CITY OF OAKLAND

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OFFICE OF THE CITY ADMINISTRATOR
Claudia Cappio
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August 2, 2016

Sent via U.S. Mail and Electronic Mail

Prologis CCIG Oakland Global, LLC
Pier 1, Bay 1
San Francisco, CA 94111
Attn: Mr. Mark Hansen
Email: mhansen@prologis.com

Oakland Bulk and Oversized Terminal, LLC
The Rotunda Building
300 Frank H. Ogawa Plaza, Suite 340
Oakland, CA 94612
Attn: Mr. Phil Tagami
Email: tagami@californiagroup.com

Prologis CCIG Oakland Global, LLC
c/o California Capital & Investments, Inc.
The Rotunda Building
300 Frank H. Ogawa Plaza, Suite 340
Oakland, CA 94612
Attn: Mr. Phil Tagami
Email: tagami@californiagroup.com

Re: An Ordinance (1) Amending The Oakland Municipal Code To Prohibit The Storage And Handling Of Coal And Coke At Bulk Material Facilities Or Terminals Throughout The City Of Oakland And (2) Adopting California Environmental Quality Act (CEQA) Exemption Findings (Ordinance No.13385 C.M.S.)

Dear Messrs. Hansen and Tagami:

Per my previous letter of July 21, 2016, enclosed please find City Council Ordinance No.13385 C.M.S. Please contact me at (510) 238-6654 or ccappio@oaklandnet.com if you have any questions

Sincerely,

Claudia Cappio
Assistant City Administrator

cc:
Doug Cole, Army Base Project Manager
Darin Ranelletti, Bureau of Planning, Deputy Director
Heather Klein, Planner
Mark Wald, Oakland City Attorney's Office
David Smith, Stice & Block, LLP

Attachments: City Council Ordinance No. 13385 C.M.S.

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2016 JUL 20 PM 1:39

CORRECTED
APPROVED AS TO FORM AND LEGALITY

City Attorney

OAKLAND CITY COUNCIL

ORDINANCE NO. 13385 C.M.S.

Introduced by Mayor Schaaf and Councilmember Kalb

AN ORDINANCE (1) AMENDING THE OAKLAND MUNICIPAL CODE TO PROHIBIT THE STORAGE AND HANDLING OF COAL AND COKE AT BULK MATERIAL FACILITIES OR TERMINALS THROUGHOUT THE CITY OF OAKLAND AND (2) ADOPTING CALIFORNIA ENVIRONMENTAL QUALITY ACT EXEMPTION FINDINGS

WHEREAS, on June 17, 2014 the Oakland City Council, at a public meeting, adopted Resolution No. 85054 C.M.S. (A Resolution to Oppose Transportation of Hazardous Fossil Fuel Materials, including Crude Oil, Coal, and Petroleum Coke, Along California Waterways, Through Densely Populated Areas, Through the City of Oakland); and

WHEREAS, the developers of the West Gateway Area of the former Oakland Army Base are pursuing the development of a "Project" at the West Gateway "Project Site" (as those terms are defined in the Development Agreement By and Between City of Oakland and Prologis CCIG Oakland Global, LLC Regarding Property Commonly Known as "Gateway Development/Oakland Global") with, among other things, the Oakland Bulk Oversized Terminal ("Terminal"), as described in the Development Agreement, and are currently pursuing plans to ship, transport, store, load, unload, stockpile, transload and/or handle at the Project Site, including in and around the Terminal, and have disclosed plans to receive and/or ship coal and coke through the Terminal; and

WHEREAS, a duly noticed public hearing was held at a special meeting of the City Council on September 21, 2015, regarding types of coal and coke products that are transported, the public health and safety impacts, and other impacts, of the transportation, transloading, storage, handling and export of those products in and through the City of Oakland, the adequacy of existing regulations, and the City's ability to regulate the transportation and handling of such products; and

