2008; Ord. 12814 § 1, 2007; Ord. 12813 § 1 (part), 2007; Ord. 12510 § 1, 2003; Ord. 12508, 2003; Ord. 12473 § 1, 2003; Ord. 12472, 2003; Ord. 12339 § 2, 2001; Ord. 12170 § 2, 1999; Ord. 12038 § 3, 1998; Ord. 11985 § 1, 1997; Ord. 11975 § 1, 1997; amended during 1997 codification; Ord. 11792-A § 2, 1995; prior traffic code § 401)

#### **10.48.020 Assessment of fees and penalties for processing parking notices of violation.**

A. The City will pass on to the parking violation ticket vehicle owner the amount charged by the Department of Motor Vehicles for the look up fee and registration holds.

B. The City will charge a fee of two dollars (\$2.00) to ticket holders to furnish a copy of the original parking notice of verification.

C. The penalty assessed for delinquent-parking citations will be one hundred (100) percent of the original amount, twenty-two (22) days after issuance of the citation or fifteen (15) days after the notice of delinquency, whichever is later, and two hundred fifty (250) percent of the original amount, thirty (30) days later.

D. The City will charge a fee of three dollars and fifty cents (\$3.50) to produce an abstract of

proof of payment so that delinquent ticket holders may obtain a release of a DMV registration hold.

(Ord. 17171 § 1, 1999; Ord. 11648, 1993)

#### **10.48.025 Imposition of county and state surcharges.**

For any parking offense under any ordinance or the California Vehicle Code, there shall be added to and imposed with the base fine a \$13.00 surcharge. Upon the expiration of California Senate Bill 857, said surcharge shall be \$10.00. The use of such surcharge shall be restricted for payments by the City to the county or the state required by law or to reimburse the City for such payments.

Each ticket for a parking violation shall specify separately the amount of the base fine and the amount for any surcharge that is required to be paid by the City to the county or the state.

(Ord. No. 13055, § 1, 12-21-2010; Ord. No. 12928, § 1, 5-5-2009)

**10.48.030 Fee for collection of delinquent  
penalty payments.**

If the City incurs collection costs in conjunction with the assignment of a parking citation for collection, that cost shall be added to the penalty, and the violator shall be liable to the City for both the civil penalties and the collection costs.

(Ord. 12773, 2006)



**Chapter 10.52**

**COMMERCIAL VEHICLES AND VEHICLE  
SIZE AND WEIGHT LIMITS**

**Sections:**

<b>10.52.010</b>	<b>Certain vehicles prohibited in central traffic district.</b>	<b>10.52.090</b>	<b>Through truck route "C" covering truck travel between the intersection of the Eastshore Freeway (State Route 69) and the Oakland-San Leandro boundary and the distribution structure of the San Francisco-Oakland Bridge.</b>
<b>10.52.020</b>	<b>Commercial vehicles prohibited from using certain streets.</b>	<b>10.52.100</b>	<b>Through truck route "D" covering truck travel between the northerly city boundary at the Broadway low level tunnel and the distribution structure of the San Francisco-Oakland Bay Bridge.</b>
<b>10.52.030</b>	<b>Heavy loads on streets in restricted districts.</b>		
<b>10.52.040</b>	<b>Restricted districts.</b>		
<b>10.52.050</b>	<b>Vehicles exceeding four and one-half tons prohibited use of certain streets between eleven p.m. and six a.m.</b>	<b>10.52.110</b>	<b>Deviations.</b>
<b>10.52.060</b>	<b>Vehicles exceeding four and one-half tons prohibited use on certain streets.</b>	<b>10.52.120</b>	<b>Local truck routes.</b>
<b>10.52.065</b>	<b>Vehicles exceeding twenty-two feet long prohibited on certain streets.</b>	<b>10.52.130</b>	<b>Vehicles exceeding four and one-half tons prohibited use of MacArthur Freeway.</b>
<b>10.52.070</b>	<b>Through truck route "A" covering truck travel between intersection of California Highway Route 5 (U.S. Route 50) and the Oakland-San Leandro boundary and the distribution structure of the San Francisco-Oakland Bay Bridge.</b>	<b>10.52.140</b>	<b>Interstate truck terminals.</b>
<b>10.52.080</b>	<b>Through truck route "B" covering truck travel between intersection of San Leandro Street and the Oakland-San Leandro boundary and the distribution structure of the San Francisco-Bay Bridge.</b>	<b>10.52.010</b>	<b>Certain vehicles prohibited in central traffic district.</b>

A. No person shall operate any of the following vehicles in the central traffic district between the hours of seven a.m. and six p.m. of any day:

1. Any freight vehicle more than eight and one-half feet in width, with load, or any freight vehicle so loaded that any part of its load extends more than twenty (20) feet to the front or rear of said vehicle;
2. Any vehicle carrying building material that has not been loaded, or is not to be unloaded, at some point within the central traffic district;
3. Any freight vehicle with a trailer;
4. Any vehicle carrying crude or fuel oil.

B. Provided that the Chief of Police may by written permit authorize the operation of any such vehicle for the purpose of making necessary emergency deliveries to or from points within the central traffic district. (Prior traffic code § 184)

**10.52.020    Commercial vehicles prohibited from using certain streets.**

A. Whenever the Council of this city designates and describes any street or portion thereof as a street the use of which by any commercial vehicle is prohibited, the Traffic Engineer shall erect and maintain appropriate signs on those streets so designated.

B. Those streets and parts of streets so marked are declared to be streets the use of which by any commercial vehicle is prohibited. The provisions of this section shall not apply to passenger buses under the jurisdiction of the Public Utilities Commission. (Prior traffic code § 188)

**10.52.030    Heavy loads on streets in restricted districts.**

When the streets in question are appropriately signposted no vehicle of any kind or nature whatsoever (other than passenger buses and passenger stages referred to in Section 50-1/4 of the Public Utilities Act of the state of California) shall be operated or moved upon or over any of the streets hereinafter in Section 10.52.040 designated without a permit as provided in this section, when the total weight of vehicle and load exceeds four and one-half tons.

This section shall not apply to, and shall not prohibit any commercial vehicle as defined by the California Vehicle Code having a loaded weight in excess of the limit herein prescribed, from using any of such streets by direct route from a street the use of which is not restricted as to such vehicles for the purpose of delivering or loading for transportation goods, wares or merchandise without such permit.

The Superintendent of Streets may, by written permit, authorize the operation of a vehicle or vehicles upon any of the streets hereinafter in Section 10.52.040 set forth, when the total weight of such vehicle or vehicles exceeds the maximum weight prescribed in this section, if, in the judgement of the Superintendent of Streets, streets upon which such vehicle is to be operated can safely withstand the additional weight for a limited operation. Such permit shall be granted upon such conditions and

upon depositing such bond as the Superintendent of Streets, may, in his or her discretion, require. (Prior traffic code § 189)

**10.52.040    Restricted districts.**

The streets referred to in Section 10.52.030 are described as follows: Lakeshore Avenue from 12th Street to Embarcadero; Harrison Boulevard from 20th Street to 24th Street and Bay Place; Lakeside Drive from Oak Street to Harrison Boulevard; Edes Avenue from Eastshore Freeway to 105th Avenue; and Elmar Avenue from 98th Avenue to 99th Avenue. (Prior traffic code § 190)

**10.52.050    Vehicles exceeding four and one-half tons prohibited use of certain streets between eleven p.m. and six a.m.**

When such streets are appropriately signposted, the use of the hereinafter described portions of the hereinafter named streets or highways by any motor vehicle (other than passenger buses and passenger stages referred to in Section 50-1/4 of the Public Utilities Act of the state of California) when the total weight of the vehicle and load exceeds four and one-half tons, except for the purpose of loading and unloading thereon, is prohibited, between the hours of eleven p.m. and six a.m.

The streets and portions thereof referred to in the preceding paragraph are: 14th Street from 12th Street to Webster Street, and 13th Street from 14th Street to Webster Street. (Prior traffic code § 191)

**10.52.060    Vehicles exceeding four and one-half tons prohibited use on certain streets.**

When such streets are appropriately sign posted, the use of the hereinafter described portion of the hereinafter named streets by any motor vehicle (other than passenger buses and passenger stages referred to in Section 50-1/4 of the Public Utilities Act of the state of California), when the total weight of the vehicle and load exceeds four and one-half tons, except for the purpose of loading and unloading thereon, is prohibited.

The streets are portions thereof referred to in the preceding paragraph are:

<b>Street</b>	<b>From</b>	<b>To</b>
21st Avenue	Foothill Boulevard	East 27th Street
39th Avenue	MacArthur Boulevard	Mountain Boulevard
50th Avenue	East 12th Street	East 14th Street
50th Avenue	International Boulevard	East 12th Street
51st Avenue	San Leandro Street	East 14th Street
52nd Avenue	San Leandro Street	East 14th Street
53rd Avenue	East 12th Street	East 14th Street
54th Avenue	San Leandro Street	East 14th Street
73rd Avenue	MacArthur Boulevard	Hillmont Drive
100th Avenue	East 14th Street	E Street
102nd Avenue	East 14th Street	E Street
103rd Avenue	East 14th Street	E Street
104th Avenue	East 14th Street	E Street
3rd Street	Peralta Street	Mandela Parkway
5th Street	Peralta Street	Mandela Parkway
8th Street	Nelson Mandela Parkway	Wood Street
9th Street	Pine Street	Willow Street
9th Street	Peralta Street	Mandela Parkway
10th Street	Center Street	Mandela Parkway
10th Street	Peralta Street	Pine Street
11th Street	Pine Street	Peralta Street
11th Street	Center Street	Mandela Parkway
12th Street	Wood Street	Mandela Parkway
13th Street	Wood Street	Center Street
14th Street	Brush Street	Union Street
14th Street	Union Street	Mandela Parkway

<b>Street</b>	<b>From</b>	<b>To</b>
15th Street	Willow Street	Peralta Street
16th Street	Willow Street	Peralta Street
18th Street	Market Street	Mandela Parkway
24th Street	Peralta Street	Adeline Street
26th Street	Peralta Street	Adeline Street
28th Street	Poplar Street	Adeline Street
28th Street	Telegraph Avenue	Webster Street
29th Street	Broadway	Harrison Street
29th Street	Telegraph Avenue	Broadway
30th Street	Peralta Street	Adeline Street
30th Street	San Pablo Avenue	Telegraph Avenue
30th Street	Telegraph Avenue	Broadway
32nd Street	Mandela Parkway	Peralta Street
32nd Street	Peralta Street	Adeline Street
34th Street	Telegraph Avenue	Webster Street
45th Street	Linden Street	Market Street
45th Street	Market Street	Linden Street
53rd Street	Emeryville City Limit	Lowell Street
53rd Street	Market Street	Martin Luther King Jr. Way
54th Street	Emeryville City Limit	San Pablo Avenue
57th Street	Gaskill Street	Lowell Street
57th Street	San Pablo Avenue	Gaskill Street
57th Street	Lowell Street	Adeline Street
57th Street	Shattuck Avenue	Telegraph Avenue
60th Street	Telegraph Avenue	Canning Street
63rd Street	Shattuck Avenue	Racine Street
63rd Street	Vallejo Street	San Pablo Avenue
65th Street	Berkeley City Limit	Shattuck Avenue

<b>Street</b>	<b>From</b>	<b>To</b>
East 10th Street	50th Avenue	54th Avenue
East 12th Street	50th Avenue	54th Avenue
Adeline Street	7th Street	West Grand Avenue
Aileen Street	Shattuck Avenue	Telegraph Avenue
Andover Street	34th Street	Northerly terminus at MacArthur Freeway
Apricot Street	San Leandro City Limits	107th Avenue
Argyle Avenue	Dublin Avenue	Kearney Avenue
Bond Street	46th Avenue	Havenscourt Boulevard
Campbell Street	7th Street	16th Street
Campbell Street	Mandela Parkway	28th Street
Carso Street	Tompkins Avenue	Aliso Avenue
Center Street	3rd Street	12th Street
Center Street	7th Street	Peralta Street
Central Avenue	Summit Street	Webster Street
Chabot Road	Claremont Avenue	College Avenue
Chase Street	Pine Street	Willow Street
Chester Street	3rd Street	12th Street
Denslowe Street	Caswell Avenue	Darien Avenue
Dublin Avenue	Mountain Boulevard	Argyle Avenue
E Street	98th Avenue	105th Avenue
E Street	92nd Avenue	94th Avenue
Edwards Avenue	Sunkist Drive	Eastbound I-580 Offramp
Elm Street	Hawthorne Avenue	Northerly terminus at MacArthur Freeway
Empire Road	Cairo Road	98th Avenue
Fitzgerald Street	Peralta Street	Haven Street
Goss Street	Pine Street	Willow Street
Hannah Street	Peralta Street	34th Street
Havenscourt Boulevard	East 14th Street	Bancroft Avenue
Hawthorne Street	Telegraph Avenue	Broadway
Helen Street	Peralta Street	34th Street
Henry Street	3rd Street	7th Street
High Street	MacArthur Boulevard	Tompkins Avenue
Hillmont Drive	Sunnymere Avenue	73rd Avenue
Kearney Avenue	Mountain Boulevard	Argyle Avenue
Lee Street	Grand Avenue	Van Buren Avenue

<b>Street</b>	<b>From</b>	<b>To</b>
Lewis Street	3rd Street	Peralta Street
Lincoln Avenue (Southbound)	Monterey Boulevard	MacArthur Boulevard
Louise Street	Peralta Street	34th Street
Lyndhurst Street	98th Avenue	Stoneford Avenue
Maddux Drive	Edes Avenue	Stoneford Avenue
Manila Avenue	MacArthur Boulevard	38th Avenue
McClude Street	29th Street	30th Street
McElroy Street	Chase Street	9th Street
Napier Avenue	Piedmont Avenue	Richmond Boulevard
Oak Grove Avenue	College Avenue	Forest Street
Peralta Street	3rd Street	16th Street
Peralta Street	Mandela Parkway	28th Street
Pine Street	Goss Street	10th Street
Poplar Street	West Grand Avenue	Peralta Street
Ramona Avenue	Piedmont Avenue	Moraga Avenue
Salem Street	Alcatraz Avenue	Northerly terminus of Salem Street
San Leandro Tunnel	Moorpark Street	Stone Street
Shorey Street	Wood Street	Pine Street
Summit Street	28th Street	Central Avenue
Sunkist Drive	Hillmont Drive	Edwards Avenue
Sunnymere Avenue	Seminary Avenue	Edwards Avenue
Tompkins Avenue	High Street	Carson Street
Union Street	West Grand Avenue	Peralta Street
Webster Street	27th Street	34th Street
Willow Street	7th Street	13th Street
Wood Street	7th Street	12th Street

(Ord. No. 13070, § 1, 6-21-2011; Ord. 12206 § 1, 2000; Ord. 12173 § 1, 1999; Ord. 12125 § 1, 1999; Ord. 12109 § 1, 1999; Ord. 12068 § 1, 1998; Ord. 12053 §§ 1, 2, 1998; Ord. 12018 § 1, 1997; Ord. 11791 § 1, 1995; prior traffic code § 192)

#### **10.52.065 Vehicles exceeding twenty-two feet long prohibited on certain streets.**

A. When such streets are appropriately signposted, the use of the described portion of the streets named in subsection B of this section by any motor vehicle (other than passenger buses and

passenger stages referred to in Section 50-1/4 of the Public Utilities Act of the State of California), when the total length of the vehicle exceeds twenty-two (22) feet, except for the purpose of loading and unloading thereon, is prohibited.

B. The streets or portions thereof referred in subsection A of this section are:

<b>Street</b>	<b>From</b>	<b>To</b>
Brookside Avenue	Ocean View Drive	Eustice Avenue
Castle Drive	Skyline Boulevard	Mountaingate Way
Mountaingate Way	Ascot Drive	Castle Drive

(Ord. 12765, 2006; Ord. 12109 § 2, 1999)

**10.52.070 Through truck route "A" covering truck travel between intersection of California Highway Route 5 (U.S. Route 50) and the Oakland-San Leandro boundary and the distribution structure of the San Francisco-Oakland Bay Bridge.**

For motor truck travel between the intersection of California Highway Route 5 (U.S. Route 50) and the Oakland-San Leandro city boundary and the distribution structure of the San Francisco-Oakland Bay Bridge, the following through truck route is established: MacArthur Boulevard from the easterly San Leandro city to 90th Avenue; 90th Avenue from MacArthur Boulevard to International Boulevard (East 14th Street); International Boulevard from 90th Avenue to 81st Avenue; 81st Avenue from International Boulevard to San Leandro Street; San Leandro Street from 81st Avenue to Fruitvale Avenue; Fruitvale Avenue from San Leandro Street to East 12th Street; East 12th Street from Fruitvale Avenue to 14th Avenue; East 8th Street from 14th Avenue to 5th Avenue; 7th Street from 5th Avenue to Fallon Street; Fallon Street (northbound) from 7th Street to 8th Street (northbound); 7th Street (eastbound) from Fallon Street to Castro Street (eastbound); 8th Street (westbound) from Fallon Street to 7th Street (westbound); 7th Street from Castro Street to Union Street; Union Street from 7th Street to 5th Street; Interstate 880 from 5th Street to the San Francisco-Oakland Bay Bridge distribution structure.

When authorized signs are in place giving notice thereof, it is unlawful for any operator of a motor truck or trucking combination entering the city of Oakland over California State Highway Route 5 (U.S. Route 50) at the Oakland-San Leandro city boundary and making a westbound

trip through the city of Oakland toward the distribution structure of the San Francisco-Oakland Bay Bridge or making an eastbound trip through the city of Oakland from the San Francisco-Oakland Bay Bridge distribution structure toward the Oakland-San Leandro boundary at MacArthur Boulevard to operate or propel such motor truck or trucking combination over any other route than that hereinabove set forth for such operation.

For the purpose of this section and Sections 10.52.080 through 10.52.120, a motor truck is a motor vehicle over twenty (20) feet in length designed, used, or maintained primarily for the transportation of property; and a "trucking combination" is any combination of vehicles designed, used or maintained for the transportation of property coupled together exceeding a total weight of twenty (20) feet and including any of the following kinds of vehicles: motor truck; tractor and semi-trailer; tractor, semi-trailer and trailer; truck and trailer; non-trailer; or trailer coach.

(Ord. 12701 § 1, 2005: Prior traffic code § 201)

**10.52.080 Through truck route "B" covering truck travel between intersection of San Leandro Street and the Oakland-San Leandro boundary and the distribution structure of the San Francisco-Bay Bridge.**

For motor truck travel between the intersection of San Leandro Street and the Oakland-San Leandro city boundary and the distribution structure of the San Francisco-Oakland Bay Bridge, the following through truck route is established: San Leandro Street from the San Leandro city boundary to 81st Avenue and thence by Route "A" as described in Section 10.52.070 to the distribution structure of the San Francisco-Oakland Bay Bridge.

When authorized signs are in place giving notice thereof, it is unlawful for any operator or any such motor truck or trucking combination entering the city of Oakland over San Leandro Street at the Oakland-San Leandro city boundary and making a westbound trip through the city of Oakland toward the distribution structure of the San Francisco-Oakland Bay Bridge or making an eastbound trip through the city of Oakland from the San Francisco-Oakland Bay Bridge distribution structure toward the Oakland-San Leandro city boundary at San Leandro Street to operate or propel such motor truck or trucking combination over any other route than that hereinabove set forth for such operation.

(Prior traffic code § 201)

**10.52.090 Through truck route "C" covering truck travel between the intersection of the Eastshore Freeway (State Route 69) and the Oakland-San Leandro boundary and the distribution structure of the San Francisco-Oakland Bridge.**

For motor truck travel between the intersection of the Eastshore Freeway (State Route 69) and the Oakland-San Leandro city boundary and the distribution structure of the San Francisco-Oakland Bay Bridge, the following through truck route is established: Eastshore Freeway from the San Leandro city limits to Fallon Street and thence by 6th Street (westbound), Madison Street (northbound), Jackson Street (southbound); 5th Street (eastbound) and thence by Route "A" to the distribution structure of the San Francisco-Oakland Bay Bridge.

When authorized signs are in place giving notice thereof, it is unlawful for any operator of any such motor truck or trucking combination entering the city of Oakland over the Eastshore Freeway (State Route 69) at the Oakland-San Leandro city boundary and making a westbound trip through the city of Oakland toward the distribution structure of the San

Francisco-Oakland Bay Bridge or making an eastbound trip through the city of Oakland from the San Francisco-Oakland city boundary at the Eastshore Freeway to operate or propel such motor truck or trucking combination over any other route than that hereinabove set forth for such operation. (Prior traffic code § 202)

**10.52.100 Through truck route "D" covering truck travel between the northerly city boundary at the Broadway low level tunnel and the distribution structure of the San Francisco-Oakland Bay Bridge.**

For motor truck travel between the northerly city boundary at the Broadway low level tunnel and the distribution structure of the San Francisco-Oakland Bay Bridge, the following through truck route is established: Broadway between the northerly city boundary line at the Broadway low level tunnel to MacArthur Boulevard, MacArthur Boulevard from Broadway to the easterly boundary of the city of Emeryville and thence from the southerly boundary of the city of Emeryville by State Route 5 to the distribution structure of the San Francisco-Oakland Bay Bridge.

When authorized signs are in place giving notice thereof, it is unlawful for any operator of any such motor truck or trucking combination entering the city of Oakland over California Highway Route 75 through the Broadway low level tunnel and making a

southbound trip through the city of Oakland toward the distribution structure of the San Francisco-Oakland Bay Bridge or making a northbound trip through the city of Oakland from the distribution structure of the San Francisco-Oakland Bay Bridge toward the Broadway low level tunnel to operate or propel such motor truck or trucking combination over any other route than that hereinabove set forth for such operation. (Prior traffic code § 203)

**10.52.110 Deviations.**

Nothing in Section 10.52.070, 10.52.080, 10.52.090, or 10.52.100 shall be deemed to prohibit the operator of any motor truck or trucking combination traversing any of the foregoing through truck routes from leaving such routes for the purpose of loading or unloading such vehicle or vehicles at a point off of said route; provided that such deviation for the purpose of loading or unloading shall be taken over a route which keeps at a minimum the distance traveled off of the truck route involved. Nor shall anything in said sections be deemed to prohibit the use of combinations of the above through truck routes nor their use in combination with other authorized truck routes as a part of any given trip. (Prior traffic code § 204)

**10.52.120 Local truck routes.**

The following truck routes are established for the movement of motor trucks and trucking combinations as defined in Section 10.52.070:

Street	From	To
23rd Avenue	East 12th Street	29th Avenue
29th Avenue	23rd Avenue	Alameda City Limits
81st Avenue	San Leandro Street	East 14th Street
90th Avenue	East 14th Street	MacArthur Freeway
3rd Street	Market Street	Adeline Street
7th Street	Fallon Street	Port of Oakland
8th Street	Fallon Street	Nelson Mandela Parkway
East 8th Street	Fallon Street	14th Avenue
East 12th Street	14th Avenue	Fruitvale Avenue
East 14th Street	81st Avenue	90th Avenue
Adeline Street	8th Street	Middle Harbor Road

<b>Street</b>	<b>From</b>	<b>To</b>
Alameda Avenue	High Street	Fruitvale Avenue
Castro Street	7th Street	12th Street
Doolittle Drive	County Line	Alameda City Limits
Fruitvale Avenue	Alameda Avenue	Alameda City Limits
Hegenberger Road	East 14th Street	Doolittle Drive
High Street	San Leandro Street	Alameda City Limits
MacArthur Freeway	Distribution Structure	Grand Avenue
Macarthur Freeway	Edwards Avenue Interchange	Warren Freeway (State Route 13 Interchange)
MacArthur Freeway	Warren Freeway (State Route 13 Interchange)	Edwards Avenue Interchange
Maritime Street	7th Street	West Grand Avenue
Martin Luther King, Jr. Way	8th Street	Port of Oakland
Middle Harbor Road	Adeline Street	Naval Supply Depot
Nelson Mandela Parkway	8th Street	7th Street
Northgate Avenue	West Grand Avenue	27th Street
Peralta Street	12th Street	Emeryville City Limits
San Francisco-Oakland Bay Bridge and Approach	Distribution Structure	Oakland-San Francisco Boundary
San Pablo Avenue	Berkeley City Limits	Emeryville City Limits
West Grand Avenue	Maritime Street	Northgate Avenue

When authorized signs are in place giving notice thereof, the operator of any motor truck or trucking combination as defined in Section 10.52.070, shall drive on such route or routes and none other except when necessary to traverse another street or streets to a destination for the purpose of loading or unloading, but only then by such deviation from the nearest truck route as is reasonably necessary. (Ord. 12701 §§ 2—3, 2005; Prior traffic code § 205)

**10.52.130 Vehicles exceeding four and one-half tons prohibited use of MacArthur Freeway.**

A. When authorized signs are in place giving notice thereof, the use of MacArthur Freeway (U.S. Highway 50) in any direction and for any purpose between the Oakland-San Leandro cities' boundary and the Grand Avenue Interchange of the MacArthur Freeway by any motor vehicle (other than passenger buses and passenger stages referred to in Sections 1031—1036, inclusive, of the Public Utilities Code of California) when the total weight of the vehicle and load exceeds four and one-half tons is prohibited, except as allowed by Section 10.52.120.

B. Notwithstanding any other provision of the Oakland Traffic Code, Nimitz Freeway (State Sign Route 17) is designated an alternate route for the use of such motor vehicles as are prohibited the use of MacArthur Freeway, which alternate route shall remain unrestricted by any local regulation as to

weight limit or type of vehicle so long as this chapter remains in effect.

C. Sections 10.52.070 through 10.52.120 specifically by this reference are made applicable to such motor vehicles as are prohibited by use of MacArthur Freeway, and through truck routes "A," "B," "C," and "D" provided by said sections are designated as alternate routes for the use of such motor vehicles as are prohibited the use of MacArthur Freeway, which alternate routes shall remain unrestricted by any local regulations as to weight limit or type of vehicle so long as this chapter remains in effect.

D. Notwithstanding any other provision of the Oakland Traffic Code, the following local truck routes are designated as alternate routes for the use of such motor vehicles as are prohibited the use of MacArthur Freeway, which alternate routes shall remain unrestricted by local regulations as to weight limit of type of vehicle so long as this chapter remains in effect:

Street	From	To
23rd Avenue	East 8th Street	East 31st Street
35th Avenue	East 14th Street	MacArthur Boulevard
55th Avenue	East 14th Street	MacArthur Boulevard
73rd Avenue	San Leandro Street	MacArthur Boulevard
Ardley	East 31st Street	MacArthur Boulevard
Fruitvale	San Leandro Street	MacArthur Boulevard
High Street	East 14th Street	MacArthur Boulevard
Seminary Avenue	San Leandro Street	Mountain Boulevard

E. This section, and any ban of truck traffic on the MacArthur Freeway, whether expressed or implied in Sections 10.52.070 through 10.52.130, shall remain in effect until January 1, 1968, and if approval of the California Department of Public Works and of the Federal Government has been obtained prior to that date to its continuation, shall remain in effect indefinitely thereafter until such time as repealed by this Council. (Prior traffic code § 206)

**10.52.140 Interstate truck terminals.**

A. Permit. Upon application to operate an interstate truck terminal, and verification that an acceptable interstate truck is available between the proposed terminal and routes identified by state of California Department of Transportation, the city Traffic Engineer, subject to applicable planning and zoning regulations, is authorized and empowered to issue a permit to operate an interstate truck terminal. These permits shall be renewed annually. An Oakland business license shall also be required to operate the terminal.

B. Route. The City Traffic Engineer shall erect and maintain appropriate signs along interstate truck route accepted in subsection A of this section. Interstate trucks to and from the said terminal are permitted to use this signed route only. All costs of signing shall be paid by the applicant.

C. Fees. Applicant shall pay an application fee, an annual permit fee and a route signing fee as prescribed in the master fee schedule.

D. Route Modification. The applicant will also be required to pay all costs of route modifications that may be required to make a proposed interstate truck route acceptable to the City Traffic Engineer.

E. Revoke Permit. The City Traffic Engineer has the right to revoke any permit issued under this section when there is evidence which indicates that the terminal and/or interstate truck route does not provide for the safe operation of interstate trucks, or designate an alternate route. All costs involved in establishing an alternate route shall be paid by the terminal operator.

F. Appeals. The City Traffic Engineer's decision as to required route modifications, issuance of per-

mits to operate an interstate truck terminal and revocation of permits may be appealed to the City Council.

G. Definitions. For the purposes of this section the following definitions shall apply:

"Interstate truck" means a combination of vehicles consisting of a truck tractor and semitrailer, or of a truck tractor, semitrailer, and trailer that conform to the conditions set forth in Section 35401.5(a) of the California Vehicle Code.

"Interstate truck terminal" means a facility at which freight is consolidated to be shipped by and where full-load consignments may be off-loaded from interstate trucks, or at which interstate trucks are regularly maintained, stored, or manufactured. (Prior traffic code § 207)

## Chapter 10.53

### **EXTRALEGAL LOAD TRANSPORTATION PERMITS**

**Sections:**

- 10.53.010 Delegation to the Chief of Police.**
- 10.53.020 Definitions.**
- 10.53.030 Permits.**
- 10.53.040 Fees.**
- 10.53.050 Liability.**
- 10.53.060 Damage and accident reporting.**
- 10.53.070 Special restrictions.**
- 10.53.080 Police escort.**

**10.53.010 Delegation to the Chief of Police.**

All the powers granted to the city by Article 6 of Chapter 5 of Division 15 of the state of California Vehicle Code, pertaining to issuance of special permits for loads exceeding the maximum sizes and/or weights, and for administering the rules and regulations pertaining thereto, are hereby delegated to the Chief of Police. (Ord. 12373 (part), 2001)

**10.53.020 Definitions.**

A. Single Trip Transportation Permit. "Single trip transportation permit" means a permit that will allow a vehicle of extralegal size, weight, or load to operate on a single trip from a single point of origin to a single destination in one direction of travel.

B. Multiple Trip Transportation Permit. "Multiple trip transportation permit" means a permit that will allow a vehicle of an extralegal size, weight or load to operate on more than a single trip within the city. Such permit shall expire on the last day of the calendar year in which it was issued.

C. Extralegal Vehicle. "Extralegal vehicle" means a vehicle whose overall dimensions and/or weight exceeds those as defined as a legal vehicle in Section 320.5 of the California Vehicle Code. (Ord. 12373 (part), 2001)

**10.53.030 Permits.**

A. Application for Permit(s). All persons, firms or agencies desiring to move any load across or upon streets and highways within the city, which load exceeds any of the imposed limitations shall apply to and first receive a special extralegal load permit from the individual(s) so designated in this chapter. The permit shall specify the streets upon which the move is authorized and the date and time of the move. The permit holder shall be knowledgeable and in compliance with all applicable California conditions, requirements, and laws for the use of the highway system and in particular movement of extralegal vehicles and/or loads.

B. Possession of Permit. The extralegal load permit shall be carried in the vehicle to which it refers at all times while the vehicle is within the city limits.

C. Void Permits. Extralegal load permits shall be declared null and void if:

1. Any portion, part or section is illegible;
2. Permit is used before or after the times and date(s) indicated;
3. Any portion, part or section has been altered or if any attempt to alter is apparent;
4. Permit is used to represent proper authority for carrying a load and/or moving a vehicle which is not specifically described on the face of the permit;
5. Permit is used to represent proper authority for carrying a load and/or moving a vehicle by any person, firm, or agency not specifically named on the permit;
6. Permit is presented without the attachments specifically named on the face of the permit firmly affixed;
7. Permit holder fails to report an accident, damage to property, or the death and/or injury to persons incurred while carrying an extralegal load, as provided for in this chapter. (Ord. 12373 (part), 2001)

**10.53.040 Fees.**

A fee for issuance of the permit, as established pursuant to California Vehicle Code Section 35795(b), and set by the California Department of Transportation, shall be paid by the applicant prior to issuance of the permit. (Ord. 12373 (part), 2001)

**10.53.050 Liability.**

A. **Injury, Death of Person, Damage to Property.** The permit holder is responsible for all liability to, or death of person(s), or damage to property that may occur through any act or omission of either the permit holder or the city arising from the issuance of the permit. In the event any claim, suit or action is brought against the city, its officers, employees or agents thereof, by reason of, or in connection with any such act or omission, permit holder shall defend, indemnify, and hold harmless the city, its officers, employees or agents from such claim, suit or action.

B. **Repair of Damage.** Any person, firm or agency granted an extralegal load permit, as provided in Section 10.53.040, shall be liable for all damages to any street, highway, bridge, or appurtenances thereto, including but not limited to, guardrails, signs, traffic signals, street lights, street trees and similar facilities, resulting from the operation, driving or moving of any vehicle which exceeds any of the limitations imposed by Division 15 of the California Vehicle Code. The permit holder agrees to repair at his/her own expense, and to the satisfaction of the Director, Public Works Agency, any damage resulting from travel under the permit.

C. **Modification to and/or Relocation of Structures.** If, in the judgment of the Director, Public Works Agency, it is determined necessary to strengthen any structure over which an overload must pass, or to perform any other work in order to insure the safe passage of the load upon city streets, the permit holder will be required to pay the full cost of such work. The permit holder will also be required to reimburse the city for any cost necessitated by the temporary relocation of traffic signals, streetlights or other appurtenances in order to permit the safe

passage of the loaded vehicle. (Ord. 12373 (part), 2001)

**10.53.060 Damage and accident reporting.**

A. **Damage to Property.** In the event of damage to highway facilities such as bridges, traffic signals, light standards and other appurtenances, a written report must be filed with the Police Department within seventy-two (72) hours after such damage was incurred.

B. **Accidents Involving Persons and/or Property.** Accidents occurring while operating under permit and requiring a report to the Department of Motor Vehicles under California Vehicle Code Section 16000 shall also be reported to the city. A copy of the permit and accident report shall be mailed to the Commercial Vehicle Unit, 455 — 7th Street, Room 104, Oakland, CA 94607 within thirty (30) days of the date of the accident. (Ord. 12373 (part), 2001)

**10.53.070 Special restrictions.**

A. Vehicles and/or loads more than twelve (12) feet in width or more than one hundred (100) feet in length shall be escorted by a pilot vehicle.

B. Appropriate flags and/or lamps as required by California Vehicle Code 24604, 25103 and 25104 shall be utilized.

C. Vehicles and/or loads exceeding California legal dimensions shall display warning signs. Signs shall be posted front and rear and must conform to the specifications of the California Department of Transportation.

D. Under no circumstances shall any overweight vehicle travel over the following locations:

1. East 8th Street, between Fallon Street and 5th Avenue (Alameda County Flood Control-Underground Facility);

2. Unless specifically authorized on the face of the extralegal load permit, those streets and thoroughfares listed in the Oakland Municipal Code, Chapter 10.52, Sections 10.52.010, 10.52.020, 10.52.030, 10.52.040, 10.52.050, 10.52.060, 10.52.065, and 10.52.130.

E. No movement shall occur between the hours of seven a.m. to nine a.m. and four p.m. to six p.m. for vehicles exceeding ten feet in width or combinations of vehicles and/or loads that are one hundred (100) feet or more in length. (Ord. 12373 (part), 2001)

**10.53.080 Police escort.**

The Chief of Police or his/her designee may require an Oakland Police Department escort for certain extralegal vehicles. The determination to assign an escort and the number of officers required to safely perform the escort of an extralegal vehicle will be made by the Chief of Police or designed. The determination may be based on the overall vehicle dimensions, type of load, location of the move, or any other reason the Chief of Police has determined may be a hazard to the public or property. The permit holder shall pay the associated costs of the police escort. (Ord. 12373 (part), 2001)



**Chapter 10.56****AIRPORT GROUND TRAFFIC  
REGULATIONS****Sections:**

- 10.56.010 Definitions.**  
**10.56.020 Powers of manager.**  
**10.56.030 Regulations in effect twenty-four hours per day.**  
**10.56.040 Speed limits.**  
**10.56.060 Entrances and exits.**  
**10.56.080 Use of service roadways.**  
**10.56.090 Driving in parking areas.**  
**10.56.110 Driving over double line.**  
**10.56.150 Removal of debris from accident.**  
**10.56.170 Citations and arrests.**  
**10.56.180 Presumption of validity of signs, devices, signals and markings.**  
**10.56.190 Manner of direction of traffic.**  
**10.56.210 Application to public employees.**  
**10.56.270 Certain parking prohibited.**  
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**10.56.290 Parking at red curb.**  
**10.56.300 Parking at green curb.**  
**10.56.310 Parking at yellow curb.**  
**10.56.320 Parking at white curb.**  
**10.56.330 Parking in parking area.**  
**10.56.340 Impounding of vehicles.**  
**10.56.350 Parallel parking.**  
**10.56.360 Parking in crosswalk.**  
**10.56.370 Emergency regulations.**  
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**10.56.400 Parking meter zones—Established.**  
**10.56.410 Parking meter installation—Painting of lines.**  
**10.56.420 Deposit of coins—Amount of time corresponds to value of coins.**  
**10.56.430 Parking meter indication that space is illegally in use.**

- 10.56.440 Parking in excess of parking time limits prohibited.**  
**10.56.450 Deposit of substitute for legal coins prohibited.**  
**10.56.460 Tampering with parking meters prohibited.**

**10.56.010 Definitions.**

The following words and phrases whenever used in this chapter shall be construed as defined in this section unless from the context a different meaning is intended, or unless a different meaning is specifically defined and more particularly directed to the use of such words or phrases:

“Board” means the Board of Port Commissioners of the city of Oakland.

“California Maintenance Manual” means that book of traffic engineering standards and instructions formulated and published by the Division of Highways of the Department of Public Works of the state of California, entitled “Manual of Instructions” and approved by the Board on April 28, 1952, together with such amendments and additions thereto as may be hereafter approved by the Board, by resolution.

“Crosswalk” means any portion of a roadway distinctly indicated for pedestrian crossing by lines or other markings on the surface thereof.

Guard, Airport or Serviceman, Airport. “Airport guard” or “airport serviceman” means any person employed by the Board having a civil service classification of “Airport Guard” or “Airport Serviceman.”

“Loading zone” means that space adjacent to a curb reserved for the exclusive use of vehicles during the loading or unloading of passengers or property.

“Manager” means the Port Manager of the Port Department of the city of Oakland.

“Official traffic control devices” means all signs, signals, markings and devices not inconsistent with this chapter placed or erected by authority to the Manager.

“Official traffic signals” means any device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and to proceed, and which is erected by authority to the Manager.

“Person” means a natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business trust organization or the manager, lessee, agent, servant, officer or employee of any of them.

“Police officer” means any officer of the Police Department of the city of Oakland, or any person authorized by the Chief of Police thereof.

“Private parking area” means any portion of the airport other than a “public parking area” which is set aside for the parking of vehicles.

“Public parking area” means any portion of the airport which is set aside for the parking of private vehicles. Parking may be made subject to the payment of compensation.

“Roadway” means those ways set aside for the movement of vehicular traffic.

Roadway, Private. “Private roadway” means a roadway not open to the public.

Roadway, Public. “Public roadway” means a roadway open to the public.

Roadway, Service. “Service roadway” means a roadway set aside for the use of vehicles furnishing supplies and the like, for the use of the Port Department or any lessee occupying any portion of the airport.

“Sidewalk” means that portion of a roadway set apart for pedestrian movement.

“Special officer” means any person employed by the Board having a civil service classification of “Special Officer.”

“Vehicle” means a device in, upon or by which any person or property is or may be propelled, moved or drawn upon a highway or roadway, excepting a device moved by human power.

1. “Bus” means a motor vehicle designed for the transportation of more than seven passengers, including the driver, and used as a common carrier of passengers.

2. “For-hire vehicle” means a vehicle used for the transportation of persons and baggage for hire, whether on a tariff or charter or per capita or other compensation or charge basis, other than a “bus.”

3. “Commercial vehicle” means a vehicle other than a “for-hire vehicle,” and other than a “bus,”

which is actually used for commercial purposes, regardless of its type.

4. “Motor vehicle” means a vehicle which is self-propelled.

Whenever any words or phrases used in this chapter are not defined herein but are now defined in the Vehicle Code of this state, such definitions are incorporated herein and shall be deemed to apply to such words or phrases used in this chapter as though set forth herein in full. (Prior traffic code § 238)

#### **10.56.020 Powers of manager.**

The manager may, when he or she shall determine that public safety or convenience requires the same, or that the movement of traffic will be expedited thereby, designate:

A. Roadways as entrances to or exits from the airport;

B. Points where vehicles must come to a stop before proceeding;

C. Places for crosswalks;

D. Roadways as service roadways, public roadways or private roadways;

E. Places where roadways shall be divided into lanes;

F. The direction and manner in which vehicles shall proceed, and may erect signs, make markings and erect or place official traffic control devices and official traffic signals giving notice thereof, which signs, markings, devices and signals shall conform to the provisions of the California Maintenance Manual. (Prior traffic code § 239)

#### **10.56.030 Regulations in effect twenty-four hours per day.**

All traffic regulations set forth in this chapter shall be in effect twenty-four (24) hours per day, except as otherwise provided, and signs and markings made, erected or placed shall so indicate. (Prior traffic code § 240)

#### **10.56.040 Speed limits.**

No person shall drive a vehicle upon the airport at a speed greater than is reasonable or prudent and in no event in excess of the following limits:

- A. Ten miles per hour in any parking area;
- B. Twenty-five (25) miles per hour on any roadway. (Prior traffic code § 241)

**10.56.060 Entrances and exits.**

Persons entering the airport by vehicle shall enter by means of those roadways which are designated as entrances to the airport and shall leave by way of those roadways which are designated as exits except as to those roadways which are not limited to one-way use. (Prior traffic code § 243)

**10.56.080 Use of service roadways.**

No person shall use any service roadway for any purpose other than that for which it is designated, as provided in this chapter. (Prior traffic code § 245)

**10.56.090 Driving in parking areas.**

All drivers of vehicles entering upon any public parking area shall follow and comply with any directional markers or signs therein. (Prior traffic code § 246)

**10.56.110 Driving over double line.**

When any roadway is divided into lanes by a double painted line no person shall drive any vehicle over such double line except when turning to the left at an intersection of roadways. (Prior traffic code § 248)

**10.56.150 Removal of debris from accident.**

The driver of any vehicle which is involved in any collision shall before leaving the place of the collision remove or cause to be removed from the roadway all glass and other debris which may have fallen upon any roadway as a result of such collision and every person hired or employed to move or remove any such vehicle, shall remove all glass and other debris which may have fallen upon the roadway as the result of the collision in which the vehicle was involved, before removing the vehicle. (Prior traffic code § 252)

**10.56.170 Citations and arrests.**

Any police officer is authorized and empowered to issue citations to any person violating any of the provisions of this chapter on the same forms used for violation of traffic laws or ordinances by the Police Department of the city of Oakland and in accordance with the provisions of Section 739 of the Vehicle Code of the state of California, or to place such person under arrest in cases where arrest is authorized for similar offenses under the provisions of said Vehicle Code. (Prior traffic code § 254)

**10.56.180 Presumption of validity of signs, devices, signals and markings.**

Whenever traffic signs or traffic control devices, signals or markings are placed in position such signs, devices, signals and markings shall be presumed to have been so placed by authority of the Manager unless the contrary shall be established by competent evidence. (Prior traffic code § 255)

**10.56.190 Manner of direction of traffic.**

Police officers, airport guards, airport servicemen and special officers are authorized to direct all traffic by voice, hand or signal in conformance with traffic laws, provided that, in the event of a fire, or other emergency, they may direct traffic as conditions may require notwithstanding the provisions of this chapter. (Prior traffic code § 256)

**10.56.210 Application to public employees.**

The provisions of this chapter shall apply to the driver of any vehicle owned by or used in the service of the United States Government, the state of California, or any political subdivision or agency of either thereof. (Prior traffic code § 258)

**10.56.270 Certain parking prohibited.**

A. No person shall park a vehicle upon any roadway except in a place designated by the Manager for parking.

B. No person shall park a vehicle on the field side of any buildings or on any hangar apron except by written permission of the Manager. A valid airport parking permit displayed in or upon the vehicle shall

be prima facie evidence of the Manager's permission having been granted.

C. No person shall stop, stand or park any vehicle in an area or space set aside, marked, and assigned to the use of the vehicles of the holder of an exclusive concession for furnishing public ground transportation service at the airport, except vehicles of the holder of such concession and of the agents and assigns thereof.

D. No person shall stop, stand or park any for-hire vehicle or bus in any space or area except in the space or area set aside, marked and assigned by the Manager for the stopping, standing or parking of such vehicles.

E. No person shall stop, stand or parking any vehicle other than a for-hire vehicle or a bus in any space or area set aside, marked and assigned by the Manager for the stopping, standing or parking of such vehicles. (Prior traffic code § 264)

#### **10.56.280 Powers of Manager re: parking.**

A. The Manager may, when he or she shall determine that the movement of traffic will be expedited thereby, designate places where vehicles may or may not be stopped or parked, and the period of time for which vehicles may be stopped or parked at any place.

B. The Manager shall set aside, mark and assign area, space or stands for the vehicles of the holder of an exclusive concession for furnishing public ground transportation service at the airport, and agents and assigns thereof.

C. The Manager may set aside, mark and assign area or space for the stopping or parking of for-hire vehicles or buses other than such vehicles of the holder of an exclusive concession for furnishing public ground transportation service at the airport.

D. The Manager may issue revocable permits for parking on the field side of buildings or upon hangar aprons; and the markings thereof made by the Manager shall conform to the provisions of the California Maintenance Manual. (Prior traffic code § 265)

#### **10.56.290 Parking at red curb.**

No person shall park any vehicle at any time adjacent to the curb marked in red. (Prior traffic code § 266)

#### **10.56.300 Parking at green curb.**

No person shall park any vehicle adjacent to a curb marked in green for any period in excess of twelve (12) minutes. (Prior traffic code § 267)

#### **10.56.310 Parking at yellow curb.**

A. No person shall park any vehicle other than a commercial vehicle adjacent to any yellow curb nor any commercial vehicle adjacent to such curb for any greater length of time than is actually necessary for loading or unloading of materials and in no event for a period longer than thirty (30) minutes.

B. No person shall park any vehicle other than a private passenger automobile or taxicab adjacent to any white curb and shall not park such vehicle for any greater period of time than is actually necessary for the loading or unloading of passengers and personal baggage and in no event for a longer period than three minutes. (Prior traffic code § 268)

#### **10.56.320 Parking at white curb.**

A. A curb marked in white shall indicate a loading zone for private passenger vehicles or taxicabs.

B. No person shall park any vehicle other than a private passenger automobile or taxicab adjacent to any white curb and shall not park such vehicle for any greater period of time than is actually necessary for the loading period than three minutes. (Prior traffic code § 269)

#### **10.56.330 Parking in parking area.**

A. No person shall park any vehicle in any public parking area except between the painted lines indicating where such vehicles shall be parked.

B. No person shall so park a vehicle as to use or occupy more than one such marked parking space.

C. No person shall remove a vehicle from any public parking area without first paying all fees or charges due for the use of such parking space. (Prior traffic code § 270)

**10.56.340 Impounding of vehicles.**

Any vehicle parked or stopped in violation of Sections 10.56.270, 10.56.290, 10.56.350, 10.56.360 and 10.56.370 shall be deemed to be left standing upon a street or highway in an unusual position and obstructing the normal movement of traffic thereon and may be removed as provided in Section 585.2 of the Vehicle Code. (Prior traffic code § 271)

**10.56.350 Parallel parking.**

A. No person shall park any vehicle adjacent to any curb on any roadway unless both right wheels of such vehicle are within eighteen (18) inches of the curb, except where parking other than parallel is designated by appropriate marking.

B. No person shall stop or stand any vehicle on the left or driving lane side of any parked vehicle. (Prior traffic code § 272)

**10.56.360 Parking in crosswalk.**

No person shall park any vehicle in a crosswalk. (Prior traffic code § 273)

**10.56.370 Emergency regulations.**

A. The Manager is authorized, when he or she shall determine that traffic congestion or hazard is likely to result from the holding of any assemblage, celebration, or function, to prohibit parking or movement of vehicles on any part of the airport until such congestion or hazard is eliminated.

B. The Manager is further authorized to post signs giving notice of such suspension of parking. Such signs shall bear the word "Temporary" in addition to the other matter appearing thereon.

C. No person shall drive or park any vehicle contrary to the instruction of any sign posted pursuant to the terms of this section.

D. No person, public utility or any department of this city shall erect or place any barrier or sign on any street on the airport unless with the approval and permission of the Manager. (Prior traffic code § 274)

**10.56.380 Pedestrians walk on sidewalks.**

No person shall walk along any roadway which is bounded by or adjacent to a sidewalk. (Prior traffic code § 275)

**10.56.390 Pedestrians use crosswalks.**

No person shall cross any roadway except in a crosswalk. (Prior traffic code § 276)



**10.56.400      Parking meter zones—  
Established.**

Parking meter zones shall be established by resolution of the Board of Port Commissioners upon such streets, roadways, portions of streets or roadways or parking lots at Metropolitan Oakland International Airport as it may deem necessary for traffic or parking control purposes. The Port Manager shall cause parking meters to be installed and maintained in such designated zones and the existence of a parking meter installed as hereinafter prescribed shall designate its location in a parking meter zone for the purposes of this chapter. (Prior traffic code § 277)

**10.56.410      Parking meter installation—  
Painting of lines.**

Parking meters shall be installed upon the curb immediately adjacent to, or when in the parking lot immediately adjacent to, the individual parking spaces designated as herein prescribed. Each meter shall be placed in such manner as to show or display by a visual signal that the parking space adjacent thereto is or is not legally in use.

The Chief Engineer shall cause to have lines or markings painted or otherwise designated upon the curb, upon the street or upon the parking lot adjacent to each meter in such manner as to identify the parking space with each respective meter. It is unlawful to park or leave standing any vehicle across any such line or marking or in any position other than within the parking area so designated. (Prior traffic code § 278)

**10.56.420      Deposit of coins—Amount of time  
corresponds to value of coins.**

When any vehicle shall be parked in any space alongside of or next to which a parking meter is located in accordance with the provisions of this title, the operator of said vehicle upon so parking shall, and it shall be unlawful to fail to, deposit immediately one United States five cent (\$0.05) coin in such parking meter and then turn the operating key or lever of said meter in a clockwise direction

to the extent allowed by the proper operation of the meter.

One-hour parking meters, when installed, shall be so adjusted as to show legal parking during a period of sixty (60) minutes upon and after the deposit of one United States five cent (\$0.05) coin therein.

Two-hour parking meters, when installed, shall be so adjusted as to show legal parking during a period of one hundred twenty (120) minutes upon and after the deposit of one United States five cent (\$0.05) coin therein. Two-hour parking meters shall be designated by distinctive coloring of the standard and by appropriate wording on the instructions plate. (Prior traffic code § 279)

**10.56.430      Parking meter indication that  
space is illegally in use.**

It is unlawful for any person to park or leave standing any vehicle in any parking meter zone at any time during which the meter indicates that the parking space is illegally in use, except during the time necessary to set the said meter to show legal parking. (Prior traffic code § 280)

**10.56.440      Parking in excess of parking time  
limits prohibited.**

Notwithstanding the fact that a parking meter shall indicate legal parking, it is unlawful for any person to park or leave standing any vehicle in any area or parking space for a period of time in excess of parking time limits prescribed and established by or pursuant to any provisions of this title.

Notwithstanding any provisions of this title or of any resolution of the Board, when one-hour parking meters are installed, in any area which by the provisions of this title is limited to parking for any other period of time, any parking meter space so designated is declared to be in a one-hour parking area; and when two-hour parking meters are installed, any parking meter space so designated is declared to be in a two-hour parking area. (Prior traffic code § 281)

**10.56.450 Deposit of substitute for legal coins prohibited.**

It is unlawful to deposit or cause to be deposited in any parking meter, any slug, device or any substitute for a five cent (\$0.05) coin of the United States. (Prior traffic code § 282)

**10.56.460 Tampering with parking meters prohibited.**

It is unlawful for any person to deface, injure, tamper with, or wilfully break, destroy, or impair the usefulness of any parking meter. (Prior traffic code § 283)

**CHAPTER 10.57**

**OAKLAND INTERNATIONAL AIRPORT  
200-YARD MARINE SECURITY ZONE**

**10.57.010 Establishment of security zone.**

A security zone is hereby established within the navigable waters of San Francisco Bay extending two hundred (200) yards seaward from the high tide mark of the shorelines surrounding the Oakland International Airport. The zone shall be marked by a buoy system installed and maintained by the United States Coast Guard. (Ord 126080 § 1 (part), 2004)

**10.57.020 Entry prohibited.**

No person, vessel or boat shall enter the security zone without the express permission of the United States Coast Guard Captain of the Port. (Ord 126080 § 1 (part), 2004)

**10.57.030 Enforcement by citation method.**

Section 10.57.010 may be enforced by the method provided for in Chapter 1.24 of this code, and by Sections 853.5 through 853.8 of the Penal Code of the State of California. (Ord 126080 § 1 (part), 2004)

**10.57.040 Violation—Penalties.**

Violations of this chapter shall constitute an infraction punishable by a fine of two hundred fifty (250) dollars for a first offense and five hundred (500) for a second or subsequent offense. (Ord 126080 § 1 (part), 2004)

**Chapter 10.60**

**VISION OBSCUREMENT AT  
INTERSECTIONS**

**Sections:**

- |                  |   |
|------------------|---|
| <b>10.60.010</b> | <b>Obstructions at intersections prohibited—Exceptions.</b>                                 |
| <b>10.60.020</b> | <b>Authority of traffic engineer.</b>   |
| <b>10.60.030</b> | <b>Responsibility of owner.</b>   |
| <b>10.60.040</b> | <b>Vision Obscurement Appeals Board.</b>  |
| <b>10.60.050</b> | <b>Appeal procedure.</b>  |
| <b>10.60.060</b> | <b>Nuisance.</b>  |
| <b>10.60.070</b> | <b>Cost of abatement a charge against the city—Collection of costs—Unpaid cost of lien.</b> |
| <b>10.60.080</b> | <b>Alternative method of collection—Addition to tax bill of amount of costs—Procedure.</b>  |

**10.60.010 Obstructions at intersections prohibited—Exceptions.**

A. Notwithstanding any other provisions of law to the contrary, no fence, hedge, shrub, tree, wall, retaining wall, earthen bank, or other landscaping or screening which exceeds a height of three feet above the street-pavement grade shall be allowed along the property line for a distance, measured from the intersection of two property lines or their projection, which is equal to the sum of the building setbacks on each of the two intersecting streets, existing or legal, whichever is less, or, within the area subtended.

B. The provisions of subsection A of this section shall not apply to a permanent building or to trees which are trimmed to eliminate foliage for a distance of eight feet above the street-pavement grade. (Prior traffic code §§ 292, 293)

**10.60.020 Authority of traffic engineer.**

The Traffic Engineer of the city, upon ascertaining that a violation of Section 10.60.010 exists, shall give written notice of said violation to the owner of the property involved. Such notice shall be given in the same manner and with the same effect as provided in

## **10.60.030**

Section 1013 of the California Code of Civil Procedure. (Prior traffic code § 295)

### **10.60.030      Responsibility of owner.**

The property owner to whom notice has been given shall, within twenty days after the giving of notice by the Traffic Engineer, as provided in Section 10.60.020, do whatever is necessary on his or her property to eliminate the violation of the provisions of this chapter. (Prior traffic code § 295)

### **10.60.040      Vision Obscurement Appeals Board.**

There is created a Board known as the Vision Obscurement Appeals Board, composed of the Traffic Engineer, the Director of City Planning, and the Superintendent of Parks. The members of said Board shall serve without additional compensation. The Board shall sit as often as necessary in order to dispose of business property before it, but it need not sit more often than once a month. (Prior traffic code § 296)

### **10.60.050      Appeal procedure.**

The property owner to whom notice has been given, as hereinabove provided, may, within ten days after the giving of such notice, file with the Traffic Engineer a written notice of appeal. The Vision Obscurement Board shall have the power, in exceptional cases, where it is impractical or physically impossible to comply with the strict letter of this chapter, and in order to provide for reasonable interpretations thereof, to modify the requirements of this chapter in such a manner that the public welfare is secured, and substantial justice done, nearly in accord with the intent and purpose of this chapter. The determination and decision of said Board shall be final and conclusive. (Prior traffic code § 297)

### **10.60.060      Nuisance.**

A condition which is in violation of the provisions of this chapter is declared to be a public nuisance. The city is authorized to abate such nuisance

by entering onto the property and removing the condition. (Prior traffic code § 298)

**10.60.070 Cost of abatement a charge against the city—Collection of costs—Unpaid cost of lien.**

Costs incurred by the city in the abatement of a condition which is in violation of the provisions of this chapter shall be a proper charge against the City Treasury and paid therefrom. The Traffic Engineer shall give the owner of the property upon which said condition exists a written notice itemizing the expense of such abatement and requesting payment. If the amount of such costs is not paid to the Traffic Engineer within five days after the giving of such notice, he or she shall record in the Office of the Recorder of Alameda County, California, a certificate substantially in the following form:

**Notice of Lien**

Pursuant to authority vested in me by the Oakland Traffic Code, I did on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, caused to be abated, at the owner's expense, in the amount of \$\_\_\_\_\_, a condition upon the real property hereinafter described. Said amount, nor any part, has not been paid. The City of Oakland does hereby claim a lien upon said real property in said amount, which amount shall remain a lien upon said real property until paid in full, together with interest at the rate of 6% per annum from the date of recordation of this lien in the Office of the Recorder of Alameda County, California. The real property upon which lien is claimed is that certain parcel of land in the City of Oakland, County of Alameda, State of California, described as follows:

(Insert property description)

Date: \_\_\_\_\_, 19\_\_\_\_.

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Oakland Traffic Engineer

Costs incurred in such abatement shall remain a lien upon the property described in the lien notice until paid in full, plus accrued interest at the rate of six percent per annum from the date of recordation. The statute of limitations shall not run against the city's right to enforce payment of such lien. (Prior traffic code § 299)

**10.60.080 Alternative method of collection—Addition to tax bill of amount of costs—Procedure.**

As an alternative method of collection of the amount of the lien, the Traffic Engineer may record said notice of lien, as hereinabove provided, and may thereafter transmit it, or a facsimile, to the County Auditor, who shall thereupon enter that amount on the County Assessment Book opposite the description of the particular lot or parcel of land; and the amount shall be collected together with all other taxes levied against the property. The assessment shall be subject to the same penalties and interest and to the same procedure under foreclosure and sale in case of delinquency as is provided for all other municipal and county taxes against the property; and all laws applicable to the levy, collection, and enforcement of general property taxes are made applicable to such special assessment. (Prior traffic code § 300)

## **Chapter 10.64**

### **ABANDONED, WRECKED, DISMANTLED OR INOPERATIVE VEHICLES**

**Sections:**

- 10.64.010 Findings and declarations.**
- 10.64.020 Definitions.**
- 10.64.030 Exceptions.**
- 10.64.040 Supplemental legislation.**
- 10.64.050 Administration.**
- 10.64.060 Authority to enter upon private property.**
- 10.64.070 Removal of vehicles by other than Police Department.**
- 10.64.080 Authority to abate and remove.**
- 10.64.090 Notice of intention to abate and remove—Form.**
- 10.64.100 Public hearing notice.**
- 10.64.110 Conduct of hearing and order of removal.**
- 10.64.120 Appeal to City Council.**
- 10.64.130 Time limit for removal.**
- 10.64.140 Notice to Department of Motor Vehicles.**
- 10.64.150 Cost of abatement a charge against City Treasury—Collection of costs—Unpaid costs a lien.**
- 10.64.160 Alternative method of collection—Addition to tax bill of amount of costs—Procedure.**
- 10.64.170 Misdemeanor to abandon or keep vehicles of type regulated by this chapter.**
- 10.64.180 Misdemeanor to fail to remove vehicles after order to do so.**

**10.64.010 Findings and declarations.**

In addition to and in accordance with the determination made and the authority granted by the state of California under Section 22660 of the Vehicle Code to remove abandoned, wrecked, dismantled, or inoperative vehicles or parts thereof as public nuisances,

the Council makes the following findings and declarations:

The accumulation and storage of abandoned, wrecked, dismantled, or inoperative vehicles or parts thereof on private or public property is found to create a condition tending to reduce the value of private property, to promote blight and deterioration, to invite plundering, to create fire hazards, to constitute an attractive nuisance creating a hazard to the health and safety of minors, to create a harborage for rodents and insects and to be injurious to the health, safety and general welfare. Therefore the presence of an abandoned, wrecked, dismantled or inoperative vehicle or part thereof, on private or public property, except as expressly hereinafter permitted, is declared to constitute a public nuisance which may be abated as such in accordance with the provisions of this chapter. (Prior traffic code § 301)

**10.64.020 Definitions.**

As used in this chapter:

“Highway” means a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel. Highway includes street.

“Inoperative” means a vehicle that is either a) mechanically incapable of being driven or b) prohibited from being operated on a public street or highway pursuant to California Vehicle Code Sections 4000, 5202, 24002, or 40001 concerning license plates, registration, equipment, safety and related matters.

“Owner of the land” means the owner of the land on which the vehicle, or parts thereof, is located, as shown on the last equalized assessment roll.

“Owner of the vehicle” means the last registered (and/or legal) owner of record.

“Public property” means and includes “highway.”

“Vehicle” means a device by which any person or property may be propelled, moved, or drawn upon a highway, except a device moved by human power or used exclusively upon stationary rails or tracks. (Ord. 12475 § 1, 2003; prior traffic code § 302)

**10.64.030 Exceptions.**

This chapter shall not apply to:

- A. A vehicle or part thereof which is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property;



B. A vehicle, or part thereof, which is stored or parked in a lawful manner or private property in connection with the business of a licensed dismantler, licensed vehicle dealer, a junk dealer or when such storage or parking is necessary to the operation of a lawfully conducted business or commercial enterprise.

Provided, however, that nothing in this section shall authorize the maintenance of a public or private nuisance as defined under the provisions of law other than Chapter 10 (commencing with Section 22650) of Division II of the Vehicle Code or this chapter;

C. Vehicles of historic value as defined in the California Vehicle Code Section 5004 and parts cars as defined in California Vehicle Code Section 5051, provided that any such historic motor vehicle or parts car is maintained on private property, maintained in such a manner as not to constitute a health hazard, and is located away from public view, or by appropriate means is completely screened from ordinary public view. (Prior traffic code § 303)

#### **10.64.040 Supplemental legislation.**

This chapter is not the exclusive regulation of abandoned, wrecked, dismantled or inoperative vehicles within the city. It shall supplement and be in addition to the other regulator codes, statutes, and ordinances heretofore or hereafter enacted by the city, the state, or any other legal entity or agency having jurisdiction. (Prior traffic code § 304)

#### **10.64.050 Administration.**

Except as otherwise provided herein, the provisions of this chapter shall be administered and enforced by the Police Department, except that the removal of vehicles or parts thereof from property may be by any person duly authorized as hereinafter provided. (Prior traffic code § 305)

#### **10.64.060 Authority to enter upon private property.**

In the enforcement of this chapter any person authorized to administer this chapter may enter upon private property for the purpose of examining a vehicle or parts thereof, obtain information as to the iden-

tity of a vehicle and to remove or cause the removal of a vehicle or part thereof declared to be a nuisance pursuant to this chapter. Provided, however, that where required by law a search or inspection warrant shall first be obtained. (Prior traffic code § 306)

#### **10.64.070 Removal of vehicles by other than Police Department.**

The removal of vehicles or parts thereof from private property may be by any person or firm authorized for that purpose by the Chief of Police. (Prior traffic code § 307)

#### **10.64.080 Authority to abate and remove.**

Upon discovering the existence of an abandoned, wrecked, dismantled, or inoperative vehicle, or parts thereof, on private property or public property within the city, the Police Department shall have the authority to cause the abatement and removal thereof in accordance with the procedure prescribed herein. These persons may include, but shall not be limited to, police officers, traffic control officers, and police service technicians. (Prior traffic code § 309)

#### **10.64.090 Notice of intention to abate and remove—Form.**

A ten-day notice of intention to abate and remove the vehicle, or parts thereof, as a public nuisance shall be mailed by registered mail to the owner of the land and to the owner of the vehicle, unless the vehicle is in such condition that identification numbers are not available to determine ownership. The notices of intention shall be in substantially the following forms:

**NOTICE OF INTENTION TO ABATE AND  
REMOVE AN ABANDONED, WRECKED,  
DISMANTLED, OR INOPERATIVE  
VEHICLE, OR PARTS THEREOF, AS A  
PUBLIC NUISANCE.**

(Name and address of Owner of the land)

As owner shown on the last equalized assessment roll of the land located at (address), you are hereby notified that the undersigned pursuant to Section 10.64.080 of the Oakland Traffic Code has determined that there exists upon said land an (or parts of an) abandoned, wrecked, dismantled or inoperative vehicle registered to \_\_\_\_\_, license number \_\_\_\_\_, which constitutes a public nuisance pursuant to the provisions of Chapter 10.64 of the Oakland Traffic Code.

You are hereby notified to abate said nuisance by the removal of said vehicle (or said parts of a vehicle) within 10 days from the date of the mailing of this notice, and upon your failure to do so the same will be abated and removed by the city and the costs thereof, together with administrative costs, assessed to you as owner of the land on which said vehicle (or said parts of a vehicle) is located.

As owner of the land on which said vehicle (or said parts of a vehicle) is located, you are hereby notified that you may, within 10 days after the mailing of this notice of intention, request a public hearing, and if such a request is not received by the Chief of Police within such 10-day period, the Police Department shall have the authority to abate and assess the costs as foresaid without a public hearing. You may submit a sworn written statement within such 10-day period denying responsibility for the presence of said vehicle (or said parts of a vehicle) on said land, with your reasons for denial, and such statement shall be construed as a request for hearing at which your presence is not required. You may appear in person at any hearing requested by you or the owner of the

vehicle, or, in lieu thereof, may present a sworn written statement as aforesaid in time for consideration at such hearing.

Notice Mailed: \_\_\_\_\_ /s/  
Date \_\_\_\_\_ (Locally designated officer)

(Prior traffic code § 310)

**10.64.100 Public hearing notice.**

Upon request by the owner of a vehicle or owner of the land received by the Chief of Police within ten days after the mailing of the notice of intention to abate and remove, a public hearing shall be held by the Chief of Police, or some person duly authorized by him or her, (hereinafter called "Hearing Officer") on the question of abatement and removal of the vehicle or parts thereof as an abandoned, wrecked, dismantled or inoperative vehicle, and the assessment of the administrative costs and the cost of removal of the vehicle, or parts thereof, against the property on which it is located.

If the owner of the land submits a sworn written statement denying responsibility for the presence of the vehicle on his or her land within such ten-day period, said statement shall be construed as a request for a hearing which does not require his or her presence. Notice of the hearing shall be mailed, by registered mail, at least ten days before the hearing to the owner of the land and to the owner of the vehicle, unless the vehicle is in such condition that identification numbers are not available to determine ownership. If such a request for hearing is not received within said ten days after mailing of the notice of intention to abate and remove, the city shall have the authority to abate and remove the vehicle, or parts thereof, as a public nuisance without holding a public hearing. (Prior traffic code § 311)

**10.64.110 Conduct of hearing and order of removal.**

All hearings under this chapter shall be held before the City Manager, or some person duly authorized by him or her (hereinafter called "Hearing Officer"), who shall hear all facts and testimony, which may

include testimony on the condition of the vehicle(s), or parts thereof, and the circumstances concerning its location on the said private property or public property. The Hearing Officer shall not be limited by the technical rules of evidence. The owner of the land may appear in person at the hearing or present a sworn written statement in time for consideration at the hearing, and deny responsibility for the presence of the vehicle(s) on the land, with his or her reasons for such denial.

The Hearing Officer may impose such conditions and take such other action as he or she deems appropriate under the circumstances to carry out the purpose of this chapter. The time for removal of the vehicle(s) or parts thereof may be delayed if, in his or her opinion, the circumstances justify it. At the conclusion of the public hearing the Hearing Officer may find that said vehicle(s), or parts thereof, has/have been abandoned, wrecked, dismantled, or is/are inoperative on private or public property and order the same removed from the property as a public nuisance and disposed of as provided in this chapter, and determine the administrative costs and the cost of removal to be charged against the owner of the land. The order requiring removal shall include a description of the vehicle(s), or parts thereof, and the correct identification number and license number of the vehicle(s), if available at the site.

If it is determined at the hearing that the vehicle(s) was/were placed on the land without the consent of the owner of the land and that he or she has not subsequently acquiesced in its presence, the Hearing Officer shall not assess the costs of administration or removal of the vehicle(s) against the property upon which the vehicle(s) is/are located or otherwise attempt to collect such costs from such owner of the land.

If the owner of the land submits a sworn written statement denying responsibility for the presence of the vehicle(s) on his or her land but does not appear, or if an interested party makes a written presentation to the Hearing Officer but does not appear, he or she shall be notified in writing of the decision.

Decisions made and determinations rendered by the Hearing Officer shall be in all cases final and

conclusive. The limitation period provided pursuant to California Code of Civil Procedure Section 1094.6 shall apply to all petition filers seeking judicial review of administrative determinations made by the Hearing Officer. (Ord. 12411 § 1 (part), 2002: prior traffic code § 312)

#### **10.64.120      Appeal to City Council.**

Any interested party may appeal the decision of the hearing officer by filing a written notice of appeal with the said Hearing Officer and the City Clerk within five days after his or her decision setting forth the specific grounds for the appeal.

Such appeal shall be heard by the City Council which may affirm, amend or reverse the order to take other action deemed appropriate. The decision of the City Council shall be final and conclusive.

The Clerk shall give written notice of the time and place of the hearing to the appellant and those persons specified in Section 10.64.090.

In conducting the hearing the City Council shall not be limited by the technical rules of evidence. (Prior traffic code § 313)

#### **10.64.130      Time limit for removal.**

Five days from the date of mailing of notice of the decision the vehicle(s) or parts thereof may be disposed of by removal to a scrap yard or automobile dismantler's yard. After a vehicle has been removed it shall not thereafter be reconstructed or made operable. (Ord. 12411 § 1 (part), 2002: prior traffic code § 314)

#### **10.64.140      Notice to Department of Motor Vehicles.**

Within five days after the date of removal of the vehicle or part thereof, notice shall be given to the Department of Motor Vehicles of the state of California identifying the vehicle or part thereof removed. At the same time there shall be transmitted to the Department of Motor Vehicles any evidence of registration available, including registration certificates, certificates of title and license plates. (Prior traffic code § 315)

**10.64.150 Cost of abatement a charge against City Treasury—Collection of costs—Unpaid costs a lien.**

Costs incurred by the city in the abatement of a condition which is in violation of the provisions of this chapter shall be a proper charge against the City Treasury and paid therefrom. If the administrative costs of removal which are charged against the owner of a parcel of land pursuant to this chapter are not paid within thirty (30) days of the date of the order declaring the vehicle or parts thereof a public nuisance and assessing costs of administration and removal or the final disposition of an appeal thereof, such costs shall be assessed against the parcel of land.

The Chief of Police shall record in the Office of the Recorder of Alameda County, California, a certificate substantially in the following form:

**NOTICE OF LIEN**

Pursuant to authority vested in me by the Oakland Traffic Code, I did on the day of \_\_\_\_\_, 19\_\_\_\_\_, cause to be abated, at the owner's expense, in the amount of \$\_\_\_\_\_, a condition upon the real property hereinafter described. Said amount, nor any part, has not been paid. The City of Oakland does hereby claim a lien upon said real property in said amount, which amount shall remain a lien upon said real property until paid in full, together with interest at the rate of 6% per annum from the date of recordation of this lien in the Office of the Recorder of Alameda County, California. The real property upon which lien is claimed is that certain parcel of land in the City of Oakland, County of Alameda, State of California, as described as follows:

(Insert property description)

Date: \_\_\_\_\_, 19\_\_\_\_\_.

\_\_\_\_\_  
Oakland Chief of Police

Costs incurred in such abatement shall remain a lien upon the property described in the lien notice until paid in full, plus accrued interest at the rate of six percent per annum from date of recordation. The statute of limitations shall not run against the city's right to enforce payment of such lien. (Prior traffic code § 316)

**10.64.160 Alternative method of collection—Addition to tax bill of amount of costs—Procedure.**

As an alternative method of collection of the amount of the lien, the Chief of Police may record said notice of lien, as hereinabove provided, and may thereafter transmit it, or a facsimile, to the County Auditor, who shall thereupon enter that amount on the County Assessment Book opposite the description of the particular lot or parcel of land; and the amount shall be collected together with all other taxes levied against the property. The assessment shall be the subject to the same penalties and interest and to the same procedure under foreclosure and sale in case of delinquency as is provided for all other municipal and county taxes against the property; and all laws applicable to the levy, collection and enforcement of general property taxes are made applicable to such special assessment. (Prior traffic code § 317)

**10.64.170 Misdemeanor to abandon or keep vehicles of type regulated by this chapter.**

It is unlawful and a misdemeanor for any person to abandon, park, store, or leave or permit the abandonment, parking, storing or leaving of any licensed or unlicensed vehicle or part thereof which is in an abandoned, wrecked, dismantled or inoperative condition upon any private property or public property within the city for a period in excess of seventy-two (72) hours unless such vehicle or part thereof is completely enclosed within a building in a lawful manner where it is not plainly visible from the street or other public or private property, unless such vehicle is stored or parked in a lawful manner on private property in connection with the business of

a licensed dismantler, licensed vehicle dealer or a licensed junk yard, or unless the vehicle is historic motor vehicle or parts car as described in Section 10.64.030C. (Prior traffic code § 318)

**10.64.180 Misdemeanor to fail to remove vehicles after order to do so.**

It is unlawful and a misdemeanor for any person to fail or refuse to remove an abandoned, wrecked, dismantled or inoperative vehicle or part thereof or refuse to abate such nuisance when ordered to do so in accordance with the abatement provisions of this chapter. (Prior traffic code § 319)

## Chapter 10.68

### EMPLOYER-BASED TRIP REDUCTION PROGRAM

**Sections:**

- 10.68.010      Definitions.**
- 10.68.020      Responsibilities of employers.**
- 10.68.030      Relationship to other requirements.**
- 10.68.040      Responsibilities of the city.**
- 10.68.050      Enforcement and appeals.**
- 10.68.060      Severability.**
- 10.68.070      Certification of compliance.**

**10.68.010      Definitions.**

As used in this chapter:

“Average vehicle ridership (AVR)” means the number of employees reporting to a work site during the peak period divided by the number of vehicles those employees use to arrive at the work site.

“Carpool” means a motor vehicle occupied by two to six employees of one or more employers traveling together between their residence and their work site for the majority of their commute trip.

“Commute trip” means the trip made by an employee from home to the work site.

“Employee” means any person who regularly works twenty (20) hours or more per week at a work site and normally travels during the peak period between six a.m. to ten a.m. or three p.m. to seven p.m. Monday through Friday and who normally works at least twenty-six (26) weeks per year. The term includes contract employees under the direction of the work site employer, including independent contractors. The term excludes field personnel, field construction workers, and volunteers.

“Employer” means any public, private, or non-profit employer, including the city of Oakland, which has a permanent work site in the city of Oakland. “Employer” shall not include contractors with no permanent place of business in the city of Oakland and other businesses with no permanent workplace location.

“Field personnel” means an employee who spends twenty (20) percent or less of his or her work time at the work site and uses a personal or company-assigned vehicle to carry out their work tasks.

“Peak period” means six a.m. to ten a.m. or three p.m. to seven p.m. Monday through Friday.

“Transportation alternatives” means methods of travel by other than driving alone. Alternatives typically include carpools, vanpools, public transit, bicycles and walking.

“Trip reduction plan” means a method or approach for providing, supporting, subsidizing, and/or encouraging the use of commute transportation alternatives, including but not limited to:

1. Providing information about transit, ridesharing, and nonmotorized commuting;
2. Matching and placement services for carpools and vanpools;
3. Provision of carpool and vanpool vehicles;
4. Carpool and vanpool operating subsidies;
5. Carpool and vanpool preferential parking location and/or reduced parking fees;
6. Charging fees for employee parking;
7. Provision of and/or placement services for subscription buses;
8. Provision of shuttle services;
9. Transit fare subsidies;
10. On-site waiting and loading facilities for transit;
11. Travel allowances for bicyclists and pedestrians;
12. On-site paths, parking, and showers and lockers for bicyclists/pedestrians;
13. Guaranteed ride home and guaranteed transportation in emergencies for users of commute alternatives;
14. On-site child care and other service/convenience facilities which lessen the need for a personal vehicle at the place of employment;
15. Telecommuting and teleconferencing.

“Vanpool” means a vehicle occupied by seven or more employees who commute together to work.

“Work site” means any property, real or personal, which is being operated or maintained by an employer as part of an identifiable enterprise. Property

on contiguous, adjacent, or proximate sites separated only by a private or public roadway or other private or public right-of-way, served by a common circulation or access system, and not separated by an impassable barrier to bicycle or pedestrian travel such as a freeway or flood control channel are included as part of the work site. (Prior traffic code § 402)

#### **10.68.020 Responsibilities of employers.**

The requirements of this chapter apply to employers with one hundred (100) or more employees at a single work site. All employers shall do the following within the specified time periods following notification from the city that they are subject to the requirements of this chapter:

A. **Transportation Manager.** Within thirty days following notice from the city Public Works Director or his or her designee as to employer requirements under this chapter, appoint a Transportation Manager. Notice shall be by U.S. Mail and shall be effective as of the date deposited in the mail. An employer having more than one work site within Oakland may appoint one manager for all work sites or individual managers for one or more of the work sites. The Transportation Manager shall be responsible for carrying out the employer requirements under this chapter. The Transportation Manager shall also have authority for the employer's trip reduction information program budget.

B. **Employee Transportation Coordinator (ETC)/Commute Coordinator.** Within thirty (30) days following notice from the city Public Works Director or his or her designee as to employer requirements under this chapter, appoint an Employee Transportation Coordinator (ETC) — also known as a Commute Coordinator. Notice shall be by U.S. Mail and shall be effective as of the date deposited in the mail. The Coordinator shall bear the day-to-day responsibility for implementing this chapter's employer requirements. Within ninety (90) days following appointment, unless the Coordinator has had one year of experience as an ETC/Commute Coordinator, the Coordinator shall complete a training course approved by the city which meets the minimum standards established by the Alameda

County Congestion Management Agency. A designated Transportation Manager may also function as a Coordinator, provided that the Manager meets the qualifications set forth in this section.

C. **Trip Reduction Plan.** Within sixty (60) days of meeting the Coordinator's training requirements, and no less frequently than once per year thereafter, submit to the city Director of Public Works or his or her designee a plan for encouraging the employees to use transportation alternatives when commuting to Oakland. The employer must implement the plan within sixty (60) days of submittal.

As a minimum, the plan must include an information program designed to encourage the use of transportation alternatives. The information program must include annual distribution to every employee of up-to-date marketing and information materials about commute alternatives and their impact on congestion and air pollution. Employers must distribute or post information provided by or through the city. All newly hired employees must receive information about transportation alternatives including carpools within two weeks of employment.

D. **Employee Survey.** The employer shall periodically administer surveys as required by the city to ascertain and monitor employee commute patterns. The survey form will be provided by the city and will not be required more than once each year. The employee survey shall be used to identify current employee use of commute modes, calculate average vehicle ridership (AVR), and serve as a data base for the future design, implementation and monitoring of employer trip reduction programs.

E. **Proof of Implementation.** One year following implementation of the plan, or at some other time required by the city, but not more often than once each year, provide a copy of all materials given to employees in the previous year and a description and schedule of contracts with employees. The employer shall also provide a brief written description of the following:

1. The number of off-street parking spaces provided by the employer;

2. The fees, if any, charged to employees for parking employee carpools, vanpools, and single-occupant vehicles. (Prior traffic code § 403)

#### **10.68.030 Relationship to other requirements.**

Employers that are required to have a trip reduction program because of any conditions of approval imposed by the city, its departments, commissions or City Council or because of a development agreement or other agreement with the city must continue to meet the requirement in addition to the program required by this chapter. (Prior traffic code § 404)

#### **10.68.040 Responsibilities of the city.**

The city shall provide the following technical guidance and support for employers undertaking this program:

A. Provide or cause the provision of marketing materials and information about transportation alternatives and how these alternatives can mitigate traffic congestion and air pollution;

B. Provide a list of approved training courses for Commute Coordinators;

C. Analyze data or cause data to be analyzed from employer surveys. Prepare a report on the results of employer surveys. Transmit report to employers, Congestion Management Agency, local transit operators, and local and regional rideshare agencies;

D. If deemed necessary, conduct periodic meetings, or cause meetings to be conducted for employer Transportation Managers and Coordinators;

E. Coordinate with other jurisdictions and with the region in developing and implementing transportation management and trip reduction programs and disseminating information about these programs to employers in the city.

The city's failure to take any or all of these actions shall not relieve an employer of its responsibility under this chapter or create any liability on the part of the city. (Prior traffic code § 405)

#### **10.68.050 Enforcement and appeals.**

##### **A. Enforcement.**

1. Any employer who violates or refuses to comply with the provisions of this chapter within sixty (60) days of written notice to comply may be guilty of an infraction as set forth in Section 1.28.020B of this municipal code.

2. Each day such violation continues shall constitute a separate offense.

3. Any employer convicted of an infraction under the provision of this chapter shall be punished upon a first conviction of a fine of not more than one hundred dollars (\$100.00) and, for a second within a period of one year, by a fine of not more than two hundred dollars (\$200.00) and for a third or any subsequent conviction within a one-year period, by a fine of not more than five hundred dollars (\$500.00). 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 one thousand dollars (\$1,000.00) or by imprisonment in the county jail for a period of not more than six months or by both.

4. The Director of Public Works or his or her designee shall enforce this chapter against violations by any of the following actions:

a. Receiving and investigating complaints related to the violation of this chapter;

b. Serving notice requiring the correction of any violation of this chapter;

c. Calling upon the City Attorney to maintain an action for injunction to enforce the provisions of this chapter and to cause the correction of any such violation through all appropriate equitable and legal means;

d. Issuing an infraction citation;

e. Any other available equitable and legal means.

B. Appeals. Employers may appeal decisions or determinations of the Director of Public Works or his or her designee made under this chapter as follows:

1. Appeals to the City Manager. Within ten calendar days after the date of a decision by the Director of Public Works or his or her designee, an appeal from said decision may be taken to the City Manager by the employer. In the event the last date of appeal falls on a weekend or holiday when city offices are closed, the next date such offices are open for business shall be the last date of appeal. Such appeal shall be made on a form prescribed by the Director of Public Works and shall be filed with the City Manager. The appeal shall state specifically wherein it is claimed there was error or abuse of discretion or wherein its decision is not supported by the evidence in the record. Upon receipt of such appeal, the City Manager shall set the date for consideration thereof and shall, not less than ten days prior thereto, give written notice to the appellant, or to the attorney of such party, of the date and place of the hearing on the appeal.

2. Appeals to the City Council. Within ten calendar days after the date of a decision by the City Manager's Office, an appeal from said decision may be taken to the City Council by the employer. In the event the last date of appeal falls on a weekend or holiday when city offices are closed, the next date such offices are open for business shall be the last date of appeal. Such appeal shall be made on a form prescribed by the Director of Public Works and shall be filed with the City Clerk. The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion or wherein its decision is not supported by the evidence in the record. Upon receipt of such appeal, the Council shall set the date for consideration thereof. The City Clerk shall notify the Director of Public Works of the receipt of said appeal and of the date set for consideration thereof; and the Director of Public Works shall, not less than ten days prior thereto, give written notice to the appellant, or to the attorney of such party, of the date and place of the hearing on the appeal.

3. Appeals are limited to the following:

- a. That the employer is not subject to regulation;

b. That the employer can most effectively accomplish the purpose of this chapter without complying with its requirements;

c. That the Director of Public Works or his or her designee has incorrectly denied an extension of time; or

d. That compliance would violate the employer's existing labor contracts.

4. Appeals to the City Manager and/or City Council shall be assessed a fee, as established in the master fee schedule.

5. Penalties under Section 1.28.020B of this municipal code do not accrue until thirty (30) days following the determination of the appeal. (Prior traffic code § 406)

#### **10.68.060 Severability.**

This chapter shall be enforced to the full extent of the authority of the city. If any section, subsection, paragraph, sentence or word of this chapter is deemed to be invalid or beyond the authority of the city, either on its face or as applied, the invalidity of such provision shall not affect the other sections. (Prior traffic code § 407)

#### **10.68.070 Certification of compliance.**

At such time when the Bay Air Quality Manager District adopts a trip reduction rule, employers subject to this chapter and the District's trip reduction rule, may file a certification of compliance from the District with the city in lieu of complying with this chapter. (Prior traffic code § 408)

## **Chapter 10.70**

### **SOUTHEAST OAKLAND AREA TRAFFIC IMPACT FEE**

#### **Sections:**

##### **Article I. General Provisions and Definitions**

- 10.70.110 Authority and reference to chapter.**
- 10.70.120 Purpose of fees.**
- 10.70.130 Impact fee program area.**
- 10.70.140 Use of fee.**
- 10.70.150 Definitions.**

##### **Article II. Payment of Fees**

- 10.70.210 Obligation to pay fees.**
- 10.70.220 Timing of payment.**
- 10.70.230 Amount of payment.**
- 10.70.240 Fee adjustment by the city.**
- 10.70.250 Exemptions and exceptions.**

##### **Article III. Credits and Reimbursements**

- 10.70.310 Application for potential credit.**
- 10.70.320 Timing of application.**
- 10.70.330 Amount of potential credit.**
- 10.70.340 Request for reimbursement.**
- 10.70.350 Allocation of reimbursements.**

##### **Article IV. Fee Protests, Appeals, and Adjustments**

- 10.70.410 Notice of protest rights.**
- 10.70.420 Director's determination.**
- 10.70.430 Appeal of director's determination.**
- 10.70.440 Cost of protest.**
- 10.70.450 Implementing regulations.**

##### **Article V. Reserved**

##### **Article I. General Provisions and Definitions**

##### **10.70.110 Authority and reference to chapter.**

This Chapter 70 of Title 10 of the Oakland Municipal Code maybe referred to as the "Southeast Oakland Area Traffic Impact Fee" as is adopted pursuant to the authority of Article XI, Section 7 of the California Constitution, Government Code sections 66000 et seq. (hereinafter "Mitigation Fee Act"), and in accordance with findings set forth in the ordinance codified herein (and all amendments thereto). (Ord. 12786 § 1 (part), 2007)

suant to the authority of Article XI, Section 7 of the California Constitution, Government Code sections 66000 et seq. (hereinafter "Mitigation Fee Act"), and in accordance with findings set forth in the ordinance codified herein (and all amendments thereto). (Ord. 12786 § 1 (part), 2007)

##### **10.70.120 Purpose of fee.**

Pursuant to this chapter, the city has established fees that will constitute a funding mechanism for traffic improvements required to mitigate cumulative traffic impacts in the Southeast Oakland area, as documented in the Leona Quarry Environmental Impact Report. Development of a TIF and TIP is required as part of the Conditions of Approval (see Condition #26) for the Leona Quarry project (Resolution No. 78358), and is also addressed in the Leona Quarry Settlement Agreement executed in December 2003 (Action No. RG-03077607). (Ord. 12786 § 1 (part), 2007)

##### **10.70.130 Impact fee program area.**

The Traffic Impact Program (TIP) area is located in Southeast Oakland. The area generally extends along both sides of the 1-580 freeway corridor between the Seminary Avenue and the 98th Avenue interchanges. A more detailed map of the geographic area included in the Southeast Oakland TIF and TIP Fee Study is included as Appendix B, and made a part of the resolution establishing the TIP. (Ord. 12786 § 1 (part), 2007)

##### **10.70.140 Use of fee.**

Fees imposed by the city pursuant to this chapter shall be used solely for the purpose of constructing or providing specific traffic and transportation related projects and/or facilities, as described in the implementing resolution(s). The fees shall be collected by the city and deposited in a separate and distinct "fee fund" in a manner to avoid commingling of the fees with other revenues or funds of the city. Such fees are subject to accounting requirements of the Mitigation Fee Act. Any interest income earned on the fund shall also be deposited therein and shall only be

expended for the purpose for which the fee was originally collected. (Ord. 12786 § 1 (part), 2007)

#### **10.70.150 Definitions.**

As used in this chapter, all words, phrases, and terms shall be interpreted in accordance with the definitions set forth in the Mitigation Fee Act, unless otherwise defined herein.

“Affordable housing” means a housing unit that is provided at an affordable rent or sold at an affordable sales price to persons and families of low or moderate income.

“Affordable sales price” means a sales price that would permit persons and families of low or moderate income to purchase the housing unit at an affordable housing cost. “Affordable housing cost” shall be as defined in California Health and Safety Code Section 50052.5. “Housing cost” shall include those items set forth in 25 California Code of Regulations Section 6920. “Affordable rent” shall be as defined in California Health and Safety Code Section 50053. “Persons and families of low or moderate income” shall be as defined in California Health and Safety Code Section 50093.

“Applicant” means any person, developer, or other legal entity, which applies to the city for approval of a development project.

“Change of use” means any proposed use that results in an increase in the number of peak hour trips generated by the replacement land use.

“Development project” means any project undertaken for the purpose of development, as defined in the Mitigation Fee Act, and shall specifically include any building permit, or any other permit or city approval required for a change of use. Development project shall specifically include any change of use or remodel.

“Director” means the Development Director who oversees the planning, zoning, and building services functions of the City of Oakland or any person designated by the City Administrator to perform the functions of the “Director” specified in this chapter.

“Fee” means, for the purpose of this chapter, a traffic impact fee imposed by the city in accordance with this chapter.

“Fee fund” means each of the separate and distinct funds into which fees for each public facility category are deposited.

“Future growth” means the total amount of potential new development in the city permitted under the general plan. Future growth can be expressed in terms of either gross square footage for commercial, office, and industrial development, and in terms of the number of dwelling units for residential development.

“Implementing resolution” means a resolution of the City Council of the City of Oakland, including any technical report incorporated by reference.

“Inflation index” means a recognized standard index (such as the Consumer Price Index or Engineering News Record Construction Cost Index), as determined by the Director to be a reasonable method of calculating the impact of inflation upon cost estimates set forth in implementing resolutions.

“Mitigation Fee Act” means California Government Code Section 66000 et seq.

“Peak hour trip” is as defined in Trip Generation, 7th Edition by the Institute of Transportation Engineers (ITE).

“Traffic or transportation facility” means any traffic or transportation related public improvements, public services, or community amenities, as defined by the Mitigation Fee Act, including, but not limited to: traffic signals, street improvements, bicycle amenities and any similar public improvement for which the city has adopted an implementing resolution pursuant to this chapter.

“Remodel” means any proposed improvement or reconstruction of an existing structure (or a previously existing structure) on a parcel which: (a) requires a building permit or other permit or city approval (such as a conditional use permit or a zoning administrator permit), and (b) results in an increase in the number of peak hour trips generated from the last legal use of the existing structure.