WHEREAS, additional written materials were submitted by interested parties; and

WHEREAS, a duly noticed public hearing was held at a special meeting of the City Council on May 9, 2016, regarding the health and safety impacts of fuel oils, gasoline and/or crude oil products, including without limitation the public health and/or safety impacts of transportation, transloading, storage, handling and/or export of fuel oil, gasoline, and crude oil products, the adequacy of existing regulations and the City's ability to regulate the transportation

and handling of such products; and

WHEREAS, additional written materials were submitted by interested parties, including materials relating to coal and coke; and

WHEREAS, the City undertook an independent evaluation of the evidence submitted during and after the aforementioned public hearings and meetings and reviewed other relevant evidence; and

WHEREAS, many communities in the City of Oakland, including without limitation West Oakland where the Terminal facility is proposed, and their residents are disadvantaged and disproportionately suffer health problems and bear the brunt of health-related impacts caused by industrial or other activities, as has been acknowledged by (1) the California Environmental Protection Agency, which using the California Communities Environmental Health Screening Tool (CalEnviroScreen), a tool that assesses all census tracts in California, has identified the community of West Oakland as a disadvantaged community disproportionately burdened by, and vulnerable to, multiple sources of pollution; and (2) the Bay Area Air Quality Management District ("BAAQMD") which designated West Oakland as a CARE ("Community Air Risk Evaluation") program community, i.e., one of the geographic areas within the Air District with high concentrations of air pollution and populations most vulnerable to health impacts from air pollutants (particularly toxic air contaminants (TACs) and fine particulate matter ($PM_{2.5}$)); and

WHEREAS, storing, loading, unloading, stockpiling, transloading and/or otherwise handling and/or managing, temporarily or permanently ("Storing or Handling") coal and coke, at facilities such as the Terminal which is proposed for the West Gateway Area of the former Oakland Army Base, and elsewhere in Oakland, are associated with and/or cause health and safety impacts in humans, including without limitation due to fugitive coal dust, which the American Lung Association considers to be a source of particulate matter that is dangerous to breathe, which the World Health Organization describes (including silica and asbestos) as responsible for most occupational lung diseases due to airborne particulate, which the United States Environmental Protection Agency ("U.S. EPA") has linked to significant health problems per the U.S. EPA's citation to numerous scientific studies, and which results in dangerous health and safety conditions to the nearby population, as well as workers and visitors in and near facilities such as the proposed Terminal; and

WHEREAS, Storing or Handling coal and coke negatively impact the environment, including because coal dust and leachates can pollute waterways, often with long-lasting impacts, and impact and contaminate sensitive habitat within the City, and which cause carbon dioxide emissions, which fuel climate change and are contrary to Oakland and California's climate change reduction goals, resulting in local climate change-related impacts to Oakland's residents and its already vulnerable populations; and

WHEREAS, based upon its independent evaluation of the evidence, the City has determined that pre-existing local, state and/or federal laws are inapplicable and/or insufficient to protect and promote the health, safety and/or general welfare of citizens, residents, workers, employers and/or visitors (hereafter called "Constituents"), including without limitation of the health, safety and/or general welfare of Constituents in the West Oakland neighborhoods, many

of who suffer disproportionately from the effects of nearby industrial activity (e.g., increased cancer and asthma rates), and who would be uniquely and adversely impacted by the Storing or Handling of coal and coke; and

WHEREAS, Article XI, Section 5 of the California Constitution provides that the City, as a home rule charter city, has the power to make and enforce all ordinances and regulations in respect to municipal affairs, and Article XI, Section 7, empowers the City to enact measures that protect and promote the health, safety, and/or welfare of its Constituents; and

WHEREAS, Section 106 of the Oakland City Charter provides that the City has the right and power to make and enforce all laws and regulations in respect to municipal affairs; and

WHEREAS, numerous policies enacted to support, protect and promote the health, safety and/or general welfare of Oakland's Constituents are contained in the Open Space, Conservation and Recreation Element, Public Safety Element and 1998 Land Use and Transportation Element ("LUTE") of the City's General Plan, as well as the Oakland Planning Code, Oakland Municipal Code, and Oakland's Energy and Climate Action Plan; and