“Vested development rights” means an applicant’s right to proceed with development of a development project in substantial compliance with the local ordinances, policies, and standards in effect at the time that the rights vests, as the term is defined in the vest-

ing tentative map statutes (Government Code sections 66498.1 66498.9), development agreement statutes (Government Code sections 65864— 65869.5), and other state laws. (Ord. 12786 § 1 (part), 2007)

## **Article II. Payment of Fees**

### **10.70.210 Obligation to pay fees.**

A. Each application for review and approval by the city for a development project within the program boundary area as defined in Section 10.70.130 of this chapter including new, in-fill, change of use, and remodeling, shall pay traffic impact fees to the city, in accordance with the amounts set forth in the implementing resolution for said fee, unless the applicant establishes, to the satisfaction of the Development Director, entitlements to a fee credit pursuant to Section 10.70.300, a fee adjustment pursuant to Section 10.70.400, or a fee exemption or exception pursuant to Section 10.70.250.

B. The obligation to pay traffic impact fees pursuant to this chapter shall not replace an applicant's obligation to mitigate development project impacts in accordance with other requirements of state or local law. The obligation to pay the traffic impact fee will not replace the applicant's obligation for other impact related fees and programs. (Ord. 12786 § 1 (part), 2007)

### **10.70.220 Timing of payment.**

The fee for each unit of development within a development project shall be imposed at the time of planning and zoning approvals and will paid in full prior to the issuance of the certificate of occupancy. Failure by the city to collect payment at time of issuance of certificate of occupancy does not waive the city's right to collect this fee.

The full amount of the fee shall be paid at the times set forth in this section:

#### **A. Residential Development.**

1. Except as provided in subsection (A)(2) of this section, the fee with respect to residential development shall be paid in one of the following ways:

For residential development consisting of only one dwelling unit, before the final inspection, or the

date the certificate of occupancy is issued, whichever occurs first; or

For residential development consisting of more than one dwelling unit, at the discretion of the Director: (i) on a pro rata basis for each dwelling unit within the residential development before the dwelling unit receives its final inspection or certificate of occupancy, whichever occurs first, or (ii) on a pro rata basis when a specified percentage of the dwelling units within the residential development have received their final inspections or certificates of occupancy, whichever occurs first, or (iii) on a lump sum basis when the first dwelling unit within the residential development receives its final inspection or certificate of occupancy, whichever occurs first.

If the fee is not fully paid before issuance of a building permit, under this subsection (A)(1), the property owner shall enter into a written agreement with the city pursuant to subsection (C) of this section.

2. Notwithstanding the provisions of subsection (A)(1) of this section, the director may require the payment of the fees imposed under this chapter before a building permit is issued, where the director determines that such fees will be collected for the purpose of defraying the actual or estimated cost of constructing traffic improvements for which an account has been established and funds appropriated and for which the city has adopted a proposed construction schedule or plan prior to any final inspection or issuance of a certificate of occupancy for a dwelling unit within the residential development; or the fees are to reimburse the city for expenditures previously made for the construction of traffic improvements.

B. Nonresidential Development. The applicant shall pay the traffic impact fee at one of the following times, at the applicant's option:

1. Before the issuance of the building permit;
2. Before the first certificate of occupancy is issued, or consistent with the requirements of subsection (c) below.

C. Written Agreement. If an owner or applicant chooses to pay the fee after the time a building permit is issued, then before the building permit is

issued, he or she shall enter into a written agreement with the city, in a form acceptable to the City Attorney, and record the agreement with the Alameda County Recorder. (Ord. 12786 § 1 (part), 2007)

#### **10.70.230 Amount of payment.**

A. The fee to be paid for each unit of development within a development project within the traffic impact program area shall be the amount of the fee in effect, pursuant to implementing resolution, at the time that full payment is made to the city.

B. The fee to be paid for a remodel action shall be the amount of the fee required pursuant to subsection (A) of this section for that portion of the remodel which generates impacts greater than the last legal use of the existing structure.

C. In the event that a previous partial fee payment is made for any unit of development, the full fee to be paid for that unit shall be the amount of the fee in effect, pursuant to implementing resolution, at the time that full payment is made to the city, less the amount of the previous partial payment.

D. The applicant shall have the burden of proving the amount of any fee previously paid, the date on which payment was made, and the unit of development for which payment was made.

E. It is the intent of the city that the fees required by this chapter shall be supplementary to the fees, dedications or conditions imposed upon development pursuant to the provisions of the Subdivision Map Act, California Environmental Quality Act, and other state laws and city ordinances or policies which may authorize the imposition of fees, dedications or conditions. (Ord. 12786 § 1 (part), 2007)

#### **10.70.240 Fee adjustments by the city.**

The city reserves the right to update and adjust the TIP fee from time to time, in accordance with the Mitigation Fee Act. The fee in effect at the time any applicant has obtained a vested development right shall be subject to adjustment by the city as incorporated in updated implementing resolutions in effect at the time that full payment of the fee is made, based upon any or all of the following criteria:

A. Adjustments in the amount of the estimated construction costs of providing the specified public facilities based upon adjustments in accordance with the inflation index.

B. Adjustments to replace estimated costs with actual costs (including carrying costs) of providing the specified traffic and/or transportation facilities.

C. Adjustments to reflect more accurate cost estimates of providing the specified traffic and transportation facilities based upon more detailed analysis or design of the previously identified specified public facilities. (Ord. 12786 § 1 (part), 2007)

#### **10.70.250 Exemptions and exceptions.**

A. Affordable housing units are exempt from the TIP and TIF. Restrictions on household incomes, rents and sales prices shall be in the form of a regulatory agreement, affordability agreement, resale controls, declaration of covenants, or similar binding instrument executed by the city and the applicant. Such restrictions shall be recorded against the affordable housing units as covenants running with land, senior in priority to any private liens or encumbrances, and shall be enforceable by the city against the project applicant or the applicant's successors-in-interest to the units for the full affordability term. In the case of rental units, the restrictions shall have a term of not less than fifty-five (55) years from the date of initial occupancy of the unit. In the case of ownership units, the restrictions shall have a term of not less than forty-five (45) years from the date of initial occupancy of the unit.

B. Residential development projects are exempt from TIP and TIF impact fees for any remodel, as long as it does not result in a change of use or does not increase the number of housing units.

C. A reconstruction of a razed structure shall receive a fee credit only if the applicant submits documentation to the satisfaction of the Development Director establishing that the razed structure was in existence in accordance with the timing requirements of this subsection. If a development project receives a credit pursuant to this subsection, the amount of the fee to be paid shall be: (i) the amount of the fee required pursuant to subsection 10.70.250(A) for the

entire new structure, (ii) minus the amount of the fee which would have been required pursuant to subsection 10.70.250(A) for the last legal use of the razed structure. In order to be entitled to a credit for the traffic impact fee, the razed structure is required to have been in existence on or after the date this ordinance is in effect.

D. An applicant may request a refund of a fee previously paid in accordance with this chapter only if the applicant provides written documentation to the satisfaction of the Development Director that: (1) the building permit (including any permit or city approval on which the fee was imposed) is cancelled or voided, and (2) work has not progressed on the building permit which would allow commencement of a new use or change of use, and (3) the city has not already committed the fees to the construction of traffic or transportation facilities. Any refund made pursuant to this subsection may, in the discretion of the Development Director, include a deduction to cover the city's administrative costs of processing the refund. (Ord. 12786 § 1 (part), 2007)

### **Article III. Credits and Reimbursements**

#### **10.70.310 Application for potential credit.**

An applicant may be eligible for a credit against TIF otherwise owed, in return for providing a traffic or transportation facility to the city, only if the applicant submits a written application to the Development Director which establishes compliance with all of the following requirements to the satisfaction of the Development Director:

A. Describe the specified traffic or transportation facility (or portion thereof) proposed to be provided by the applicant, with a cross-reference to the description of the specified traffic or transportation facility in the relevant implementing resolution.

B. Identify the estimated cost of providing the specified traffic or transportation facilities (including construction, design, and/or land acquisition, as set forth in the implementing resolution in effect at time application to the city) for which the applicant is requesting credit.

C. Describe the development project or projects to which the fee credit is requested to apply. The description shall be limited to all or a portion of the development project for which specified public facilities are a condition of approval.

D. Document that either: (1) the applicant is required, as a condition of approval for the development project, to construct the specified public facilities; or (2) the applicant requests to build one or more specified traffic or transportation facilities which benefit the development project, and the Development Director determines in writing prior to the commencement of construction that it is in the city's best interests for the specified public facilities to be built by the applicant.

E. The applicant must enter into a subdivision improvement agreement or other written agreement with the city, in a form acceptable to the City Attorney, before beginning construction of the improvement. (Ord. 12786 § 1 (part), 2007)

#### **10.70.320 Timing of application.**

The application for credit shall be submitted by the applicant to the Development Director in accordance with the following timing requirements: (a) to the extent that the applicant requests credit for design or construction, the application shall be submitted concurrently with the submittal of improvement plans; (b) to the extent that the applicant requests credit for land dedication, the application shall be submitted prior to the recordation of the final map or parcel map for the development project. The applicant may submit a late application only if the applicant establishes, to the satisfaction of the Director, that, in light of new or changed circumstances, it is in the city's best interests to allow the late application. (Ord. 12786 § 1 (part), 2007)

#### **10.70.330 Amount of potential credit.**

In the event that the Director determines that the applicant has submitted a timely application in compliance with Section 10.70.320, and it is in the city's best interest to allow the applicant to provide the proposed specified traffic or transportation facility, the applicant may be entitled to credit against fees

otherwise owed in accordance with this chapter, provided that the applicant enters into an agreement with the city which includes the following essential terms:

A. The design of the specified traffic or transportation facility is approved by the city.

B. The applicant agrees to provide the specified public facilities in return for the credit to be allocated in accordance with the terms of the agreement and this chapter. The applicant provides in writing a document indicating the estimate time to design and construct the relevant traffic or transportation facility, along with an estimated date of completion.

C. The amount of credit available to the applicant shall not exceed the lesser of: (i) the applicant's actual cost of providing the specified public facility, to be evidenced by the submittal of written documentation to the satisfaction of the Director, and (ii) the estimated cost of providing the specified public facility, as identified in the implementing resolution.

D. The applicant provides improvement security in a form and amount acceptable to the city.

E. The applicant identifies the development projects to which the credit will be applied. (Ord. 12786 § 1 (part), 2007)

#### **10.70.340 Request for reimbursement.**

To the extent that the applicant has a balance of credit available, the applicant may submit a written request for reimbursement to the Development Director. The applicant shall be entitled to potential reimbursement from the city only if the applicant submits a written request to the Development Director which establishes the following:

A. The request shall be made no later than one hundred and eighty (180) days after the later to occur of: (i) issuance of the last certificate of occupancy within the development project for which the application for credit was made, or (ii) the date of the city's acceptance of the specified traffic or transportation facilities as complete.

B. The request shall identify the specific dollar amount of the credit balance for which the applicant requests reimbursement, along with documentation in support thereof. This documentation shall include a calculation of the total credit available (pursuant to

Section 10.70.330) less amount of credit previously allocated to offset fees pursuant to section.

C. The request must include a designation of the name and address of the legal entity to which reimbursement payments are to be made. (Ord. 12786 § 1 (part), 2007)

#### **10.70.350 Allocation of reimbursements.**

A. In the event the Development Director determines that the applicant has properly submitted a request for reimbursement pursuant to Section 10.70.340, the Development Director shall prepare a written determination which will identify the dollar amount of the potential reimbursement. The dollar amount of the reimbursement shall equal the amount specified in the applicant's request (not to exceed the actual credit available to the applicant, less the total of all credit allocations to offset fees pursuant to Section 10.70.330, as determined by the Director).

B. The city shall make reimbursement payments to the applicant. The right to receive reimbursement payments, if any, shall not run with the land.

C. The city shall make reimbursement payments pursuant to a schedule to be established by the Director, and consistent with the approved capital improvement program. The city shall make no reimbursements to any applicant in excess of the amount of fees deposited in the relevant reimbursement account.

D. No reimbursement payment shall be made to an applicant until after the completion of construction by the applicant, and acceptance of improvements by the city. (Ord. 12786 § 1 (part), 2007)

### **Article IV. Fee Protests, Appeals, and Adjustments**

#### **10.70.410 Notice of protest rights.**

A. Each applicant is hereby notified that, in order to protest the imposition of a traffic impact fee required by this chapter, the protest must be filed in accordance with the requirements of this chapter and the Mitigation Fee Act. Failure of any person to comply with the protest requirements of this chapter or the Mitigation Fee Act shall bar that person from

any action or proceeding or any defense of invalidity or unreasonableness of the imposition.

B. On or before the date on which payment of the fee is due, the applicant shall pay the full amount required by the city and serve a written notice to the Director with all of the following information: (1) a statement that the required payment is tendered, or will be tendered when due, under protest; and (2) a statement informing the city of the factual elements of the dispute and the legal theory forming the basis for the protest.

C. The applicant shall bear the burden of proving, to the satisfaction of the Director, entitlement to a fee adjustment. The evidence (information and documentation) to be submitted by the applicant in support of the protest shall include, but not be limited to, an identification of the amount of the fee which the applicant alleges should be imposed upon the development project, and all factual and legal bases for the allegation. The applicant shall identify each portion of this Impact Fee Ordinance and any implementing resolution which the applicant claims supports the allegation. The applicant shall identify each portion of this Impact Fee Ordinance and each portion of any implementing resolution (in particular the technical reports incorporated therein) which the applicant claims fails to support the city's imposition of the fee upon the development project. At the request of the Director, the applicant shall provide additional information or documentation in substantiation of the protest. (Ord. 12786 § 1 (part), 2007)

#### **10.70.420 Director's determination.**

No more than thirty (30) days after receipt of all requested materials identified in subsection 10.70.410 (C), the Director shall investigate the factual and legal adequacy of the applicant's protest to render a decision and issue a written determination regarding the protest. During the review process, the Director shall consider the applicant's protest, relevant evidence assembled as a result of the protest. The Director's determination shall support the fee imposed upon the development project unless the applicant establishes, to the satisfaction of the Director, entitlement to an adjustment to the fee.

#### **10.70.430 Appeal of director's determination.**

Any applicant who desires to appeal a determination issued by the Director pursuant to Section 10.70.420 shall submit a written appeal to the Director and the City Administrator. A complete written appeal shall include a complete description of the factual elements of the dispute and the legal theory forming the basis for the appeal of the Director's determination. An appeal received by the City Administrator more than ten calendar days after the Director's determination shall be rejected as late. No later than thirty (30) days after receipt of a complete and timely appeal, the City Administrator shall render a decision. The City Administrator's decision is final and conclusive. (Ord. 12786 § 1 (part), 2007)

#### **10.70.440 Costs of protest.**

The applicant shall pay all city costs related to any protest or appeal pursuant to this chapter, in accordance with the fee schedule adopted by the city. At the time of the applicant's protest, and at the time of the applicant's appeal, the applicant shall pay a deposit in an amount established by the city to cover the estimated reasonable cost of processing the protest and appeal. (Ord. 12786 § 1 (part), 2007)

#### **10.70.450 Implementing regulations.**

The City Administrator is hereby authorized to adopt rules and to implement this chapter and to make such interpretations of this chapter as he or she may consider necessary to achieve the purposes of this chapter. (Ord. 12786 § 1 (part), 2007)

### **Article V. Reserved**

**Title 11**

**(Reserved)**



## Title 12

### STREETS, SIDEWALKS AND PUBLIC PLACES

#### Chapters:

- |              |   |
|--------------|---|
| <b>12.02</b> | <b>Complete Street Design Standards</b>                             |
| <b>12.04</b> | <b>Sidewalk, Driveway and Curb<br/>Construction and Maintenance</b> |
| <b>12.08</b> | <b>Encroachments</b>  |
| <b>12.12</b> | <b>Excavations</b>  |
| <b>12.16</b> | <b>Improvements Generally</b>                                       |
| <b>12.20</b> | <b>Improvements by Private Contract</b>                             |
| <b>12.24</b> | <b>Street and Sidewalk Use Regulations</b>                          |
| <b>12.28</b> | <b>Railroad Tracks</b>  |
| <b>12.32</b> | <b>Street Trees and Shrubs</b>                                      |
| <b>12.36</b> | <b>Protected Trees</b>  |
| <b>12.40</b> | <b>Hazardous Trees</b>  |
| <b>12.44</b> | <b>Assemblies and Parades</b>                                       |
| <b>12.50</b> | <b>Newsracks—City-Wide Controls</b>                                 |
| <b>12.52</b> | <b>Sidewalk Benches</b>   |
| <b>12.56</b> | <b>Sound Amplification Equipment</b>                                |
| <b>12.60</b> | <b>Bicycles</b>   |
| <b>12.64</b> | <b>Park and Recreation Area Use<br/>Regulations</b>                 |



## Chapter 12.02

### **COMPLETE STREET DESIGN STANDARDS**

**Sections:**

**12.02.001 Definitions.**

**12.02.003 Purpose.**

**12.02.005 Responsibility.**

**12.02.007 Acceptance by the City Council.**

**12.02.010 Design standards.**

**12.02.001 Definitions.**

As used in this chapter:

"Complete street", which is reflected in City Resolution No. \_\_\_\_\_ C.M.S., as it may be amended, is a transportation facility that is planned, designed, operated and maintained to provide safe mobility and access for all users, including bicyclists, pedestrians (including seniors, children, and persons with disabilities), transit users of abilities, movers of commercial goods, and motorists, appropriate to the function and context of the facility.

"Private street" means an alley, roadway, or street, not maintained by the City, and used for vehicular, bicycle, or pedestrian access.

"Public street" means an alley, roadway, or street, maintained by the City, and used for vehicular, bicycle, or pedestrian access.

"Street system" means either the entire complete streets network or a portion of that network of publicly and privately maintained streets, under the jurisdiction of the City, used for vehicular, bicycle, or pedestrian access.

(Ord. No. 13153, § 1, 2-19-2013)

**12.02.003 Purpose.**

The purpose of this chapter is to augment Chapter 16.16 and establish the City's intent to implement complete streets serving all users and modes so as to uniformly regulate the design, construction, operation, and maintenance of the street system. The City will use complete streets to provide safe comfortable, and convenient travel along and across streets (including streets, roads, high-

ways, bridges, and other portions of the transportation system) through a comprehensive, integrated transportation network that serves all categories of users, as defined above.

(Ord. No. 13153, § 1, 2-19-2013)

**12.02.005 Responsibility.**

The Director of Public Works or his/her designee is responsible for developing and publishing complete street standards for the design and construction of the street system consistent with this Code, and for updating the standards from time to time to reflect emerging best practices and innovative design options as appropriate for City context. Such standards shall apply to all streets regardless of whether they are private streets or public streets.

(Ord. No. 13153, § 1, 2-19-2013)

**12.02.007 Acceptance by the City Council.**

No street system or portion thereof shall be accepted by the City as part of the public street system except by resolution of the City Council upon recommendation of the Director of Public Works or his/her designee.

(Ord. No. 13153, § 1, 2-19-2013)

**12.02.010 Design standards.**

All roadway dimensions and geometric requirements, including but not limited to, right-of-way widths, pavement widths, alignment, grade, length of block and others are established in the context of the complete streets approach in compliance with Chapter 16.16, Design standards.

(Ord. No. 13153, § 1, 2-19-2013)



<b>Chapter 12.04</b>	<b>12.04.190</b>	<b>Sidewalk and driveway construction—Permit forms—Conditions and requirements—Posting.</b>
<b>SIDEWALK, DRIVEWAY AND CURB CONSTRUCTION AND MAINTENANCE</b>		
<b>Sections:</b>		
<b>12.04.010</b>	<b>12.04.200</b>	<b>Driveway construction—Conditions.</b>
<b>State law adopted—Erection of barricades.</b>	<b>12.04.210</b>	<b>Transfer of permit for private construction of sidewalks or driveways.</b>
<b>12.04.020</b>	<b>12.04.220</b>	<b>Private construction of sidewalks and driveways—Compliance with permit and adopted specification.</b>
<b>Notice to repair dangerous conditions.</b>	<b>12.04.230</b>	<b>Private construction of sidewalks and driveways—Removing obstructions, safety measures.</b>
<b>12.04.030</b>		<b>Driveway defined.</b>
<b>Cost of voluntary requested repairs.</b>		<b>Driveway opening defined.</b>
<b>12.04.040</b>		<b>Driveway openings—Widths—Locations—Requirements in certain zones.</b>
<b>Voluntary requested repairs—Prospective notice of lien.</b>	<b>12.04.240</b>	<b>Driveway openings—Widths—Locations—General requirements.</b>
<b>12.04.050</b>	<b>12.04.250</b>	<b>Driveway construction.</b>
<b>Failure to make payments.</b>	<b>12.04.260</b>	<b>Driveway Appeals Board—Creation—Membership.</b>
<b>12.04.060</b>		<b>Driveway Appeals Board—Powers.</b>
<b>Mandatory repair—Prospective notice of lien.</b>		<b>Driveway Appeals Board—Decisions appealable to Council or Planning Commission.</b>
<b>12.04.070</b>	<b>12.04.270</b>	<b>Private construction of curbs and gutters—Permit required.</b>
<b>Grass and other obstructions.</b>		<b>Private construction of curbs and gutters—Permit contents—Time of completion.</b>
<b>12.04.080</b>	<b>12.04.280</b>	<b>Private construction of curbs and gutters—Appointment and compensation of inspectors—Engineering services.</b>
<b>Obstructions generally—Loading.</b>	<b>12.04.290</b>	<b>Elimination of abandoned driveway—Power of Superintendent of Streets.</b>
<b>12.04.090</b>		
<b>Obstructions in certain districts.</b>		
<b>12.04.100</b>		
<b>Private contract defined.</b>		
<b>12.04.110</b>		
<b>Private construction of sidewalks and driveways—Permit required—Construction material.</b>	<b>12.04.300</b>	
<b>12.04.120</b>	<b>12.04.310</b>	
<b>Multiple contractor services—One permit required.</b>	<b>12.04.320</b>	
<b>12.04.130</b>	<b>12.04.330</b>	
<b>Private construction of sidewalks and driveways—Inspection—Fee—Payment in advance.</b>	<b>12.04.340</b>	
<b>12.04.140</b>	<b>12.04.350</b>	
<b>Sidewalk and driveway fees—Fund to which credited.</b>		
<b>12.04.150</b>		
<b>Sidewalk and driveway construction—Obstructions.</b>		
<b>12.04.160</b>		
<b>Sidewalk and street obstruction—Public safety.</b>		
<b>12.04.170</b>		
<b>Responsibility for accidents.</b>		
<b>12.04.180</b>		
<b>Sidewalk and driveway construction—Time of completion.</b>		

- 12.04.360      Elimination of abandoned driveway—Notice.**
- 12.04.370      Elimination of abandoned driveways—Processing to assess costs.**

**12.04.010      State law adopted—Erection of barricades.**

The provisions of Division 7, Part 3, Chapter 22, of the California Streets and Highways Code are adopted as the procedure to be followed by the Superintendent of Streets/Director of Public Works, and provisions governing and regulating maintenance of sidewalks. In addition thereto, whenever any portion of any street, lane, alley, court or place in the city, or any sidewalk constructed thereon, according to law, shall be out of repair and in condition to endanger persons or property passing thereon, and the Superintendent of Streets/Director of Public Works shall have notice thereof, it shall be his or her duty to forthwith erect such barricades, lights, or other safety devices as he or she may deem necessary to warn the public of such dangerous condition, and to guard against accidents resulting therefrom.

The adjacent property owner, or tenant, may at his or her expense substitute similar and appropriate guards against accident subject to the approval of the Superintendent of Streets/Director of Public Works. All costs incurred by the city for erecting and maintaining such barricades, lights or other safety devices shall be a charge against, and a lien upon the parcel or parcels of the property fronting adjacently upon the street, lane, alley, court or place wherein such dangerous condition is located. (Prior code § 6-1.01)

**12.04.020      Notice to repair dangerous conditions.**

Whenever any portion of any street, lane, alley, court or place in the city, or any sidewalk constructed thereon, according to law, shall be out of repair and in condition to endanger persons or property passing thereon, or in condition to interfere with the public convenience in the use thereof, it shall be the

duty of the Superintendent of Streets/Director of Public Works of said city to require, by notice in writing, to be delivered to them personally, or left on the premises, the owners or occupants of lots or portions of lots, fronting on said portions of said street, lane, alley, court or place, or of said portion of said walk, so out of repair as aforesaid, to repair forthwith said portion of said street, lane, alley, court or place to the center thereof, or said sidewalk in front of the property of which he or she is the owner or tenant or occupant, specifying in said notice what repairs are required to be made.

It is unlawful for said owner or tenant or occupant of said lots, or portion of said lots, to neglect or refuse for the period of three days from the date of the service of the aforesaid notice, to make said repairs, and diligently and without interruption to prosecute the same to completion. (Prior code § 6-1.071)

**12.04.030      Cost of voluntary requested repairs.**

In order to fulfill the responsibility outlined in Section 12.04.020, owners may elect to have the city repair the dangerous sidewalk conditions. The Director of Public Works is authorized and directed to execute an agreement on behalf of the city with such persons which would include the following conditions:

- A. Agreement to allow the city and/or its contractor to perform the necessary work;
- B. Agreement to pay the actual repair cost, plus an additional charge to cover the city's cost of contract administration, engineering and inspection, plus interest; the interest rate shall be in accordance with the master fee schedule; the Director of Public Works may establish a program and eligibility requirements for low income property owners who reside at the location where the repair work is performed; the interest rate for persons qualifying for said program shall be in accordance with the master fee schedule;
- C. Option to pay these costs in annual installments not to exceed five years with the ability to

pay the balance at any time before the five-year period in completed;

D. A prospective notice of lien may be filed by the Director of Public Works with the Alameda County Recorder against the property; such prospective notice of lien will take the form set forth in Section 12.04.040; and

E. Upon completion of the repairs, a notice of lien will be filed by the Director of Public Works with the Alameda County Recorder against the property and will be released only when the charges have been paid in full. (Prior code § 6-1.072)

#### **12.04.040      Voluntary requested repairs—                           Prospective notice of lien.**

The prospective notice of lien referenced in Section 12.04.030D shall take the following form:

#### **PROSPECTIVE NOTICE OF LIEN**

Pursuant to the Streets and Highways Code of the State of California and the provisions of Chapter 12.04 of the Oakland Municipal Code, I caused a Notice To Repair a dangerous sidewalk condition to be mailed to the subject property owner and/or posted on the subject property, notifying the property owner of their responsibility to repair a dangerous sidewalk condition. The owner of said property has entered into an Agreement to allow the city and/or its contractor to perform the necessary work. The estimated cost of said repairs, including interest, is \$\_\_\_\_\_ and said amount has not been paid. The City of Oakland does hereby give public notice of its claim in said amount against subject property and of pending city action to record a lien against said property when the repairs have been completed. The real property herein referenced and upon which a prospective notice of lien is claimed, is that certain parcel of land lying and being in the City of Oakland, County of Alameda, State of California, and particularly described as follows, to-wit:

(Insert description of property)

Dated this \_\_\_\_\_ day of \_\_\_\_\_,  
19\_\_\_\_\_.

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Director of Public Works  
City of Oakland

(Prior code § 6-1.073)

#### **12.04.050      Failure to make payments.**

An owner shall be deemed to be delinquent in the payment of voluntary requested repairs if said owner fails to make a required payment within three months of the due date. At the time of delinquency, the unpaid balance, plus any charge imposed on the city by the county for collection of said delinquency, shall constitute a special assessment against said property. The Director of Public Works shall cause a copy of the report of assessment to be served upon the owner of said property not less than five days prior to the time fixed of confirmation of said assessment; service may be by enclosing a copy of the report of assessment in a sealed envelope, postage prepaid, addressed to the owner at his or her last known address as the same appears on the last equalized assessment rolls of the city, and depositing the same in the United States mail; and service shall be deemed completed at the time of deposit in the United States mail.

A copy of the report of assessment shall be posted in the Office of the City Clerk at least three days prior to the time when the report will be submitted to the City Council. After confirmation of the report, a certified copy shall be filed with the County Auditor, Alameda County, on or before August 10th. The description of the parcel reported shall be that used for the same parcel as the County Assessor's map books for the current year. The County Assessor shall enter each assessment on the County tax roll opposite the parcel of land. The amount of the assessment shall be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject

to the same penalties and the same procedure for foreclosure and sale in case of delinquencies as provided for ordinary municipal taxes. (Prior code § 6-1.074)

**12.04.060      Mandatory repair—Prospective notice of lien.**

In the event the property owner does not commence the repair of a dangerous sidewalk condition within two weeks after notice is given and diligently and without interruption prosecute same to completion, the Director of Public Works shall make such repair, and the cost of the same shall become a lien on the property upon confirmation by the City Council. Prior to the commencement of said work by the city, a prospective notice of lien may be filed by the Director of Public Works with the Alameda County Recorder against the property. Such prospective notice of lien will take the form set forth hereinbelow:

**PROSPECTIVE NOTICE OF LIEN**

Pursuant to the Streets and Highways Code of the State of California and the provisions of Chapter 12.04 of the Oakland Municipal Code, I caused a Notice To Repair a dangerous sidewalk condition to be mailed to the subject property owner and/or posted on the subject property, notifying the property owner of their responsibility to repair a dangerous sidewalk condition. The owner of said property has failed to diligently and without interruption prosecute same to completion, nor has the property owner entered into an Agreement to allow the city and/or its contractor to perform the necessary work. The estimated cost of said repairs, including collection costs, is \$\_\_\_\_\_ and said amount has not been paid. The City of Oakland does hereby give public notice of its claim in said amount against subject property and of pending city action to record a lien against said property when the repairs have been completed. The real property herein referenced and upon which a prospective notice of lien is claimed, is that certain parcel of land lying and

being in the City of Oakland, county of Alameda, State of California, and particularly described as follows, to wit:

(Insert description of property)

Dated this \_\_\_\_\_ day of \_\_\_\_\_,  
19\_\_\_\_\_.

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Director of Public Works  
City of Oakland

(Prior code § 6-1.075)

**12.04.070      Grass and other obstructions.**

Every owner of real property in the city shall keep the entire width of sidewalk in front of such property, from curb to lot line, free and clear of all grass, weeds, rubbish or other obstructions or materials which from any cause whatever shall have accumulated or may accumulate upon such sidewalk above the established grade of the same.

Upon the failure or refusal of any such owner of real property in the city to so remove any obstructions from the sidewalk as herein provided, the provisions hereinbefore in this chapter set forth relative to the repair of sidewalks (Sections 12.04.010 through 12.04.060, both inclusive) shall apply. (Prior code § 6-1.08)

**12.04.080      Obstructions generally—Loading.**

It is unlawful for any person to place, or cause to be placed, or suffer to remain, upon any sidewalk in the city, any goods, wares or merchandise, or any other object or substance; provided, however, that not to exceed one-third of the width of any sidewalk may be used for not to exceed thirty (30) minutes while actually engaged in the loading or unloading of any goods, wares or merchandise, or any other object or substance; provided further, however, newspaper and periodical racks and/or stands located on the inner or outer edge of sidewalks and sidewalk cafes are excepted from the provisions of this section. (Prior code § 6-1.09)

**12.04.090 Obstructions in certain districts.**

Anything in Section 12.04.080 to the contrary notwithstanding, it is declared to be lawful for merchants doing business in that portion of the city bounded on the north by the southern line of Seventh Street; on the west by the eastern line of Broadway; on the south by the waterfront; and on the east by the eastern line of Fallon Street, to use the sidewalk in front of their premises for the display and sale of goods, wares and merchandise; provided, however, that there shall be maintained, at all times, a clear space along such sidewalk of not less than four feet in width for the use of pedestrians. (Prior code § 6-1.10)

**12.04.100 Private contract defined.**

The words "private contract" as used in this chapter, with reference to private construction of sidewalks, driveways, gutters, or curbs, shall be construed to mean construction other than let by the city or permitted by the issuance of approved plans and specifications to the private contractor by the Superintendent of Streets/Director of Public Works. (Prior code § 6-1.11)

**12.04.110 Private construction of sidewalks and driveways—Permit required—Construction material.**

It is declared to be unlawful for any person to repair or construct, or cause to be repaired or constructed, by private contract in the city, any sidewalk, driveway, or to cut any curb for the purpose of constructing a driveway, or to begin the excavation for the purpose of constructing a sidewalk or driveway, without first obtaining from the Superintendent of Streets, a permit in writing so to do. Excepting, however, that a property owner, when notified by the Superintendent of Streets/Director of Public Works to repair an existing sidewalk or driveway, may make such repair to the extent of not more than twenty-five square feet without the necessity of obtaining a permit therefor.

Sidewalks or driveways shall be constructed of portland cement concrete with the following exceptions:

A. In an industrial area, where concrete sidewalks or driveways have been constructed, asphaltic concrete may be placed between the property line and the concrete sidewalk or driveway.

B. On streets where there are no curbs or other permanent street improvements in the sidewalk area, asphaltic concrete driveways and driveway access bridges may be permitted.

C. Within the boundaries of special design sidewalk districts, the sidewalks shall be constructed according to plans and specifications prepared by the City Engineer, which plans and specifications shall be adopted by resolution of the City Council.

For each of the exceptions above, permission must first be obtained from the Superintendent of Streets/Director of Public Works. Improvements constructed under subsections A and B of this section are considered temporary only, and shall be removed upon notice from said Superintendent of Streets. (Prior code § 6-1.12)

**12.04.120 Multiple contractor services—One permit required.**

When sidewalks, driveways, curbs and gutters, or any combination thereof, are constructed by a contractor at the same time and at the same location, one permit shall be sufficient to cover the work contemplated. (Prior code § 6-1.151)

**12.04.130 Private construction of sidewalks and driveways—Inspection—Fee—Payment in advance.**

It shall be the duty of the Superintendent of Streets/Director of Public Works to cause an inspection to be made of sidewalks or driveways constructed under private contract as referred to in Section 12.04.110, to ascertain whether such work is being done, or has been done, in accordance with the provisions of this chapter and the permit issued therefor.

At the time of the issuance of a permit, as required in Section 12.04.110, the applicant shall pay the Superintendent of Streets/Director of Public Works such fee or fees as shall be established by resolution of the Council of the city, and no permit,

as required by said section, shall be issued until such payment shall have first been made. (Prior code § 6-1.13)

**12.04.140 Sidewalk and driveway fees—Fund to which credited.**

All fees collected pursuant to the provisions of this chapter shall be credited to the general fund. (Prior code § 6-1.15)

**12.04.150 Sidewalk and driveway construction—Obstructions.**

The permit granted pursuant to Section 12.04.110 shall prescribe the date when work shall begin and (except "Limited Operations Areas" established by Resolution No. 31375 C.M.S., as now or hereafter amended, and other areas designated by the Superintendent of Streets/Director of Public Works) may include the right to place, or cause to be placed, upon the street adjacent to the place where the construction, alteration or repair work is to be performed, such materials or appliances as may be necessary for use in performing such work, provided, however, that such materials and appliances shall not occupy more than one-third of the roadway in front of said construction work, and shall be placed thereon subject to the direction and approval of the Superintendent of Streets/Director of Public Works. In no event shall said appliances or materials be placed within five feet of any railroad or street car track. All materials, debris and appliances shall be so placed as not to obstruct any gutterway, and shall be so cared for as to prevent them from being blown or otherwise carried into any gutterway, or any catch basin, or any portion of the street other than the portion lawfully occupied by such obstruction. Provided, however, that the Superintendent of Streets/Director of Public Works may order such materials, appliances and debris, or any portion thereof, to be removed within three days after written notice, and in the event the same is not removed within the time prescribed by the Superintendent of Streets/Director of Public Works, he or she may cause to be removed at the expense of the owner of the parcel of property fronting the sidewalk or drive-

way for which the permit was granted. The placing of materials, appliances and debris upon the street for the purpose of such construction work and the removal thereof shall be held to be a part of such construction work. (Prior code § 6-1.17)

**12.04.160 Sidewalk and street obstruction—Public safety.**

Wherever the construction, alteration or repair of a building adjacent to public streets or sidewalks, or the construction or repair of sidewalks, driveways, curbs or gutters, or other private improvement contracts or undertakings require the temporary occupancy of any portion of a public street or a public sidewalk and a permit has been granted for such occupancy pursuant to the provisions of this code or the building laws or other ordinances of the city, such permit and such occupancy shall be subject to the following conditions and requirements: The permittee shall provide and maintain such facilities as fences, barriers, "street closed" signs, lights and watchmen as may be necessary to provide adequate protection and prevent avoidable accidents to the public. Where such facilities or any of them are not provided or are out of service and an emergency exists that necessitates protective measures, the Superintendent of Streets/Director of Public Works or his or her representative may provide such facilities during the emergency, and the cost thereof shall be paid by the permittee or deducted from any deposit made with the city as a condition to the granting of such permit. The Superintendent of Streets/Director of Public Works or his or her representative, before taking the above-mentioned emergency action, shall take all steps reasonable under the circumstances to notify the permittee, or his or her known representatives, of the existing conditions and allow said permittee to care for the same, provided he or she acts promptly and expeditiously. (Prior code § 6-1.171)

**12.04.170 Responsibility for accidents.**

The permittee shall be responsible for all claims and liabilities arising out of work performed under the permit, or arising out of permittee's failure to

perform the obligations with respect to street, sidewalk, curb and gutter construction and maintenance and all public safety facilities required by law. The permittee shall, and by acceptance of the permit agrees to, defend, indemnify, and save and hold harmless the city, its officers and employees, from and against any and all suits, claims or actions brought by any person for or on account of any bodily injury, disease or illness or damage to persons and/or property sustained in or arising out of the construction of the work performed under the permit or in consequence of permittee's failure to perform the obligations with respect to street, sidewalk, curb and gutter construction and maintenance and all public safety facilities required by law. (Prior code § 6-1.172)

**12.04.180 Sidewalk and driveway construction—Time of completion.**

If all of the private construction and/or repair work of any sidewalk and/or driveway be not completed within thirty (30) days from the date of the permit, and in accordance with the terms of this chapter, the Superintendent of Streets/Director of Public Works may notify the holder of the permit to complete said work within two days, and if not so completed, the Superintendent of Streets/Director of Public Works is authorized to have the same done at the expense of the owner of the parcel of property fronting upon the sidewalk and/or driveway upon which such work was completed. (Prior code § 6-1.18)

**12.04.190 Sidewalk and driveway construction—Permit forms—Conditions and requirements—Posting.**

Permits granted pursuant to Section 12.04.110 shall be upon forms, and shall specify the name of the applicant, and location of the property in front of which the proposed sidewalk and/or driveway is to be repaired and/or constructed, and the number of square feet to be repaired and/or constructed. A sketch or plot plan, drawn to scale, showing the

proposed driveway construction, together with all existing streetlight standards, poles, utility poles, signs, sidewalk boxes, fire hydrants, and any other obstructions shall be submitted with each request for a driveway permit. In no case shall a permit be granted to construct sidewalks where the Council has declared its intention to construct sidewalks under the general laws of the state of California, and also provided, that in the event any of the terms or conditions of this chapter are not complied with within the time fixed for compliance, no further permit shall be issued to such person while such person causes or permits such noncompliance to continue, or is indebted to the city for money expended in accordance with the terms and conditions of this chapter.

All permits for construction under this chapter shall be posted conspicuously on the job. (Prior code § 6-1.19)

**12.04.200 Driveway construction—Conditions.**

Every permit for the construction of a driveway shall be subject to the condition that the owner of the property facing such driveway will, at his or her own expense, construct or reconstruct the curb, parkway and sidewalk upon the abandonment of the use of said property for any purpose which necessitates the existence of a driveway. (Prior code § 6-1.191)

**12.04.210 Transfer of permit for private construction of sidewalks or driveways.**

No construction and/or repair of sidewalks and/or driveways to be performed under a permit issued pursuant to this chapter shall be performed except by or under the supervision of the designated permittee, who shall also be the person who is responsible to the owner or contractor for said work. In the event it shall at any time be ascertained that any work is being done, or has been done, under a permit issued to one other than the person responsible to the owner or contractor for said work, and it shall be proven that the use of said permit was with the

knowledge and consent, expressed or implied, of the designated permittee, then the person doing, or having done, the work shall be guilty of an infraction. Such permit shall be declared null and void and the permittee shall obtain a new permit within two days. The payment of a penalty fee shall be as prescribed in the master fee schedule for starting work without a valid permit. (Prior code § 6-1.21)

**12.04.220 Private construction of sidewalks and driveways—Compliance with permit and adopted specification.**

All sidewalks and/or driveways must be repaired and/or constructed in every particular in accordance with the permit therefor issued, must be completed within thirty (30) days from the date of permit, except in cases where owners have been notified to make repairs as provided in Sections 12.04.010 to 12.04.060, inclusive, unless an extension of time thereon be granted by the Superintendent of Streets/Director of Public Works and must be done in conformity with the current city Street Department Standard Specifications on file in the Office of the City Clerk, and to the satisfaction and acceptance of the Superintendent of Streets/Director of Public Works. (Prior code § 6-1.22)

**12.04.230 Private construction of sidewalks and driveways—Removing obstructions, safety measures.**

In the private construction and/or repair of sidewalks and/or driveways, all rejected and refuse materials are to be removed immediately from the work, and all surplus materials shall be removed from the work within two days after the construction of the sidewalk is complete. All forms shall be removed in not less than twelve (12) hours or more than ten days after completion of the sidewalk. The excavation left by such removal shall be filled with earth and tamped so as to restore the excavated portion to the grade of the completed sidewalk.

The contractor shall provide and maintain such fences and red lights as may be necessary to prevent avoidable accidents to the public.

No material or other obstruction shall be placed within fifteen (15) feet of the fire hydrants, which must be at all times readily accessible to the Fire Department. (Prior code § 6-1.23)

**12.04.240 Driveway defined.**

The way or means of vehicular access from that portion of a street used for vehicular travel to the adjacent property, including the portion of the sidewalk lying within said way or means of access, is defined as a driveway. (Prior code § 6-1.24)

**12.04.250 Driveway opening defined.**

The depressed portion of the curb at the driveway entrance is defined as a driveway opening. (Prior code § 6-1.241)

**12.04.260 Driveway openings—Widths—Locations—Requirements in certain zones.**

No permit shall be issued by the Superintendent of Streets/Director of Public Works for the construction, relocation or widening of any driveway in any commercial, industrial or special zone, or in any residential zone combined with the S-12 residential parking combining zone, or in any residential zone not combined with the S-12 residential parking combining zone where the lot is developed or to be developed with five or more parking spaces, until each of the following shall have been complied with:

A. The sketch or plot plan required by Section 12.04.190 shall have been approved in writing by the Traffic Engineer.

B. Where a portion of the front yard area is used or is intended to be used for the purpose of vehicular movement, storage, or parking, a safety curb constructed of portland cement concrete shall be located along and inside the property line to the full extent, excepting the driveway openings, of said open area. All such safety curbs shall not be less than six inches wide, fourteen (14) inches deep, and with at least six inches extending above the surface of the ground. Provided, however, no such safety curb shall be required between driveways, as ex-

tended, serving a service station pump island parallel to such curb.

C. Provision is made for sufficient space on the property to be served to provide egress therefrom without the backing of vehicles across the sidewalk area.

D. Within the S-12 residential parking combining zone, the number of width of driveway opening shall conform to the provisions of Section 17.94.080 of the zoning regulations of the Oakland Planning Code, and the number of usable on-street parking spaces shall be maximized pursuant to the provisions of Section 17.94.100 of the zoning regulations of the Oakland Planning Code. (Prior code § 6-1.242)

#### **12.04.270 Driveway openings—Widths—Locations—General requirements.**

All driveways hereinafter constructed, relocated or widened shall comply with the following conditions:

A. In all commercial, industrial or special zones other than the S-12 residential parking combining zone, the driveway openings shall be not less than twelve (12) feet in width nor more than thirty-five (35) feet in width. In the S-12 zone, the provisions of Section 17.94.080 of the zoning regulations of the Oakland Planning Code shall apply.

B. In residential zones, other than those combined with the S-12 residential parking combining zone, the driveway openings shall be not less than ten feet in width nor more than nineteen (19) feet in width; provided, however, a driveway opening serving two or more parcels may be twenty-nine (29) feet in width. For the special case of four-unit residential buildings, the driveway opening may be twenty-seven (27) feet in width. In the S-12 zone, the provisions of Section 17.94.080 of the zoning regulations of the Oakland Planning Code shall apply.

C. Driveways serving a single parcel of property or serving any of several adjacent parcels under single ownership shall be separated by at least twenty-five (25) feet of full vertical curb, except that within the S-12 residential parking combining zone,

the provisions of Section 17.94.100 of the zoning regulations of the Oakland Planning Code shall apply.

D. Driveways serving separate but adjoining parcels of property under different ownerships shall be separated by at least ten feet of full vertical curb, except that within the S-12 residential parking combining zone, the provisions of Section 17.94.100 of the zoning regulations of the Oakland Planning Code shall apply.

E. Driveways serving corner lots shall be so located that (1) a driveway on either street shall be at least twenty-five (25) feet from the projected curb line of the intersecting street; and (2) no part of the driveway shall extend into the curb return a distance greater than five feet.

F. Driveways shall form an angle of thirty degrees or less off a line perpendicular to or radial to the street alignment, for a distance of eighteen feet behind the property line measured along the shortest side of said driveway.

G. Any time a parcel of land is cleared of existing surface improvements, the driveways serving this parcel must be closed or reconstructed to conform to the conditions of this chapter.

H. All driveway curb transitions shall be eighteen (18) inches with standard six-inch-high curbs.

I. No driveway shall be constructed or reconstructed within thirty (30) inches of any existing obstruction in the street area.

J. No driveway shall be constructed or reconstructed in such manner and at such location as, in the opinion of the Traffic Engineer, the use thereof would constitute a hazardous condition. (Prior code §§ 6-1.243, 6-1.244)

#### **12.04.280 Driveway construction.**

The Superintendent of Streets/Director of Public Works shall develop Standard Plans for the construction of driveways and driveway openings, which shall be adopted by resolution of the City Council. (Prior code § 6-1.245)

**12.04.290      Driveway Appeals Board—  
Creation—Membership.**

A Driveway Appeals Board is created. The Board shall consist of the Traffic Engineer, the Director of City Planning, the Chief of Police and the Superintendent of Streets/Director of Public Works. The Board shall have such powers as are granted to it in this chapter. (Prior code § 6-1.246)

**12.04.300      Driveway Appeals Board—  
Powers.**

In order to prevent or lessen unnecessary hardship or practical difficulties in exceptional cases where it is difficult or impossible to comply with the strict provisions of this chapter applying to driveways, or the provisions of Section 17.94.080 or 17.94.100 of the zoning regulations of the Oakland Planning Code, the Driveway Appeals Board shall have the power to make such variances from said provisions whereby so doing the public welfare is secured and substantial justice done most nearly in accord with the intent and purposes of said provisions of said chapter or said provisions of the Oakland Planning Code. (Prior code § 6-1.247)

**12.04.310      Driveway Appeals Board—  
Decisions appealable to Council  
or Planning Commission.**

The City Council shall review the proceedings and decision of the Driveway Appeals Board on all of the matters within its jurisdiction, except for matters involving the provisions of Section 17.94.080 or 17.94.100 of the zoning regulations of the Oakland Planning Code, when the decision of said Board is appealed to the City Council within ten days of the date of the decision. The City Planning Commission shall review the proceedings and decision of the Driveway Appeals Board on all matters involving the provisions of Section 17.94.080 or 17.94.100 of the zoning regulations of the Oakland Planning Code, when the decision of said Board is appealed to the Commission within ten days of the date of the decision. The City Council or Planning Commission, as the case may be, may affirm, reverse or modify the Board's decision and

may make such decision or may impose such conditions as the facts warrant and may grant or deny a variance, and its decision shall be final. Council action shall be by resolution.

An appeal to the City Council from the decision of the Driveway Appeals Board may be taken by filing a petition with the City Clerk within ten days of the decision. Upon receipt of such petition, the City Clerk shall, with the approval of the Council, set the time for consideration of the appeal by the Council, and shall notify in writing the appellant and all persons whose interest therein has been recorded in any of the proceedings theretofore taken in the matter, of the time and place of the hearing on appeal.

An appeal to the City Planning Commission from the decision of the Driveway Appeals Board shall be made on a form prescribed by the City Planning Department and shall be filed with such Department within ten days of the decision. Upon receipt of such appeal, the Secretary of the City Planning Commission shall set the time for consideration of the appeal by the Commission, and shall notify in writing the appellant and all persons whose interest therein has been recorded in any of the proceedings theretofore taken in the matter, of the time and place of the hearing on appeal. (Prior code § 6-1.248)

**12.04.320      Private construction of curbs and  
gutters—Permit required.**

It is declared to be unlawful for any person to construct, or cause to be constructed by private contract independently of other street work, any concrete curb or gutters on any public street without first obtaining from the Superintendent of Streets/Director of Public Works, a permit in writing so to do. (Prior code § 6-1.25)

**12.04.330      Private construction of curbs and  
gutters—Permit contents—Time  
of completion.**

Any permit required under Section 12.04.320 shall provide for the completion of the work within thirty (30) days, which time may be extended by the Superintendent of Streets/Director of Public Works,

and shall further provide that the work be done in conformity with the current city Street Department Standard Specifications on file in the Office of the City Clerk, and to the satisfaction and acceptance of the Superintendent of Streets/Director of Public Works. (Prior code § 6-1.27)

**12.04.340 Private construction of curbs and gutters—Appointment and compensation of inspectors—Engineering services.**

The Superintendent of Streets/Director of Public Works shall have the same power to appoint suitable persons to superintend or inspect the curb and gutter construction work by private contract as is or may be vested in the Superintendent of Streets/Director of Public Works by the laws of the state of California in the case of public contracts. (Prior code § 6-1.28)

**12.04.350 Elimination of abandoned driveway—Power of Superintendent of Streets.**

The Superintendent of Streets/Director of Public Works shall have the power and authority to determine that the use for which a driveway was constructed has been abandoned and give written notice requiring that the curb, parkway and sidewalk shall be restored to its original condition, or that a curb be constructed if none previously existed and that the parkway and sidewalk be constructed to grade. (Prior code § 6-1.291)

**12.04.360 Elimination of abandoned driveway—Notice.**

Such notice shall particularly specify what work is required to be done, how the same is to be done, and what materials shall be used. The notice shall be either given personally by service upon the owner or person in possession of the property facing such driveway, or by placing such notice in the United States mail in a sealed envelope addressed to the person in possession of such property, or to the owner thereof, addressed to his or her last known address as the same appears on the last

equalized assessment rolls of the city, and when no address so appears, to General Delivery, City of Oakland, with postage prepaid. (Prior code § 6-1.292)

**12.04.370 Elimination of abandoned driveways—Processing to assess costs.**

If such work is not commenced within ten days after such notice is given as aforesaid and diligently and without interruption prosecuted to completion, the Superintendent of Streets/Director of Public Works shall proceed to cause such work to be done in the manner and pursuant to the provisions of Sections 12.04.010 through 12.04.060, inclusive, of this chapter, or Sections 31, 32, and 33 of the "Street Improvement Act of 1911" (Statutes 1911, p. 730, as the same is now or may be hereafter amended). (Prior code § 6-1.293)

	<b>Chapter 12.08</b>	
<b>ENCROACHMENTS</b>		
<b>Sections:</b>		
<b>12.08.010</b>	<b>Public telephones and bus shelters.</b>	<b>12.08.200</b> <b>Permit to obstruct streets—Limits of encroachment—Warning devices.</b>
<b>12.08.020</b>	<b>Flagpole sockets, flagpoles and flags.</b>	<b>12.08.210</b> <b>Portion of street obstructed.</b>
<b>12.08.030</b>	<b>Public sidewalk encroachments—Types and definitions.</b>	<b>12.08.220</b> <b>Responsibility for accidents.</b>
<b>12.08.040</b>	<b>Permit requirements for major encroachments.</b>	<b>12.08.230</b> <b>Street obstruction guarantee deposits—Metered and unmetered areas.</b>
<b>12.08.050</b>	<b>Permit requirements for minor encroachments.</b>	<b>12.08.240</b> <b>Removal of street obstructions—Metered and unmetered areas.</b>
<b>12.08.060</b>	<b>Permit requirements for short term encroachments.</b>	
<b>12.08.070</b>	<b>Permit procedure for major encroachment.</b>	<b>12.08.010</b> <b>Public telephones and bus shelters.</b>
<b>12.08.080</b>	<b>Permit procedure for minor encroachment.</b>	A. The Director of Public Works is authorized to issue minor encroachment permits from time to time to the serving telephone company and the serving public transportation agency in compliance with the provisions of this title. Such permits shall be required for the serving telephone company to install and maintain public telephones on the public sidewalks of the city and shall also be required for the serving public transportation agency to install and maintain public bus shelters on said public sidewalks. The number, location and design of public telephones or bus shelters allowed under each such permit shall be subject to the approval of the Director of Public Works so as to best serve the public interest.
<b>12.08.090</b>	<b>Permit procedure for short term encroachment.</b>	B. Permits issued pursuant to subsection A of this section shall include the following provisions:
<b>12.08.100</b>	<b>Extent of encroachment.</b>	1. The permittee shall maintain the public telephones (telephones and booths) or public bus shelters in good repair and safe and sightly condition at permittee's expense and to the satisfaction of the Director of Public Works. All necessary electrical and telephone connections, cables, wires and associated appurtenances shall be installed underground in appropriate conduits and in accordance with applicable codes.
<b>12.08.110</b>	<b>Disclaimer and agreement required.</b>	2. The permittee shall save the city harmless from any and all losses, claims or judgements for damage to any person or property arising from the installation or maintenance of the public telephones or public bus shelters.
<b>12.08.120</b>	<b>Liability insurance required.</b>	
<b>12.08.130</b>	<b>Revocation of permit—Notice to remove encroachment.</b>	
<b>12.08.140</b>	<b>Unlawful encroachment—Enforcement by citation—Enforcing officers other than Oakland Police.</b>	
<b>12.08.150</b>	<b>Exceptions.</b>	
<b>12.08.160</b>	<b>Encroachments on unimproved residential streets.</b>	
<b>12.08.170</b>	<b>Encroachments on improved residential streets.</b>	
<b>12.08.180</b>	<b>Application procedure for waiver of damages and indemnity agreement.</b>	
<b>12.08.190</b>	<b>Appeals.</b>	

3. The permit shall be revocable on thirty (30) days' prior written notice to the permittee from the Director of Public Works, in which event the permittee shall at his or her own expense remove the public telephone or telephones, bus shelter or bus shelters installed pursuant to the permit and shall restore the sidewalk as nearly as practicable to its condition prior to such installation.

4. For permits granted to the serving telephone company for installation and maintenance of public telephones, the permit shall require that the city receive an amount equal to at least fifteen (15) percent of the receipts in lawful currency of the United States (exclusive of Federal Communications Excise Taxes) from the coin receptacles of the public telephone installed under authority of this title. (Prior code §§ 6-1.51, 6-1.52)

#### **12.08.020 Flagpole sockets, flagpoles and flags.**

No flagpole shall be erected or maintained in the sidewalk area of any street in the city in violation of the provisions of this title.

Flagpoles shall be set in sockets in such a manner that they can be easily removed. The sockets shall be set twelve (12) inches back from the curb face and must be eight inches in depth and truly vertical. Where basements exist beneath the sidewalk area in which said sockets are to be placed, the waterproofing thereof shall be done to the satisfaction of the Building Inspector. At all times when not in use, said sockets shall be covered with a metal cap which must fit the socket snugly and shall be flush with the sidewalk surface. In cases where there is no concrete sidewalk, the top of the socket when the cap is affixed must be flush with top of the concrete block in which it is set.

It is unlawful to permit any flagpole to be in its socket except on the days and occasions enumerated below. Flagpoles shall fit snugly in sockets and shall not extend more than fourteen (14) feet six inches and not less than eleven (11) feet above the level of the sidewalk when inserted in said sockets. Said flagpoles shall not be used for the display of any advertising matter, and shall have only displayed thereon

the National Flag, the flag of this state, or insignia of a fraternal or patriotic character, which such flags or insignia shall not exceed four by six feet in size. No flag or insignia shall be displayed on said flagpoles except on legal holidays and on occasions when permission is granted by the City Council by resolution. (Prior code § 6-1.53)

#### **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. 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 Pushcart Food Vending Program Ordinance, pushcart 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 encroach shall be revocable at the pleasure of the City Council without recourse unless otherwise provided herein. Nothing in this section shall apply to the operation or maintenance of sidewalk cafes.

A major encroachment, for the purposes of this title, shall be anything attached to a structure or constructed in place so that it projects into the public right-of-way such as basement vaults, kiosks, covered conveyors, crane extensions, earth retaining structures, and structure connected planter boxes, fences, or curbs. Projections over any public street, alley or sidewalk in excess of the limitations specified in the Oakland Building Code shall also be classified as major encroachments, including theater marquees, signs suspended above the sidewalk, oriel windows, balconies, cornices and other architectural projections.

A minor encroachment, for the purposes of this title, shall be an encroachment into the public right-

of-way resting on or projecting into the sidewalk area, but which is not structurally attached to a building, such as flowerpots, planter boxes, clocks, flagpole sockets, bus shelters, phone booths, bike racks, fences, nonadvertising benches, curbs around planter areas, displays of flowers, fresh fruits and vegetables. Such displays of fruits and vegetables shall not be allowed except when similar fruits and vegetable items are sold indoors on the premises at that location. In commercial zones, minor encroachments shall basically be for decorative or public service purposes with advertising signs specifically prohibited.

Short term encroachments into the public right-of-way, for the purposes of this title, shall be events open to the public which take place upon streets and sidewalks such as semiannual art and handicraft shows and semiannual sidewalk sales sponsored by merchant associations representing the majority of merchants in the area of the show or sale, and semi-annual block parties and other events. (Ord. 12582 § 2(C), 2004; Ord. 12310 § 3(C), 2001; prior code § 6-1.54)

#### **12.08.040      Permit requirements for major encroachments.**

No major encroachment shall be allowed in the dedicated public right-of-way except in compliance with the terms of a permit to be granted to the property owner of abutting real property or his or her authorized agent by resolution of the City Council. A separate permit must be obtained for each separate installation of a major encroachment.

A permit to install a major encroachment shall contain, in addition to the requirements therefor contained in this title, such additional requirements as, in the judgment of the City Council, the location and nature of the proposed major encroachment shall require for public health, safety and appearance. (Prior code § 6-1.55)

#### **12.08.050      Permit requirements for minor encroachments.**

No minor encroachments shall be allowed in the dedicated public right-of-way except in compliance

with the terms of a permit to be granted to the permittee by the Director of Planning and Building. The permittee shall be the property owner of abutting real property or his or her authorized agent, or an applicant that has submitted an appropriate performance bond in an amount determined by the Director of Planning and Building.

In addition to the requirements contained in this title, a permit to install a minor encroachment shall contain requirements pertaining to the location and nature of the proposed minor encroachment if, in the judgement of the Director of Planning and Building, additional requirements are necessary for public health, safety or appearance.

When the minor encroachment permit is not linked to abutting real property by county recordation, and if, as determined by the Director of Planning and Building, said encroachment or the removal of said encroachment may require the restoration of public improvements, the applicant shall submit a performance bond subject to the approval of and in an amount determined by the Director of Planning and Building. The performance bond shall remain in effect for the life of the encroachment and until all permit conditions have been performed to the full satisfaction of the city. (Prior code § 6-1.56)

#### **12.08.060      Permit requirements for short term encroachments.**

No short term encroachment shall be allowed in the dedicated public right-of-way except in compliance with the terms of a permit to be granted by the Chief of Police. A separate permit must be obtained for each separate event to be held on public right-of-way and shall remain in force for a maximum period of three days unless permission to encroach for a longer period is granted by resolution of the City Council.

A necessary condition of granting a short term encroachment permit is that the applicant must be sponsored by or represent a local merchant association or community organization, except that in residential areas an applicant may be granted a short term encroachment permit to hold a block party

when he or she represents a majority of residents on the concerned block. Any such merchant association, community organization or group of residents may semiannually sponsor only one application for short term encroachment. In commercial or industrially



zoned areas the majority of the tenants must support the proposed encroachment.

A permit for short term encroachment shall contain, in addition to the requirements therefor contained in this title, such additional requirements as, in the judgment of the Chief of Police, the proposed short term encroachment shall require for public health and safety.

Upon approval of an application for a short term encroachment permit, the Chief of Police shall provide the applicant with a statement of the estimated cost of providing police officers for pedestrian and traffic control at the location described in the application. The applicant/sponsor shall be required to prepay the traffic control fees prior to the issuance of a short term encroachment permit. Traffic control includes clearing the encroachment site of unauthorized vehicles, diversion of traffic around the encroachment area, and directing pedestrian and vehicular traffic at the encroachment location.

The police personnel costs shall be computed by determining the number of police officers who will be required beyond that which would otherwise be needed at that time multiplied by the number of hours for which such additional service is rendered at the rate of the city's full overtime cost of providing officers on an hourly basis as established by the city's master fee schedule.

If the actual cost for police personnel on the dates of the encroachment are less than the estimated cost paid by the applicant/sponsor, the applicant/sponsor will be refunded the difference by the city from the general fund. If more police hours are required than originally charged, the applicant/sponsor will be billed the additional costs. (Prior code § 6-1.57)

#### **12.08.070      Permit procedure for major encroachment.**

A separate application must be filed by the property owner or his or her authorized agent for each permit for a major encroachment. Application for a permit to install a major encroachment shall be filed in the office of the Director of Public Works. After filing of the application, the Director of Public Works shall have an investigation made of the site

where the proposed encroachment would be installed. The application must be accompanied by a sketch or plan showing the dimensions and exact location of the proposed encroachment and its relationship to the remainder of the structure and the street lines. A plan and elevations shall be required in all cases in addition to a brief written description of the encroachment. Fees shall be in accordance with the master fee schedule.

The Director of Public Works shall refer each application for a major encroachment permit to the Director of City Planning for review and comment. If response or statement of delay is not received by the Director of Public Works within thirty (30) days, the approval of the Director of City Planning shall be assumed.

When such application for a major encroachment permit and the details shown upon the accompanying sketch or plan have been reviewed by the Director of City Planning and comply with the terms of this title and any further requirements set by the Director of Public Works, the Director of Public Works shall recommend approval of the application.

If the Director of Public Works does not recommend approval of the application, the applicant may appeal the decision of the Director of Public Works to the City Council. Such appeal shall be made on a form prescribed by the Office of the City Clerk. The appeal shall be filed with such office within thirty (30) days of the rejection of the application.

The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Director of Public Works or wherein the decision for denial of application is not supported by evidence in the record. The appeal shall be accompanied by such information as may be required to facilitate review. Upon receipt of the appeal, the Office of the City Clerk shall within thirty (30) days set a time for hearing such appeal. The City Council at such time shall consider the merits of the appeal and render a decision within sixty (60) days from the close of the hearing unless a continuance is agreed to by all affected parties.

The City Council by resolution, if it determines to authorize a major encroachment permit, shall

prescribe special conditions for granting a conditional revocable permit in compliance with the terms of this title and such other conditions as may be prescribed by the City Council for public health, safety and appearance. Such resolution constitutes a conditional revocable permit for encroachment which shall take effect when all other conditions set forth therein shall have been complied with, and such permit shall remain in effect as long as the permittee complies with all conditions established for the granting of such permit. The permit shall become null and void upon the failure of the permittee to comply with any conditions established for the granting of such permit or upon a termination by resolution of the City Council as being in the city's best interest. (Prior code § 6-1.58)

#### **12.08.080      Permit procedure for minor encroachment.**

A separate application must be filed for each permit for a minor encroachment. Application for a permit to install a minor encroachment shall be filed in the office of the Director of Public Works. After filing of the application, the Director of Public Works shall have an investigation made of the site where the proposed encroachment would be installed. Such application shall be accompanied by a sketch or plan showing the dimensions and exact location of the proposed encroachment and its relationship to any structure, and/or the sidewalk area. A plan and elevations shall be required in all cases in addition to a brief written description of the encroachment. Fees shall be in accordance with the master fee schedule.

The Director of Public Works shall refer each application for a minor encroachment permit to the Director of City Planning for review and comment. If response or statement of delay is not received by the Director of Public Works within seven days, the approval of the Director of City Planning shall be assumed.

When such application for a minor encroachment permit and the details shown upon the accompanying sketch or plan have been reviewed by the Director of City Planning and comply with the terms of

this title and any further requirements set by the Director of Public Works for public health, safety and appearance, the Director of Public Works shall approve the application. Such approval constitutes granting of a conditional revocable permit for minor encroachment and such permit shall remain in effect as long as the permittee complies with all conditions established for the granting of such permit. The permit shall become null and void upon the failure of the permittee to comply with any conditions established for the granting of such permit or upon termination by written notification from the Director of Public Works as being in the city's best interest. (Prior code § 6-1.59)

#### **12.08.090      Permit procedure for short term encroachment.**

A separate application must be filed for each permit for short term encroachment. Application for a permit for short term encroachment shall be filed in the Office of the Chief of Police. After filing of the application, the Chief of Police shall consider the advisability of issuing a short term encroachment permit. Fees shall be in accordance with the master fee schedule.

When an application for a short term encroachment permit complies with the provisions of this title and any further requirements set by the Chief of Police for public health and safety, the Chief of Police shall approve the application. Such approval constitutes granting of a conditional revocable permit. A permit for short term encroachment shall become null and void upon the failure of the permittee to comply with any condition established for the granting of such permit. (Prior code § 6-1.60)

#### **12.08.100      Extent of encroachment.**

No major or minor encroachment into the public right-of-way may be granted unless a minimum clear space of five and one-half feet remains open for public use in the sidewalk area. Such encroachment shall not materially interfere with public use of the sidewalk or endanger the public welfare and convenience during said public use. For the purposes of determining the clear space, poles, street light

standards, traffic signal standards, parking meters, fire hydrants, official street trees, tree cutouts in the sidewalk, regulatory signs and other such objects (street hardware) may not be considered as part of the minimum horizontal clear space reserved for public use. Flowers may be planted in approved tree cutouts.

Bicycle racks and flagpole sockets may be placed in the area near a curb face if properly located and an encroachment permit is obtained. Phone booths, nonadvertising benches and bus shelters shall be placed in a location acceptable to the Director of Public Works. No other encroachments shall be allowed in any portion of the remaining sidewalk area except in that area adjacent to the building which remains after the minimum public use area and the area containing street hardware have been subtracted. In no event may a minor encroachment extend farther than two feet from the property line into the public right-of-way.

Major encroachments, except for structures below the walkway such as basement vaults and sidewalk elevators, and minor encroachments into the public right-of-way in the sidewalk area shall have a minimum height of twelve (12) inches and no portion shall project beyond the base projection of the encroachment unless at a height of eight feet or more above the sidewalk. There should be clear color differentiation between the sidewalk paving and objects placed or installed in the sidewalk area. (Prior code § 6-1.61)

#### **12.08.110 Disclaimer and agreement required.**

No major encroachment permit shall take effect until the permittee files a disclaimer and agreement with the city for recordation. The above disclaimer and agreement shall be subject to the approval of the City Attorney and the Director of Public Works.

The disclaimer shall be a statement to the effect that the permittee by the acceptance, either expressed or implied, of the encroachment permit thereby disclaims any right, title or interest in or to the portion of sidewalk or street area designated in the permit, and agrees that said temporary use of

designated areas does not constitute an abandonment on the part of the city of any of its rights for street purposes or otherwise.

The agreement shall be a statement that the permittee accepts and shall comply with and be bound by each and all of the terms and conditions for the permit set by this title, the Director of Public Works, the City Manager, and the City Council. (Prior code § 6-1.62)

#### **12.08.120 Liability insurance required.**

No permit for installation of a major or minor encroachment or for undertaking, in commercial or industrially zoned areas, a short term encroachment shall be granted until the applicant therefor has placed on file with the City Clerk a written certificate of insurance or copy of the policy showing that insurance is in effect in compliance with this section. For short term encroachment permits an additional copy shall be submitted to the Office of the Chief of Police. Such insurance shall be issued by a responsible and solvent corporation, authorized to issue insurance policies under the laws of the state of California. The public liability policy or policies shall insure, in addition to the permit applicant, the city, its agents and employees against loss from any liability imposed upon the city, its agents and employees for injury to or death of any person, or damage to property growing out of the installation of any encroachment(s) for which a permit or permits is or are granted under the provisions of this title. The policy or policies shall contain an endorsement declaring the policy or policies as primary coverage on said liabilities. The minimum amounts specified in such public liability policy or policies shall be three hundred thousand dollars (\$300,000.00) for each occurrence for public liability insurance and fifty thousand dollars (\$50,000.00) for each occurrence for property damage insurance. Additional amounts may be required as circumstances warrant, at the sole discretion of the Director of Public Works or the Chief of Police. The policy of insurance shall be maintained in its original amount by the permittee at his or her expense at all times during the period for which the permit is in effect.

Said policy shall also state that it shall not be cancelled or amended except upon thirty (30) days' prior written notice thereof to the City Manager. (Prior code § 6-1.63)

**12.08.130 Revocation of permit—Notice to remove encroachment.**

Any encroachment permit may be revoked, or renewal denied, if the permittee fails to comply with any of the provisions of this title or any of the special conditions set forth for the granting of such permit, at the discretion of the issuing authority. The issuing authority shall be that of the City Council, the Director of Public Works, or the Chief of Police, depending upon the type of encroachment permit, as stated hereinbefore.

Upon the revocation of any major or minor encroachment permit, it shall be the responsibility of the Director of Public Works to require the permittee at his or her sole expense to immediately remove the encroachment from the sidewalk or street area and to repair any damage resulting therefrom to the satisfaction of the Director of Public Works.

The notice to remove an encroachment shall be given in writing to the owner or his or her authorized agent. It shall be sent to the owner of record and to the permittee if he or she is other than the owner of record of the property fronting on the portion of sidewalk and street containing the encroachment. (Prior code § 6-1.64)

**12.08.140 Unlawful encroachment—Enforcement by citation—Enforcing officers other than Oakland Police.**

A. No person shall, except in compliance with the terms of a major, or minor, or a short term encroachment permit issued according to the provisions of this title, encroach upon or into the public street or sidewalk area in the city in a manner or manners for which such permit or permits would be needed.

B. No persons holding such encroachment permit shall, upon the revocation or denial of renewal of the permit, fail to remove said encroachment at

his or her sole expense within the time period specified by notice or, for major and minor encroachments, by the third day prior to insurance lapse, whichever is the lesser. The normally specified period for removal of an encroachment shall be thirty (30) days for major encroachments, fourteen (14) days for minor encroachments, and one day for short term encroachments except as noted above. Further, the permittee shall repair at his or her sole expense any damage to sidewalk or street area resulting from the existence of said encroachment within the time period mentioned above.

C. It shall be a separate violation of this title for each day that the holder of an encroachment permit fails to remove an encroachment within the time period specified by notice, or for major and minor encroachments by the third day prior to insurance lapse. It shall also be a violation of this title for any person to otherwise encroach unlawfully upon or into the public right-of-way.

D. Any encroachment permit holder or owner of property abutting an encroachment who is informed in writing by the City Manager, his or her authorized delegate or those employees authorized to enforce this chapter of an unlawful encroachment shall have twenty-four (24) hours after the time of receipt of such notice to remove the encroachment at his or her sole expense. Notice may be given by mail or personal service. In the event the person so notified fails to accomplish such removal or removes said encroachment but fails to restore the public street or sidewalk to the satisfaction of the Director of Public Works, the Director of Public Works shall order city forces to remove said encroachment and/or restore the public area and shall charge all costs incurred by the city for such removal and/or restoration plus twenty (20) percent to the permittee or owner of record. A bill for such costs shall be presented to the owner of record of the property fronting on the portion of sidewalk and street containing the encroachment. In the event that the encroachment has created a condition dangerous to the public requiring immediate removal, the Director of Public Works may immediately remove such encroachment, restore the public street or side-

walk and bill the permittee or owner of record as set forth above. The Director of Public Works shall forthwith inform the permittee or owner of record of said condition, work done and costs thereof.

E. Any person violating any of the provisions of this section shall be deemed guilty of an infraction.

F. Pursuant to Section 836.5 of the California Penal Code, the supervisory and field personnel of the Office of Public Works assigned to sidewalk inspection work and Office of Community Development, Housing Conservation, Supervising Housing Representatives are authorized to enforce this chapter and arrest violators thereof.

G. The Director of Planning and Building shall be authorized to file a lien with the County Recorder against the property owner responsible for the illegal encroachment, to recover all costs expended by the city as described in subsection D of this section. Where a bond has been required, the Director of Planning and Building shall be authorized to exercise the city's rights under the bond to obtain compliance with the conditions of the permit and/or to recover all costs to the city in removing an illegal encroachment and restoring the public right-of-way. (Prior code § 6-1.65)

#### **12.08.150 Exceptions.**

The requirements for encroachment permits set forth in this title do not apply to certain types of sidewalk benches, covered in Chapter 12.52, nor to newspaper and periodical racks, covered in Section 12.04.080, and do not apply to existing fences or walls at the back line of sidewalks on improved streets. (Prior code § 6-1.66)

#### **12.08.160 Encroachments on unimproved residential streets.**

The requirement for a major or minor encroachment permit to be obtained before encroachment is allowed, as set forth elsewhere in this title, shall not apply in areas with unimproved streets where zoning regulations restrict development to single-family dwellings. In such areas a waiver of damages and indemnity agreement must be executed between the property owner and the city before installation of an

encroachment in the public right-of-way. (Prior code § 6-1.67)

#### **12.08.170 Encroachments on improved residential streets.**

Where zoning regulations restrict development to single-family dwellings a major or minor encroachment permit grants permission to abutting property owners to encroach upon a portion of the public right-of-way in areas with improved streets. In such areas a major or minor encroachment permit shall be obtained before encroachment is allowed in that portion of the public area lying between the curbline and either the back line of existing concrete sidewalk or a line on the private property side of the curbline lying six feet distant from the curbline. Encroachment proposed in any remaining portion of the public right-of-way lying between the limits just described and the private property line will also require a waiver of damages and indemnity agreement. (Prior code § 6-1.68)

#### **12.08.180 Application procedure for waiver of damages and indemnity agreement.**

A waiver of damages and indemnity agreement shall be obtained before installation of encroachments on unimproved streets and before installation of encroachments on improved streets, in that area described in Section 12.08.170. Application for each such waiver shall be filed in the Office of the Director of Public Works. After filing of an application, the Director of Public Works shall have an investigation made of the site where the proposed encroachment would be installed. Fees shall be in accordance with the master fee schedule.

The Director of Public Works shall refer each application for a waiver of damages and indemnity agreement to the Director of City Planning for review and comments. If response or statement of delay is not received by the Director of Public Works within seven days, the approval of the Director of City Planning shall be assumed.

The Director of Public Works, after determining that such an encroachment will not interfere with

present or immediately foreseeable public use of the area, shall cause the waiver of damages and indemnity agreement to be executed. A standard form, containing the necessary conditions of such agreement, shall be used. Execution of said agreement requires: (A) the signatures of the owner or authorized agent who is the applicant and the Director of Public Works or his or her authorized representative; (B) the notarization of said agreement; and (C) the recordation by the city of said instrument in the Office of the Recorder of Alameda County, California.

The Director of Public Works, upon establishment of the need for public use of the area affected by the encroachment, shall cause a resolution to be prepared to rescind the waiver of damages and indemnity agreement for said encroachment. When such resolution is passed by the Council of the city and filed with the Office of the Recorder of Alameda County, California, the waiver of damages and indemnity agreement for said encroachment shall be terminated and cancelled. (Prior code § 6-1.69)

#### **12.08.190 Appeals.**

An applicant shall have the right of appeal in cases where an application for a minor or short term encroachment is denied by the issuing authority. Any such administrative determination or interpretation denying application which is made by the Director of Public Works, for minor encroachments, or the Chief of Police, for short term encroachments, may be appealed to the City Manager. Such appeal shall be made on a form prescribed by the Office of the City Manager and shall be filed with such Office.

The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Director of Public Works or the Chief of Police or wherein the decision for denial of application is not supported by evidence in the record. The appeal shall be accompanied by such information as may be required to facilitate review. Upon receipt of the appeal, the Office of the City Manager shall set a time for hearing such appeal, and at such time shall

consider the merits of the appeal. (Prior code § 6-1.71)

#### **12.08.200 Permit to obstruct streets—Limits of encroachment—Warning devices.**

No person, firm or corporation shall place, or cause to be placed, on any public street, or any portion thereof, in the city, any materials or appliances for use in the construction, alteration or repair of any building, or for any other purpose necessitating temporary occupancy of any portion of the public streets, without first obtaining a permit therefor from the Director of Public Works/Superintendent of Streets of said city. Such materials and appliances shall be adequately protected by barricades and flashers, and shall not occupy more than seven feet of the roadway of the street that is immediately adjacent to the curbline, and not more than one-half of the width of the sidewalk (except where a temporary sidewalk is constructed), and shall be placed thereon under the direction and to the satisfaction of the Director of Public Works/Superintendent of Streets, but in no case shall they be placed or cause to be placed within five feet of a railroad track. (Prior code § 6-2.60)

#### **12.08.210 Portion of street obstructed.**

All materials intended for use in the permitted obstruction of streets shall be confined to and occupy only such portion of the street as the permit may designate, and all sand, dirt and other materials or debris of any kind shall be prevented from being blown or otherwise moved to any other portion of the street. No material of any kind shall be deposited in any gutterway of any street so as in any manner to obstruct the same. (Prior code § 6-2.610)

#### **12.08.220 Responsibility for accidents.**

The permittee shall be responsible for all claims and liabilities arising out of work performed under the permit or arising out of permittee's failure to perform the obligations with respect to street maintenance, warning devices or the use and occupancy of any sidewalk, street or sidewalk places by virtue

of the permit. The permittee shall, and by acceptance of the permit agrees to, defend, indemnify, save and hold harmless the city, its officers and employees, from and against any and all suits, claims or actions brought by any person for or on account of any bodily injuries, disease or illness or damage to persons and/or property sustained or arising in the construction of the work performed under the permit or in consequence of permittee's failure to perform the obligations with respect to street maintenance, warning devices or the use and occupancy of any sidewalk, street or sidewalk place by virtue of the permit. (Prior code § 6-2.611)

**12.08.230 Street obstruction guarantee deposits—Metered and unmetered areas.**

The permits required by Section 12.08.200 shall be granted only to the owner or lessee (or agent of either) of the lot upon which a building is proposed to be constructed, altered, or repaired. When an application is made for a permit, the person making such application shall make a deposit with the city for each and every twenty-five (25) feet of the frontage of said lot, or fraction thereof, which is to be occupied in a parking meter district or for each and every fifty (50) feet of lot frontage, or fraction thereof, which is to be occupied in unmetered areas, as the case may be. Said deposit shall guarantee to the city that the permittee will remove or cause to be removed, all dirt, debris and materials of any kind from the street, roadway, or sidewalk area, to the satisfaction of said Director of Public Works/Superintendent of Streets, and shall reimburse the city for the loss of meter revenue where said obstruction exists in metered areas. Said removal shall be done immediately upon the completion of the construction, alteration or repair of said building, or within the time limit prescribed by said permit. Provided, however, that if at any time prior thereto the Director of Public Works/Superintendent of Streets declares that the public interest or convenience requires the removal of same, or any portion thereof, then said permittee shall promptly remove or cause to be removed said materials from said

areas. Every permit granted as in Section 12.08.200 provided and every permit for temporary obstruction, shall be subject to such condition or guarantee. (Prior code § 6-2.62)

**12.08.240 Removal of street obstructions—Metered and unmetered areas.**

The Director of Public Works/Superintendent of Streets shall prescribe in every permit granted for the obstruction of street, roadway or sidewalk areas the time limitation of such occupancy, which shall in no event exceed twelve (12) months for each permit in unmetered areas, and six months for each permit in metered areas. Upon the failure or neglect of a permittee to remove, or cause to be removed, to the satisfaction of said Director of Public Works/Superintendent of Streets all dirt, debris or materials as aforesaid within three days after being notified to do so by said Director of Public Works/Superintendent of Streets the money so deposited as a guarantee, or so much thereof as may be necessary, shall be used by said Director of Public Works/Superintendent of Streets in the removal of such dirt, debris, or materials. (Prior code § 6-2.64)

**Chapter 12.12**  
**EXCAVATION**

**Sections:**

- 12.12.010** Disturbance of streets—Permit.
- 12.12.020** Public utility annual permit.
- 12.12.030** Default in payment of permit fees.
- 12.12.040** Application for permit to excavate.
- 12.12.050** Excavation for sewer connection.
- 12.12.060** Excavation for storage tanks.
- 12.12.070** Excavation for part of building.
- 12.12.080** Form and conditions of permit.
- 12.12.090** Revocation of permit.
- 12.12.100** Notice of commencement of work.
- 12.12.110** General requirements in performance of work.
- 12.12.120** Limited operation areas.
- 12.12.130** Compliance with state safety orders and applicable laws.
- 12.12.140** Storage of materials in public right-of-way.
- 12.12.150** Completion of work by city.
- 12.12.160** Money collected.
- 12.12.170** Use of area by city.
- 12.12.180** Notice of completion.
- 12.12.190** Street maintenance.
- 12.12.200** Responsibility for accidents.
- 12.12.210** Defects appearing after completion—Duty to repair.
- 12.12.220** Excavations—Supervision of Director of Public Works.
- 12.12.230** Conduits of utilities—Maps of locations.
- 12.12.240** Excavations in areas between curb and sidewalk—Permit.
- 12.12.250** Excavations—Disposition of surplus materials.
- 12.12.260** Trenching/excavation restrictions.

- 12.12.270** Excavations—Emergencies.
- 12.12.280** Excavation permits subject to rights in others.

**12.12.010 Disturbance of streets—Permit.**

It is unlawful for any person to make, or cause or permit to be made, any excavation in or under the surface of any public street, alley, sidewalk, or other public place for the installation, repair or removal of any pipe, conduit, duct or tunnel or for any other purpose, without first obtaining from the Office of Public Works a written permit to make such excavation. Said Office shall, before issuing such permit, require:

A. First: Application for the permit shall be made in writing to the Office of Director of Public Works on forms furnished by said Office. The application shall contain such information as the Director of Public Works may require and be made in quadruplicate and filed with him or her for processing.

Plans and profiles in quadruplicate showing work to be done, location, limits of work, location of pavement replacement types, together with such further information as the Director of Public Works may require, shall be furnished by the applicant when requested by the Director of Public Works.

If an emergency street cut, opening, or excavation is made, application for a permit shall be made on the next working day.

If the street cut, opening, or excavation is to be made in a State Highway, the permittee shall also comply with all lawful regulations of the Division of Highways, Director of Public Works, state of California, and procure from such Division all lawful permits required therefor by the state of California.

B. Second: That the applicant show legal authority to occupy and use, for the purpose mentioned in said application, the streets, alleys, sidewalks or other public places wherein the excavation is proposed to be made.

It is unlawful for any person to make, or to cause or permit to be made, an excavation, or to install or maintain, or to cause or permit to be installed or maintained, any tank, pipe, conduit, duct or tunnel

in or under the surface of any public street, alley, sidewalk or other public place at any location other than that described in the application and shown on the plans filed by such person as required by the provisions of this title.

C. Third: All permits granted under this chapter shall imply that all pipes, conduits, vaults, ducts, and other underground installations, shall be of the quality installed in the manner, and subject to the inspection prescribed elsewhere in the Oakland Municipal Code. (Prior code § 6-2.01)

#### **12.12.020 Public utility annual permit.**

Any public utility possessing a franchise to install, operate, maintain or use facilities in the streets covered by permit issued hereunder, although deriving its rights to occupy such streets from franchise, shall nevertheless procure such permit to the extent necessary to enable the city to exercise reasonably its police powers over the performance of work by such permittee under its franchise.

Such public utilities may submit requests to the Director of Public Works for an annual permit to perform minor repairs and service installations. If issued, such permit will carry with it all the conditions and responsibilities which would apply if individual permits were issued. The utility will furnish the city with a copy of its paving order, or other pertinent document, within twenty-four (24) hours after start of the work in the street at each location considered to be included in the annual permit, which document shall include the annual permit number. (Prior code § 6-2.011)

#### **12.12.030 Default in payment of permit fees.**

Whenever the Department of Public Works shall render to any person a bill, invoice or statement specifying the amount of the fees and costs incurred by the city for the necessary and satisfactory completion of the work covered by a permit issued to such person for such work under the provisions of this title, and charged to and payable by such person, payment in full of such fees and costs shall be made to the Office of Public Works within fifteen (15) days after such billing. Any such bill or state-

ment shall be deemed to have been duly rendered when deposited in the United States mail, postage prepaid, directed to the person for whom intended at the address registered by him or her with the Department of Streets. If the fees and costs included in any such invoice, bill or statement are not paid in full within the said period of fifteen (15) days, no further application for a permit made by such obligor, as authorized by this title, shall be approved by the Director of Public Works until payment in full of such fees and costs has been made. (Prior code § 6-2.012)

#### **12.12.040 Application for permit to excavate.**

When application for a permit is made as provided for in Section 12.12.010, and such application to excavate and the details shown upon the accompanying plans, when such plans are required, comply with the terms of this title, and the regulations of the City Council, the application and plans shall be approved by the Director of Public Works. After such approvals, one of the plans shall be filed in the Office of the Director of Public Works as a public record. The application and one of the plans shall be filed with the Office of Public Works. (Prior code § 6-2.02)

#### **12.12.050 Excavation for sewer connection.**

When an application is made for a permit to excavate for the purpose of making a house connection with a sewer or for repair of the same, the person making such application shall pay a fee in accordance with the master fee schedule if such excavation is to be made in a dedicated street area. (Prior code § 6-2.03)

#### **12.12.060 Excavation for storage tanks.**

Whenever any person desires to install or repair a tank or tanks for the storage of gasoline or oil, said person shall obtain an excavation permit and pay a fee in accordance with the master fee schedule. (Prior code § 6-2.04)

**12.12.070 Excavation for part of building.**

When an application is made for permission to excavate within the sidewalk area for the purpose of maintaining a covered area-way, the construction plans of which are approved by the Building Inspector and a building permit issued therefor, the person making such application shall pay a fee in accordance with the master fee schedule covering only so much of the area proposed to be excavated as lies outside the walls of the structure of which the said building permit is issued. (Prior code § 6-2.05)

**12.12.080 Form and conditions of permit.**

The application, when approved and signed by the Director of Public Works or his or her authorized representative, shall constitute the permit. Permits shall be secured at least two working days before the work is commenced, except in the case of emergencies. Permits shall not be transferable. The permit shall provide a time limit within which the work shall be completed. The permit shall be void if the work is not commenced and completed within the date specified on the permit, unless an extension of time for good cause is granted as hereinafter provided. (Prior code § 6-2.06)

**12.12.090 Revocation of permit.**

Any permit granted hereunder may be revoked by the Office of Public Works for noncompliance with any of the provisions of this title.

Any public utility possessing a franchise to install, operate, maintain or use facilities in the streets covered by permit issued hereunder, although deriving its rights to occupy such streets from franchise, shall nevertheless procure such permit to the extent necessary to enable the city to exercise reasonably its police powers over the performance of work by such permittee under its franchise. (Prior code § 6-2.061)

**12.12.100 Notice of commencement of work.**

At least two working days before the work is started the permittee shall give notice of the time of commencement of the work to the Director of Public Works. Similar notice shall be given to the Po-

lice Department and/or Fire Department, if requested on permit. (Prior code § 6-2.062)

**12.12.110 General requirements in performance of work.**

A. The Office of Public Works shall adopt such regulations for workmanship, location, size and depth of excavations as it may deem necessary for the public convenience and welfare.

B. Any monument of granite, concrete, iron or other lasting material set for the purpose of locating or preserving the lines of any street or property subdivision or a precise survey reference point within the city shall not be removed or disturbed or caused to be removed or disturbed without first obtaining permission in writing from the City Manager to do so (a copy of which shall be filed in the office of the City Engineer before it becomes effective); said permission to be granted upon condition that the person applying therefor shall cause to be replaced at his or her expense, by the City Engineer of this city, the monument so removed or disturbed.

C. In the areas hereinafter designated as "Limited Operations Area" the following requirements 1, 2, 3 and 4, in addition to all others specified in this title, shall apply:

1. No work that will interfere with traffic shall be performed in any public street or roadway during the hours of seven a.m. to nine a.m. and four p.m. to six p.m. (except Sundays and Holidays).

2. No equipment, construction materials or excavated material that will interfere with traffic shall be stored on any public street or roadway during hours noted above.

3. All trenches and excavations in any public street or roadway shall be backfilled and opened to traffic, or covered with suitable steel plates securely placed and opened to traffic at all times except during actual construction operations, or where otherwise permitted in writing by the City Engineer.

4. Each section of work shall be completed or temporarily paved and open to traffic in not more than five days after commencing work unless otherwise permitted in writing by the City Engineer.

Nothing herein specified shall prohibit emergency work and/or repair necessary to insure public health and safety.

D. The work shall be coordinated with other agencies or concerns working in the area to the satisfaction of the Director of Public Works. (Prior code § 6-2.07)

#### **12.12.120 Limited operation areas.**

Limited operation areas shall be those streets so designated by resolutions duly passed by the Council of the city at a regular meeting thereof. (Prior code § 6-2.071)

#### **12.12.130 Compliance with state safety orders and applicable laws.**

The permittee shall obey and enforce all lawful safety orders, rules and recommendations of the Division of Occupational Safety and Health of the Department of Industrial Relations of the state of California applicable to the work and shall comply with all applicable state and local laws, ordinances, codes and lawful regulations. (Prior code § 6-2.091)

#### **12.12.140 Storage of materials in public right-of-way.**

Construction materials may not be stored in the public right-of-way for more than five days after unloading. The placement of construction materials stored in the public right-of-way is subject to review and approval of the Engineer. In no case shall such storage cause unreasonable inconvenience to the public. Construction equipment shall not be stored in the public right-of-way prior to its actual use at the work site and not more than five days after its use is no longer required to perform the work. Unless otherwise approved by the Engineer in writing the permittee shall be subject to the street obstruction charges according to the city master fee schedule for storage of construction materials and equipment in the public right-of-way exceeding the specified five-day period.

Street obstruction fees may be waived if, in the opinion of the Engineer, the permittee was delayed in removing his or her materials and equipment

from the public right-of-way by unforeseen events beyond his or her control. Labor disputes, strikes, fires and adverse weather conditions may constitute such a delay.

Failure of the permittee to remove his or her construction equipment and materials from the public right-of-way within twenty-four (24) hours of due notice shall authorize the city to impound said materials and equipment. Costs incurred by the city in performing this work shall be charged to the permittee and are subject to collection. (Prior code § 6-2.093)

#### **12.12.150 Completion of work by city.**

If, in the judgement of the Director of Public Works, the work is unduly delayed by the permittee, for whatever reason, if the public interests reasonably so demand that immediate action be taken, the Director of Public Works, or his or her authorized representative, may order the condition remedied by written or oral, including telephonic, communication to the permittee. If the permittee cannot be contacted or does not take immediate action, the Office of Public Works shall have full power to complete said work, or may contract for the completion of said work, and the cost thereof, including administrative expense, shall be charged to the permittee. (Prior code § 6-2.10)

#### **12.12.160 Money collected.**

All money collected by the Director of Public Works for the costs of replacements and inspection thereon as provided herein or in accordance with the master fee schedule, shall be credited to the general fund of said city. (Prior code § 6-2.101)

#### **12.12.170 Use of area by city.**

At all times during the performance of the work the city shall have the right to use all or any part of the area occupied by the permittee under the permit. (Prior code § 6-2.112)

#### **12.12.180 Notice of completion.**

Notice of completion shall be filed with the Di-

rector of Public Works by the permittee within ten days after completion of the work. (Prior code § 6-2.114)

#### **12.12.190 Street maintenance.**

After the completion of the work, the permittee shall exercise reasonable care in inspecting for and immediately repairing and making good any injury or damage to any portion of the street which occurs as a result of work done under the permit, including any and all injury or damage to the street which would not have occurred had such work not been done.