WHEREAS, this Ordinance is supported by sufficient justifications and/or evidence, including for reasons stated herein and in the record, including the June 27, 2016 City Council Agenda Report, incorporated herein by reference, and meets the appropriate legal standards, including without limitation the City's police power, the Oakland City Charter, the Oakland Municipal and Planning Codes, and the City's General Plan and other land use plans/policies; and

WHEREAS, this Ordinance was considered at a duly noticed public hearing, during a special meeting of the City Council on June 27, 2016, where interested parties were given ample opportunity to participate in the public hearing by submittal of oral and/or written comments; and

WHEREAS, the public hearing was closed by the City Council on June 27, 2016; now, therefore

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

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

Section 2. The City Council, based upon its own independent review, consideration, and exercise of its independent judgment, hereby finds and determines, on the basis of substantial evidence in the entire record before the City, that this Ordinance is (1) not a Project under the California Environmental Quality Act ("CEQA") and is therefore exempt pursuant to CEQA Guidelines section 15378; and (2) exempt from CEQA pursuant to CEQA Guidelines sections 15307 (action to protect natural resources); 15308 (action to protect the environment); and/or 15061(b)(3) ("Common Sense" exemption, no reasonable possibility of a significant effect on the environment). Each of the foregoing provides a separate and independent basis for CEQA

compliance and, when viewed collectively, provides an overall basis for CEQA compliance.

Section 3. Chapter 8.60 is hereby added to the Oakland Municipal Code to read as follows:

Chapter 8.60 PROHIBITION ON THE STORING AND HANDLING OF COAL AND COKE

Article I – General Provisions
8.60.010 – Purpose.
8.60.020 – Findings.
8.60.030 – Definitions and Interpretation of Terms.
8.60.040 – Applicability; Prohibitions.

Article II – Miscellaneous
8.60.100 – Conflicting Provisions.
8.60.110 – Administrative Regulations.
8.60.120—Enforcement.

Article I – General Provisions

8.60.010 – Purpose.

The purpose of this chapter is to establish a citywide ban on the storage, loading, unloading, stockpiling, transloading and handling of Coal and Coke, as defined below, throughout the City of Oakland, by the Owner or Operator of a Coal or Coke Bulk Material Facility, as defined below, to protect and promote the health, safety and/or general welfare of its citizens, residents, workers, employers and/or visitors (hereafter called "Constituents") by eliminating any risk of release into the environment (including without limitation airborne particulate or release into the soil or water or onto persons) from storage, loading, unloading, stockpiling, transloading and handling of Coal and Coke and to ensure that the handling of such materials does not create a public nuisance or cause any adverse public health, safety and/or general welfare impacts (including with respect to property values, aesthetics, and economic interests). Notwithstanding anything to the contrary contained in this chapter, the purposes and intent of this chapter are **not** to regulate the transportation of Coal or Coke, for example, by train or marine vessel, including without limitation through the City of Oakland or to or from a Coal or Coke Bulk Material Facility; nor does this chapter actually regulate such. Rather, the purpose and intent of this chapter is to address the unique and peculiar health, safety and/or other impacts of Coal or Coke in Oakland, and specifically West Oakland.

8.60.020 – Findings.

A. This Ordinance serves the public interest and is necessary to protect and promote the health, safety, and/or welfare of the City of Oakland's Constituents, and is enacted pursuant to Article XI, Sections 5 and 7, of the California Constitution, Section 106 of the Charter of the City of Oakland, the City's General Plan, Oakland's Energy and Climate Action Plan, specific plans and other land use plans.

B. Specifically, the City Council finds and determines:

1) The transport and Storing or Handling of Coal or Coke in the City of Oakland, including without limitation to and from West Oakland, would have many public health and/or safety impacts, including without limitation the creation of conditions that would be substantially dangerous to the health and/or safety of Oakland's Constituents:

a. Characteristics of Coal and Coke pose many risks to public health and/or safety, including without limitation because Coal and Coke release fugitive dust, as particulate matter (PM_{10}) and fine particulate matter ($PM_{2.5}$), toxic and non-toxic, which negatively affects air quality and the health and/or safety of persons who breathe in such particulate matter and fine particulate matter (including without limitation heart and lung disease and lung cancer). Coal contains toxic heavy metals including mercury, arsenic, and lead, and exposure to these toxic heavy metals is linked to cancer and birth defects. Coal is highly combustible (including by spontaneous combustion), which poses risks to the health and/or safety of persons who are residing, working or playing nearby as well as to public safety personal who would respond to such incidents.

b. Many communities in the City of Oakland, including without limitation West Oakland, and their residents are disadvantaged and disproportionately suffer health problems (including without limitation elevated levels of asthma, premature and low-weight births, cardiovascular disease, increased levels of emergency and non-emergency hospital admissions, and other pollution- and non-pollution-related ailments) and bear the brunt of health-related impacts caused by industrial or other activities, which is a matter of common knowledge and documented in healthy studies, and has been recognized by regulatory agencies (including the California Environmental Protection Agency which has determined West Oakland to be a Disadvantaged Community area and the Bay Area Air Quality Management District has designated West Oakland as a CARE ("Community Air Risk Evaluation") program community, i.e., one of the geographic areas within the Air District with high concentrations of air pollution and populations most vulnerable to health impacts from air pollutants (particularly toxic air contaminants (TACs) and fine particulate matter ($PM_{2.5}$)). The American Lung Association considers coal dust a

source of particulate matter that is dangerous to breathe. The World Health Organization cites coal dust, including silica and asbestos, as responsible for most occupational lung diseases due to airborne particulate. Uses in and around facilities where Coal or Coke would be Stored or Handled include residences, schools, child care facilities, parks, and other locations at which vulnerable persons spend substantial amounts of time. The existing air quality of Oakland, including West Oakland, is poor, and in particular is currently in nonattainment for several state and federal ambient air quality standards, including ozone, particulate matter, and fine particular matter, and monitored levels have often exceeded state and federal ambient air quality standards. The Storage or Handling of Coal or Coke would cause additional exceedances of ambient air quality standards, and would create conditions substantially dangerous to the health and/or safety of persons in these communities for this and other reasons which are discussed further below.

c. The rail transport of Coal or Coke through the City, including without limitation to and from West Oakland, would have substantial public health and safety impacts to Constituents, including without limitation West Oakland, and would create conditions substantially dangerous to the health and/or safety of such persons. Reasons include without limitation that there are not sufficiently effective, safe means to prevent the release of fugitive coal dust during the rail transport of Coal or Coke (whether through use of dust suppressants (surfactants) or use of covered rail cars, and covered rail cars or application of a topping agent would not reduce the coal dust escaping from the bottom of the rail car during transport and deposited along the rail tracks or to adjacent properties to be resuspended into the ambient air and re-entrained over and over again). As to fugitive coal dust, for example, the best available means for preventing fugitive coal dust, whether by dust suppressant (surfactant) or covered rail cars (which have not been shown to be safer or more effective than dust suppressants and which are an unproven technology) would result in no more than 85% effectiveness (based upon railroad-furnished data that cannot be independently verified), which still would result in high amounts of fugitive coal dust through rail transport of Coal and Coke. No covers have been reported to be used on Coke-filled railcars. Furthermore, the overall emissions from a Coke or Coal Bulk Materials Facility are expected to exceed both the daily and annual PM_{10} and $PM_{2.5}$ City of Oakland California Environmental Quality Act (CEQA) Thresholds, which would be considered a significant unavoidable impact under CEQA and thus presumptively a substantially dangerous condition to health.