The permittee shall, upon notice from the Director of Public Works or his or her authorized representative, immediately repair any injury or damage in any portion of the street which occurs as a result of the work done under the permit, including any and all damage to the street which would not have occurred had such work not been done, and which, in the opinion of the Director of Public Works or his or her authorized representative, constitutes a public hazard. In the event such repairs are not made by the permittee within twenty-four (24) hours after notice, the Director of Public Works is authorized to make such repairs. (Prior code § 6-2.115)

#### **12.12.200 Responsibility for accidents.**

The permittee shall be responsible for all claims and liabilities arising out of work performed under the permit or arising out of permittee's failure to perform the obligations with respect to street maintenance. The permittee shall, and by acceptance of the permit agrees to, defend, indemnify, save and hold harmless the city, its officers and employees, from and against any and all suits, claims or actions brought by any person for or on account of any bodily injuries, disease or illness or damage to persons and/or property sustained or arising in the construction of the work performed under the permit or in consequence of permittee's failure to perform the obligations with respect to street maintenance. (Prior code § 6-2.116)

#### **12.12.210 Defects appearing after completion—Duty to repair.**

If the pavement or surface of the street over said excavation should become depressed or broken at any time after the work has been completed—natural wear of the surface or improper work of some other party excepted—the permittee shall, upon written notice from and an opportunity to be heard by the Director of Public Works or his or her authorized representative, make immediate repairs to the satisfaction of the Office of Public Works.

If said pavement is not completely restored within thirty (30) days after such notice has been given, the Office of Public Works shall have the authority to perform the restoration work at the expense of the permittee. (Prior code § 6-2.117)

#### **12.12.220 Excavations—Supervision of Director of Public Works.**

All excavations, refilling of excavations and repairing of street surfaces, pursuant to the provisions of this title, shall be made under the supervision and direction of the Director of Public Works/Superintendent of Streets to supervise and direct all such making and refilling of excavations, and repairing of street surfaces, and to require that all such excavations refilling and repairing comply with the requirements of the provisions of this code and of the ordinances of said city. (Prior code § 6-2.13)

#### **12.12.230 Conduits of utilities—Maps of locations.**

It is made the duty of every person owning, using, controlling or having an interest in pipes, conduits, ducts or tunnels under the surface of any public street, alley, sidewalk or other public place for supplying or conveying gas, electricity, communications, water, steam, ammonia or oil in, to, or from the city, or to or from its inhabitants, or for any other purpose, upon demand of the Director of Public Works, to file in the Office of the Director of Public Works upon a twenty-four (24) hours' notice, such map or set of maps as shall be demanded by said Director of Public Works, which said

map or set of maps shall show in detail the exact location, size, description and date of installation, if known, of all mains, laterals, services and service pipes, and of all valves, pressure regulators, drips, manholes, handholes, transformer chambers or other appliances installed beneath the surface of such public streets, alleys, sidewalks or other public places in the city belonging to, used by, or under the control of, such person, or in which such person has any interest. It shall be the duty of every person, upon demand of said Director of Public Works, upon twenty-four (24) hours' notice, to file such corrected map or sets of maps as shall be demanded by the Director of Public Works, showing the complete installation of all such pipes and other appliances, including all installations made during the previous year, to and including the last day of such year. Each such map shall be accompanied by an affidavit endorsed thereon, subscribed and sworn to by such person or by a member of the firm or by the president or secretary of the corporation or their authorized representative, to the effect that the same correctly exhibits the details required by this title to be shown thereon.

Whenever any pipe, conduit, duct, tunnel or other structure located under the surface of any public street, alley or other public place, or the use thereof is abandoned, the person owning, using, controlling or having an interest in the same, shall within thirty (30) days after such abandonment, upon demand by the Director of Public Works, file in the Office of the Director of Public Works a map giving in detail the location of the pipe, conduit, duct, tunnel or other structure so abandoned. Each map or set of maps filed pursuant to the provisions of this section shall show in detail the location of all such pipes, conduits, ducts, tunnels or other structures abandoned subsequent to the filing of the last preceding map or set of maps.

The owner of any facility installed in accordance with the provisions of this title shall bear all costs of moving, removing, shoring up, supporting or protecting said facility in the event it becomes necessary for the city or its authorized contractor to trench or excavate under or adjacent to said facility

during the construction, reconstruction, repair or maintenance of any city street or any city-controlled public sanitary or storm sewer under or adjacent to said facility. (Prior code § 6-2.14)

#### **12.12.240 Excavations in areas between curb and sidewalk—Permit.**

It is unlawful for any person to make, or to cause or permit to be made, any excavation under, or to remove or to cause or to permit to be removed, any earth, dirt, or other formation from under that portion of sidewalk lying between the curbline and a line parallel thereto and distant therefrom one-fourth of the legal width of the sidewalk.

Provided, however, that the Director of Public Works may approve a permit for the making of excavations under the aforementioned portion of any sidewalk. Before any such permit is issued, however, a request in writing to the Director of Public Works shall be made therefor, accompanied by a detailed plan of such excavation, showing the proposed location thereof, all appurtenances thereto and the purposes for which it is to be used. Any such excavation shall be so constructed and maintained as to afford lateral, sublateral, adjacent and overhead support of the surrounding embankments and structures satisfactory to the Director of Public Works.

This section shall not prevent the necessary excavation for laying pipes or sewer connections across such portions of the sidewalks. Any permit issued under the provisions of this section may be revoked at any time by the City Council when, in its judgement, the public need requires it. The city shall have the right to use any portion of the excavated area constructed or maintained under the authority of the aforementioned permit for the construction and maintenance of sewers, pipelines, conduits and other public work and improvements. (Prior code § 6-2.15)

#### **12.12.250 Excavations—Disposition of surplus materials.**

All surplus materials removed under the provisions of this title relative to excavations shall, if required by him or her, be delivered to such points

## **12.12.250**

as the Director of Public Works shall direct, provided the distance such material is required to be hauled does not exceed one mile.

None of the provisions of this title relative to excavations shall apply to any work done or to be done along, in or upon any public street, alley or other public place pursuant to any law of the state of California providing for the improvement thereof, or to any work done or to be done along, in or upon any such street, alley or other public place pursuant to any contract for improvement authorized by the City Council, nor to excavations made by any department, board or officer of the city in the discharge of its or his or her official duties; provided, however, that the provisions contained in Section 12.12.110 shall apply to all such work and to all excavations to be made along, in or upon any public street, alley or other public place. (Prior code § 6-2.16)

that part of such street, alley or other public place for any purpose for which such street, alley or other public place may be lawfully used. (Prior code § 6-2.18)

## **12.12.260 Trenching/excavation restrictions.**

No trenching or excavation shall be permitted in any street that has been constructed or resurfaced within a five-year period prior thereto, without express permission of the Director of Public Works. Emergency work is exempted from this title. (Prior code § 6-2.161)

## **12.12.270 Excavations—Emergencies.**

Nothing in this title relative to excavations shall be construed to prevent any person maintaining any pipe or conduit in any public street, alley or public place by virtue of any law, ordinance or permit, from making such excavation as may be necessary for the preservation of life or property when such necessity arises; provided that the person making such excavation shall obtain a permit therefor on the next working day. (Prior code § 6-2.17)

## **12.12.280 Excavation permits subject to rights in others.**

Every permit for an excavation in or under the surface of any public street, alley or other public place shall be granted subject to the right of the city, or of any other person entitled thereto, to use

## Chapter 12.16

### IMPROVEMENTS GENERALLY

**Sections:**

<b>12.16.010</b>	<b>Permit to circulate petition for improvement.</b>
<b>12.16.020</b>	<b>Intent.</b>
<b>12.16.030</b>	<b>Requirement.</b>
<b>12.16.040</b>	<b>Improvement procedure.</b>
<b>12.16.050</b>	<b>Improvement standards.</b>
<b>12.16.060</b>	<b>Notification to permit applicants.</b>
<b>12.16.070</b>	<b>Appeal.</b>
<b>12.16.080</b>	<b>Regulations for issuance of plans and specifications for public works contracts.</b>

**12.16.010      Permit to circulate petition for improvement.**

It is unlawful for any person to circulate a petition requesting the Council to order the improvement of any street pursuant to the terms of ordinance or statute, or to solicit private contracts for the improvement of such street without first having obtained permission so to do from the Director of Public Works/Superintendent of Streets.

Any person desiring said permit shall first file with the Director of Public Works/Superintendent of Streets a written statement showing location, type, character and description of said work in such detail as said Director of Public Works/Superintendent of Streets may require. Said Director of Public Works/Superintendent of Streets, if he or she is of the opinion that public necessity and convenience require the doing of said work, that the proposed improvement is feasible and beneficial, and the cost is not prohibitive, may grant permission to circulate such petition or solicit such private contract for the doing of said work; provided, however, that the Director of Public Works/Superintendent of Streets may rescind any permit granted under the provisions of this section.

Such permission, together with a copy of said written statement, shall be attached to said petition

or contract, and shall be exhibited to the signer before his or her signature is obtained.

Each request for a signature to such petition or contract in violation hereof shall be considered a separate and distinct violation. (Prior code § 6-2.19)

**12.16.020      Intent.**

The intent of Sections 12.16.020 to 12.16.070 is to supplement other laws, ordinances and statutes requiring street improvements, including curb, gutter, and sidewalk in public streets areas. (Prior code § 6-2.191)

**12.16.030      Requirement.**

A. **New Construction.** No building or other structure shall be erected, no building addition or alteration improvements shall be constructed, no other property improvements shall be made where the cost of said improvements will be in excess of forty-five thousand dollars (\$45,000.00), and no building or other permit shall be issued therefor by the city on any lot unless that portion of the abutting street lying between the centerline of said street and the lot line for the full width of all abutting street frontages has been fully improved in accordance with the improvement standards specified in Section 12.16.050, or unless said improvements have been assured to the satisfaction of the City Engineer as specified in Section 12.16.040.

“Property improvements,” as referred to herein, means all buildings, structures, fixtures, and fences, erected on or affixed to the land, excepting telephone and telegraph lines.

B. **Authorization to Revise Threshold Value.** The value of private construction improvements that invoke the requirement for construction of abutting street improvements may be revised, from time to time, by the Director of Planning and Building as construction costs escalate or de-escalate as determined by the Building Cost Index for the San Francisco Bay Region, as reported in the Engineering News Record. Any revision made by the Director shall supersede the amount stated in subsection A of this section.

C. Exception. The requirements stated in subsections A and B of this section shall not apply to property in zoning districts where residential development is restricted to single-family dwellings. The foregoing shall not restrict requirements for improvements required pursuant to any other law or regulation including, by way of example, but not as a limitation, any of the applicable real estate subdivision regulations.

D. Requirements for Permit. For the purposes of this section, street improvements as required by subsections A and B of this section shall be considered as satisfactorily assured when the City Engineer: (1) accepts plans and specifications meeting his or her approval as required by Section 12.16.050; (2) enters into an agreement with the owner or applicant required to make said street improvements as provided in Section 12.16.040; and (3) accepts an improvement security as provided in Section 12.16.040. When all of the street improvements required by this section have been assured as provided by Section 12.16.040 or completed to the satisfaction of the City Engineer, he or she shall notify the Building Division or other permit issuing department, and a building permit or other permit may then be issued. (Prior code § 6-2.192)

#### **12.16.040 Improvement procedure.**

A. General Procedure. Any person required to make street improvements by the provisions of Section 12.16.030 shall either construct and complete the improvements according to the procedure established by the City Engineer for construction of improvements in street areas, and in conformance with the standards set forth in Section 12.16.050, or shall provide the City Engineer with plans and specifications meeting his or her approval and an improvement security as provided herein, and enter into an agreement with the City Engineer as provided herein.

A cash inspection deposit, as is currently required by the City Engineer, shall be made at the time that the plans and specifications approved by the City Engineer, are obtained for construction by the owner or contractor for the street improvement work.

B. Deferment of Improvements. Whenever the owner requests that the required street improvements be deferred, the City Engineer is authorized to enter into an agreement with the persons required to make said improvements. This agreement, among other conditions and provisions, shall provide a time limit or completion date to be met by said persons required to make said street improvements. The time limit or completion date shall not exceed one year from the date of issuance of the building permit or other permit. The agreement shall also require, and the persons required to make said street improvements shall provide the city with an improvement security as defined in subsection C of this section. Any such agreement shall be subject to the approval by the City Attorney prior to its execution by the City Engineer. Any extensions of time for completion requested beyond the one-year period hereinabove stated shall be subject to the approval of the City Council.

#### **C. Improvement Security.**

1. "Improvement security" as used in this section means one or more of the following:

a. A cash deposit or deposits made with the city;

b. A bond or bonds by one or more duly authorized corporate sureties; or

c. An instrument or instruments of credit from one or more financial institutions subject to regulation by the state or federal government pledging that the funds necessary to meet the performance are on deposit and guaranteed for payment and agreeing that the funds designated by the instrument shall become trust funds for the purposes set forth in the instrument.

2. Said improvement security shall be in the amounts and for the following purposes:

a. An amount, determined by the City Engineer, of one hundred (100) percent of the total estimated cost of the improvement, conditioned upon the faithful performance of the agreement or contract; and

b. An additional amount equal to fifty (50) percent of the total estimated cost of the improvement, securing payment to the contractor, his or her

subcontractors and to persons renting equipment for furnishing labor or materials to them for the improvement.

3. Improvement security may be released or reduced in whole or in part in the following manner:

a. Improvement security given for faithful performance of the agreement or contract may be released upon final completion and acceptance of the work or the City Engineer may provide for the partial release of the improvement security upon the acceptance of portions of the work as it progresses.

b. Improvement security securing the payment to the contractor, his or her subcontractors and to persons renting equipment or furnishing labor or materials may, six months after the completion and acceptance of the work, be reduced to an amount not less than the total of all claims on which an action has been filed and notice thereof given in writing to the City Engineer; and if there are no actions filed, the improvement security may be released in full.

4. The City Engineer is authorized to release or reduce the improvement security under the above set forth conditions and in accordance with such rules as he or she may prescribe.

5. The liability of the improvement security, as defined herein, shall be confined to:

a. The performance of the work covered by the agreement or contract between the persons required to make said street improvement, and the City Engineer;

b. The performance of any changes or alterations in such work; provided, that all such changes or alterations do not exceed ten percent of the original estimated cost of the improvement.

D. Guarantee. The owner shall require his or her contractor to guarantee the work, in general, for one year after acceptance by the city. The contractor shall be held responsible for and must correct or repair any defects arising or discovered in any part of his or her work within a one-year period after acceptance of the work by the city. The contractor shall not be required to perform

any further work thereon, beyond the said one year, except upon such items as may be reserved specifically in the plans and specifications or in the formal written acceptance. (Prior code § 6-2.193)

#### **12.16.050 Improvement standards.**

All improvements to be constructed under this section shall be at the abutting property owner's expense and installed according to City standards and shall consist of pavement, curbs, gutters, sidewalks, storm drainage including conduits and inlet structures, and any other structures such as retaining walls, public stairways, etc., as required by the City Engineer in accordance with Chapter 12.02. Plans and specifications shall be prepared at the owner's expense by a civil engineer registered in the State of California and no work in public area shall be started until said plans and specifications have been approved by the City Engineer. Where the existing street conforms to grades acceptable to the City Engineer and the required street improvements consist of sidewalk and/or curb and gutter only, plans and specifications will not be required and the work may be done with a sidewalk-driveway-curb-gutter permit.

(Ord. No. 13153, § 2, 2-19-2013; Prior code § 6-2.194)

#### **12.16.060 Notification to permit applicants.**

When the City Engineer finds that the provisions of Sections 12.16.020 to 12.16.050 are applicable to any building or other permit application, he or she shall inform the permit applicant and property owner of such determination in writing and shall prescribe the specific requirements of these sections which he or she finds to be applicable, and shall advise the owner and applicant that any request for waivers from his or her determination must be requested in writing, be for good cause, and be filed within 30 days after notification of his or her determination. If a request for a waiver is filed, the City Engineer shall hold a hearing on such request within 30 days after receipt of such request. The City Engineer shall

## **12.16.060**

notify the applicant and owner of the time and place of such hearing at least ten days prior to said hearing date.

When the City Engineer determines that conditions of terrain or existing improvements contiguous to the property involved so warrant, he or she may, based on said good cause, approve and allow variations and deviations from the requirements set forth in Section 12.16.050 as he or she determines warranted. Whenever uncertainty exists as to the proper application of the requirements of the provisions of Sections 12.16.030 through 12.16.050, the City Engineer shall determine the applicability of the requirements, consistent with the intent of these sections.

(Prior code § 6-2.195)

when needed, controlling the City's issuance of plans and specifications of work for which the City Council or other authorized municipal body is asking for bids in connection with public works contracts.

(Prior code § 6-2.263)

## **12.16.070      Appeal.**

Any person required to make street improvements under the provisions of Sections 12.16.020 to 12.16.060 may appeal any determination made by the City Engineer in the enforcement or administration of these provisions to the City Manager. Such an appeal shall be made in writing and shall state in clear and concise language the grounds therefor, and shall be filed with the Office of Public Works within ten days of the date of the City Engineer's notice of denial of any request for waiver of required street improvements.

The City Manager may make such modifications in the requirements of these provisions or may grant such waivers or modifications of the determinations which are appealed to him or her as he or she shall determine are warranted to prevent any unreasonable hardship under the facts of each case, provided that such modification or waiver is in conformity with the general intent of the requirements of these provisions.

(Prior code § 6-2.196)

## **12.16.080      Regulations for issuance of plans and specifications for public works contracts.**

The Office of Finance is authorized to develop and implement procedures and regulations, as and

## Chapter 12.20

### IMPROVEMENTS BY PRIVATE CONTRACT

#### Sections:

- 12.20.010      Permit required.**
- 12.20.020      Filing and approval of specifications.**
- 12.20.030      Certificate of completion, and approval.**
- 12.20.040      Denial or right to as penalty.**

#### **12.20.010      Permit required.**

No person shall cause or allow the construction by private contract of any work in any public street of the city, in front of property owned by him or her, or under his or her charge or control, or work in any public easement or right-of-way, unless permission therefor shall have been first obtained from the Superintendent of Streets by the issuance of the approved plans and specifications to the private contractor. Provided, however, that nothing herein shall be construed to apply to the private construction of sidewalks, driveways, curbs or gutters as provided for in Chapter 12.04. (Prior code § 6-2.20)

#### **12.20.020      Filing and approval of specifications.**

Except for initial improvements of "Subdivisions of hillside lands," the procedure for improvement of which is set forth in Chapter 16.28 and Sections 16.32.010 through 16.32.030, inclusive, of this code, no permission to perform work in public streets or easements by private contract shall be granted, unless the persons applying for the permission shall have furnished the following requirements to the Director of Public Works/Superintendent of Streets for his or her approval and acceptance:

A. Plans and specifications for the work together with an estimate of the cost of the work, prepared by a registered civil engineer;

B. A petition to the Director of Public Works/Superintendent of Streets from the applicant requesting permission to do the work. The petition

shall include a statement as to the estimated number of days necessary to complete the project (which estimate may be modified by the Director of Public Works/Superintendent of Streets);

C. A deposit sufficient to cover the fees and compensation specified in approved city policies.

All work performed shall be to the satisfaction and acceptance of the Superintendent of Streets/Director of Public Works in conformity with the plans and specifications approved and within the estimated time. (Amended during 1997 codification; prior code § 6-2.21)

#### **12.20.030      Certificate of completion, and approval.**

When street work is done by private contract, upon completion of the work specified in the contract the contractor shall secure (A) from the Engineer for the work, the Engineer's Certificate, which shall state the work has been done to line and grade (if the engineering work has been done outside of the City Engineer's Office, a copy of the Engineer's Certificate shall be filed in said office, and in the office of the Superintendent of Streets/Director of Public Works); (B) From the Director of Public Works/Superintendent of Streets, his or her certificate, which shall state that the work has been done in conformity with the specifications and to the satisfaction and acceptance of the Director of Public Works/Superintendent of Streets.

The Director of Public Works/Street Superintendent shall have the same power to appoint a suitable person to superintend or inspect construction as is or may be vested in the Director of Public Works/Superintendent of Streets by the general law of the State of California in the case of public contracts, and the compensation of such person shall be the same as for special superintendents or inspectors employed under public contracts. (Prior code § 6-2.24)

#### **12.20.040      Denial or right to as penalty.**

In addition to any other penalty provided by this code, any person who shall collect money or attempt to collect money for street work done under any

**12.20.040**

private contract granted pursuant to the terms of this chapter, until the certificates of the Engineer and Street Superintendent/Director of Public Works shall have been issued, as hereinbefore in Section 12.20.030 provided for, or who shall violate or attempt to violate any of the provisions of this chapter pertaining to street work, by private contract, shall be denied the privilege of thereafter doing any kind of street work in the city. (Prior code § 6-2.26)

## Chapter 12.24

### STREET AND SIDEWALK USE REGULATIONS

#### Sections:

- 12.24.010   Leaks in water pipes.**
- 12.24.020   Mixing mortar on streets.**
- 12.24.030   Spilling sand on streets.**
- 12.24.040   Tacks and glass.**
- 12.24.050   Injuring sidewalks and streets.**
- 12.24.060   Industrial wastes and waters in public streets.**
- 12.24.070   Prohibited uses of streets—  
Washing, greasing, repair of vehicles—Storing of vehicles for purposes of selling, dismantling, repairing or servicing.**
- 12.24.075   Parking of vehicles advertised for sale—Authority to remove.**
- 12.24.080   Street decorations permits.**

#### **12.24.010   Leaks in water pipes.**

It is unlawful for any person owning or controlling water pipes in the city to permit a leak to exist in any of the same within any public street or public place in the city for more than twenty-four (24) hours after notice of such leak has been given to such person; or for any such person owning or controlling such water pipes to permit any soil saturated or softened by water from a leak in such pipe to remain in or under any public street for a longer period than is actually necessary for the work of removing the same, said work to begin within twenty-four (24) hours after notice of the presence of such saturated or softened soil has been given to said person and to be diligently prosecuted to completion. All such saturated or softened material shall be replaced with firm material compacted and otherwise placed in accordance with regulations of the city for refilling excavations.

Notice as herein provided for may be given in writing to the person owning or controlling such water pipes, by any person having knowledge there-

of, and it shall be the duty of the Superintendent of Streets/Director of Public Works to give notice of such leaks as come to his or her attention. (Prior code § 6-2.54)

#### **12.24.020   Mixing mortar on streets.**

It is unlawful for any person to place or cause to be placed anywhere upon the surface of the roadway of any public streets in the city or upon the surface of any improved sidewalk therein, mortar in a moist state for any purpose whatsoever, or to mix or prepare the same upon such roadway or sidewalk, unless such mortar be placed, mixed or prepared in a tight box or upon a close fitted platform or bed.

No moist concrete shall be allowed to stand on the surface of any street or improved sidewalk for a longer period than one hour after mixing, and on completion of the job all surplus material shall be removed and the street or sidewalk surface washed, cleaned and left in the same condition as before mixing. No rock, sand, gravel, or cement shall be washed into and left in either gutters or catch basins or allowed to find its way into catch basins. (Prior code § 6-2.55)

#### **12.24.030   Spilling sand on streets.**

It is unlawful for any person to use within the city any cart, wagon or other vehicle for the purpose of carrying sand, earth or rock on or over any public street unless the same is tight and so constructed as to prevent the deposit of such sand, earth or rock in whole or in part in or upon such public street. (Prior code § 6-2.56)

#### **12.24.040   Tacks and glass.**

It is unlawful for any person to throw or deposit tacks, broken glass or ware upon the sidewalks, streets, avenues, alleys or other public places in the city. (Prior code § 6-2.57)

#### **12.24.050   Injuring sidewalks and streets.**

It is unlawful for any person to cut, carve, hack, hew or otherwise injure or deface any sidewalk, curb, gutter or pavement on any public street in the city. (Prior code § 6-2.58)

**12.24.060 Industrial wastes and waters in public streets.**

It is unlawful for any person to discharge, or cause or permit to be discharged any industrial wastes or processing waters into public streets or upon public property without first having obtained a permit therefor granted by resolution of the City Council upon written application therefor. The application shall be supported by such data as the City Manager may require, and the permit shall be revocable at the will of the City Council. (Prior code § 6-2.65)

**12.24.070 Prohibited uses of streets—**

**Washing, greasing, repair of vehicles—Storing of vehicles for purposes of selling, dismantling, repairing or servicing.**

It is unlawful for any person to use any public street in the city for any of the following purposes:

- A. Washing, greasing or repairing such vehicles except repairs necessitated by an emergency;
- B. Storing of vehicles held or acquired for dismantling, rebuilding, sale or resale, repairing, servicing, scrapping or other salvage processes.

This section may be enforced by the method provided for in Chapter 1.24 of this code and Sections 853.5 through 853.8 of the Penal Code of the state of California. Said section shall be enforced by members of the Police Department. (Ord. 11942, 1996; prior code § 6-2.66)

**12.24.075 Parking of vehicles advertised for sale—Authority to remove.**

A. California Vehicle Code Section 22651.9 provides that a local authority may remove a vehicle located on any street or public land when the vehicle is found to satisfy all the following requirements:

- 1. Because of a sign or placard on the vehicle, it appears that the primary purpose of parking the vehicle at that location is to advertise to the public the private sale of that vehicle.
- 2. Within the past thirty (30) days, the vehicle is known to have been previously issued a notice of

parking violation, under local ordinance, which was accompanied by a notice containing all of the following:

- a. A warning that an additional parking violation may result in the impoundment of the vehicle;
- b. A warning that the vehicle may be impounded pursuant to this section, even if moved to another street, so long as the signs or placards offering the vehicle for sale remain on the vehicle;
- c. A warning that all public streets within the city are covered under this section.
- 3. The notice of parking violation was issued at least twenty-four (24) hours prior to the removal of the vehicle.
- 4. The local authority of the city has, by ordinance, authorized the removal of vehicles pursuant to this section from the street or public lands on which the vehicle is located.
- B. The city authorizes removal of cars parked for purposes of advertising their sale, pursuant to the terms and authority and in accordance with the provisions of California Vehicle Code Section 22651.9. (Ord. 12107, 1999)

**12.24.080 Street decorations permits.**

A. The Building Official of the city is authorized to grant permits to hang street decorations along and over the public streets in the business districts of the city for decorative purposes only for periods of time not to exceed sixty (60) days.

B. This section does not, and shall not be construed to, permit temporary signs, as defined in the Oakland Sign Code, along and over the public streets.

C. The granting of permits to hang street decorations along and over the public streets shall be conditioned by the following:

- 1. That each permittee shall obtain approval from the Manager of the Electrical Department before attaching to any electroliers or stringing any electrical wires along and/or over public streets;
- 2. That each permittee shall obtain approval from the Traffic, Street and Engineering, Fire, Police and City Planning Departments prior to the

installation of decorations and/or electrical wires as permitted by this code;

3. That each permittee shall obtain approval from the Director of Parks and Recreation;

4. That the electrical work shall be performed under an electrical permit obtained from the Inspectional Services Department, and that all installations shall be made in compliance with the provisions of this code;

5. That each permittee shall obtain permission from the appropriate public utility companies before attaching to any poles, guy wires, or span wires, and such attachments shall comply with the rules and regulations of the Public Utilities Commission of the state of California;

6. That the sign permit forms of the Inspectional Services Department are to be used for the processing of applications to hang decorations. This is not to be construed as requiring the installation to meet all the requirements of the Oakland Sign Code;

7. That a fee for each installation shall be paid to the Building Official as required for signs as set forth in the Oakland Sign Code;

8. That all street decorations shall be installed and maintained in a safe condition, and each permittee shall agree in writing, at the time of the granting of said permit, to be responsible for any loss or damage caused by the installation or maintenance of said decorations and to indemnify and hold harmless the city, its officers and employees, from any claims or damages sustained or arising out of the installation or maintenance of said decorations;

9. That each permittee shall maintain in force and effect good and sufficient public liability insurance in the amount of two hundred thousand dollars (\$200,000.00)/three hundred thousand dollars (\$300,000.00); and property damage insurance in the amount of fifty thousand dollars (\$50,000.00), both



including the contractual liability assumed above, or including the city and all officers and employees thereof as additional insured with respect to any and all claims arising out of the existence of said decorations;

10. That nothing herein contained shall be, or be deemed to be, a waiver of the city's right to hold the permittee liable for any and all damage to city property resulting from the permission herein granted;

11. That each permit granted pursuant hereto is revocable at the pleasure of the Building Official, and all street decorations erected shall be removed from the streets upon the conclusion of the sixty (60) day permit period to the satisfaction of said Building Official. (Prior code § 6-2.69)

**Chapter 12.28**  
**RAILROAD TRACKS**

**Sections:**

- 12.28.010**   **Tracks of street railroad crossing street being paved.**
- 12.28.020**   **Tracks of railroad crossing street being paved.**
- 12.28.030**   **Pavement by railroads to be same as rest of street.**
- 12.28.040**   **Tracks and pavement to be laid in accordance with approved plans.**
- 12.28.050**   **Tracks—Maintenance of pavement between—Notice to repair.**
- 12.28.060**   **Tracks—Repairs to be made by city if not made upon notice.**
- 12.28.070**   **Tracks—Type and laying.**
- 12.28.080**   **Tracks—Removal and replacement.**
- 12.28.090**   **Tracks—Abandonment—Repaving.**
- 12.28.100**   **Tracks where improved type of pavement is in use.**
- 12.28.110**   **Spur tracks—Permit required—Application.**
- 12.28.120**   **Spur track permit—Deposit.**

**12.28.010    Tracks of street railroad crossing street being paved.**

Wherever any street railroad operating upon the public streets of the city crosses any public street in said city which is being paved with a hard-surfaced pavement upon a concrete foundation such as sheet asphalt, basalt blocks, vitrified brick or other similar material, any person operating such street railroad shall, at the time the work of paving is done on the cross street, reconstruct, to the satisfaction of the Director of Public Works/Superintendent of Streets of the city, the tracks of such street railroad at such crossing in the manner shown upon that certain plan prepared by the City Engineer, entitled "Sectional

Plan of Street Railway Tract Construction for Street Intersection (Type 'A') Oakland, California, August 1919," and filed on the 26th day of August 1919, in the office of the City Clerk of said city. (Prior code § 6-2.27)

**12.28.020    Tracks of railroad crossing street being paved.**

Whenever any railroad operating upon the public streets of the city, other than a street railroad, crosses any public street in the city which is being paved with a hard-surfaced pavement upon a concrete foundation such as sheet asphalt, basalt blocks, vitrified brick or other similar material, any person operating such railroad, other than said street railroad, shall, at the time the work of paving is done on the cross street, reconstruct, to the satisfaction of the Director of Public Works/Superintendent of Streets of the city, the tracks of such railroad at such crossing in the manner shown upon that certain plan prepared by the City Engineer, entitled "Sectional Plan of Heavy-type Railroad Track Construction for Street Intersection (Type 'A') Oakland, California, August 1919," and filed on the 26th day of August, 1919, in the office of the City Clerk of said city. (Prior code § 6-2.28)

**12.28.030    Pavement by railroads to be same as rest of street.**

In all cases where a public street within the city is now, or shall be hereafter, paved with bithulithic, concrete, or oil-macadam, that portion of such street to be kept in order or repair by any street railroad having a track or tracks thereon, shall be paved with the same pavement as the other portion of the street.

The laying of said pavement upon such portion of such street shall be commenced within ten days after the completion and acceptance by the Superintendent of Streets/Director of Public Works of the pavement upon the remainder in width of such street.

The provisions of this section shall apply to all existing franchises and all franchises hereafter granted, but shall not apply to Broadway or Washington

Streets, or to Fourteenth Street between Broadway and Washington Streets. (Prior code § 6-2.29)

**12.28.040 Tracks and pavement to be laid in accordance with approved plans.**

All car tracks to be hereafter laid by any person in the city, and all street pavement and roadway to be laid within the space required by law to be maintained by railway companies, shall be constructed according to detail plans which must be prepared by the party or parties who propose to do the work. Said plans must be submitted to and approved by the City Engineer before construction begins, and all work must be done to the satisfaction of the City Engineer and Director of Public Works/Superintendent of Streets. All existing tracks and street pavement and roadways, the design of which is not approved by the City Engineer, when removed for any other purpose than ordinary repair of roadbed, must be replaced by track or pavement conforming to the above requirements. The plans as aforesaid must show in detail a cross-section of the proposed track and pavement and roadway, and the alignment of all railway tracks must be satisfactory to the City Engineer.

All railroad tracks and street pavement must be laid on the official grade of the street, and all existing tracks and street pavement not on official grade must be reconstructed upon the order of the City Council. (Prior code § 6-2.30)

**12.28.050 Tracks—Maintenance of pavement between—Notice to repair.**

Any person owning or operating any car track or tracks in the city, shall be required to maintain and sprinkle said track or tracks and the pavement and roadway between and adjacent thereto and two feet each side thereof in a condition satisfactory to the City Manager and the Director of Public Works/Superintendent of Streets of said city.

Any owner, superintendent or other officer of any corporation or association, owning or operating any street railroad in the city, shall, upon notice from the

Director of Public Works/Superintendent of Streets of the city, make all repairs specified in said notice. Any car track which presents serious obstruction to travel in the crossing of vehicles will be subject to removal by the Director of Public Works/Superintendent of Streets without notice to the owners or officers in charge of said track. (Prior code § 6-2.31)

**12.28.060 Tracks—Repairs to be made by city if not made upon notice.**

After service of notice to make any repairs as provided for in Section 12.28.050, and the time for beginning work as specified having expired, the Director of Public Works/Superintendent of Streets may proceed to make any necessary repairs.

Any work provided for by Section 12.28.050 must be commenced within three days after service of notice and prosecuted diligently to completion unless the time for beginning work is otherwise specified in said notice. (Prior code § 6-2.32)

**12.28.070 Tracks—Type and laying.**

All tracks hereafter to be laid for any street railroad in any public street in the city shall be constructed of standard rails of the most approved pattern, and in a good and substantial manner, and so as to present the least possible obstruction to travel and the crossing of vehicles. All rails heretofore in use which do not conform to the foregoing provisions, when removed for any other purpose than for ordinary repair of the roadbed, stringers or ties, shall be replaced by rails conforming, and in a manner conforming to said foregoing provisions.

All tracks for any street railroad now, or hereafter to be, constructed in any public street in the city shall be laid in such a manner that the top of the rail or rails shall be flush with the street between the rails and for two feet on either side of such rails and between the tracks, if there is more than one. (Prior code § 6-2.33)

**12.28.080 Tracks—Removal and replacement.**

No track or tracks, in use by any street railroad

in the city and laid in any public street in said city, shall be taken up or removed to any part of said street or elsewhere, for temporary or other purposes, without first obtaining permission for said work from the Council of the city.

Whenever any such track or tracks are taken up for temporary purposes, such track or tracks must be replaced promptly and with as little obstruction to travel as possible, and in accordance with the provisions of this title applicable thereto.

All such tracks for said street railroads in the city shall be laid in accordance with the official grade of the public street in which such tracks are laid, and whenever the grade of any such street is changed such tracks shall be relaid promptly to conform to the change of grade. (Prior code § 6-2.34)

#### **12.28.090 Tracks—Abandonment—Repaving.**

Whenever any street railroad track laid in or upon any public street in the city is taken up for abandonment of its use, the person owning or controlling such street railroad track shall remove such track promptly and repave that portion of the street formerly used by the tracks so removed between the rails and for two feet on either side thereof. Such repavement and all paving required by the provisions of this title relative to tracks shall be done with similar materials, of as good quality as the adjacent roadway, and shall be done in accordance with the general specifications provided by ordinance or otherwise for similar street work. (Prior code § 6-2.35)

#### **12.28.100 Tracks where improved type of pavement is in use.**

In all cases where any public street in the city is paved with asphalt, bitumen, wooden blocks or other improved paving material, and when a portion of such street is to be kept in repair by any street railroad, such portion of said street shall not be macadamized or remacadamized nor shall any macadam be laid thereon, and such portion of said street which is to be kept in repair by any street railroad must be properly paved and such paving must be

done to the satisfaction of the Director of Public Works/Superintendent of Streets of the city.

All work hereinbefore in this title required to be done by a street railroad company shall be done promptly, in a good, substantial manner and to the satisfaction of the Director of Public Works/Superintendent of Streets.

No owner, or any superintendent, or other official of any firm, corporation or association, owning, operating or controlling any street railroad in the city, shall cause, or knowingly allow, any work to be done or fail to be done in violation of the provisions of this title. (Prior code § 6-2.36)

#### **12.28.110 Spur tracks—Permit required—Application.**

No person, firm, or corporation shall lay down, or cause to be laid down on any public street, or portion thereof, in the city, a spur or side track, or to run or permit or cause to be run thereon, any cars without first obtaining a permit therefor from the Council of the city. Such tracks shall be used exclusively for the transportation of freight between the main line, or part thereof, of the railroad and warehouses, manufactories, or other business industries and enterprises, and shall not be used as the main line or any part thereof. Such tracks shall be laid level with the street and shall be operated in such manner as not to interfere with the use of the street by the public. The application shall contain such information, plans, profiles, and specifications as shall be requested by the Director of Public Works/Superintendent of Streets. All permits granted hereunder shall be by Council resolution setting forth such conditions and terms as the Council may prescribe. Said resolution shall be revocable by resolution adopted at the pleasure of the City Council. (Prior code § 6-2.67)

#### **12.28.120 Spur track permit—Deposit.**

Each application to the Council for a spur track permit shall be accompanied by a deposit. (Prior code § 6-2.68)

## Chapter 12.32

### STREET TREES AND SHRUBS

**Sections:**

- 12.32.010      Definitions.**
- 12.32.020      Powers and authority over trees.**
- 12.32.030      Dangerous trees a nuisance—Summary power to remove same.**
- 12.32.040      Cost of removal of dangerous tree.**
- 12.32.050      Proceedings for creating a lien.**
- 12.32.060      Permit to maintain, remove, mutilate, attach to, or detach from, trees.**
- 12.32.070      Permits generally.**

**12.32.010      Definitions.**

For the purpose of this chapter certain words and phrases are defined and certain provisions shall be construed as herein set out, unless it shall be apparent from the context that they have a different meaning:

“Boats” means and includes canoes, rowboats, sail boats, hydro-planes and any and all other watercraft.

“Improvement” when used in this chapter in reference to trees or shrubs, means and includes the planting, removal or maintenance of same, and any or all acts necessary thereto.

“Maintenance” or “maintain,” when used in this chapter in reference to trees or shrubs, means and includes clipping, spraying, fertilizing, irrigating, propping, treating for disease or injury, and any other similar acts which promote the life, growth, health or beauty of such trees or shrubs.

“Public street,” when used in this chapter means and includes all public streets, avenues, highways, alleys, walks and lanes in the city. (Prior code § 6-3.01)

**12.32.020      Powers and authority over trees.**

The City Manager shall have full power and

authority over the planting, removal and maintenance of trees and shrubs in or upon any public street or public grounds and shall have the right and power to establish rules and regulations relating thereto. The City Manager or his or her delegated representative shall have the power to cause the trimming or removal of any tree or shrub in or upon any public street or public grounds which is diseased or is endangering or which may endanger the security or usefulness of any public street, sewer or sidewalk. (Prior code § 6-3.02)

**12.32.030      Dangerous trees a nuisance—Summary power to remove same.**

Any tree or shrub growing partially in any public street or sidewalk, or on a private estate and overhanging or projecting into any such street, and which is endangering, or which may in any way endanger, the security or usefulness of any public street, sewer or sidewalk, or any tree or shrub growing wholly on a private estate but which because of its physical condition, height, angle of lean, or other factor, which is endangering, or may in any way endanger, the security or usefulness of any public street, sewer or sidewalk, is declared to be a public nuisance. The City Manager of the city or his or her delegated representative may remove such tree or shrub, or such parts thereof as are liable to fall or are dangerous or an obstruction; provided, that except in case of manifest public danger and immediate necessity, no such tree or shrub located upon a private estate shall be wholly cut down or removed unless ten days’ notice in writing shall be given personally or by certified mail by the City Manager or his or her delegated representative to an owner as set forth in the last equalized assessment rolls used by the city, and occupant, or agent of the private estate most immediately affected by such cutting or removal; and if any owner, occupant or agent of such estate shall, within seven days after the giving of such notice, file with the Parks and Recreation Commission of the city his or her objections in writing to such removal, such tree or shrub shall not be cut down or removed unless said Commission shall give such owner or other proper per-

son who has made said objection a reasonable opportunity to be heard in support of such objection, and shall thereafter notify the City Manager, in writing, of its decision in the matter. If the Commission overrules the objections and approves the cutting down or removal of such tree or shrub or portion thereof, the City Manager or his or her delegated representative shall forthwith have such tree or shrub or portion thereof cut down or removed. (Prior code § 6-3.03)

**12.32.040 Cost of removal of dangerous tree.**

The city shall be reimbursed by the owner, occupant, or agent of such estate for all costs incurred by the city in the removal of said dangerous tree or shrub located upon a private estate. Upon completion by the city of the abatement of said dangerous tree or shrub, the City Manager or his or her delegated representative shall cause written notice to be given to the occupant and owner as set forth in the last equalized assessment rolls used by the city or agent of such estate, personally or by certified mail, showing the itemized cost of such abatement and giving notice of the day, hour and place when the City Council will hear and pass upon a report of the City Manager or his or her delegated representative of the cost of the abatement, together with any objections or protests, if any, which may be raised by said owner, occupant or agent. (Prior code § 6-3.031)

**12.32.050 Proceedings for creating a lien.**

Upon the day and hour fixed for the hearing, the City Council shall hear and pass upon the report of the City Manager or his or her delegated representative and shall hear such evidence as may be presented by any interested party. Thereupon, the City Council may make such revision, correction or modification in the report as it deems just and shall thereafter confirm by resolution the report as submitted, revised, corrected or modified. The decision of the City Council shall be final. If the amount of the expense to the city as confirmed by the City Council is not paid by the owner, occupant or agent

or said owner within fifteen (15) days after such confirmation by the City Council, said amount shall constitute a lien on said real property and the City Manager or his or her delegated representative shall record in the Office of the County Recorder of the county of Alameda, state of California, a certificate substantially in the following form:

**NOTICE OF LIEN**

Pursuant to the authority granted by Resolution No. \_\_\_\_ C.M.S. of the City Council of the City of Oakland, adopted on the \_\_\_\_ day of \_\_\_\_ 19\_\_\_\_, and the provisions of Section 12.32.030 of the Oakland Municipal Code, the City Manager did on the \_\_\_\_ day of \_\_\_\_ 19\_\_\_\_, cause a dangerous (tree-shrub) located upon the hereinafter described real property to be removed at the expense of the owner, occupant or agent thereof, in the amount of \$\_\_\_\_\_, and that said amount has not been paid, nor any part thereof, and the City of Oakland does hereby claim a lien upon the hereinafter described real property in said amount, and the same shall be a lien upon said real property until said sum with interest at the rate of 6% per annum, from the date of the recording of said notice, has been paid in full and discharged of record. The real property hereinabove mentioned and upon which a lien is claimed is that certain piece or parcel of land lying and being in the City of Oakland, County of Alameda, State of California, and particularly described as follows, to-wit:

(insert description of property)

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

**CITY OF OAKLAND**

By \_\_\_\_\_  
City Manager

and the same shall be a lien against the property described therein until the amount thereof, plus

accrued interest from and after the date of the recording of said notice of lien, has been paid in full. All persons shall be deemed to have had notice of the contents thereof. The amount of such lien shall draw interest at the rate of six percent per annum from the date of recordation of said lien in the Office of the County Recorder. (Prior code § 6-3.032)

**12.32.060    Permit to maintain, remove,  
mutilate, attach to, or detach  
from, trees.**

It is unlawful for any person to make any tree or shrub improvement, or to destroy, deface or mutilate any tree or shrub in and along any public street, or to attach or place any rope, wire, sign, poster, handbill or other thing to or on any tree growing in any public street, or any guard or protection of such tree, or to cause or permit any wire charged with electricity to come in contact with any such tree, without having first obtained a written permit therefor from the Director of Parks and Recreation of the city. (Prior code § 6-3.04)

**12.32.070    Permits generally.**

The Board of Park Directors may authorize the Superintendent of Parks, or any other officer under its jurisdiction, to issue permits in this chapter required to be secured from the said Board and notices in this chapter required to be given. Every permit granted under Section 12.32.070 shall specifically prescribe the work to be done under it and shall expire sixty (60) days from its date. Any permit granted may be revoked by the Board of Park Directors at any time upon satisfactory proof to said Board that the privilege thereunder is being abused. (Prior code § 6-3.06)

## Chapter 12.36

### PROTECTED TREES

**Sections:**

<b>12.36.010</b>	<b>Intent and findings.</b>
<b>12.36.020</b>	<b>Definitions.</b>
<b>12.36.030</b>	<b>Application for permits.</b>
<b>12.36.040</b>	<b>Permit required.</b>
<b>12.36.050</b>	<b>Criteria for tree removal permit review.</b>
<b>12.36.060</b>	<b>Conditions of approval.</b>
<b>12.36.070</b>	<b>Procedure—Development-related tree removals.</b>
<b>12.36.080</b>	<b>Procedure—Non-development-related tree removals.</b>
<b>12.36.090</b>	<b>Procedure—City-owned tree removals.</b>
<b>12.36.100</b>	<b>Appeals—Development-related tree removal permits.</b>
<b>12.36.110</b>	<b>Appeals—Non-development-related tree removal permits.</b>
<b>12.36.120</b>	<b>Appeals—City-owned tree removal permits.</b>
<b>12.36.130</b>	<b>Emergency situations.</b>
<b>12.36.140</b>	<b>Exemptions.</b>
<b>12.36.150</b>	<b>Enforcement and penalties.</b>
<b>12.36.160</b>	<b>Investigation of violations.</b>
<b>12.36.170</b>	<b>Violation hearing.</b>
<b>12.36.180</b>	<b>Cost of tree removal permit violation investigation, enforcement, and replacement plantings a lien.</b>
<b>12.36.190</b>	<b>Notice of lien—Tree removal permit violation investigation, enforcement, replacement plantings.</b>
<b>12.36.200</b>	<b>Liabilities.</b>

**12.36.010 Intent and findings.**

The ordinance codified in this chapter is enacted in recognition of the following facts and for the following reasons:

A. Among the features that contribute to the attractiveness and livability of the city are its trees,

both indigenous and introduced, growing as single specimens, in clusters, or in woodland situations. These trees have significant psychological and tangible benefits for both residents and visitors to the city.