d. Storing or Handling of Coal or Coke would have substantial public health and safety impacts to Oakland Constituents, including without limitation West Oakland, and would create conditions substantially dangerous to the health and/or safety of such persons. Reasons include without limitation that, as discussed above, there are not sufficiently effective, safe means to

prevent the release of fugitive coal dust, or to prevent combustion (including spontaneous combustion) when Coal or Coke is delivered to and from, or stored at, rail-switching facilities or terminals. Contributions of particulates to local levels of total particulate matter, PM_{10} and $PM_{2.5}$, would cause additional exceedances of ambient air quality standards and cause conditions substantially dangerous to the health of the adjacent neighbors in disadvantaged communities, including without limitation West Oakland. Workers would be closest to the fugitive coal dust and respirable fine particulates during transport and staging of loaded cars for unloading and within the enclosed facilities. Further, Coal is prone to spontaneous combustion, due to controlled factors (e.g., management techniques) and uncontrollable factors (e.g., the qualities of the Coal, air temperatures), and the subsequent risks associated with fire are substantial. Coal fires have been well documented, including during rail transport, storage piles and at shipping facilities such as the proposed Terminal. Coal fires are often difficult to control when spontaneous combustion occurs, particularly within a Coal pile, and fire personnel need specialized equipment and training. Coal dust explosions more likely to occur in enclosed facilities. Firefighting personnel responding to a Coal fire could generate a dust cloud that leads to an explosion. Toxic air pollutants released by Coal fires would be similar to Coal-fired power plant emissions, but without treatment by the emission control systems, and both acute and chronic health impacts can be expected for persons in close proximity to a Coal fire including workers, emergency responders, and other adjacent Constituents. Emissions from Coal fires would include fine particulate matter, a wide variety of metals, especially mercury, toxic hydrocarbon/volatile organic compound species and small amounts of uranium.

e. The export of Coal from facilities at the City of Oakland, including in West Oakland, would lead to the burning of Coal overseas, where it is expected to be combusted in power plants. That would cause incremental increase of greenhouse gas ("GHG") emissions globally. This increase in GHG emissions would contribute incrementally to global climate change along with sea level rise and flooding that would be experienced locally in Oakland and which could disproportionally affect already vulnerable populations and significant City public-safety related infrastructure and utilities.

f. The export of Coal from facilities at the City of Oakland, including in West Oakland, would lead to the burning of Coal overseas, where it would be combusted in power plants. That would cause incremental increase of pollutants globally, which would be experienced locally in Oakland, contributing to the Bay Area's already high pollutant concentrations and further exceedances of the ambient air quality standards and exacerbating the health effects in adjacent communities.

2) The Storing or Handling of Coal or Coke in the City of Oakland, including without limitation to and from the West Oakland, would be detrimental to the general welfare of Oakland Constituents, for all the reasons stated in this Ordinance (including without limitation the above findings of health and safety impacts). Storing or Handling Coal and Coke also causes the following policy impacts: Exporting Coal to be burned in Asia and other regions increases emission of harmful air pollutants, including carbon dioxide emissions, which fuel climate change and violate Oakland and California's climate change reduction goals. The export of Coal interferes with the City's ability to address and mitigate impacts resulting from climate change. In addition, the rise of cleaner forms of energy such as natural gas, wind and solar, have contributed to a reduction of Coal production, closure of Coal plants, and the filing of bankruptcy of major Coal companies. Reliance of businesses in the City on Coal or Coke industry is neither in the City's environmental nor economic interests, and reliance on Coal exports for the facilities would not constitute sound economic development. Coal dust build-up may destabilize railroad tracks and degrade roadbeds, resulting in an increased financial risk for Oakland taxpayers to reconstruct or maintain these major improvements. There are significant financial risks to the City with Coke or Coal Bulk Materials Facilities, as a number of them have shuttered in recent years, leaving the taxpayers to pay the closure and/or clean-up costs.