B. Trees contribute to the visual framework of the city by providing scale, color, silhouette and mass. Trees contribute to the climate of the city by reducing heat buildup and providing shade, moisture, and wind control. Trees contribute to the protection of other natural resources by providing erosion control for the soil, oxygen for the air, replenishment of groundwater, and habitat for wildlife. Trees contribute to the economy of the city by sustaining property values and reducing the cost of drainage systems for surface water. Trees provide screens and buffers to separate land uses, landmarks of the city's history, and a critical element of nature in the midst of urban settlement.

C. For all these reasons, it is in the interest of the public health, safety and welfare of the Oakland community to protect and preserve trees by regulating their removal; to prevent unnecessary tree loss and minimize environmental damage from improper tree removal; to encourage appropriate tree replacement plantings; to effectively enforce tree preservation regulations; and to promote the appreciation and understanding of trees. (Prior code § 7-6.01)

**12.36.020 Definitions.**

For the purposes of this chapter, the meaning and construction of words and phrases hereinafter set forth shall apply:

“Applicant” means either one of the following:

1. The owner of the real property upon which the protected tree(s) involved in a tree removal permit and/or site inspection applications are located, also referred to herein as the tree owner;

2. The agent of the property owner (tree owner), as established by legally binding written stipulations between the property owner and the agent for the property owner.

“dbh (diameter at breast height)” means trunk diameter measured at four and one-half feet above the ground. For multistemmed trees, a permit is

required if the diameter of all individual trunks when added together, equals or exceeds the minimum size stipulated for the species.

For convenience in the field, circumferences are considered equivalent to diameter as follows:

Diameter	Circumference
4"	12"
9"	28"

"Development related" means any activity regulated by the city of Oakland and which requires design review or a zoning, building, grading or demolition permit.

"Nonnative" means any tree species which does not naturally occur within the Oakland city limits.

"Protected perimeter" means an area of land located underneath any protected tree which extends either to the outer limits of the branches of such tree (the drip line) or such greater distance as may be established by the Office of Parks and Recreation in order to prevent damage to such tree.

"Protected tree" means a protected tree for the purpose of this chapter is the following:

1. On any property, *Quercus agrifolia* (California or Coast Live Oak) measuring four inches dbh or larger, and any other tree measuring nine inches dbh or larger except *Eucalyptus* and *Pinus radiata* (Monterey Pine);

2. *Pinus radiata* (Monterey Pine) trees shall be protected only on city property and in development-related situations where more than five Monterey Pine trees per acre are proposed to be removed. Although Monterey Pine trees are not protected in non-development-related situations, nor in development-related situations involving five or fewer trees per acre, public posting of such trees and written notice of proposed tree removal to the Office of Parks and Recreation is required per Section 12.36.070A and Section 12.36.080A.

3. Except as noted above, *Eucalyptus* and Monterey Pine trees are not protected by this chapter.

"Topping" means elimination of the upper twenty-five percent or more of a tree's trunk(s) or main leader(s).

"Tree" means a woody perennial, usually with one main trunk, attaining a height of at least eight feet at maturity.

"Tree removal" means the destruction of any tree by cutting, regrading, girdling, interfering with the water supply, or applying chemicals, or distortion of the tree's visual proportions by topping.

"Tree reviewer" means a city employee in the classification of Arboricultural Inspector, Tree Supervisor II or Tree Supervisor I assigned by the Director of Parks and Recreation to review, inspect and prepare findings for all tree removal permit applications and appeals of decisions related thereto.

"Working day" means Monday through Friday, except officially designated city holidays. (Prior code § 7-6.02)

### 12.36.030 Application for permits.

All applications for tree removal permits shall only be made by applicants, as defined in this chapter, and no person who does not meet the definition of an applicant shall be issued a tree removal permit. (Prior code § 7-6.03)

### 12.36.040 Permit required.

A. A protected tree may not be removed without a tree removal permit.

B. A tree removal permit, if one is required, shall be authorized by the Tree Reviewer prior to the approval of any building, grading, or demolition permit application, and shall only be issued to the applicant concurrent with or subsequent to all other necessary permits pertinent to site alteration and construction.

C. Tree removal permits shall be transferrable from one applicant to another applicant only upon the following conditions:

1. The new applicant must meet the eligibility criteria set forth in Section 12.36.020;

2. Prior to transfer, a written, notarized statement must be provided to the Tree Reviewer by the permit holding applicant and the new applicant

identifying the new applicant by name, address, and telephone number, and stating the reason and effective date for the permit transfer;

3. The permit holding applicant and new applicant must present proper identification to the Tree Reviewer;

4. The new applicant must pay the fee established by the master fee schedule of the city for tree removal permit transfers;

5. The transfer must be approved by the Tree Reviewer. Approval shall be granted, if the requirements of subsections (C)(1), (2), (3) and (4) of this section are met.

D. All tree removal permits shall remain valid for one year from the date of permit issuance. An additional one year extension shall be granted upon receipt of a written request from the permit applicant by the Tree Reviewer. No tree removal permit shall remain valid for a period in excess of two years from the date of permit issuance. The applicant must pay the fee established by the master fee schedule of the city for tree removal permit extensions. (Prior code § 7-6.04)

#### **12.36.050 Criteria for tree removal permit review.**

A. In order to grant a tree removal permit, the city must determine that removal is necessary in order to accomplish any one of the following objectives:

1. To insure the public health and safety as it relates to the health of the tree, potential hazard to life or property, proximity to existing or proposed structures, or interference with utilities or sewers;

2. To avoid an unconstitutional regulatory taking of property;

3. To take reasonable advantage of views, including such measures as are mandated by the resolution of a view claim in accordance with the view preservation ordinance (Chapter 15.52 of this code);

4. To pursue accepted, professional practices of forestry or landscape design. Submission of a landscape plan acceptable to the Director of Parks and Recreation shall constitute compliance with this criterion;

5. To implement the vegetation management prescriptions in the S-11 site development review zone.

B. A finding of any one of the following situations is grounds for permit denial, regardless of the findings in subsection A of this section:

1. Removal of a healthy tree of a protected species could be avoided by:

a. Reasonable redesign of the site plan, prior to construction;

b. Trimming, thinning, tree surgery or other reasonable treatment.

2. Adequate provisions for drainage, erosion control, land stability or windscreens have not been made in situations where such problems are anticipated as a result of the removal.

3. The tree to be removed is a member of a group of trees in which each tree is dependent upon the others for survival.

4. The value of the tree is greater than the cost of its preservation to the property owner. The value of the tree shall be measured by the Tree Reviewer using the criteria established by the International Society of Arboriculture, and the cost of preservation shall include any additional design and construction expenses required thereby. This criterion shall apply only to development-related permit applications.

C. In each instance, whether granting or denying a tree removal permit, findings supporting the determination made pursuant to subsection A or B of this section, whichever is applicable, shall be set forth in writing. (Prior code § 7-6.05)

#### **12.36.060 Conditions of approval.**

The following conditions of approval, depending upon the facts of each application, may be issued in conjunction with any tree removal permit:

A. Adequate protection shall be provided during the construction period for any trees which are to remain standing. Measures deemed necessary by the Tree Reviewer in consideration of the size, species, condition and location of the trees to remain, may include any of the following:

1. Before the start of any clearing, excavation, construction or other work on the site, every protected tree deemed to be potentially endangered by said site work shall be securely fenced off at a distance from the base of the tree to be determined by the Tree Reviewer. Such fences shall remain in place for duration of all such work. All trees to be removed shall be clearly marked. A scheme shall be established for the removal and disposal of logs, brush, earth and other debris which will avoid injury to any protected tree.

2. Where proposed development or other site work is to encroach upon the protected perimeter of any protected tree, special measures shall be incorporated to allow the roots to breathe and obtain water and nutrients. Any excavation, cutting, filing, or compaction of the existing ground surface within the protected perimeter shall be minimized. No change in existing ground level shall occur within a distance to be determined by the Tree Reviewer from the base of any protected tree at any time. No burning or use of equipment with an open flame shall occur near or within the protected perimeter of any protected tree.

3. No storage or dumping of oil, gas, chemicals, or other substances that may be harmful to trees shall occur within the distance to be determined by the Tree Reviewer from the base of any protected trees, or any other location on the site from which such substances might enter the protected perimeter. No heavy construction equipment or construction materials shall be operated or stored within a distance from the base of any protected trees to be determined by the tree reviewer. Wires, ropes, or other devices shall not be attached to any protected tree, except as needed for support of the tree. No sign, other than a tag showing the botanical classification, shall be attached to any protected tree.

4. Periodically during construction, the leaves of protected trees shall be thoroughly sprayed with water to prevent buildup of dust and other pollution that would inhibit leaf transpiration.

5. If any damage to a protected tree should occur during or as a result of work on the site, the applicant shall immediately notify the Office of

Parks and Recreation of such damage. If, in the professional opinion of the Tree Reviewer, such tree cannot be preserved in a healthy state, the Tree Reviewer shall require replacement of any tree removed with another tree or trees on the same site deemed adequate by the Tree Reviewer to compensate for the loss of the tree that is removed.

6. All debris created as a result of any tree removal work shall be removed by the applicant from the property within two weeks of debris creation, and such debris shall be properly disposed of by the applicant in accordance with all applicable laws, ordinances, and regulations.

B. Replacement plantings shall be required in order to prevent excessive loss of shade, erosion control, groundwater replenishment, visual screening and wildlife habitat in accordance with the following criteria:

1. No tree replacement shall be required for the removal of nonnative species, for the removal of trees which is required for the benefit of remaining trees, or where insufficient planting area exists for a mature tree of the species being considered.

2. Replacement tree species shall consist of *Sequoia sempervirens* (Coast Redwood), *Quercus agrifolia* (Coast Live Oak), *Ancutus merciesii* (Madrone), *Aesculus californica* (California Buck-eye) or *Umbelluiana californica* (California Bay Laurel).

3. Replacement trees shall be of twenty-four (24) inch box size, except that three fifteen (15) gallon size trees may be substituted for each twenty-four (24) inch box size tree where appropriate.

4. Minimum planting areas must be available on site as follows:

a. For *Sequoia sempervirens*, three hundred fifteen square feet per tree;

b. For all other species listed in subsection (B)(2) of this section, seven hundred (700) square feet per tree.

5. In the event that replacement trees are required but cannot be planted due to site constraints, an in lieu fee as determined by the master fee schedule of the city may be substituted for required replacement plantings, with all such revenues ap-

plied toward tree planting in city parks, streets and medians.

Plantings shall be installed prior to the issuance of a certificate of occupancy, subject to seasonal constraints, and shall be maintained by the applicant until established. The Tree Reviewer may require a landscape plan showing the replacement planting and the method of irrigation. Any replacement planting which fails to become established within one year of planting shall be replanted at the applicant's expense.

C. Workers compensation, public liability, and property damage insurance shall be provided by any person(s) performing tree removal work authorized by a tree removal permit.

D. The removal of extremely hazardous, diseased, and/or dead trees shall be required where such trees have been identified by the Tree Reviewer.

E. Any other conditions that are reasonably necessary to implement the provisions of this chapter. (Prior code § 7-6.06)

#### **12.36.070 Procedure—Development-related tree removals.**

A. Notice and Posting of Monterey Pine Removals. Any property owner or arborist who intends to remove one or more Monterey Pine trees from any parcel must notify the Office of Parks and Recreation in writing of the address, number and size of Monterey Pine trees to be removed, with such notice addressed to the Tree Reviewer, Park Services Division, 7101 Edgewater Drive, Oakland, CA 94621.

In addition, the public posting procedures detailed in subsections F of this section shall be required for all Monterey Pine tree removal situations.

B. Pre-application Design Conference. Prior to the submission of a tree removal permit application, a prospective applicant may request a pre-application design conference or a design review checklist conference by filing a request with the City Planning Department.

The pre-application design conference shall be convened by City Planning staff, and shall include the applicant, the Tree Reviewer, City Planning

staff, Public Works staff (if necessary), and property owners of parcels located adjacent to the site of the proposed tree removal. The purpose of the pre-application design conference shall be to review proposed tree removals and determine whether alternative designs might be possible which would reduce the number of trees to be removed.

The results of the pre-application design conference shall be advisory, and shall not be binding on the prospective applicant; however, failure of a prospective applicant to reasonably incorporate the advisory findings made at the pre-application design conference into a subsequent tree removal permit application may be considered by the Tree Reviewer when making final permit determinations.

C. Application. In any development-related situation which requires removal or possible damage to a protected tree or trees, including application for design review, zoning permits, planned unit developments, or land subdivisions, a tree removal permit application must be filed with the City Planning Department at the same time any zoning permit, design review, planned unit development, or land subdivision application is filed in accordance with the requirements of the regulations governing such applications.

All applicants for tree removal permits shall provide two copies of a survey and site plan as specified by Section 12.36.080 of the Oakland Municipal Code and Section 302(c) of the Oakland Building Code. All such surveys and site plans shall indicate the location, species, and dbh of all protected trees located within thirty (30) feet of proposed development activity on the subject property, regardless of whether or not the protected trees in question are included on any tree removal permit application; those protected tree(s) which are proposed for removal shall also be clearly identified.

The applicant shall also be required to certify in writing that the applicant has read, understood, and shall comply with the terms and provisions of this title, including any conditions of permit approval made pursuant thereto.

**D. Initial City Review.** The City Planning Department shall review and receive all applications for development-related tree removal permits.

In those cases where a tree removal permit is required, the applicant shall submit a tree removal permit application. Tree removal permits shall be required for all protected trees which are to be removed by the applicant, or which are located within ten feet of the proposed building footprint or perimeter of earthwork. City Planning staff shall then:

1. Accept the tree removal permit application after confirming that the required information has been provided by the applicant;
2. Collect the fee established by the master fee schedule of the city for tree removal permit review from the applicant, who shall pay such fee;
3. Advise the applicant of the requirement to mark all protected trees proposed for removal in plain view of the street with water soluble paint using a numbering scheme consistent with the numbering scheme used on the survey and site plan;
4. Issue the applicant sufficient summary notices to be posted and maintained by the applicant in clear public view from all street frontages of the subject property; and
5. Immediately forward the original tree removal permit application to the Office of Parks and Recreation for further processing.

**E. CEQA Review.** All tree removal permit applications shall be reviewed by the Tree Reviewer under the California Environmental Quality Act (CEQA) within five working days of permit application receipt using checklists established for this purpose.

Exemption from CEQA shall be determined by the application of criteria which take into account the existing property use (developed versus undeveloped), the total extent of requested tree removals, and the size of any individual protected tree proposed for removal.

In the event the Tree Reviewer determines that additional CEQA review is required, a referral shall be made to the City Planning Department within five working days of permit application receipt. City Planning staff shall review all referrals within estab-

lished CEQA review time frames, and shall notify the Tree Reviewer of the projected CEQA completion date.

**F. Site Posting.** The applicant shall paint a sequential number of not less than twelve (12) inches in height on each protected tree proposed for removal, and shall post the summary notices as required herein within two days after making an application for a tree removal permit. The painted numbers and summary notice shall not be removed until such time as a tree removal permit is issued or denied by the city for the tree(s) in question.

Failure of the applicant to properly post any tree tag or summary notice shall result in the extension of all time limits established for a permit application until such time as the applicant has provided proper tree and/or site posting.

**G. Application Verification.** The Tree Reviewer, within four working days of receipt of a permit application, shall notify the applicant whether the application is complete and accepted for filing. If the Tree Reviewer determines that a permit application is incomplete, the notice to the applicant shall set forth the reasons for the incompleteness, and the application shall be deemed rejected. If the applicant is not notified by the Tree Reviewer within four working days, said permit application shall be deemed complete.

**H. Public Notice and Input.** The Office of Parks and Recreation shall, within ten working days of permit application, notify occupants and proper owners of all parcels located adjacent to the site of proposed tree removal(s) in writing of the fact that a tree removal permit application has been made, the name of the applicant, and the closing date for public input. Notice to occupants shall be addressed to "Occupant." The Office of Parks and Recreation shall accept public comment regarding a tree removal permit application for a period of not less than twenty (20) working days following verification of proper site posting.

**I. Site Inspection.** The Tree Reviewer of the Office of Parks and Recreation shall review all tree removal inspection requests, and shall inspect all

such sites within five working days after the application is filed.

J. Site Design Conference. The City Planning Department shall meet and confer with the applicant, the Tree Reviewer and concerned parties in an effort to achieve a design which will accommodate the jeopardized tree(s). Such site design conference shall be convened not later than ten working days after permit application.

This time limit may be modified by the mutual consent of the applicant, the City Planning Department, and the Office of Parks and Recreation. In addition, when an application for a Planned Unit development or land subdivision is filed with the city, the City Planning Department shall convene a design conference with the applicant, concerned parties and the Tree Reviewer to address tree removal issues.

K. Permit Determinations. The Tree Reviewer of the Office of Parks and Recreation shall review all tree removal permit applications and shall be responsible for making all necessary findings for approval or denial of such permit applications, including attaching all necessary conditions of approval.

Any public input or comments shall be noted by the Tree Reviewer.

L. Permit Issuance and Denial. Based upon the determinations of the Tree Reviewer, except as otherwise stated herein and except as necessitated by CEQA review, the Office of Parks and Recreation shall issue or deny a tree removal permit application within twenty (20) working days of application. The Office of Parks and Recreation shall hold all tree removal permits until the appeal deadline established in Section 12.36.100 has expired.

If an application for tree removal is approved and not appealed, a tree removal permit shall be issued by the Office of Parks and Recreation and immediately forwarded to the Office of Public Works. The Office of Public Works shall hold all tree removal permits until determinations are made regarding any other permit applications affecting the project in question. Once all permit applications for a particular project have been approved, the Office of Public

Works shall issue the applicable tree removal permit.

If an application for tree removal is approved and not appealed, but any other related permit application affecting the project in question is denied, the tree removal permit shall be withheld by the Office of Public Works until such time as all permit applications for said project are approved.

If the application for tree removal is denied and not appealed, it shall be returned to the applicant by the Office of Public Works, along with the reasons for denial provided by the Office of Parks and Recreation.

Following issuance of a tree removal permit, the applicant shall post a copy thereof in plain view on the site while tree removal work is underway.

M. Appealed Permits. Once a decision has been made regarding an appeal of a tree removal permit or application for tree removal, such permit or application for tree removal shall be processed as described in subsection L of this section.

N. Suspended Permits. The Tree Reviewer, after notice to the tree permit holder, may, in writing, suspend a permit issued under the provisions of this code whenever the Tree Reviewer, based upon substantial evidence, determines that a permit was issued in error either because the applicant supplied incorrect information, the applicant failed to supply all relevant information, and such information could not have been reasonably discovered by the Tree Reviewer during the site investigation, or that work done pursuant to the permit has resulted in violation of this code or some other related code, ordinance, or resolution.

The notice to the tree permit holder shall state the grounds for suspension. In addition, it shall state the conditions that must be satisfied to have the suspension lifted. The notice shall also state the permit holder, upon receipt of the notice, may submit evidence to the Tree Reviewer indicating that there are no grounds for permit suspension. Upon receipt of any such evidence, the Tree Reviewer shall immediately review the evidence and, within two working days of receipt of said evidence, shall notify the

permit holder in writing whether the suspension shall be lifted.

The decision of the Tree Reviewer shall be final unless appealed within five working days, pursuant to Section 12.36.100. (Prior code § 7-6.071)

#### **12.36.080 Procedure—Non-development-related tree removals.**

A. Notice and Posting of Monterey Pine Removals. Any property owner or arborist who intends to remove one or more Monterey Pine trees from any parcel must notify the Office of Parks and Recreation in writing of the address, number and size of Monterey Pine trees to be removed, which such notice addressed to the Tree Reviewer, Park Services Division, 7101 Edgewater Drive, Oakland, CA 94621.

In addition, the public posting procedures detailed in subsection F of this section shall be required for all Monterey Pine tree removal situations.

B. Pre-application Design Conference. Prior to the submission of a tree removal permit application, a prospective applicant may request a pre-application design conference by filing a written request with the Office of Parks and Recreation.

The pre-application design conference shall be convened by the Tree Reviewer, and shall include the applicant, the Tree Reviewer, City Planning staff, Public Works staff (if necessary), and property owners of parcels located adjacent to the site of the proposed tree removal. The purpose of the pre-application design conference shall be to review proposed tree removals and determine whether alternatives might be possible which would reduce the number of trees to be removed.

The results of the pre-application design conference shall be advisory, and shall not be binding on the prospective applicant; however, failure of a prospective applicant to reasonably incorporate the advisory findings made at the pre-application design conference into a subsequent tree removal permit application may be considered by the Tree Reviewer when making final permit determinations.

C. Application. In any non-development-related situation which requires removal or possible damage

to a protected tree or trees, a tree removal permit application must be filed with the Office of Parks and Recreation at 1520 Lakeside Drive (Parks and Recreation Main Office) or at 7101 Edgewater Drive, Room 405 (Park Services Division Office).

All applicants for tree removal permits shall provide a site plan as specified by the city. All such site plans shall indicate the location, species, and dbh of all protected trees which are proposed for removal.

The applicant shall also be required to certify in writing that the applicant has read, understood, and shall comply with the terms and provisions of this chapter, including any conditions of permit approval made pursuant thereto.

D. Initial City Review. The Office of Parks and Recreation shall review all applications for non-development-related tree removal permits.

In those cases where a tree removal permit is required, the applicant shall submit a tree removal permit application. Tree removal permits shall be required for all protected trees which are to be removed by the applicant. Parks and Recreation staff shall then:

1. Accept the tree removal permit application after confirming that the required information has been provided by the applicant;

2. Collect the fee established by the master fee schedule of the city for tree removal permit review from the applicant, who shall pay such fee;

3. Issue a sufficient number of tree tags to the applicant, one of which is to be posted and maintained by the applicant in plain view of the street on each protected tree;

4. Issue the applicant sufficient summary notices to be posted and maintained by the applicant in clear public view from all street frontages of the subject property; and

5. Immediately forward the original tree removal permit application to the Tree Reviewer for further processing.

E. CEQA Review. All tree removal permit applications shall be reviewed by the Tree Reviewer under the California Environmental Quality Act (CEQA) within five working days of permit applica-

tion receipt using checklists established for this purpose.

Exemption from CEQA shall be determined by the application of criteria which take into account the existing property use (developed versus undeveloped), the total extent of requested tree removals, and the size of any individual protected tree proposed for removal.

In the event the Tree Reviewer determines that additional CEQA review is required, a referral shall be made to the City Planning Department within five working days of permit application receipt. City Planning staff shall review all referrals within established CEQA review time frames, and shall notify the Tree Reviewer of the projected CEQA completion date.

**F. Site Posting.** The applicant shall place one of the tree tags issued by the city on each protected tree, and shall post the summary notices as required herein within two days after making an application for a tree removal permit. The tags and notice shall not be removed until such time as a tree removal permit is issued or denied by the city for the tree(s) in question.

Failure of the applicant to properly post any tree tag or summary notice shall result in the extension of all time limits established for a permit application until such time as the applicant has provided proper tree and/or site posting.

**G. Application Verification.** The Tree Reviewer, within four working days of receipt of a permit application, shall notify the applicant whether the application is complete and accepted for filing. If the Tree Reviewer determines that a permit application is incomplete, the notice to the applicant shall set forth the reasons for the incompleteness, and the application shall be deemed rejected. If the applicant is not notified by the Tree Reviewer within four working days, said permit application shall be deemed complete.

**H. Public Notice and Input.** The Office of Parks and Recreation shall, within ten working days of permit application, notify occupants and property owners of all parcels located adjacent to the site of proposed tree removal(s) in writing of the fact that

a tree removal permit application has been made, the name of the applicant, and the closing date for public input. Notice to occupants shall be addressed to "Occupant." The Office of Parks and Recreation shall accept public comment regarding a tree removal permit application for a period of not less than twenty (20) working days following verification of proper site posting.

**I. Site inspection.** The Tree Reviewer of the Office of Parks and Recreation shall review all tree removal inspection requests, and shall inspect all such sites within five working days after the application/request is filed.

**J. Permit Determinations.** The Tree Reviewer of the Office of Parks and Recreation shall review all tree removal permit applications and shall be responsible for making all necessary findings for approval or denial of such permit applications, including attaching all necessary conditions of approval.

Any telephone calls or written comments received regarding the tree removal permit application shall be considered in the preparation of findings, and written records of such calls and/or comments shall be entered into the permanent permit file.

**K. Permit Issuance and Denial.** Based upon the determinations of the Tree Reviewer, and except as otherwise stated herein, the Office of Parks and Recreation shall issue or deny a tree removal permit application within twenty (20) working days of application. The Office of Parks and Recreation shall hold all tree removal permits until the appeal deadline established in Section 12.36.100 has expired.

If an application for tree removal is approved and not appealed, a tree removal permit shall be issued by the Office of Parks and Recreation and immediately forwarded to the applicant.

If the application for tree removal is denied and not appealed, it shall be returned to the applicant by the Office of Parks and Recreation, along with the reasons for denial.

Following issuance of a tree removal permit, the applicant shall post a copy thereof in plain view on the site while tree removal work is underway.

**L. Appealed Permits.** Once a decision has been made regarding an appeal of a tree removal permit or application for tree removal, such permit or application for tree removal shall be processed as described in subsection K of this section.

**M. Suspended Permits.** The Tree Reviewer, after notice to the tree permit holder, may, in writing, suspend a permit issued under the provisions of this code whenever the Tree Reviewer, based upon substantial evidence, determines that a permit was issued in error either because the applicant supplied incorrect information, the applicant failed to supply all relevant information, and such information could not have been reasonably discovered by the Tree Reviewer during the site investigation, or that work done pursuant to the permit has resulted in violation of this code or some other related code, ordinance, or resolution.

The notice to the tree permit holder shall state the grounds for suspension. In addition, it shall state the conditions that must be satisfied to have the suspension lifted. The notice shall also state the permit holder, upon receipt of the notice, may submit evidence to the Tree Reviewer indicating that there are no grounds for permit suspension. Upon receipt of any such evidence, the Tree Reviewer shall immediately review the evidence and, within two working days of receipt of said evidence, shall notify the permit holder in writing whether the suspension shall be lifted.

The decision of the Tree Reviewer shall be final unless appealed within five working days, pursuant to Section 12.36.110. (Prior code § 7-6.072)

#### **12.36.090 Procedure—City-owned tree removals.**

**A. Tree Posting.** Except as exempted in Section 12.36.140, all city-owned trees proposed for removal shall be posted by the Office of Parks and Recreation. A tree tag shall be affixed to each tree proposed for removal in plain view of the street. The tags shall not be removed until such time as tree removal is approved or denied by the city for the tree(s) in question.

**B. Public Notice and Input.** The Office of Parks and Recreation shall, within ten working days of tree posting, notify property owners of all parcels located adjacent to the site of proposed tree removal(s) in writing of the fact that city-owned trees have been proposed to be removed, and the closing date for public input. The Office of Parks and Recreation shall accept public comment regarding the proposed removal of city-owned trees for a period of not less than twenty (20) working days following proper site posting.

**C. Tree Removal Determinations.** The Tree Reviewer of the Office of Parks and Recreation shall review all proposed city-owned tree removals and shall be responsible for making all necessary findings for approval or denial of such removals, including attaching all necessary conditions of approval.

Any telephone calls or written comments received regarding the public input period shall be considered in the preparation of findings, and written records of such calls and/or comments shall be entered into the permanent Tree Reviewer files.

**D. Tree Removal Approval and Denial.** Based upon the determinations of the Tree Reviewer, and except as otherwise stated herein, the Office of Parks and Recreation shall approve or deny city-owned tree removals within twenty (20) working days of application. The Office of Parks & Recreation shall suspend all city-owned tree removals until the appeal deadline established in Section 12.36.120 has expired.

If the proposed tree removal(s) are approved and not appealed, the city-owned tree(s) shall be removed in accordance with regular work schedules.

If the proposed tree removal(s) are not approved, the city-owned tree(s) shall not be removed.

Following approval of city-owned tree removal, the Office of Parks and Recreation shall post a public notice thereof in plain view on the site while tree removal work is underway.

**E. Appealed Permits.** Once a decision has been made regarding an appeal of city-owned tree removal, such tree removal shall be processed as described in subsection D of this section. (Prior code § 7-6.073)

**12.36.100 Appeals—Development-related tree removal permits.**

Any person with standing as defined herein may appeal a tree removal permit decision made by the Office of Parks and Recreation to the City Council.

A. Standing. A decision of the Office of Parks and Recreation with regard to a development-related tree removal permit may be appealed by the applicant or the owner of any adjoining or confronting property. In the case of a planned unit development or subdivision, the decision may be appealed by the owner of any property adjoining or confronting any parcel of the planned unit development or subdivision. As used herein, the term "adjoining" means immediately next to, and the term "confronting" means in front or in back of.

B. Venue. All such appeals shall be made to the City Council. The decision of the City Council shall be final.

C. Procedure. The appeal shall be filed within five working days after the date of a decision by the Office of Parks and Recreation, and shall be made on a form prescribed by and filed with the City Clerk. The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Director of Parks and Recreation or wherein such decision is not supported by the evidence in the record.

Upon receipt of such appeal, the City Clerk shall set the appeal for hearing at the next available City Council meeting. The hearing date set by the City Clerk shall be not more than thirteen (13) working days from the date of the decision by the Office of Parks and Recreation.

The City Clerk shall, not less than five days prior to the date set for the hearing on appeal, give written notice to the appellant and any known adverse parties, or their representatives, of the time and place of the hearing.

In considering the appeal, the City Council shall determine whether the proposed tree removal conforms to the applicable criteria. It may sustain the decision of the Office of Parks and Recreation or require such changes or impose such reasonable

conditions of approval as are, in its judgement, necessary to ensure conformity to said criteria.

If the appeal is not finally disposed of by the City Council within eighteen (18) working days of the date of the decision by the Office of Parks and Recreation, said decision shall be deemed affirmed, and the permit appeal denied.

Should an appeal be filed during an officially declared City Council recess, the City Manager shall be authorized to appoint a Hearing Officer to hear the appeal and make a final determination on the appeal. All provisions of this section shall apply to such administrative appeal hearings, and the decision of the Hearing Officer shall be final.

D. The appellant shall pay the fee established by the master fee schedule of the city for tree removal permit appeals. (Prior code § 7-6.081)

**12.36.110 Appeals—Non-development-related tree removal permits.**

Any person with standing as defined herein may appeal a non-development-related tree removal permit decision made by the Office of Parks and Recreation to the Park and Recreation Advisory Commission.

A. Standing. A decision of the Office of Parks and Recreation with regard to a non-development-related tree removal permit may be appealed by the applicant or the owner of any adjoining or confronting property. As used herein, the term "adjoining" means immediately next to, and the term "confronting" means in front or in back of.

B. Venue. All such appeals shall be made to the Park and Recreation Advisory Commission. The decision of the Park and Recreation Advisory Commission shall be final.

C. Procedure. The appeal shall be filed at 1520 Lakeside Drive within five working days after the date of a decision by the Office of Parks and Recreation, and shall be made on a form prescribed by and filed with the Director of Parks and Recreation. The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Director of Parks and Recreation or wherein

such decision is not supported by the evidence in the record.

Upon receipt of such appeal, the Director of Parks and Recreation shall set the appeal for hearing at the next available Park and Recreation Advisory Commission meeting. The Director of Parks and Recreation shall, not less than five days prior to the date set for the hearing on appeal, give written notice to the appellant and any known adverse parties, or their representatives, of the time and place of the hearing.

In considering the appeal, the Park and Recreation Advisory Commission shall determine whether the proposed tree removal conforms to the applicable criteria. It may sustain the decision of the Office of Parks and Recreation or require such changes or impose such reasonable conditions of approval as are, in its judgement, necessary to ensure conformity to said criteria.

If the appeal is not finally disposed of by the Park and Recreation Advisory Commission within thirty (30) working days of the date of the decision by the Office of Parks and Recreation, said decision shall be deemed affirmed, and the permit appeal denied.

Should an appeal be filed during an officially declared Park and Recreation Advisory Commission recess, the City Manager shall be authorized to appoint a Hearing Officer to hear the appeal and make a final determination on the appeal. All provisions of this section shall apply to such administrative appeal hearings, and the decision of the Hearing Officer shall be final.

**D. Fee.** The appellant shall pay the fee established by the master fee schedule of the city for tree removal permit appeals. (Prior code § 7-6.082)

#### **12.36.120 Appeals—City-owned tree removal permits.**

Any person with standing as defined herein may appeal a city-owned tree removal decision made by the Office of Parks and Recreation to the Park and Recreation Advisory Commission and the City Council.

**A. Standing.** A decision of the Office of Parks and Recreation with regard to a city-owned tree removal may be appealed by any concerned resident of the city.

**B. Venue.** All appeals shall be made to the Park and Recreation Advisory Commission. The decision of the Park and Recreation Advisory Commission may be further appealed to the City Council, whose decision shall be final.

**C. Procedure.** The appeal shall be filed within five working days after the date of a decision by the Office of Parks and Recreation, and shall be made on a form prescribed by and filed with the Director of Parks and Recreation. The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Director of Parks and Recreation or wherein such decision is not supported by the evidence in the record.

Upon receipt of such appeal, the Director of Parks and Recreation shall set the appeal for hearing at the next available Park and Recreation Advisory Commission meeting. The Director of Parks and Recreation shall, not less than five days prior to the date set for the hearing on appeal, give written notice to the appellant and any known adverse parties, or their representatives, of the time and place of the hearing.

In considering the appeal, the Park and Recreation Advisory Commission shall determine whether the proposed tree removal conforms to the applicable criteria. It may sustain the decision of the Office of Parks and Recreation or require such changes or impose such reasonable conditions of approval as are, in its judgement, necessary to ensure conformity to said criteria.

Any decision of the Parks and Recreation Advisory Commission may be appealed to the City Council.

Should an appeal be filed during an officially declared Park and Recreation Advisory Commission or City Council recess, the City Manager shall be authorized to appoint a Hearing Officer to hear the appeal and make a final determination on the appeal. All provisions of this section shall apply to

such administrative appeal hearings, and the decision of the Hearing Officer shall be final.

D. Fee. The appellant shall pay the fee established by the master fee schedule of the city for tree removal permit appeals. (Prior code § 7-6.083)

#### **12.36.130 Emergency situations.**

In case of an emergency in which a protected tree is in so dangerous a condition as to pose an immediate threat to safety or property, the Director of Parks and Recreation or the Director of Public Works, or their respective designees, shall be empowered to waive the requirement for a tree removal permit. Supervisory personnel for East Bay municipal utility district, Pacific Bell, Pacific Gas and Electric Company, and Alameda County flood control and water conservation district shall also be authorized to conduct emergency tree removal without a tree removal permit.

The removal of a protected tree under emergency conditions shall be reported to the Office of Parks and Recreation on the first business day following the emergency tree removal. (Prior code § 7-6.09)

#### **12.36.140 Exemptions.**

A. City of Oakland. In situations which require the removal of hazardous trees located on city property, a tree removal permit shall not be required. Hazardous city trees shall be verified by city staff using the criteria contained in Chapter 12.40 of this code hazardous tree ordinance.

B. Other Public Agencies. A tree removal permit shall be required for removal of protected trees as defined in this chapter, unless the agency has previously and continuously demonstrated that it has adopted a vegetative management program that is consistent with the city's tree policies, as enunciated in this code and the Oakland comprehensive plan. The Parks and Recreation Advisory Commission shall review the vegetation management plans annually or upon any major revisions to ascertain exemption status.

In accordance with the California Public Utilities Code, Rules 35 of General Order 95, reasonable clearance of branches, foliage or trees on Pacific

Gas and Electric property to allow the safe and reliable operation of utilities shall be exempt from tree removal permit requirements.

C. Court Mandated Tree Removals. A tree removal permit shall not be required for the removal of any protected tree mandated by a court of law in accordance with Chapter 15.52 of this code (view preservation ordinance) or Chapter 12.40 of this code hazardous tree ordinance. (Prior code § 7-6.10)

#### **12.36.150 Enforcement and penalties.**

A. Except in compliance with the terms of this chapter, no person shall remove, damage, or endanger any protected tree in the city.

B. Any person violating any of the provisions of this chapter shall be deemed guilty of an infraction.

C. Park Rangers, Senior Park Rangers, Supervising Park Rangers, Senior Park Supervisor, Senior Tree Supervisor, Arboricultural Inspector, and Management Assistant (Parks) of the city of Oakland are authorized to enforce the provisions of this chapter and, pursuant to the provisions of Section 5 of the California Penal Code, are further authorized to arrest without a warrant any person violating said chapter.

D. A violation shall be liable for all costs associated with the investigation and enforcement of this chapter by the city.

E. In addition, a violator shall be required to provide replacement trees and/or fees, but not to exceed the value of the tree or trees legally removed or damaged, as evaluated by the formula developed by the International Society of Arboriculture.

F. An applicant or property owner who fails to comply with the provisions of this chapter, or who violates said provisions, shall not receive a certificate of occupancy from the city for any project wherein such noncompliance and/or violations have occurred until such time as the provisions of this chapter have been fully satisfied.

G. The remedies set forth in subsections A through G of this section shall be considered alternative, and shall be in addition to any other remedies available to the city in law or equity. (Prior code § 7-6.11)

**12.36.160 Investigation of violations.**

When, in the opinion of the Tree Reviewer, a violation of this chapter may have occurred, the Tree Reviewer shall investigate the alleged violation(s) and make written preliminary findings. If the preliminary findings suggest that a violation of this chapter has occurred, the Tree Reviewer shall notify the alleged violator and/or property owner, if different than the alleged violator, in writing. The notice shall include a description of each alleged violation, and shall provide the alleged violator and/or property owner ten working days in which to respond in writing, or to request a hearing before the City Council, or both. The notice shall also indicate that, if the alleged violator and/or property owner do not respond within the ten working day period, the preliminary findings of the Tree Reviewer shall become final, and the alleged violator and/or property owner shall become subject to the provisions of Sections 12.36.180 and 12.36.190. (Prior code § 7-6.121)

**12.36.170 Violation hearing.**

If the alleged violator and/or property owner, pursuant to Section 12.36.160, requests a hearing before the City Council, the date of the hearing shall be set within five working days of the city's receipt of the request for a hearing. Written notice of the hearing, which may be continued from time to time, shall be given to alleged violator and/or property owner at least five working days prior to the hearing.

At the hearing, the alleged violator and/or property owner shall have the burden of disapproving the preliminary findings of the Tree Reviewer. In the event any party requesting a hearing fails to appear, the decision of the Tree Reviewer shall become final, and the violator shall be subject to the provisions of Sections 12.36.180 and 12.36.190.

At the close of the hearing, the City Council, using the evidence in the record, shall determine whether any violations of this chapter have occurred. The decision of the City Council shall be supported by written findings, and shall be final. A

copy of the City Council's findings shall be served on the alleged violator and/or property owner.

In any case in which the City Council determines that a violation has occurred, the violator shall be subject to the provisions of Sections 12.36.180 and 12.36.190. (Prior code § 7-6.122)

**12.36.180 Cost of tree removal permit violation investigation, enforcement, and replacement plantings a lien.**

The costs outlined in Section 12.36.150 above shall constitute a special assessment against the real property whereupon a tree removal permit violation has been investigated, confirmed and enforced. Said costs shall be itemized in writing in a report of assessment. The Director of Parks and Recreation shall cause a copy of the report of assessment to be served upon the owner of said property not less than five days prior to the time fixed for confirmation of said assessment: service may be by enclosing a copy of the report of assessment in a sealed envelope, postage prepaid, addressed to the owner at his or her last known address as the same appears on the last equalized assessment rolls of the city, and depositing same in the United States mail; and service shall be deemed completed at the time of deposit in the United States mail.

A copy of the report of assessment shall be posted in the Office of Parks and Recreation at least three days prior to the time when the report will be submitted to the City Council. After the assessment is made and confirmed, it shall be a lien on said real property.

Such lien attaches upon recordation in the Office of the County Recorder, Alameda County, by certified copy of the resolution of confirmation. After confirmation of the report, a certified copy shall be filed with the County Auditor, Alameda County, on or before August 10th. The description of the parcel reported shall be that used for the same parcel as the County Assessor's map books for the current year. The County Assessor shall enter each assessment on the county tax rolls opposite the parcel of land. The amount of the assessment shall be collected at the

same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure for foreclosure and sale in case of delinquencies as provided for ordinary municipal taxes. (Prior code § 7-6.131)

**12.36.190 Notice of lien—Tree removal permit violation investigation, enforcement, replacement plantings.**

The lien mentioned in Section 12.36.180 shall take the following form:

**NOTICE OF LIEN**

Pursuant to authority vested in me by Resolution No. \_\_\_\_\_ C.M.S., of the Council of the City of Oakland, passed on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ and the provisions of Chapter 12.36, of the Oakland Municipal Code. I did, on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ initiate a tree removal permit violation investigation, an enforcement of this chapter, and replacement paintings to be made at the location hereinafter described at the expense of the owners thereof, in the amount of \$\_\_\_\_\_, and that said amount has not been paid nor any part thereof, and the City of Oakland does hereby claim a lien upon the hereinafter described real property in said amount; the same shall be a lien upon the said property until said sum with interest thereon at the legally allowable rate from the date of the recordation of this lien in the Office of the County Recorder of the County of Alameda, State of California, has been paid in full. The real property hereinafter mentioned and upon which a lien is claimed is that certain parcel of land lying and being in the City of Oakland, County of Alameda, State of California, and particularly described as follows, to wit:

(insert description of property)

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

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Director of Parks and Recreation  
CITY OF OAKLAND

(Prior code § 7-6.132)

**12.36.200 Liabilities.**

A. The issuance and exercise of a permit pursuant to this chapter shall not be deemed to establish any public use or access not already in existence with regard to the property to which the permit is applicable.

B. The issuance of a permit pursuant to this chapter shall not create any liability of the city with regard to the work to be performed, and the applicant for such permit shall agree to hold harmless the city and its officers and employees from any damage or injury that may occur in connection with, or resulting from, such work. (Prior code § 7-6.15)

## Chapter 12.40

### HAZARDOUS TREES

**Sections:**

- 12.40.010 Intent and findings.**
- 12.40.020 Definitions.**
- 12.40.030 Standards of resolution of claims.**
- 12.40.040 Procedure—Non-city trees.**
- 12.40.050 Procedure—City trees.**
- 12.40.060 Apportionment of costs.**
- 12.40.070 Attorney's fees.**
- 12.40.080 Civil penalty.**
- 12.40.090 Liabilities.**
- 12.40.100 Enforcement.**

**12.40.010 Intent and findings.**

The ordinance codified in this chapter is enacted in recognition of the following facts and for the following reasons:

A. Among the features that contribute to the attractiveness and livability of the city are its trees, both native and introduced.

B. Trees are subject to natural forces that can cause entire trees or individual limbs to fall. Factors contributing to the falling of trees or limbs include the weakened condition of overly mature or diseased trees, high winds, and heavy soil saturation during and after storms.

C. It is recognized that falling/fallen trees and limbs can pose hazards to both human safety and the well-being of neighboring properties. Owners of neighboring properties may desire the removal or trimming of a tree or trees perceived to be a threat to human safety or the well-being of their property.

D. It is also recognized that legal remedies alone do not adequately protect owners of neighboring properties. It is, therefore, in the interest of the public health, welfare, and safety to establish another method for the resolution of hazardous tree claims for the purpose of preventing personal injury or damage to neighboring properties. (Prior code § 7-10.1)

**12.40.020 Definitions.**

For the purposes of this chapter, the meaning and construction of words and phrases hereinafter set forth shall apply:

“Claimant” means any individual who files a bona fide hazardous tree claim as required by the terms and provisions of this chapter.

“Corrective action” means any specific requirement to resolve a hazardous tree claim.

“Crown reduction” means the reduction in height and/or spread of a tree accomplished through the selective removal of branches and/or trunks such that the lateral to which a branch or trunk is cut is at least one-half the diameter of the cut being made.

“Hazardous tree” means any tree which poses an imminent threat to life or property, as determined by inspection using the criteria established by Section 12.40.030.

“Hazardous tree arbitrator” means any forester registered and licensed by the state of California.