3) The Storing or Handling of Coal and Coke in the City of Oakland, including without limitation to and from the West Oakland, would have many detrimental impacts to the existing, natural environment, including without limitation because the burning of Coal and Coke, including the potential for Coal combustion and the application of topping agents could result in the release of toxic air contaminants such as mercury, lead and other trace metals into the environment polluting waterways, soil and sensitive habitat within the City. Coal contains toxic heavy metals and Polycyclic Aromatic Hydrocarbons ("PAHs"), at levels that are harmful to fish and other wildlife.

C. Each individual finding presented in Sections A and B above constitutes a separate and independently sufficient basis to adopt the Ordinance. The City Council finds and determines that each of the findings in Sections A and B above is separately and independently adopted and applicable and should a court of competent jurisdiction determine than any particular finding(s) is or are insufficient to support the adoption of this Ordinance, such determination shall have no effect on the validity of the remaining findings. Moreover, when viewed collectively, the above findings constitute an overall basis to support adoption of the Ordinance.

8.60.030 – Definitions and Interpretation of Terms.

A. As used in this chapter, the following terms have the following meanings, and to the extent a Planning Code and/or Municipal Code Chapter and/or Section is referenced herein, such reference shall also include future amendments, if any:

1) ASTM means the American Society for Testing and Materials.

2) Coal means a solid, brittle, carbonaceous rock classified as anthracite, bituminous, subbituminous, or lignite by ASTM Designation D388-77.

3) Coke means a solid carbonaceous material derived from the distillation of Coal (including Metallurgical Coke) or from oil refinery coker units or other cracking processes (including Petroleum Coke and/or Petcoke).

4) Coal or Coke Bulk Material Facility means an existing or proposed source, site, or facility, including all contiguous land, structures, other appurtenances, and improvements thereon, or any part thereof, where Coal or Coke is or may be Stored or Handled.

5) Constituents or Oakland Constituent means the citizens, residents, workers, employers and/or visitors of the City of Oakland.

6) Conveyor Shuttle or Traveler or Tripper means a device supporting a conveyor that can travel forwards or backwards along a feed conveyor as needed to allow the conveyor to load material onto a selected area, including without limitation of a ship, rail car, pile or pit.

7) Fugitive Dust means any solid particulate matter that becomes airborne by natural or human-made activities, excluding engine combustion exhaust and particulate matter emitted from a properly permitted exhaust stack equipped with a pollution control device.

8) Metallurgical Coke or Metcoke means a carbon material resulting from the manufactured purification of multifarious blends of bituminous Coal.

9) Owner or Operator means any person who has legal title to any Coal or Coke Bulk Material Facility, who has charge, care or control of any Coal or Coke Bulk Material Facility, who is in possession of any Coal or Coke Bulk Material Facility or any part thereof, and/or who is entitled to control or direct the management of any Coal or Coke Bulk Material Facility.

10) Petroleum Coke or Petcoke means a solid carbonaceous residue produced from a coker after cracking and distillation from petroleum refining operations, including such residues produced by petroleum upgraders in addition to petroleum refining.

11) Pile or Stockpile means any amount of Coal or Coke which attains a height of three feet or more, or a total surface area of 150 square feet or more (whether in a single pile or two or more piles), including without limitation covered and uncovered piles, piles located above ground, underground or within containers.

12) Store or Handle, or Storing or Handling, or Storage or Handling means to store, load, unload, stockpile, transload or otherwise handle and/or manage, temporarily or permanently, physical material including without limitation Coal and Coke.

13) Telescoping Loading Chute means a length adjustable chute which completely encloses the material during loading or unloading operations.

14) Transfer Point means the location at or within a facility where material being moved, carried, or conveyed is dropped or deposited.

15) Transloading means transferring Coal or Coke from one mode of transportation (including without limitation a railcar, truck or ship) to another (including without limitation a railcar, truck or ship) or transferring goods from one container (including without limitation an import container) to another container (including without limitation a domestic container).

B. Interpretation of Terms. References to Coal and Coke shall be interpreted to mean Coal and/or Coke. References to Owner or Operator of a Coal or Coke Bulk Material Facility shall be interpreted to mean an Owner and/or Operator of such facility. References to Store or Handle Coal and Coke shall be interpreted to mean Store or Handle Coal and/or Coke.

8.60.040 – Applicability, Prohibitions.

A. The regulations, requirements and provisions of this chapter shall apply to any Owner or Operator of a Coal or Coke Bulk Material Facility, and to any other person who Stores or Handles Coal and Coke at a Coal or Coke Bulk Material Facility, unless exempt or excepted from this chapter.

B. An Owner or Operator of a Coal or Coke Bulk Material Facility shall not do any of the following at a Coal or Coke Bulk Material Facility:

1. Allow or maintain any Pile of Coal or Coke;
2. Operate any Telescoping Loading Chute for the transport of Coal or Coke.
3. Operate any Conveyor Shuttle or Traveler or Tripper for the transport of Coal or Coke or in any manner which creates a Transfer Point on site.
4. Load, unload, transload or transfer any Coal or Coke between any mode of transportation, including without limitation between or among a motor vehicle (e.g., a truck), ship or train.
5. Otherwise Store or Handle any Coal or Coke.

C. Exemptions. The following are not included within the definition of Coal or Coke Bulk Material Facility: (i) non-commercial facilities (e.g., educational facilities or residential property on which persons may Store or Handle small amounts of Coal or Coke for personal, scientific, recreational or incidental use), and (ii) on-site manufacturing facilities where all of the Coal or Coke is consumed on-site at that facility's location and utilized on-site as an integral component in a production process, and which are operated pursuant to, and consistent with, permits granted by the Bay Area Air Quality Management District.

D. Exception, Procedure.

1. Any person (including any entity) who contends application of this Ordinance to him or her would constitute an uncompensated taking of property (in violation of the Fifth and Fourteenth Amendments of the U.S. Constitution or Article 1, Section 19, of the California Constitution) may petition the City Administrator to be excepted from the application of the Ordinance.

2. Petitions must be on the form provided by the Planning Bureau of the Planning and Building Department ("Department") and submitted to the Department to the attention of the Planning Director. Failure to submit such a Petition will preclude such person from challenging this chapter in court. The Petition shall identify the name and address of the applicant and property owner, the affected application number, and shall state specifically and completely how this chapter applied to him or her would constitute an uncompensated taking of property (in violation of the Fifth and Fourteenth Amendments of the U.S. Constitution or Article 1, Section 19, of the California Constitution), and shall include payment of fees in the same amount as specified in the City's Master Fee Schedule for appeals of zoning determinations to the City Planning Commission. Failure to raise each and every issue and provide appropriate supporting evidence will constitute waiver of that issue and be grounds for denial of the Petition.

3. The Petition may be granted only if the City Administrator finds, based upon substantial evidence, that both (a) the application of any aspect of this Ordinance would constitute an unconstitutional taking of property, and (b) the exception will allow additional or continued land uses only to the minimum extent necessary to avoid such a taking. If the Petition is granted, the City may impose reasonable conditions on the project.

4. The City Administrator, or designee, shall mail to the applicant a written determination accepting or rejecting the Petition.

5. If any interested party seeks to challenge the written determination of the City Administrator, he or she must appeal to the City Council and such appeal must be filed within ten (10) calendar days of the date from which the City Administrator's written determination was issued, by 4:00 p.m. Appeals must be on the form provided by the Department and submitted to the Department to the attention of the Planning Director. The appeal must state specifically wherein it is claimed there was error or abuse of discretion by the City Administrator and/or wherein the decision is not supported by substantial evidence. The appeal also must include payment of fees in the same amount as specified in the City's Master Fee Schedule for zoning appeals to the City Council of decisions by the City Planning Commission.

6. Failure to make a timely appeal will preclude any interested person from challenging the City's decision in court. The appeal itself must raise each and every issue that is contested, along with all arguments and evidence in the record

which support the basis for the appeal. Failure to do so will preclude any interested person from raising such issues during the appeal and/or in court. However, the appeal will be limited to issues and/or evidence presented in the Petition to the City Administrator.