“Hazardous tree claim” means the written basis for arbitration under the terms and conditions of this chapter, submitted by the claimant which clearly presents the following:

1. The precise nature of the alleged hazardous tree situation including all pertinent and corroborating physical evidence available;

2. The exact location of the tree alleged to be a hazard, the address of the property upon which the tree is located, and the tree owner's name and address. This requirement may be satisfied by the inclusion of tree location, property address, and tree owner information on a survey or plot plan submitted with the hazardous tree claim;

3. Any mitigating actions proposed by the parties involved to resolve the alleged hazardous tree claim;

4. Documentation of personal communication between the claimant and the tree owner which failed to resolve the alleged hazardous tree situation as set forth in Section 12.40.040. The claimant must provide physical evidence that written attempts at reconciliation have been made and failed. Such evidence may include, but is not limited to, copies

of and receipts for certified or registered mail correspondence.

“Thinning” means the selective removal of entire branches from a tree, so as to improve the tree’s structural condition.

“Tree” means any woody perennial plant, usually with one main trunk, attaining a height of at least eight feet at maturity.

“Tree owner” means any individual or entity owning real property in the city upon whose land is located the tree that forms the basis for the filing of a hazardous tree claim.

“Tree removal” means the complete removal of any tree. (Prior code § 7-10.2)

#### **12.40.030 Standards of resolution of claims.**

A. The hazard that the tree poses to human safety and the well-being of the neighboring property shall be determined by evaluating, among other factors that the arbitrator or its experts deem appropriate:

1. The health of the tree, including its general vigor;
2. The presence and extent of disease, insects, or other pathogenic organisms;
3. The structure and shape of the tree, including its root system;
4. The presence of any physical defect such as splitting, broken limbs, etc.;
5. The soil and slope conditions in the vicinity of the tree, including any evidence of erosion and/or upheaval;
6. The degree of lean from vertical;
7. The exposure of the trees to the predominant wind direction;
8. The proximity of the tree to human activities and items of value on the neighboring property; and
9. The likelihood of the tree causing personal injury or damage to property in the reasonably near future.

B. Corrective actions may include, but shall not be limited to:

1. Thinning;
2. Crown reduction;
3. Tree removal with replacement planting;

4. Cabling and bracing.

C. Corrective actions shall be limited to thinning or cabling/bracing where possible.

D. When thinning is not a feasible solution, crown reduction shall be preferable to tree removal if it is determined that the impact of crown reduction does not adversely affect the tree’s growth pattern or health, or otherwise constitute a detriment to the tree in question.

E. Tree removal shall only be considered when all other corrective actions are judged to be ineffective and shall be accompanied by replacement plantings of appropriate plant materials to restore, as much as possible, the benefits lost due to tree removal. Replacement plantings may be required on either the tree owner’s or the claimant’s property.

F. All corrective actions shall take precedence over the provisions of the tree preservation ordinance as set forth in Chapter 12.36, and no tree removal permit shall be required for corrective actions performed under this chapter.

G. All thinning, crown reduction, cabling, bracing, and tree removal required under this chapter must be performed by a certified, insured arborist or other party approved by the hazardous tree claimant and tree owner. (Prior code § 7-10.3)

#### **12.40.040 Procedure—Non-city trees.**

A. Initial Reconciliation. A claimant who believes in good faith that a tree situated on the property of another poses a threat to human safety or the well-being of the claimant’s property may notify the tree owner in writing of such concerns.

The tree owner shall respond to the claimant within ten working days of receipt of a written hazardous tree claim. The submission of such notification to the tree owner shall be accompanied by personal discussion, if possible, to enable the claimant and the tree owner to attempt to reach a mutually agreeable solution to the alleged hazardous tree situation.

B. Arbitration. In those cases where the initial reconciliation process fails, the claimant and the tree owner may elect binding arbitration by a hazardous

tree arbitrator to resolve the alleged hazardous tree situation.

The arbitrator shall be fully qualified under the terms and conditions of this chapter and shall be agreed to by both the claimant and the tree owner. The arbitration agreement may provide for employment of experts, including certified arborists, in order to fully investigate the hazardous tree claim.

The arbitrator shall follow the standards set forth in Section 12.40.030 to reach a fair resolution of the claim within fifteen (15) working days from the date binding arbitration is agreed to by the parties and shall submit a written report to the claimant and the tree owner. Said report shall include the arbitrator's findings with respect to all standards listed in Section 12.40.030, and shall specify all required corrective actions. At least three competitive bids shall be secured by the arbitrator for the required corrective actions.

All required corrective actions shall be fully implemented within ten working days of the delivery of the arbitrator's report to the claimant and the tree owner. The findings of the arbitrator shall be final.

C. Litigation. In those cases where the initial reconciliation process fails to resolve the hazardous tree claim and binding arbitration as set forth in subsection B of this section is not elected by the parties, civil action may be pursued by the claimant for resolution of the hazardous tree claim under the terms and conditions of this chapter. The claimant shall have the burden of providing the alleged hazardous tree situation and the suitability of the proposed corrective actions. The party bringing any civil action under this chapter shall promptly notify the city of Oakland, Office of Parks and Recreation, in writing of such action. (Prior code § 7-10.41)

#### **12.40.050 Procedure—City trees.**

A. Claim Filing. A claimant who believes in good faith that a tree situated on city property poses a threat to human safety or to the well-being of the claimant's property may submit a hazardous tree claim to the Office of Parks and Recreation (1520 Lakeside Drive, Oakland 94612).

B. Investigation. Upon receipt of a hazardous tree claim, the Office of Parks and Recreation shall investigate the claim according to the standards set forth in Section 12.40.030, and shall issue written findings to the claimant within twenty (20) working days of receiving the claim.

C. Corrective Action. All hazardous tree claims found by the city to be valid shall be subject to corrective action in accordance with Section 12.40.030. Such actions shall be performed by the city.

D. Appeals. A claimant may appeal to the City Council any decision of the Office of Parks and Recreation granting or denying a hazardous tree claim. The appeal shall be filed within five working days of receipt of written findings from the Office of Parks and Recreation, and shall be made on a form prescribed by and filed with the Office of the City Clerk.

The appeal shall state specifically wherein it is claimed there was either error or abuse of discretion by the Office of Parks and Recreation, or wherein the Office of Parks and Recreation's decision is not supported by the evidence on the record.

Upon receipt of such an appeal, the Office of the City Clerk shall set the time for consideration thereof. The Office of the City Clerk shall notify the Office of Parks and Recreation of the receipt of said appeal and of the time set for consideration thereof. The Office of the City Clerk shall, not less than five days prior to the date set for the appeal hearing, give written notice to the appellant and any known adverse parties, or their representatives, of the time and place of the hearing.

In considering the appeal, the Council shall determine whether the proposed corrective actions conform to the applicable criteria. It may sustain the decision of the Office of Parks and Recreation, or require such changes or impose such reasonable conditions of approval as are, in its judgment, necessary to insure conformity with said criteria. The decision of the Council shall be final.

The appellant shall pay the filing fee established by the city's master fee schedule for the filing of hazardous tree appeals. (Prior code § 7-10.42)

**12.40.060 Apportionment of costs.**

The claimant shall pay one hundred (100) percent of the costs of filing a hazardous tree claim. The claimant and the tree owner shall each pay fifty (50) percent of the costs of binding arbitration. The tree owner shall pay one hundred (100) percent of the cost of all corrective actions. (Prior code § 7-10.5)

rective actions mandated pursuant to this chapter.  
(Prior code § 7-10.9)

**12.40.070 Attorney's fees.**

Each party shall pay their own costs and attorney's fees except in the case where the dispute goes to trial or judicial arbitration. In the event that an action under this title is resolved after trial or judicial arbitration in municipal or Superior Court, the prevailing party shall be entitled to reasonable attorney's fees and costs of suit. (Prior code § 7-10.6)

**12.40.080 Civil penalty.**

A tree owner shall be deemed to have violated the provisions of this chapter if judgment in favor of a hazardous tree claimant is obtained after trial or judicial arbitration in either the municipal or Superior Court. The civil penalty for each violation of this title shall be \$1,000 pursuant to Section 217 of the Charter of the city. (Prior code § 7-10.7)

**12.40.090 Liabilities.**

A. The issuance of an arbitration report and decision pursuant to this chapter shall not be deemed to establish any public use or access not already in existence with regard to the property for which the arbitration report and decision are issued.

B. The issuance of an arbitration report and decision pursuant to this chapter shall not create any liability of the city with regard to the hazardous tree or the corrective actions to be performed. (Prior code § 7-10.8)

**12.40.100 Enforcement.**

A violation of this chapter is not an infraction and the enforcement of this chapter shall be by the private parties involved. The claimant shall have the right to bring injunctive action to enforce any cor-

**Chapter 12.44****ASSEMBLIES AND PARADES****Sections:****Article I. Assemblies**

- 12.44.010 Congregating in streets.**  
**12.44.020 Street meetings.**

**Article II. Parades**

- 12.44.030 Title.**  
**12.44.040 Purpose.**  
**12.44.050 Definitions.**  
**12.44.060 Permit required.**  
**12.44.070 Duties of permittee/sponsor of parade.**  
**12.44.080 Unlawful to sponsor or participate in a parade without a permit.**  
**12.44.090 Unlawful to exceed scope of permit.**  
**12.44.100 Application procedure—Fee.**  
**12.44.110 Contents of application form.**  
**12.44.120 Action on application.**  
**12.44.130 Grounds for denial of application for a parade permit.**  
**12.44.140 Permit conditions.**  
**12.44.150 Appeal procedure.**  
**12.44.160 Permit issuance.**  
**12.44.170 Indemnification agreement.**  
**12.44.180 Traffic control fees—Use of pre-established event routes.**  
**12.44.190 Cleanup deposits.**  
**12.44.200 Violation—Penalty.**

**Article I. Assemblies****12.44.010 Congregating in streets.**

Whenever the free passage of any street or sidewalk shall be obstructed by a crowd, except on the occasion of public meetings, the persons composing such crowd shall disperse or move on when directed to do so by a police officer. It is unlawful for any person to refuse to so disperse or move on when so

directed to do by a police officer as herein provided.  
(Prior code § 3-6.01)

**12.44.020 Street meetings.**

The following ordinance is an initiative measure adopted May 18, 1915:

**AN ORDINANCE REGULATING THE HOLDING OF PUBLIC MEETINGS ON ANY PUBLIC STREETS, OR IN ANY PUBLIC SQUARE, PARK, LANE, ALLEY, COURT OR OTHER PUBLIC PLACE WITHIN THE FIRE LIMITS OF THE CITY OF OAKLAND, AND REPEALING ORDINANCE NO. 1836 C.M.S., OF THE CITY OF OAKLAND, AND ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH, AND PROVIDING PENALTIES FOR VIOLATION THEREOF.**

BE IT ORDAINED by the Council of the City of Oakland, as follows:

**SECTION 1.** It is hereby declared to be unlawful for any person or persons to conduct, take part in or address any public meeting held on any public street, or in any public square, park, lane, alley, court or other public place within the fire limits of the City of Oakland; provided, however, that between the hours of six o'clock P.M. and thirty minutes after ten o'clock P.M. of each day, it shall be lawful for any person or persons to conduct, take part in or address any public meeting on the following streets within the said fire limits, to wit:

On Ninth, Tenth and Eleventh Streets, between the westerly line of Clay Street and the easterly line of Franklin Street; on Fifteenth Street between the easterly line of Washington Street and the westerly line of Jefferson Street; on Clay Street between the southerly line of Ninth Street and the northerly line of Eleventh Street; and provided further, that such public meetings shall be so conducted as not to violate

the traffic ordinances of the City of Oakland now in force and effect.

**SECTION 2.** The words “address any public meeting” as used in this Ordinance, is defined to include the right to speak freely and publish one’s views on any subject matter and illustrate the same; provided, however, that no person or persons shall speak or publish anything of an immoral or treasonable character.

**SECTION 3.** Any person violating any of the provisions of this Ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not to exceed one hundred (100) dollars and in case said fine be not paid, the person or persons so fined shall be imprisoned in the City Prison of the City of Oakland at the rate of one (1) day for every two (2) dollars of the fine so imposed and remaining unpaid.

**SECTION 4.** Ordinance No. 1836 C.M.S. entitled “An ordinance regulating the holding of public meetings in any public street, square, park, lane, alley, court, or other public place, or at or in front of the entrance to any public building situated within the fire limits of the City of Oakland,” approved October 20, 1897, and all ordinances and parts of ordinances in conflict with this Ordinance are hereby repealed.

**SECTION 5.** This Ordinance shall take effect at the time and in the manner provided by law.

(Prior code § 3-6.04)

## Article II. Parades

### 12.44.030 Title.

This article shall be known as the Oakland parade ordinance. (Prior code § 3-6.08 (§ 1))

### 12.44.040 Purpose.

This article establishes the standards for the issuance of a permit for parades in the city. (Prior code § 3-6.08 (§ 2))

### 12.44.050 Definitions.

As used in this section:

“Applicant” means any person, firm, association, corporation, organization, club, or ad hoc committee who seeks a parade permit from the Chief of Police to conduct or sponsor a parade governed by this section. An applicant must be eighteen (18) years of age or older.

“Chief of Police” means the Chief of Police or his or her other authorized designee.

“Float” means a decorated motorized or mobile cart, vehicle, or structure used to carry an exhibit in a parade.

“Free speech route” means a route (course of travel) along designated streets, sidewalks or other street rights-of-way which are pre-established, pursuant to Section 12.44.180 by resolution of the City Council for use by parades held for the primary purpose of First Amendment expression. No traffic control fees pursuant to Section 12.44.180 will be charged for parades utilizing a free speech route, in the event applicant satisfies the conditions for waiver of fees specified in Section 12.44.180E.

“Parade” means a march or procession consisting of persons, animals or vehicles, or a combination thereof, on any city street, sidewalk, alley, or other street right-of-way, which might block fire hydrants; obstruct, delay, or interfere with the normal flow of pedestrian or vehicular traffic; or which otherwise does not comply with traffic laws or controls.

“Permit application fee” means the fee to be paid by the permit applicant at the time the application is filed with the Chief of Police. A fee schedule shall be set by the City Council and shall cover the actual full costs of processing and investigating parade applications, and administering the parade permit program.

“Permittee” means any person or organization who has been issued a parade permit by the Chief of Police. (Prior code § 3-6.08 (§ 3))

**12.44.060 Permit required.**

Any person desiring to conduct or sponsor a parade in the city shall first obtain a parade permit from the Chief of Police. A parade permit is not required for the following:

- A. Parades, athletic events or other special events under the jurisdiction of the Oakland Department of Parks and Recreation which occur exclusively in a park;
- B. Funeral processions. (Prior code § 3-6.08 (§ 4))

**12.44.070 Duties of permittee/sponsor of parade.**

- A. Each permittee of a parade shall comply with all terms and conditions of the parade permit.
- B. Each permittee of a parade shall ensure that the person in charge of the parade shall be identifiable and shall carry the parade permit on his or her person for the duration of the parade.
- C. Each permittee of a parade shall ensure the area used for the permitted parade is cleaned and restored immediately following the completion of the parade, to the same condition as existed prior to the parade.
- D. Each permittee will ensure that no enticements such as candy, balloons, toys, etc. will be thrown, handed, or given away to on-lookers during the duration of the parade. (Prior code § 3-6.08 (§ 5))

**12.44.080 Unlawful to sponsor or participate in a parade without a permit.**

- A. It is unlawful for any person to sponsor or conduct a parade requiring a permit, under Section 12.44.060, unless a permit has been issued for the parade. It is unlawful for any person to participate in such a parade with the knowledge that the sponsor of the parade has not been issued the required permit.
- B. It is unlawful for any person to interfere with or disrupt a lawful parade. (Prior code § 3-6.08 (§ 6))

**12.44.090 Unlawful to exceed scope of permit.**

The parade permit authorizes the permittee/sponsor to conduct a parade only as is described in the permit, and in accordance with the terms and conditions of the permit. It is unlawful for the permittee/sponsor to wilfully violate the terms and conditions of the permit, or for any parade participant with knowledge thereof, to willfully violate the terms and conditions of the permit. (Prior code § 3-6.08 (§ 7))

**12.44.100 Application procedure—Fee.**

- A. Any person desiring to sponsor a parade shall apply for a permit by filing a verified application with the Chief of Police on a form supplied by the Chief of Police.
- B. If the application is for a parade along a free-speech route, the application shall be filed not less than ten days but not more than ninety (90) days before the date on which the parade is to occur. All other applications shall be submitted not less than thirty (30) days but not more than ninety (90) days before the date of the parade.
- C. Upon a showing of good cause, the Chief of Police shall consider an application which is filed after the final filing deadline, provided that there is sufficient time to process and investigate the application and obtain police services for the parade. Good cause can be demonstrated by the applicant showing that the circumstance which gave rise to the permit application did not reasonably allow the participants to file within the time prescribed, and that the parade is for the purpose of exercising the right of free speech.
- D. Each application for a permit shall be accompanied by a nonrefundable permit application fee in the amount set by City Council resolution. (Prior code § 3-6.08 (§ 9))

**12.44.110 Contents of application form.**

The application for a parade permit shall provide the following information:

- A. All events: the name, address, telephone number, and date of birth of applicant and an alter-

native contact person. If the parade is proposed to be sponsored by one or more organizations, the name, address and telephone number of the organizations, and the president(s) of the organization. If requested by the Chief of Police, written authorization to apply for the parade permit shall be provided by an officer of the requesting organization(s);

B. The name, address and telephone number of the person who will be present and in charge on the day of the parade;

C. The nature and purpose of the parade;

D. The proposed date and estimated starting and ending time of the parade;

E. Location of the parade including its route and boundaries;

F. Estimated number of persons in the parade, and, in addition, the type and estimated number of vehicles, animals, and structures which will be used at the event;

G. Description of any sound amplification equipment which will be used at the parade;

H. Whether any food or alcoholic and/or nonalcoholic beverages will be sold at the parade;

I. Whether monitors will be utilized at the parade;

J. Parking contingencies planned for the parade;

K. The assembly point for the parade and the time at which units of the parade will begin to assemble;

L. The route to be traveled;

M. Whether the parade will occupy all or only a portion of the streets proposed to be traveled;

N. The number, types, and size of floats;

O. Maximum size of and material used for any signs or banners to be carried on the route;

P. Location and description of any reviewing stand;

Q. Cleanup activities planned;

R. Any supplementary information which the Chief of Police shall find reasonably necessary, under the particular circumstances of the parade application to determine whether to approve or conditionally approve the permit pursuant to Sections 12.44.130 and 12.44.140. (Prior code § 3-6.08 (§ 10))

#### **12.44.120 Action on application.**

A. The Chief of Police shall approve, conditionally approve, or deny an application for the grounds specified in Section 12.44.130. Such action shall be taken not later than five days after the filing of a complete application for a parade along a free speech route or fifteen (15) days after the filing of a complete application for all other parades. The applicant shall be notified of any permit conditions at the time the action on the application is taken.

B. If the application is denied or conditionally approved, at the time of taking action on the permit, the Chief of Police shall inform the applicant in writing of the grounds for denial, or of the reason for the imposition of conditions, and of the right of appeal.

C. If the Chief of Police relied upon information regarding the parade other than that which was contained in the application, he or she shall inform the applicant of the additional information considered.

D. If the Chief of Police refuses to consider a late application under Section 12.44.100C, the Chief of Police shall inform the applicant of the reason(s) for the refusal, and of the right of appeal. (Prior code § 3-6.08 (§ 11))

#### **12.44.130 Grounds for denial of application for a parade permit.**

A. The Chief of Police shall approve an application for a parade permit unless he or she determines from a consideration of the application, or other pertinent information, 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 provide a complete application form after having been notified of the requirement of producing additional information or documents; or

3. The sole purpose of the parade is for private profit and not for First Amendment expression, such as for the advertising of any product, good, ware, merchandise or event; or

4. Another complete permit application has been previously filed for another parade at the same time and place requested by the applicant, or so close in time and place as to cause traffic congestion or a demand for police services which the Police Department is unable to meet; or

5. The time, route, or size of the parade will substantially interrupt the safe and orderly movement of pedestrian or vehicular traffic in the immediate vicinity of the parade site or route, or disrupt the use of a street at a time when it is usually subject to great traffic congestion; or

6. The concentration of persons, animals and vehicles at the site of the parade, or at the assembly and disbanding areas will prevent proper police, fire, ambulance, or other essential public services to areas contiguous to the parade; or

7. The size or duration of the parade 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; provided that:

a. Nothing herein authorizes denial of a permit because of the need to protect participants from the conduct of others, if reasonable permit conditions can be imposed to allow for adequate protection of parade participants with the number of the police officers available to police the parade; or

8. The parade will not move from its point of origin to its point of termination in three hours or less; or

9. The parade will substantially interfere with any construction or maintenance work scheduled to take place upon or along the city streets, or a previously granted encroachment permit; or

10. The parade will occur at a time and place where the noise created by the activities of the parade will substantially disturb or disrupt the activities of such institutions as schools and hospitals; or

11. Sponsors have failed to indemnify the city for previous parade costs.

B. When the grounds for denial of an application for a permit specified in subsections (A)(4) through (A)(10) of this section can be corrected by altering the time, place, and manner of the parade, as autho-

rized by Section 12.44.140, the Chief of Police shall, instead of denying the application, conditionally approve the application provided that the applicant accepts such conditions for permit issuance. The conditions imposed shall provide for only such modification of the applicant's proposed parade as are necessary to achieve compliance with subsections (A)(4) through (A)(11) of this section. (Prior code § 3-6.08 (§ 12))

#### **12.44.140 Permit conditions.**

The Chief of Police may condition the issuance of a parade permit by imposing reasonable requirements concerning the time, place, and manner of the parade, as necessary to protect the safety of all persons and property, provided that such conditions shall not unreasonably restrict the right of free speech. Such conditions include:

A. Alteration of the date, time, or route of the parade proposed on the permit application;

B. Alteration of the location of the assembly and disbanding areas of the parade;

C. Accommodation of pedestrian or vehicular traffic, including restricting the parade to only a portion of a street traversed;

D. Requirements for the use of traffic cones or barricades;

E. Compliance with all ordinances or laws and obtaining all legally required permits or licenses;

F. Requirements for the training and use of monitors;

G. Restrictions on the number and type of vehicles, animals, or structures at the parade, and prior inspection and approval of floats, structures, and decorated vehicles for fire safety by the Oakland Fire Department;

H. Compliance with animal protection ordinances and laws;

I. Requirements for the use of garbage containers, cleanup and restoration of city property;

J. Restrictions on the use of amplified sound;

K. Requirements for providing first aid or sanitary facilities;

L. Requirements for notice of permit conditions to parade participants. (Prior code § 3-6.08 (§ 13))

**12.44.150      Appeal procedure.**

A. The applicant shall have the right to appeal one or more permit conditions or the denial of a permit. The applicant shall also have the right to appeal the amount of fees, or cleanup deposits imposed pursuant to Section 12.44.190.

B. A notice of appeal stating the grounds for the appeal shall be filed with the City Clerk within five days after mailing or personal delivery of a notice of denial or notice of permit condition(s).

C. If an applicant files an appeal, the City Manager or his or her designee shall hold a hearing no later than two business days after the filing of the appeal, and will render a decision no later than one business day after hearing the appeal. The City Manager's decision is final. (Prior code § 3-6.08 (§ 14))

**12.44.160      Permit issuance.**

The Chief of Police shall issue the parade permit once:

A. Final action has been taken on the application pursuant to Sections 12.44.120A or 12.44.150C; and

B. Where conditions have been imposed, the applicant has agreed in writing to comply with the terms and conditions of the permit; and

C. The following sections of this article have been complied with:

1. Section 12.44.170 pertaining to indemnification;

2. Section 12.44.180 pertaining to police traffic control costs;

3. Section 12.44.190 pertaining to cleanup deposits (when applicable). (Prior code § 3-6.08 (§ 15))

**12.44.170      Indemnification agreement.**

A. Prior to the issuance of a parade permit, the permit applicant and president or designee of the sponsoring organization(s) (if any), must sign an agreement to reimburse the city for any costs insofar as permitted by law, arising from the repair of damage to city property proximately caused at the parade by the actions of the permittee, sponsoring organization, its officers, employees, or agents, or

any person who was under the permittee's or sponsoring organization's control.

B. The agreement shall also provide that the permittee and/or sponsoring organization shall defend the city against, and indemnify and hold the city harmless from, any liability to any persons resulting from any damage or injury occurring in connection with the permitted parade proximately caused by the actions of the permittee and/or sponsoring organization, its officers, employees or agents, or any person who was under the permittee's and/or sponsoring organization's control.

C. Persons who merely join in a parade are not considered by that reason alone to be "under the control" of the permittee or sponsoring organization. (Prior code § 3-6.08 (§ 16))

**12.44.180      Traffic control fees—Use of pre-established event routes.**

A. Prepayment of Fees. Upon approval of an application for a parade permit, the Chief of Police shall provide the applicant with a statement of the estimated cost of providing police officers for traffic control at the parade. The applicant/sponsor shall be required to prepay the traffic control fees prior to the issuance of a parade permit. Traffic control includes clearing the parade route or site of unauthorized vehicles, diversion of traffic around the parade, and directing pedestrian and vehicular traffic along the route of the parade.

B. Computing Traffic Control Costs. The traffic control costs shall be computed by determining the number of police officers who will be required for traffic control beyond that which would otherwise be required at that time multiplied by the number of hours for which such additional service is rendered at the rate of the city's full cost of providing officers on an hourly basis as established by the Police Department's fee schedule.

C. Refunds or Additional Charges. If the actual cost for traffic control on the date of the parade is less than the estimated cost pursuant to subsection A of this section, the applicant/sponsor will be promptly refunded the difference by the city. If more police hours are required than originally

charged, the sponsor will be billed the additional costs.

D. Pre-Established Parade Routes and Fees. The City Council, upon the recommendation of the Chief of Police shall pre-establish several parade routes within the city. The routes shall specify the number of officers assigned for police traffic control on the routes. The pre-established routes and the fee schedule for police traffic control services shall be made available to the public.

E. Free Speech Routes and Waiver of Fees. Traffic control fees will be waived by the Chief of Police if the following conditions are satisfied:

1. The applicant/sponsor signs a verified statement that he or she believes the parade's purpose is First Amendment expression, and that the cost of traffic control fees is so financially burdensome that it would constitute an unreasonable burden on the right of First Amendment expression.
2. The applicant or sponsor selects one of the pre-established free speech parade routes.
3. The size of the parade can be controlled by one to four officers over a two-hour period. (Prior code § 3-6.08 (§ 17))

#### **12.44.190 Cleanup deposits.**

A. The applicant/sponsor of a parade involving horses or other large animals, water aid stations, the sale of food or beverages, or erection of structures, shall be required to provide a cleanup deposit prior to the issuance of a parade permit. The cleanup deposit shall be in the amount established in a cleanup fee schedule adopted by City Council resolution.

B. The cleanup deposit shall be returned after the parade if the area used for the parade has been cleaned and restored to the same condition as existed prior to the parade.

C. If the property used for the parade has not been cleaned or restored, the permittee shall be billed for the actual cost by the city for cleanup and restoration, and the cleanup deposit or a portion thereof shall be applied toward payment of the bill.

D. If the permittee disputes the bill, he or she may appeal to the Director of Public Works within five days after receipt of the bill. Should there be any

unexpended balance on deposit after completion of the work, this balance shall be refunded to the permittee. Should the amount of the bill exceed the cleanup deposit, the difference shall become due and payable to the city upon the applicant's receipt of the bill. (Prior code § 3-6.08 (§ 18))

#### **12.44.200 Violation—Penalty.**

Any person wilfully violating any provision of the parade ordinance codified in this article shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not to exceed five hundred dollars (\$500.00) for each violation of the article and/or up to six months imprisonment in the county jail. (See Section 1.28.010A of this code.) (Prior code § 3-6.08 (§ 8))

## Chapter 12.50

### **NEWSRACKS—CITY-WIDE CONTROLS**

**Sections:**

- 12.50.010      Establishment of city-wide newsrack controls.**
- 12.50.020      Findings.**
- 12.50.030      Declaration of purpose.**
- 12.50.040      Definitions.**
- 12.50.050      Areas requiring newsrack controls.**
- 12.50.060      Newsracks—Permit required.**
- 12.50.070      Newsrack permit application.**
- 12.50.080      Request for hearing.**
- 12.50.090      Permissible types of newsracks.**
- 12.50.100      Standards for newsrack placement.**
- 12.50.110      Maintenance required.**
- 12.50.120      Removal of newsrack assembly upon discontinuance of use (for permitted newsrack locations).**
- 12.50.130      Advertising on newsracks.**
- 12.50.140      Newsrack identification.**
- 12.50.145      Public nuisance.**
- 12.50.150      Abatement of violation of newsrack code.**
- 12.50.160      Penalties.**
- 12.50.170      Indemnification.**
- 12.50.180      Promulgation of guidelines.**

**12.50.010      Establishment of city-wide newsrack controls.**

This chapter establishes newsrack controls city-wide. On the effective date of this provision, controls shall apply to the placement, maintenance and removal of newsracks within the public sidewalk area. (Ord. 12004 § 2(part), 1997)

**12.50.020      Findings.**

The City Council finds that there is a substantial governmental interest in ensuring that persons may reasonably use the public streets, sidewalks, rights-of-way, and other public property without interference with such use.

The City Council further finds that the proliferation of news and advertising publications intended for public distribution, and the corresponding increase in the number of individual newsrack dispensers placed upon the public rights-of-way in certain locations throughout the city has resulted in the following:

- A. Obstruction of traffic views;
- B. Damage to light standards, poles, trees and sidewalks from improper placement;
- C. Detracting from the appearance of the public streets and grounds;
- D. Blocking access to public facilities;
- E. Blocking access to properties adjoining public rights-of-way.

However, the City Council acknowledges that the streets, sidewalks and public rights-of-way are historically associated with the sale and distribution of newspapers and other publications, and that access to and use of these areas for such purposes is not to be denied except where such use unreasonably interferes with the use of these areas by pedestrians or traffic, or where such use presents a hazard to persons or property.

Given the limited space available and the increasing congestion throughout the community, the city has a substantial interest in devising a systematic approach to newsrack placement to ensure a fair and equitable distribution of news publications, and that persons may reasonably use the public streets, sidewalks, rights-of-way and other public property without interference of use. This objective may be achieved by allowing modular newsracks and prohibiting all freestanding newsracks in highly congested areas or areas with particular public safety or aesthetic concerns, where the sole use of modular newsracks will promote the City's aesthetic interest in the appearance of the area, result in more news publications in less space and thereby reduce congestion. (Ord. 12821 § 3 (part), 2007: Ord. 12004 § 2(part), 1997)

**12.50.030      Declaration of purpose.**

The purpose of this chapter is to provide a means to control the placement of newsrack dispensers in

the public sidewalk area. (Ord. 12821 § 3 (part), 2007: Ord. 12004 § 2(part), 1997)

#### **12.50.040 Definitions.**

As used in this chapter:

**Abandoned Newsrack.** A newsrack or newsrack assembly is considered "abandoned" when it remains empty for more than ten business days or contains outdated issues in violation of the "guidelines" promulgated pursuant to this chapter, or when the permittee has failed to properly maintain or discontinue use as provided in the guidelines promulgated pursuant to this chapter. Any removal notice issued on the basis of abandonment shall be withdrawn on a showing by the publication that the newsrack is not abandoned, but is empty or contains outdated issues as a result of a labor strike or a temporary or extraordinary interruption or disruption of publication by the newspaper sold or dispensed from that newsrack.

**Days.** Use of the term "days" for the purposes of this chapter means calendar days.

**Director.** As used in this chapter, "Director" refers to the Director of the Community and Economic Development Agency or his or her designee.

"Hearing Examiner" means a person appointed or designated by the Director or his or her designee who is qualified by training and experience to conduct administrative hearings.

"Newsrack" means a freestanding container or an individual unit that is part of a modular newsrack assembly that is commonly used to distribute publications to the general public. A newsrack may be coin operated or may contain free printed materials.

"Newsrack assembly" means a multi-unit newsrack and associated components including pedestal, tray and newsrack boxes.

"Single-unit newsrack configuration" means a freestanding single newsrack unit of the style and type typically used by newspaper publishers instead of, or as an alternative to, multi-unit configurations. (Ord. 12821 § 3 (part), 2007: Ord. 12004 § 2(part), 1997)

#### **12.50.050 Areas requiring newsrack controls.**

The Chief of Building Services will identify locations city-wide (typically identified as a block or blocks of a particular street) where immediate newsrack controls shall be implemented. Declaration of need for newsrack controls at those locations identified by the Chief of Building Services shall be based on findings outlined in Section 12.50.020. At those locations, newsrack permits shall be issued and consolidated modular units (as deemed to be necessary) shall be installed. Those areas shall be posted with a public notice identifying the locations in which controls will be required. Notice shall be sent to each publisher and distributor identified as having a presence in the area. The notice will provide for a period of one hundred twenty (120) days for full compliance (to allow for coordination, the ordering of materials, and installation of equipment.) Conditions that are found to be an imminent hazard shall be corrected immediately.

Notwithstanding the requirements listed above, all newsracks, city-wide, (individual racks as well as modular units) shall comply with clearance standards and obstruction criteria established in the guidelines promulgated pursuant to this chapter. (Ord. 12004 § 2(part), 1997)

#### **12.50.060 Newsracks—Permit required.**

In areas that have been declared as requiring newsrack controls by the Chief of Building Services, the person or persons responsible for such installation, use and/or maintenance of newsracks shall apply for and secure a nontransferable permit pursuant to the requirements of this chapter prior to the installation of any newsrack or newsrack assembly on public property, within the public right-of-way of any street, or within any public easement adjacent to any street. Existing newsracks, located in areas designated as requiring newsrack controls, that are in conformance with the requirements of this chapter and are allowed to remain in place shall also require a permit. No permit shall be issued except in conformance with this chapter.

The provisions of this chapter shall be the exclusive requirements for newsrack encroachments onto public property in the city of Oakland and preempt any other provisions in this code.

The Chief of Building Services shall not consider the content or viewpoint of the material to be distributed through newsracks in administering or enforcing this section, except as may otherwise be authorized in this section or pursuant to state or federal law. (Ord. 12821 § 3 (part), 2007: Ord. 12004 § 2(part), 1997)

#### **12.50.070 Newsrack permit application.**

The newsrack permit application shall state the names and addresses of those responsible for installation, use and maintenance of the newsrack or newsrack assembly subject to the permit, the name of the publication, interval of publication (i.e., weekly, daily, etc.), and shall describe with particularity the location proposed for installation. The application shall be approved and a nontransferable permit issued within ten days if the type of newsrack and the proposed location meets the standards set forth in this chapter and the guidelines promulgated pursuant to this chapter.

The newsrack permit application shall be completed in accordance with city newsrack specifications. The application shall be completed by a duly authorized representative of both the publication and, if applicable, any independent distributor authorized to service that publication's newsrack. A nontransferable newsrack permit may be issued within ten working days if the type of newsrack and location(s) proposed meet the standards set forth in this section and the city's newsrack specifications.

Prior to obtaining a newsrack permit, the applicant shall provide notice to property owners and businesses immediately adjacent to the requested location of his/her intent to place a newsrack. Any objections conveyed to the Chief of Building Services by a member of the public shall be considered prior to the approval of a newsrack permit.

The applicant shall provide a nonrefundable encroachment permit application fee in an amount established by ordinance of the City Council. Such permits shall be valid for, and renewable every year

and be listed in the city of Oakland Master Fee Schedule.

For modular newsracks, a separate newsrack permit must be obtained for each newsrack within the assembly. A person securing a newsrack permit may install and maintain additional newsracks by obtaining an encroachment permit for each newsrack. The rules and procedures of this chapter shall apply to each location. (Ord. 12821 § 3 (part), 2007: Ord. 12004 § 2(part), 1997)

#### **12.50.080 Request for hearing.**

If an application for a newsrack permit is disapproved, in whole or in part, the Chief of Building Services shall notify the applicant promptly, explaining fully the reasons for denial of the permit. The applicant shall have fourteen (14) days following receipt of such notice to request a hearing regarding the denial. Such request for hearing shall be made on a form prescribed by the Director of the Community and Economic Development Agency and shall be filed with the Chief of Building Services.

The request for hearing shall state specifically wherein it is claimed there was an error or abuse of discretion by the Chief of Building Services in denying the permit application. The request for hearing shall be accompanied by such information as may be required to facilitate review. Upon receipt of the request for hearing, the Chief of Building Services shall set a time for hearing, and at such time, a Hearing Examiner appointed for such purpose shall consider the merits of the appeal. The decision of the Hearing Examiner shall be final. If a person is found to be in violation of any provisions of this chapter, they are entitled to a hearing as specified in this section. (Ord. 12821 § 3 (part), 2007: Ord. 12004 § 2(part), 1997)

#### **12.50.090 Permissible types of newsracks.**

A. Multi-unit Configurations. Except as provided in subsections (B)(1) and (2) of this section, newsracks within areas requiring controls shall be installed in multi-unit configuration newsrack assemblies standard in trade use. Multi-unit configurations shall be permanently affixed to the ground in a man-

ner conforming to standards included in guidelines promulgated by the Chief of Building Services.

B. Single-Unit Configurations. Single-unit newsrack configurations shall not be permitted within areas requiring controls except:

1. Temporarily on a trial basis to determine the suitability of permanent newsrack placement at a particular location; or

2. Temporarily when space is unavailable in existing multi-unit configurations within the area requiring controls; or

3. When the number of newsracks at a location identified as requiring controls does not exceed five and placement of the individual newsracks conforms to the requirements of the guidelines promulgated pursuant to the chapter.

A single-unit configuration shall not be chained, bolted or otherwise attached to any tree, shrub, or other plant, nor attached to any property not owned by the newsrack owner without the consent of the property owner, nor situated upon any landscaped area, and provided further, that the single unit is of a design commonly in trade use.

In areas requiring newsrack controls, a temporary single-unit configuration shall not be approved for a period of more than sixty (60) days. At least ten days prior to placing a temporary newsrack, a completed newsrack permit application shall be submitted, including written notice of the proposed location and date upon which the placement period will begin.

Within ten days after expiration of the temporary placement period, the person maintaining the temporary newsrack shall either cause it to be removed, or submit a written application to the Chief of Building Services for a permit to obtain the next available space in an existing multi-unit configuration at or near the temporary location, or to obtain space in a multi-unit configuration to be newly installed at or near the temporary location. A person may be allowed to maintain the temporary newsrack at the permitted site for up to an additional sixty (60) days upon timely submission of a written application therefor if no suitable permanent newsrack space is available.

C. Permissible Height and Arrangement. The height, arrangement and configuration of any newsrack placed within an area determined to require controls shall comply with standards included in guidelines promulgated by the Chief of Building Services. Such standards shall be consistent with the findings, intent and purpose of this chapter. (Ord. 12004 § 2(part), 1997)

#### **12.50.100 Standards for newsrack placement.**

No newsrack (including in areas where newsrack controls and modular newsrack units are not determined to be necessary) shall be installed, used or maintained in any location upon public property, within any right-of-way, or within public easements adjacent to streets where such installation, use or maintenance endangers the safety of persons or property, or interferes with or obstructs the line of sight of pedestrians and drivers, or interferes with public utility, public transportation, or other government use, or unreasonably interferes with or impedes the flow of pedestrian, bicycle, or vehicular traffic, the ingress into or egress from any residence, place of business, or any legally parked or stopped vehicle, or the use of traffic signals, hydrants, mailboxes, or light standards and telephone poles or parking meters.

Additional standards to more specifically delineate placement requirements of newsracks within the public sidewalk area shall be included in guidelines promulgated by the Chief of Building Services. Such standards shall be consistent with the findings, intent and purpose of this chapter.

Criteria to be used by the city in determining the allocation of space available in modular newsrack units, when necessary, shall also be included in guidelines promulgated by the Chief of Building Services. (Ord. 12821 § 3 (part), 2007: Ord. 12004 § 2(part), 1997)

#### **12.50.110 Maintenance required.**

Each newsrack and newsrack assembly within the public sidewalk area shall be maintained in a neat and clean condition and in good repair at all times. Newsracks that have been damaged shall be replaced

or repaired as soon as is practical. For example, without limitation, each newsrack and newsrack assembly shall be free of chipped, faded, peeling or cracked paint, dirt and grease, rust and corrosion, posters, decals, or handbills, and shall have no broken structural parts or cracked plastic or glass parts. Failure to cause the repair, replacement and/or maintenance of newsrack(s) may result in the finding of required abatement thereof pursuant to Section 12.50.150.

Maintenance of newsrack boxes shall be the responsibility of the publisher or distributor using the newsrack. Pedestals and trays for modular newsrack units shall be the joint responsibility of those individuals with newsracks on the trays. (Ord. 12004 § 2(part), 1997)

#### **12.50.120 Removal of newsrack assembly upon discontinuance of use (for permitted newsrack locations).**

In the event the permit holder wishes to abandon a location, (for locations where newsrack controls are determined to be necessary) the permit holder shall promptly notify the city of his or her intent to remove the newsrack or newsrack assembly, as the case may be. When use of any newsrack location is permanently discontinued, the newsrack assembly, which includes pedestals and trays, shall be removed and the location restored to its previous condition. At locations where a number of newsrack boxes have been removed, a consolidation of remaining newsrack boxes shall be effected. Where necessary, trays shall be reduced in size to accommodate the number of remaining newsrack boxes. No newsrack assembly shall be left with gaps as the result of the removal of newsracks. Cost of consolidation shall be borne by the remaining publications. (Ord. 12004 § 2(part), 1997)

#### **12.50.130 Advertising on newsracks.**

No modular newsrack units in the public sidewalk area shall be used for advertising or publicity purposes, except that logos indicating the display, sale or distribution of the publication distributed from the newsrack are permissible. At locations determined to

require specific newsrack controls, the Chief of Building Services shall develop departmental regulations included in the guidelines regarding the permissible color of newsracks and the size and location of logos, identifying symbols and/or decals allowed pursuant to this chapter. Those regulations are to assure a uniform appearance of modular newsrack units with regard to height, color, and logo style and placement on the newsrack boxes. (Ord. 12004 § 2(part), 1997)

#### **12.50.140 Newsrack identification.**

Every person maintaining a newsrack within the public sidewalk area shall have his or her name, address and telephone number affixed to it in a place where such information will be readily visible. (Ord. 12004 § 2(part), 1997)

#### **12.50.145 Public nuisance.**

The accumulation and storage of abandoned, wrecked, dismantled or inoperative newsracks or parts thereof on sidewalks or in the public rights-of-way is hereby found to promote blight and deterioration and to be injurious to the health, safety and general welfare. Therefore, the presence of an abandoned, wrecked, dismantled or inoperative newsrack on the sidewalk or other public right-of-way is hereby declared to constitute a public nuisance which may be abated as such in accordance with the provisions of this chapter. (Ord. 12821 § 3 (part), 2007)

#### **12.50.150 Abatement of violation of newsrack code.**

A. Order to Abate. When the Chief of Building Services, or his or her designee, finds that a newsrack has contributed substantially to any of the conditions outlined in sections 12.50.020 or 12.50.110, in violation of this chapter, he or she, or his or her designee, may declare and deem the violation of a public nuisance and issue an order to abate. A notice of abatement shall be given in writing and sent to the address stated on the newsrack permit application (if a permit has been issued) or shown upon the newsrack itself. An additional notice tag shall be affixed to the newsrack on the date of notice. The latter method of noti-

fication shall be sufficient when no identification is shown on the newsrack and no permit has been issued. The person responsible for its installation and maintenance shall be notified and given seven days to remedy the violation. Service of said notice may be made by enclosing the same in a sealed envelope, addressed to the permittee or publication if the newsrack is unpermitted, 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 deposit in the United States mail.

If the cited condition(s) are not abated within seven days, the Chief of Building Services, or a designee, may assess penalties as stated in this section below and at his/her discretion seize the newsrack or newsracks in violation of this chapter.

The notice of abatement shall contain the following:

1. The street address of location and a legal description of the property sufficient for identification of the location upon which the nuisance location(s) is located;

2. A statement that the enforcement official has determined pursuant to this chapter that the permit holder and/or publication of the subject newsrack(s) are in violation of this chapter;

3. A statement specifying the condition that has been deemed a public nuisance;

4. A statement ordering the permittee and/or publication that uses the subject newsrack(s) to abate the condition(s), specifying the manner in which the same shall be abated, and the period within which such abatement shall be accomplished;

5. A statement specifying that if the cited condition(s) are not abated within seven days, the Chief of Building Services, or a designee, may assess penalties as stated in this section below and at his/her discretion seize the newsrack or newsracks in violation of this chapter.

**B. Removal Sanctioned.** The Chief of Building Services may cause a newsrack or a newsrack assembly installed or maintained in the public sidewalk area in violation of this chapter to be seized and removed if it is impractical to remedy the violation

otherwise. A seized newsrack or newsrack assembly shall be retained by the city and may be recovered by the responsible party(ies) within thirty (30) days from date of seizure upon payment of the costs incurred by the city for maintenance, repairs, notification, seizure, removal and storage as specified in section 12.50.160.

**C. Notification Prior to Removal.** Before any newsrack or newsrack assembly is seized, the person responsible for its installation and maintenance shall be notified and given seven days to either remedy the violation, or request a hearing before the Chief of Building Services to contest the seizure pursuant to subsection D of this section. Notice shall be given in writing and sent to the address stated on the newsrack permit application (if a permit has been issued) or shown upon the newsrack itself. An additional notice tag shall be affixed to the newsrack on the date of notice. The latter method of notification shall be sufficient when no identification is shown on the newsrack and no permit has been issued.

**D. Hearing Upon Request.** A person notified pursuant to subsection B of this section of the city's intent to remove a newsrack or newsrack assembly may request a hearing before the Chief of Building Services by making a written request within fourteen (14) days of notification of removal. The hearing shall be provided as specified in section 12.50.080 of this Chapter.

**E. When Notification Not Required.** Notwithstanding subsections A, B, C and D of this section, prior notice of seizure is not required where the newsrack or newsrack assembly poses an immediate danger to pedestrians or vehicles, provided notice of the seizure and an opportunity to contest is given to the person responsible for the seized newsrack within seven (7) days after the seizure.