7. The City Council will conduct a public hearing and render a final administrative decision on the appeal via a resolution. The Petition may be granted only if the City Council finds, based upon substantial evidence, that both (1) the application of any aspect of this Ordinance would constitute an unconstitutional taking of property, and (2) the exception will allow additional or continued land uses only to the minimum extent necessary to avoid such a taking. If the Petition is granted, the City may impose reasonable conditions on the project.

Article II – Miscellaneous

8.60.100 – Conflicting Provisions.

Where a conflict exists between the requirements in this chapter and applicable requirements contained in other chapters of this Code and/or the Planning Code, the applicable requirements of this chapter shall prevail.

8.60.110 – Administrative Regulations.

The City Administrator is hereby authorized to adopt rules and regulations consistent with this chapter as needed to implement this chapter, subject to the review and approval of the Office of the City Attorney, and to develop all related forms and/or other materials and take other steps as needed to implement this chapter, and make such interpretations of this chapter as he or she may consider necessary to achieve the purposes of this chapter. Within 60 days of the adoption by the City Administrator of any rules and regulations or written interpretation implementing this chapter, the City Administrator shall submit those rules and regulations or written interpretation to the City Council, for informational purposes.

8.60.120 – Enforcement.

A. Failure to comply with any of the provisions of this chapter is declared to be prima facie evidence of an existing major violation and shall be abated by the City Administrator in accordance with the provisions of this chapter. Any person in violation will be subject to civil penalties, civil action and/or other legal remedies.

B. If an Owner or Operator fails to comply with any provisions of this chapter, the City may take any of the following actions:

1. Withhold issuance of any planning and/or building-related permits;
2. Record a Special Assessment or other lien or liens against the real property;
3. Revoke or suspend the temporary certificate of occupancy and/or certificate of occupancy and/or planning-related permits;

4. Assess civil penalties against an Owner or Operator who fails to comply with this chapter, pursuant to Chapter 1.08 of this Code, and/or enforce any violation as a misdemeanor or by administrative citation per Chapters 1.12 or 1.28 of this Code; and/or
5. Take any other action necessary and appropriate to abate the violation.

Violations of this chapter are considered to be "Major" pursuant to Section 1.08.040D of this Code. The daily civil penalties described in subsection (4) above shall continue until the violations are cured. Civil penalties authorized in this chapter are in addition to any other administrative or legal remedy which may be pursued by the City to address violations identified in this chapter.

Section 4. The record before this Council relating to this Ordinance and supporting the findings made herein includes, without limitation, the following:

1. All final staff reports, and other final documentation and information produced by or on behalf of the City, including without limitation supporting technical studies and all related/supporting final materials, and all final notices relating to aforementioned public hearings and meetings;
2. All oral and written evidence received by the City regarding the subject matter of this Ordinance through the close of the public hearing on June 27, 2016, and other such evidence and other information regarding the subject matter of this Ordinance which is in the public domain, no matter when or where such evidence or other information became public; and
3. All matters of common knowledge and all official enactments and acts of the City, such as (a) the City's General Plan; (b) the Oakland Municipal Code and Planning Code; (c) other applicable City policies and regulations; and (d) all applicable state and federal laws, rules and regulations.

The custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are respectively: (a) Planning and Building Department –Bureau of Planning, 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, California; and (b) Office of the City Clerk, One Frank H. Ogawa Plaza, 1st Floor, Oakland California.

Section 5. The provisions of this Ordinance are severable. If a court of competent jurisdiction determines that any word, phrase, clause, sentence, paragraph, subsection, section, chapter or other provision (collectively called "Part") is invalid, or that the application of any Part of this Ordinance to any person or circumstance is invalid, such decision shall not affect the validity of the remaining Parts of this Ordinance. The City Council declares that it would have adopted this Ordinance irrespective of the invalidity of any Part of this Ordinance or its application to such persons or circumstances who have been expressly excluded from its coverage.

Section 6. Pursuant to