**F. Removal of Abandoned Newsracks.** The Chief of Building Services may cause the removal and/or disposal of an abandoned newsrack as defined in Section 12.50.040 if it is not claimed by the responsible party within thirty (30) days.

**G. Restoration of Right-of-Way After Removal.** Upon the removal of a newsrack, the public right-of-way shall be returned to its original condition by the

permittee, or publication if a permit has not been issued, including but not limited to the refilling of holes installed for purposes of securing newracks.

H. Revocation of Permit. A permit for placement of a newsrack or newsrack assembly in areas designated by the Chief of Building Services to require modular newsracks may be revoked by the Chief of Building Services for failure to adequately secure, identify, maintain, refurbish, paint, or remove a newsrack or newsrack assembly as required by this Article if any provision of this Article is violated. Notice of revocation and an opportunity to contest the determination shall be provided pursuant to subsections B, C and D of this section. (Ord. 12821 § 3 (part), 2007: Ord. 12004 § 2(part), 1997)

#### **12.50.160      Penalties.**

Any permittee, or the owner of an unpermitted newsrack found to be in violation of any provision of this chapter shall receive a notice of violation in accordance with Section 12.50.150. If the same newsrack is found to be in violation seven days from the date that a notification for abatement and/or for removal was mailed, the owner of the newsrack shall be subject to civil penalties in accordance with the provisions of Chapters 1.08 of the Oakland Municipal Code. This chapter may be enforced by the Chief of Building Services or his or her authorized representatives. Each newsrack found to be in violation is considered to be a separate offense. A person found in violation of this chapter shall be entitled to hearing by making a written hearing request within fourteen (14) days of the notice to abate. The hearing shall be provided as specified in section 12.50.080 of this chapter. (Ord. 12821 § 3 (part), 2007: Ord. 12004 § 2(part), 1997)

#### **12.50.170      Indemnification.**

Prior to the issuance of a newsrack permit in areas designated by the Chief of Building Services to require newsrack controls, every person operating or maintaining a newsrack or newsrack assembly upon or within the public property, right-of-way or public easements shall agree, prior to the granting of a permit, to indemnify and hold harmless the city, its offi-

cers and employees, from any loss, liability, damage, or cost sustained by any person or property, arising from the installation, operation or use of such newsrack, as is stated on the face of said permit. (Ord. 12004 § 2(part), 1997)

**Chapter 12.52****SIDEWALK BENCHES****Sections:**

- 12.52.010      Permit required.**
- 12.52.020      Permit application.**
- 12.52.030      Basic minimum permit.**
- 12.52.040      Permit denial, revocation.**
- 12.52.050      Permit fees.**
- 12.52.060      Deposit of performance security.**
- 12.52.070      Where prohibited.**
- 12.52.080      Lawful installation and maintenance.**
- 12.52.090      Advertising and signs.**
- 12.52.100      Removal.**
- 12.52.110      Liability insurance policy.**
- 12.52.120      Insurance policy amounts.**

**12.52.010      Permit required.**

It is unlawful for any person to install or maintain any bench on any street or sidewalk area within the city, unless there has been issued, and is in valid existence, a permit therefor from the City Manager. A separate permit must be obtained for each bench, which permit shall be valid only for the particular location specified thereon. Each permit shall bear a separate number. Not more than two permits shall be issued for any one location, and must be issued to the same permittee.

For the purposes of this chapter, "bench" means a seat located upon public property along any public way for the comfort, convenience and accommodation of passersby or persons awaiting transportation. (Prior code § 6-1.40)

**12.52.020      Permit application.**

A. No bench permit shall be issued except upon written application, filed with, and upon a form prescribed by, the City Clerk, showing the proposed location of each bench, the advertising, if any, to appear thereon and such other information as the City Manager may require.

B. Detailed plans and specifications of each bench shall be supplied by the applicant.

C. Each application must be signed by the owner of the bench or benches for which permits are requested, and must be accompanied by an inspection fee of one dollar (\$1.00) for each such bench.

D. Whenever a bench for which a permit has been issued is sold or title or control thereof assigned or transferred or the location thereof is changed, a new permit must be obtained for its maintenance; provided, however, that in the event there is a change in legal entity of the bench owner through due process of law, the City Manager may approve the transfer of all existing permits from the predecessor person or firm to the succeeding person or firm. (Prior code § 6-1.41)

**12.52.030      Basic minimum permit.**

No application for bench permits shall be approved or permit therefor granted unless such application is for a minimum of one (100) hundred benches; and every permittee, both present and future, shall agree to maintain and shall pay a minimum permit fee based upon, and shall at all times maintain in use not fewer than one hundred (100) sidewalk benches. (Prior code § 6-1.411)

**12.52.040      Permit denial, revocation.**

A. The application for a bench permit shall be denied if the City Manager shall find that the maintenance of the bench would tend to obstruct passage along any public way, or to create a hazard, or would otherwise be detrimental to the public safety, welfare or convenience.

B. Any permit may be revoked, or renewal thereof denied, for any violation of any of the provisions of this chapter, for any fraud, or misrepresentation in the application, or for any reason which would have been grounds for denial of the application.

C. Any permit issued under this section shall be cancelled and revoked if the permittee fails to install the bench within sixty (60) days after the date of the issuance of the permit. (Prior code § 6-1.42)



**12.52.050 Permit fees.**

The holder of every sidewalk bench permit shall pay to the Oakland Bureau of Permits and Licenses a permit fee in the amount of sixty cents (\$.60) per month payable quarterly in advance for each bench for which a permit is issued, which shall be paid at the time of the issuance of the permit.

Each permit shall expire on July 1st next following the date of its issuance unless renewed. A fee for one-quarter year for each bench shall be paid at the time of each annual renewal of the permit. Applications for renewal must be made prior to the expiration date by payment of said quarterly fee. (Prior code § 6-1.44)

**12.52.060 Deposit of performance security.**

No permit shall be issued, and no existing permit shall be valid, until the holder or applicant therefor shall have deposited with the city a security guaranteeing performance of all of the requirements of this chapter pertaining to sidewalk benches. In the event the permittee shall fail to comply with any of the said requirements to this chapter, the City Manager may cause whatever may be required to be done to satisfy such requirements and shall charge the costs thereof against the aforesaid deposit.

The permittee may recover the bench if, within sixty (60) days after the removal, he or she pays the cost of such removal and storage. After sixty (60) days, the City Manager may sell, destroy or otherwise dispose of the bench at his or her discretion. All of the foregoing shall be at the sole risk of the permittee, and shall be in addition to any other remedy provided by law for the violation of this chapter. (Prior code § 6-1.441)

**12.52.070 Where prohibited.**

No person shall install or maintain any sidewalk bench:

- A. In any alley;
- B. At any location where the distance from the face of the curb to the property line is less than ten feet;
- C. At any location distant more than fifty (50) feet from the nearest intersecting street; provided

that whenever, in the opinion of the City Manager, observance of this requirement would result in inconvenience or hardship, this requirement may be waived by the City Manager.

D. At any place except an existing public carrier stop;

E. At any location where such advertising is prohibited by the provisions Title 17 of this code. (Prior code § 6-1.45)

**12.52.080 Lawful installation and maintenance.**

A. No sidewalk bench permittee shall locate or maintain any bench at a point less than eighteen (18) inches or more than thirty (30) inches from the face of the curb, and each bench must be kept parallel with the curb.

B. No bench shall be more than forty-two inches high nor more than two feet six inches wide, nor more than seven feet long, overall.

C. Each bench must have displayed thereon, in a conspicuous place, the name of the permittee and the permit number, which shall be applied by the permittee and renewed whenever they become illegible.

D. It shall be the duty of the permittee to maintain each bench at all times in a safe condition and at its proper and lawful location, and to inspect each bench periodically. (Prior code § 6-1.46)

**12.52.090 Advertising and signs.**

A. No advertising matter or sign whatever shall be displayed upon any sidewalk bench except upon the front and rear surfaces of the backrest, and not more than seventy-five (75) percent of each such surface shall be so used. No pictures or representations in irregular contours shall appear on any such bench. All advertising shall be subject to the approval of the City Manager.

B. No advertisement or sign on any bench shall display the words "STOP," "LOOK," "DRIVE-IN," "DANGER," or any other word, phrase, symbol or character liable to interfere with, mislead or direct traffic. (Prior code § 6-1.47)

**12.52.100 Removal.**

A. After the revocation of any sidewalk bench permit, the City Manager may remove and store the bench, if the permittee fails to do so within ten days after notice.

B. The permittee may recover the bench, if within sixty (60) days after the removal, he or she pays the cost of such removal and storage, which shall not exceed two dollars (\$2.00) for removal and five dollars (\$5.00) a month for storage, for each such bench. After sixty (60) days, the City Manager may sell, destroy or otherwise dispose of the bench at his or her discretion. All of the foregoing shall be at the sole risk of the permittee, and shall be in addition to any other remedy provided by law for the violation of this chapter. (Prior code § 6-1.48)

**12.52.110 Liability insurance policy.**

A. No sidewalk bench permit shall be issued pursuant to this chapter unless the applicant shall post and maintain with the City Clerk a policy of public liability and property damage insurance, approved by the City Attorney and conditioned as hereinafter provided.

B. The policy shall be conditioned that the permittee will indemnify and save harmless the city, its officers and employees from any and all loss, costs, damages, expenses or liability which may result from or arise out of the granting of the permit, or the installation or maintenance of the bench for which the permit is issued, and that the permittee will pay any and all loss or damage that may be sustained by any person as a result of, or which may be caused by or arise out of such installation or maintenance. The policy of insurance shall be maintained in its original amount by the permittee at his or her expense at all times during the period for which the permit is in effect, and thereafter until the benches are removed or title thereto is transferred to another permittee. Said policy shall also state that it shall not be cancelled or amended except upon thirty (30) days' prior written notice thereof to the City Manager. All policies shall be renewed and submitted for approval at least thirty (30) days prior to their expiration date. (Prior code § 6-1.49)

**12.52.120 Insurance policy amounts.**

The insurance policies required by Section 12.52.110 shall insure against loss from the liability imposed upon the assured, which shall include the permittee, by law for injury to, or death of, any person, or damage to property growing out of the installation or maintenance of any sidewalk bench, to the amount or limit of fifty thousand dollars (\$50,000.00) on account of injury to or death of any one person, and, subject to the same limit as respects injury to or death of one person, of one hundred thousand dollars (\$100,000.00) on account of any one accident resulting in injury to or death of more than one person, and of ten thousand dollars (\$10,000.00) for damage to property of others, resulting from any one accident. (Prior code § 6-1.50)

## Chapter 12.56

### SOUND AMPLIFICATION EQUIPMENT

**Sections:**

- 12.56.010 Definitions.**
- 12.56.020 Activity prohibited.**
- 12.56.030 Permit issuance conditions.**
- 12.56.040 Use restrictions.**
- 12.56.050 Exemption.**
- 12.56.060 Revocation or denial of permit.**
- 12.56.070 Appeal from revocation or denial of permit.**
- 12.56.080 Quiet zones—City Council establishment authority.**
- 12.56.090 Quiet zones—Extent—Signs installed.**
- 12.56.100 Quiet zones—Use of sound amplifying equipment prohibited.**
- 12.56.110 Violation—Penalty.**

**12.56.010 Definitions.**

As used in this chapter:

“Sound amplifying equipment” means any machine or device for or to facilitate the amplification of the human voice, music or any other sound. Sound amplifying equipment includes but is not limited to radios, televisions, portable and nonportable cassette tape players, record players, laser disc players, and compact disc players. Sound amplifying equipment shall not be construed as including any equipment used on authorized emergency vehicles or horns or to hear warning devices on other vehicles used only for traffic safety purposes.

“Unreasonably loud manner” means the volume of sound in the use or operation of any sound amplification equipment if such sound can be heard by a person from fifty (50) or more feet from the source of the amplification. (Prior code § 3-6.09(A))

**12.56.020 Activity prohibited.**

It is unlawful for any person to use or operate or

permit the use or operation in an unreasonably loud manner of any sound amplifying equipment out-of-doors or indoors when used or operated to reach persons out-of-doors without first obtaining a written permit from the City Manager by submitting an application at least ten working days prior to the date of intended use; provided, however, that permits for the use or operation of sound amplifying equipment in a manner other than that prescribed by this chapter in public parks or playgrounds shall be obtained from the Director of Parks and Recreation. Such permit shall be issued unless the permit requested is prohibited by Section 12.56.030, or is for a location within a zone of quiet which has been established as hereinafter provided. The use or operation of sound amplifying equipment for which a permit is issued shall be subject to the limitations and regulations set forth in Section 12.56.030. (Prior code § 3-6.09(B))

**12.56.030 Permit issuance conditions.**

No permit shall issue to permit operation of sound amplification equipment in a manner other than that prescribed by this chapter if:

- A. The equipment is to be used or operated out-of-doors or indoors but used or operated to reach persons out-of-doors between the hours of ten p.m. and nine-thirty a.m.
- B. The operation of such equipment is to be in those areas of the city which are designated as residential districts by the zoning ordinance of the city.
- C. The operation of such equipment is to be in the business district of the city where such use or operation is so loud as to disturb the operations or meetings of businesses, a governmental entity or any public hearing conducted by such governmental entity or at a location where such use or operation would impede the flow of pedestrian or vehicular traffic to such an extent that it would create a dangerous traffic situation or would constitute a detriment to traffic safety.
- D. Use or operation of the sound amplification equipment would interfere with another permit or event previously granted. (Prior code § 3-6.09(C))

**12.56.040 Use restrictions.**

All the provisions of this chapter shall apply to the use or operation of sound amplifying equipment by a hospital, church, school, educational institution or private enterprise when used or operated upon property owned or controlled by said hospital, church, school, educational institution or private enterprise when such amplification is audible outside the boundaries of such property. (Prior code § 3-6.09(D))

**12.56.050 Exemption.**

No restrictions exist and no permit shall be required for sound amplification equipment used by a governmental agency when engaged in duties requiring such amplification for the benefit of the general health and welfare of the community. (Prior code § 3-6.09(E))

**12.56.060 Revocation or denial of permit.**

The City Manager shall deny a permit allowing sound amplifying equipment to be operated in a manner other than that prescribed by this chapter where it is determined that:

- A. Any use restriction as specified in Section 12.56.030 will occur; or
- B. The facts contained in the application are found to be false or nonexistent in any material detail; or
- C. The applicant refuses to agree in writing to abide by or comply with all conditions of the permit. (Prior code § 3-6.09(F))

**12.56.070 Appeal from revocation or denial of permit.**

Any person aggrieved by a denial or revocation of a permit considered or issued under this chapter shall have the right to appeal to the City Manager by filing with the City Clerk, within five days from and after the date of denial or revocation, a written notice of appeal which shall set forth the grounds for such appeal. The City Manager shall act upon such appeal as expeditiously as possible and advise the appellant of the results. (Prior code § 3-6.09(G))

**12.56.080 Quiet zones—City Council establishment authority.**

The City Council, for the purpose of preventing disturbances to the occupants of churches, hospitals, institutions reserved for the sick, schools, or educational institutions, or the students or faculties of said schools or educational institutions, may establish by resolution, zones of quiet adjacent to churches, hospitals, or institutions, when the superintendent or chief executive officer of such church or institution requests the establishment of such zones. (Prior code § 3-6.09(H))

**12.56.090 Quiet zones—Extent—Signs installed.**

The resolution establishing a zone of quiet shall describe the extent of said zone of quiet, and upon the establishment thereof, the Department of Public Works is authorized to install and maintain appropriate signs to indicate the existence of said zone, provided that the expense of such installation and maintenance is paid by the institution making such request prior to such installation. (Prior code § 3-6.09(I))

**12.56.100 Quiet zones—Use of sound amplifying equipment prohibited.**

It is unlawful for any person to use or operate or permit the use of or operation of any sound amplifying equipment out-of-doors or indoors when used or operated to reach persons out-of-doors within any zone of quiet established by resolution of the City Council, provided that signs indicating the existence of such zone of quiet have been erected and are in place. (Prior code § 3-6.09(J))

**12.56.110 Violation—Penalty.**

Violation of any provision of this chapter constitutes an infraction. This chapter may be enforced by the method provided for in Chapter 1.28 of the Oakland Municipal Code and Section 853.5 of the Penal Code of the state of California. This chapter shall be enforced by member of the Oakland Police Department. (Prior code § 3-6.09(L))

**Chapter 12.60****BICYCLES****Sections:**

- 12.60.010** **Bicycle license required.**
- 12.60.020** **Bicycle license—Issuance.**
- 12.60.030** **Bicycle license plates and registration cards—Loss.**
- 12.60.040** **Bicycle and bicycle parts business reports.**
- 12.60.050** **Bicycle licensee's report of sale, transfer of registration, or change of address.**
- 12.60.060** **Destroying bicycle numbers or licenses.**
- 12.60.070** **Bicycle operation rules—Violation—Penalty.**
- 12.60.080** **Violation of Sections 12.60.010 through 12.60.060—Fine.**

**12.60.010 Bicycle license required.**

It is unlawful for any person to operate or use a bicycle, as defined in Section 39000 of the California Vehicle Code, upon any street in the city of Oakland without first obtaining a California Bicycle License therefor. (Prior code § 3-12.01)

**12.60.020 Bicycle license—Issuance.**

The Chief of Police is authorized and directed to issue a registration card and a California bicycle license which, when issued, shall entitle the licensee to operate such bicycle for which said license has been issued, upon all streets, exclusive of sidewalks, in the city for the calendar year or portion thereof for which said license is issued. (Prior code § 3-12.02)

**12.60.030 Bicycle license plates and registration cards—Loss.**

It shall be the duty of the Chief of Police to cause to be attached to the frame of each bicycle a California bicycle license, and to issue a registration card to the licensee upon payment of the license fee provided for in this chapter.

Upon loss or mutilation of a license, the licensee shall report said loss within seven days. Upon receipt of such report, the Chief of Police shall cancel such license and issue a new license. (Prior code § 3-12.03)

**12.60.040 Bicycle and bicycle parts business reports.**

All persons engaged in the business of buying secondhand bicycles or secondhand bicycle parts are hereby required to make a daily report to the Chief of Police, giving the name and address of the person from whom each bicycle or bicycle part is purchased, the description of each bicycle or bicycle part purchased, the frame number or numbers of each bicycle purchased and the number of license found thereon, if any. All persons engaged in the business of selling new or secondhand bicycles or new or secondhand bicycle parts are required to make a daily report to the Chief of Police, giving a list of all sales made by such dealers, which list shall include the name and address of each person to whom sold, the kind of bicycle or bicycle part sold, together with a description thereof and frame number or numbers of each bicycle and the number of the license attached thereto, if any. Junk collectors and junk dealers, as defined in Chapter 5.04 of this code and secondhand dealers and exchange dealers as defined in Chapter 5.46 are required to make daily reports, as in this section provided, for any transaction involving secondhand bicycles or secondhand bicycle parts. (Prior code § 3-12.04)

**12.60.050 Bicycle licensee's report of sale, transfer of registration, or change of address.**

It shall be the duty of every person who sells or transfers ownership of any bicycle licensed hereunder to report such sale or transfer by returning to the Chief of Police the registration card issued to such person as licensee thereof, together with the name and address of the person to whom said bicycle is sold or transferred, and such report shall be made within ten days of the date of said sale or transfer. It shall be the duty of the purchaser or transferee of

**12.60.050**

such bicycle to apply for a transfer of registration thereof within ten days of the date of said sale or transfer.

Whenever the owner of a bicycle licensed pursuant to this code changes his or her address, he or she shall within ten days notify the Chief of Police of the old and new address. (Prior code § 3-12.05)

**12.60.060      Destroying bicycle numbers or licenses.**

It is unlawful for any person to wilfully or maliciously remove, destroy, mutilate or alter the number of any bicycle frame licensed pursuant to the provisions of this chapter. It is also unlawful for any person to remove, destroy, mutilate or alter any license plate, seal or registration card during the time in which said license plate, seal or registration card is operated; provided, however, that nothing in this chapter shall prohibit the Chief of Police from stamping numbers on the frames of bicycles on which no serial number can be found, or on which said number is illegible or insufficient for identification purposes. (Prior code § 3-12.06)

**12.60.070      Bicycle operation rules—Violation—Penalty.**

It is unlawful to operate a bicycle on any trail within the city in an unsafe, reckless, dangerous or negligent manner. No person shall operate a bicycle in excess of fifteen (15) miles per hour, nor in excess of five miles per hour when passing pedestrians or equestrians or when approaching and negotiating a blind turn, nor at a greater speed than is reasonable or prudent. Within city parks, bicyclists can ride on named trails only and are prohibited from operating bicycles off-trail. Bicyclists must obey all posted signs and rules. Bicyclists must call out when passing pedestrians, or other bicyclists and then must pass to the left. Bicyclists must yield to equestrians by calling out and requesting instructions to pass. The City Manager, or his or her designees, shall determine trail accessibility for bicyclists. Any person who violates this section shall be guilty of an infraction punishable as provided in Chapter 1.28 of this code. (Prior code § 6-3.34)

**12.60.080      Violation of Sections 12.60.010 through 12.60.060—Fine.**

Any person who violates or fails to comply with the provisions of Sections 12.60.010 through 12.60.060 shall be subject to a fine of not more than ten dollars (\$10.00) (Ord. 11940 § 1, 1996: prior code § 3-12.011)

**Chapter 12.64****PARK AND RECREATION AREA USE REGULATIONS****Sections:**

- Article I. Generally**
- 12.64.010 Definitions.**
- 12.64.020 Carrying hatchets in parks.**
- 12.64.030 Prohibition against littering in parks—Enforcement by citation method—Park rangers, deputy head ranger and head ranger as peace officers for purpose of enforcement.**
- 12.64.040 Destroying notices.**
- 12.64.050 Animals.**
- 12.64.060 Games.**
- 12.64.070 Weapons—Disturbing birds.**
- 12.64.080 Selling wares, gaming, obscenity.**
- 12.64.090 Injuring trees and other properties.**
- 12.64.100 Disorderly conduct, vandalism, sleeping on benches, pilfering.**
- 12.64.110 Hours of use of parks.**
- 12.64.120 Park noise regulation.**
- 12.64.130 Traffic regulations.**
- 12.64.140 Motor vehicles in parks.**
- 12.64.150 Washing or repairing motor vehicles in parks.**
- 12.64.160 Fires.**
- 12.64.170 Fires on red flag days.**
- 12.64.180 Joaquin Miller Park—Park closure on red flag days.**
- 12.64.190 Children in boats.**
- 12.64.200 Boats on Lake Merritt.**
- 12.64.210 Fishing in Lake Merritt.**
- 12.64.220 The zoo.**
- 12.64.230 Municipal swimming pools—Not to be used in absence of attendant.**
- 12.64.240 Golf courses.**

**Article II. Park Permits**

- 12.64.250 Statement of principles.**
- 12.64.260 Definitions.**
- 12.64.270 Compliance required.**
- 12.64.280 Permit required.**
- 12.64.290 Private event park use application.**
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**Article I. Generally****12.64.010 Definitions.**

For the purpose of this article certain words and phrases are defined and certain provisions shall be construed as herein set out, unless it shall be apparent from the context that they have a different meaning.

“Boats” means and includes canoes, rowboats, sailboats, hydroplanes and any and all other watercraft.

“Improvement,” when used in this article in reference to trees or shrubs, means and includes the planting, removal or maintenance of same, and any or all acts necessary thereto.

“Maintenance” or “maintain,” when used in this article in reference to trees or shrubs, means and includes clipping, spraying, fertilizing, irrigating, propping, treating for disease or injury, and any

other similar acts which promote the life, growth, health or beauty of such trees or shrubs.

"Public street" when used in this article shall include all public streets, avenues, highways, alleys, walks and lanes in the city of Oakland. (Prior code § 6-3.01)

#### **12.64.020 Carrying hatchets in parks.**

It is unlawful for any person to carry in any public park of the city any hatchet, axe, machete, brush knife or any other device other than pocket-knife, capable of cutting, defacing or mutilating trees or shrubs, without permission so to do from the Board of Park Directors of the city or its duly authorized representatives. (Prior code § 6-3.11)

#### **12.64.030 Prohibition against littering in parks—Enforcement by citation method—Park rangers, deputy head ranger and head ranger as peace officers for purpose of enforcement.**

A. No person shall, except in the proper receptacles where these are provided by the city, place, deposit, dump or leave or cause to be placed, deposited, dumped or left, in, on or upon the grounds of any park or the waters of any fountain, pond, lake, stream or other body of water in any park, any garbage, swill, cans, bottles, papers, refuse, trash or rubbish. Where receptacles are not so provided, all such rubbish or waste shall be carried away from the park by the persons responsible for its presence and properly disposed of elsewhere.

B. No person shall bring in, place, deposit, dump or leave, or cause to be brought in, placed, deposited, dumped or left in, on or upon the grounds of any park, or the waters of any fountain, pond, lake, stream, or other body of water in any park, any carcass of any dead animal or any noisome, nauseous or offensive matter.

C. This section may be enforced by the method provided for in Chapter 1.24 of this code, and Sections 853.1—853.4 inclusive of the Penal Code of California.

D. This section shall be enforced by members of the Oakland Police Department and in addition the park rangers, deputy head ranger and head ranger of the city are designated as, given the powers of, and determined to be, peace officers for the purpose of enforcing this section in the manner set forth in Chapter 1.24 of this code and Sections 853.1—853.4 inclusive of the Penal Code of California; provided, however that neither the park rangers, deputy head ranger nor head ranger shall be considered for any purpose members of the Oakland Police Department. (Prior code § 6-3.12)

#### **12.64.040 Destroying notices.**

No person shall injure, deface or destroy any notice, rules or regulations for the government of parks, posted or in any manner permanently fixed by order or permission of the Board of Park Directors, nor fix any bills or notices in said parks. (Prior code § 6-3.13)

#### **12.64.050 Animals.**

No person shall lead any horse in the limits of any public park in the city or permit any horse that is not harnessed and attached to a vehicle or mounted by an equestrian, to enter the same, and no person shall turn loose into said parks any dogs, cattle, swine, goats or other animals, or permit the same to run at large in such parks, and police officers and park employees are given authority to capture and destroy any cats found running at large within said parks. (Prior code § 6-3.14)

#### **12.64.060 Games.**

No person shall engage in any game of baseball, cricket, soccer, football, croquet or any other game with ball and bat, within the limits of any public park in the city, except where authorized by the Office of Parks and Recreation. (Prior code § 6-3.16)

#### **12.64.070 Weapons—Disturbing birds.**

No person shall carry firearms or discharge any firearms in any public park in the city or shoot birds

or throw stones or other missiles within the boundaries of said parks or disturb the waterfowl on Lake Merritt or on any pond or in any way disturb any bird in any of said parks. (Prior code § 6-3.18)

**12.64.080 Selling wares, gaming, obscenity.**

It is unlawful for any person to sell or offer for sale any goods, wares, merchandise, foods, confec-tions, refreshments or other article within any public



park, public building or public grounds in the city, without the order or permission therefor of the commission, department or board which has jurisdiction therein. The terms "public building" and "public grounds," as used herein, shall include the Oakland-Alameda County Coliseum Complex and public parking lots adjacent thereto when completed.

No gaming shall be allowed in said parks, buildings or grounds, nor any obscene or indecent act performed therein. (Prior code § 6-3.19)

#### **12.64.090 Injuring trees and other properties.**

It is unlawful for any person to trespass upon the grass of any public park in the city or to pick flowers from the same, or to cut, break or in anywise injure, damage or deface the trees, shrubs, turf, buildings, fences, benches, fountains, statuary or any fixtures connected therewith, or to foul any fountains or springs within said park. (Prior code § 6-3.21)

#### **12.64.100 Disorderly conduct, vandalism, sleeping on benches, pilfering.**

Disorderly conduct, pilfering, vandalizing, or sleeping on benches or seats in any public park is strictly prohibited. (Ord. 11925, 1996: prior code § 6-3.22)

#### **12.64.110 Hours of use of parks.**

The Parks and Recreation Commission may fix the hours during which the parks, or any particular park, is open to public use. No person, other than a city employee in the performance of his or her duty, shall enter or remain in any park during the time when it is not open for public use. (Prior code § 6-3.33)

#### **12.64.120 Park noise regulation.**

No person shall operate, or permit the operation of, any sound amplification system (including portable or car audio equipment) so that sound can be heard fifty (50) or more feet away from the source in any park within the city, except upon the issuance of a permit therefor by the Director of Parks, Recre-

ation and Cultural Affairs and payment of the fee specified in the master fee schedule.

Permits issued for the operation of a sound amplification system shall specify the location of any bandstand and the position of each loudspeaker shall be as specified by the said Director so as to minimize, to the extent practicable, the amount of amplified sound to be audible in adjacent residential properties. No loudspeaker shall be permitted to be placed in a public park within three hundred (300) feet of any residential structure. In no event shall a permittee cause amplified sound to exceed eighty (80) decibels at any boundary of the park in which amplified sound is being produced.

Estuary Park and Duck Pond Stage area of Lakeside Park may be exempted from these requirements if and only if the following findings are made by the Director of Parks, Recreation and Cultural Affairs:

A. The permittee has no prior history of events in parks which includes verified, unresolved complaints of excessive noise, poor security and crowd control, and/or poor parking control;

B. The applicant has met and conferred with local residents and developed a specific event plan to meet the expressed concerns of said local residents; and

C. The applicant has paid all required fees and deposits for the event in question, and has met all additional regulatory requirements which may apply to the event in question. (Ord. 11893 § 1, 1996: prior code § 6-3.32)

#### **12.64.130 Traffic regulations.**

It is unlawful for any person to drive or ride within the boundaries of any public park in the city at a rate of speed exceeding fifteen (15) miles per hour, or for any person to ride or drive within the limits of said parks upon any other than the avenues and roads provided therefor, and no wagon or vehicle of burden shall pass through the said parks except upon such road or avenue as shall be designated by the Board of Park Directors for such transportation.

## **12.64.130**

No person shall enter or leave any of said parks except by such gates, roads, paths or avenues as may be for such purpose provided and arranged.

No vehicle for hire shall stand upon any part of any public park in the city for the purpose of hire, except in waiting for persons taken by it into such park, except at such points as may be specially designated by the Board of Park Directors. (Prior code § 6-3.25)

### **12.64.140 Motor vehicles in parks.**

It is unlawful for any person to operate or drive any motorcycle or other motor vehicle in, over or upon an equestrian or pedestrian path or trail or any other portion of any public park in the city except on such roadway or parking area regularly set apart for the use of such motor and other vehicles. (Prior code § 6-3.251)

### **12.64.150 Washing or repairing motor vehicles in parks.**

It is unlawful for any person to wash, polish or repair any motor vehicle within any public park area in the city. (Prior code § 6-3.252)

### **12.64.160 Fires.**

No person shall be permitted to make or kindle a fire of any kind within any public park in the city except at designated barbecue areas approved by the Parks and Recreation Advisory Commission. (Prior code § 6-3.24)

### **12.64.170 Fires on red flag days.**

No person shall be permitted to make or kindle a fire within any public park in the city on a red flag day designated by the Fire Chief (Director of Fire Services) of the Oakland Fire Department. (Prior code § 6-3.241)

### **12.64.180 Joaquin Miller Park—Park closure on red flag days.**

No person, other than a city employee in the performance of his or her duty, shall enter or remain in Joaquin Miller Park on a red flag day designated

by the Fire Chief (Director of Fire Services) of the Oakland Fire Department. (Prior code § 6-3.331)

### **12.64.190 Children in boats.**

It is unlawful for any person under sixteen (16) years of age to hire a boat or other watercraft to be used upon the waters of Lake Merritt or that portion of the estuary of San Antonio or Oakland harbor which lies within the limits of the city, unless such person be accompanied by his or her parent or guardian or an adult person; or for any person to rent any boat or other watercraft to any such person under sixteen (16) years of age to be so used unless such person is accompanied by his or her parent or guardian or an adult person. (Prior code § 2-5.10)

### **12.64.200 Boats on Lake Merritt.**

A. Boat Permit. It is unlawful for any person to launch, use, moor or store upon Lake Merritt any private boat unless there shall have first been procured for said boat a permit from the Recreation Commission for such purpose. Said Commission may, by rule, specify the conditions under which the same may be granted, suspended, or revoked.

B. Speed of Boats. Speed of mechanically propelled boats on Lake Merritt is limited to eight miles an hour unless special permission to exceed such limit is granted by the Board of Playground Directors.

C. Boats in Certain Areas. It is unlawful for any person between the first day of October and the last day of April next succeeding, to row, drive, propel or navigate any boat in, over, or upon any part of the following described area of Lake Merritt:

That portion of the northeastern arm of Lake Merritt that lies northeasterly of a line bearing north 38° 13' west from a point on the eastern line of Lakeshore Boulevard, distant thereon one hundred and sixty (160) feet southerly from the production of the entire line of that portion of Hanover Avenue that lies between Wayne and Newton Avenues.

This subsection shall not apply to the employees of the city properly engaged in work for said city in or upon the above described area and authorized by the Board of Playground Directors or the Board of Park Directors to be thereon.

D. Boats and Boat Races. No person shall be permitted to use the shores of Lake Merritt as a landing place for boats, or keep thereat boats for hire or floating boat houses with pleasure boats for hire, or keep boats of any kind in Lake Merritt, except under a permit from the Recreation Commission for such purpose, and only at places designated by and under restrictions and regulations promulgated by the Board of Park Directors or the Recreation Commission; and no regattas, boat races, or other special events involving the use of Lake Merritt shall take place thereon without permission granted by the Recreation Commission. (Prior code §§ 6-3.07—6-3.09, 6-3.17)

#### **12.64.210 Fishing in Lake Merritt.**

No person shall fish in Lake Merritt without written permission from the Board of Park Directors so to do, and no person shall in any event be allowed to catch more than two bass in one day in Lake Merritt. (Prior code § 6-3.20)

#### **12.64.220 The zoo.**

It is unlawful for any person to tease, injure or frighten any of the birds, animals, reptiles or fish belonging to, or confined in the municipal zoo. (Prior code § 6-3.23)

#### **12.64.230 Municipal swimming pools—Not to be used in absence of attendant.**

It is unlawful for any person to enter upon any municipal swimming pool or the dressing rooms connected therewith at any time when no employee of the Recreation Department, or other attendant authorized by said Department, is on duty at said pool. (Prior code § 6-3.31)

#### **12.64.240 Golf courses.**

A. Trespass on. It is unlawful for any person to trespass upon the Oakland Municipal Golf Course, or upon any private or public golf course in the city, except pursuant to the express consent of the person in charge of the management thereof.

B. Play Upon. It is unlawful for any person to play upon the Oakland Municipal Golf Course, or upon any private or public golf course in the city, without first having obtained a ticket therefor, or except pursuant to the express consent of the person in charge of the management thereof.

C. Taking of Golf Balls. It is unlawful for any person to take possession of any golf ball not belonging to him or her from any golf course, or from any land or any street adjacent thereto.

D. Injury to Turf. It is unlawful for any person to wilfully or maliciously injure the turf on any golf course.

E. Sales on. It is unlawful for any person to sell golf balls, golf equipment, food, drinks, or other commodities, on the Oakland Municipal Golf Course, or upon any private or public golf course in the city, except pursuant to express permission of the person in charge of the management thereof. (Prior code §§ 6-3.26—6-3.30)

### **Article II. Park Permits**

#### **12.64.250 Statement of principles.**

All parks within the city are held in trust for the use of the public. Included within such use are public assembly, communication of thoughts between citizens and discussion of public questions. These uses of the city's parks are recognized as privileges, immunities, rights, and liberties belonging to all citizens, regardless of sex, race, religion, color, national origin, or political or philosophical persuasion. It is also recognized that the right to use the parks is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience and in consonance with peace and good order. (Prior code § 6-8.01)

**12.64.260 Definitions.**

The following words and phrases, whenever used in this article, shall be construed as defined in this section:

“Director” means the Director of Parks, Recreation and Cultural Services or his or her authorized representative.

“Musical or other entertainment” means and includes the playing of any musical instrument and the use of sound amplifying device.

“Parks” means and includes all grounds, roadways, avenues and parks of the city, or any part, portion or area thereof.

“Permit” means a permit for use of parks as provided for and defined in this article.

“Persons” means and includes persons, associations, partnerships, firms or corporations.

“Private event” means any event conducted in any city park consisting of twenty-five (25) or more patrons that is not open to the public, including but not limited to picnics, birthday parties, family, church and school events or related activities, and may include amplified or nonamplified sound.

“Special event” means any event that is open to the public, including but not limited to rallies, concerts, fundraisers, fairs, exhibits or related activities, and which is more specifically defined in Title 9, Chapter 9.52 of the Oakland Municipal Code. “Special event” permit requirements shall apply to park events, so that the permit process for special events in Chapter 9.52 applies to this section and is incorporated by reference herein. (Ord. 12131 § 1 (part), 1999; prior code § 6-8.02)

**12.64.270 Compliance required.**

No person shall enter, be or remain in any park of the city unless he or she complies with this article and other provisions of this code. (Prior code § 6-8.03)

**12.64.280 Permit required.**

No use of any park for a private or special event may be made without issuance of a permit therefor. All applications for use of any park must be accompanied by the fee prescribed in the master fee sched-

ule, signed or co-signed by an adult, which adult shall agree to be responsible for said exclusive use. No use permit will be granted, if, prior to the time the application was filed, the city has scheduled a city-sponsored event at the same time and place as the activity proposed in the application. (Ord. 12131 § 1 (part), 1999; prior code § 6-8.04)

**12.64.290 Private event park use application.**

Any person applying for a private event permit hereunder shall file an application for such permit with the PRCS Central Reservations Unit not less than fifteen (15) working days nor more than eleven (11) months prior to the proposed use of said park. The Director may waive the fifteen (15) working day period if applicant waives all appeal rights. (Ord. 12131 § 1 (part), 1999; prior code § 6-8.05)

**12.64.291 Park use permit for special events.**

Any person applying for a park use permit for a special event shall file an application for such permit with the PRCS Central Reservations Unit not less than ninety (90) days nor more than eleven (11) months prior to the proposed use of said park. The Director may waive the ninety (90) day period if the applicant waives all appeal rights.

In addition to applying for a park use permit, the applicant must apply for a special event permit with the Oakland Police Department for approval by the Chief of Police or his designee pursuant to the requirements enumerated in Chapter 9.52 of Title 9 of the Oakland Municipal Code. However, the Chief of Police, in consultation with the Director of Parks, Recreation and Cultural Services or his or her authorized representative, shall retain the authority to delegate the issuance of special event permits for certain routine events in city parks not likely to result in impacts on the public safety and welfare to the PRCS Central Reservations Unit.

Should the Chief of Police delegate the issuance of OPD special event permits to the Director of PRCS pursuant to this subsection, the Director shall cause PRCS to notify the Oakland Police Depart-

ment of the issuance of any such permit at least ten (10) working days before the event commences. (Ord. 12131 § 1 (part), 1999)

#### **12.64.300    Contents of park permit applications.**

In addition to other information required, applications for park use permits for a private or special event shall contain at the minimum the following:

- A. Name of each applicant, sponsoring organization and the person or persons who are in charge of or responsible for the proposed activity;
  - B. The business and residence address and telephone numbers of each person and entity named in subsection A of this section;
  - C. The park being applied for;
  - D. The starting time of the proposed activity;
  - E. The finishing time of the proposed activity;
  - F. The number of persons expected;
  - G. The nature of the proposed activity or activities including equipment and vehicles to be brought into the park, nature and duration of the use of such equipment, nature and duration of the use of any amplified sound, whether speech or music;
  - H. Estimated number of parking spaces required.
- (Ord. 12131 § 1 (part), 1999; prior code § 6-8.06)

#### **12.64.310    Action on application for permit.**

A. Park Use Permits for Private Events. The Director of PRCS shall grant or deny applications for park use permits for private events on or before fifteen (15) calendar days after the filing of the application unless the time for such granting or denial of the permit has been waived by the applicant in writing.

B. Applications for OPD Permits for Special Events. The Chief of Police or his designee shall grant or deny applications for special events in parks pursuant to Title 9, Chapter 9.52 of the Oakland Municipal Code. Nothing precludes the Chief from delegating to the Director of PRCS this authority pursuant to Section 12.64.291, in which case the Director shall approve, conditionally approve, or deny the application no later than fifteen (15) calendar days after the filing of a complete application.

The applicant shall be notified of any conditions of approval at the time the action on the application is taken. (Ord. 12131 § 1 (part), 1999; prior code § 6-8.07)

#### **12.64.320    Criteria for issuance of permit.**

An application for a park use permit for a private or special event should be granted unless any one or more of the following conditions apply:

- A. That a permit has been granted for the same park and on the same day and time for which the application in question pertains;
- B. That the applicant has made no provision for temporary toilet facilities as required in this article;
- C. That the applicant has made no provision for crowd control monitors as required in this article;
- D. That the applicant has made no provision for cleanup services as required in this article;
- E. That the applicant has refused to agree in writing to comply with the regulations for the use of parks as provided for in this code or has failed to provide a reasonable means of informing all persons participating in the proposed activity of the regulations;
- F. That the applicant has refused to execute the indemnification agreement provided for in this article;
- G. That the application was not filed in time, unless the Director waives the time requirement and applicant waives his or her right of appeal;
- H. That the applicant has not secured a charitable solicitation permit as provided for in Chapter 5.18 of this code, if such permit is required thereby for the proposed activity;
- I. That the proposed activity involves the sale of goods, wares, merchandise, foods, confections, refreshments, or other articles, and the permission of the Director has not been secured, as required by Section 12.64.080;
- J. That the applicant has not secured a certificate of insurance as provided for in this article if insurance is required for the proposed activity.
- K. For a park use permit for special event. That the applicant has not filed an application with the Police Department for a special event permit as

defined in Title 9, Chapter 9.52. (Ord. 12131 § 1 (part), 1999; prior code § 6-8.08)

#### **12.64.330 Right of appeal.**

For a permit application to hold a special event in a park, the reconsideration process as provided for in Title 9, Article 9.52.90 shall apply, whether the decision from which the appeal is taken is made by the Chief or by the Director of PRCS pursuant to Section 12.64.291.

An applicant whose application for a park use permit for a private event has been denied or any person claiming to be adversely affected by the issuance of a park use permit for a private event may appeal the decision within five working days of the decision. The appeal shall be heard before the Parks and Recreation Advisory Commission (PRAC) pursuant to the hearing and appeals process adopted by that body. The decision of the PRAC shall be final.

Upon receipt of such appeal, the Director shall set the appeal at the next available Park and Recreation Advisory Commission meeting. The Director shall give notice to the appellant and any known adverse parties, or their representatives, of the time and place of the hearing.

The appellant shall pay the fee established by the current city of Oakland master fee schedule. (Ord. 12131 § 1 (part), 1999; prior code § 6-8.09)

#### **12.64.340 Crowd control monitors.**

The Director may impose a requirement of one crowd control monitor per hundred (100) persons expected to attend the proposed activity. The applicant shall, within two days of the receipt of the Director's decision, supply to the Director a list of the proposed crowd control monitors, including their names, addresses and telephone numbers. The applicant may, at his or her option, provide police reserve personnel or duly licensed private patrol officers instead of crowd control monitors in the numbers approved by the Director. Crowd control monitors shall wear armbands and such other identification as the Director may require to prominently identify them as monitors. (Prior code § 6-8.10)

#### **12.64.350 Cleanup.**

Provision shall be made by the permittee for cleaning up and disposal outside the park of all litter, debris, bottles, cans, paper, or other such matter remaining after use of the park, pursuant to the permit. The Director of Parks and Recreation may require a monetary deposit to insure compliance with this section. Said deposit shall be refunded within five days after use of the park if it appears to the satisfaction of the Director that there has been compliance with this section. (Prior code § 6-8.11)

#### **12.64.360 Temporary toilet facilities.**

Provision shall be made for temporary or portable toilets at the ratio of one per every five hundred (500) persons over and above the number of toilets permanently located at the site. Such temporary or portable toilets shall be removed from the park within twenty-four (24) hours after the event for which the permit was granted. (Prior code § 6-8.12)

#### **12.64.370 Indemnification agreement.**

All persons to whom a use permit has been granted must agree in writing to indemnify and hold the city harmless for injury or damage caused by the activity sponsored by the permittee, and said permittee shall be liable to the city for any and all damage to parks, facilities and buildings owned by the city, which results from the activity of the permittee or is caused by any participant in said activity. (Prior code § 6-8.13)

#### **12.64.380 Certificate of insurance.**

A certificate of insurance naming the city, its council, agents and employees as additional insured may be required for private events when the proposed activity is likely to have an impact on park and/or city services and resources. If required, the certificate of insurance must be submitted to the PRCS Central Reservations Unit at least three weeks before date of the proposed activity. (Ord. 12131 § 1 (part), 1999)

#### **12.64.390 Misrepresentation of event.**

Any misrepresentation involved in renting facili-

ties or parks will result in immediate cancellation of the event and/or forfeiture of all fees paid. (Ord. 12131 § 1 (part), 1999)

**12.64.400 Public parks as drug free zones.**

Pursuant to California Health and Safety Code Section 11380.5(e), the City Council of the city of Oakland, California does designate as drug free zones, all public parks within its geographical boundaries. (Ord. 12118, 1999)

**12.64.410 Penalties for violation of park permit requirements.**

A. Any violation of this chapter may be charged as a civil penalty or an infraction, as provided for in Title 1 of the Oakland Municipal Code, except as specified in B of this section. 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.

B. It shall be a misdemeanor for the event sponsor or his or her designee to refuse to terminate an event for violation of event conditions, or for holding an event without benefit of permit. (Ord. 12131 § 1 (part), 1999)

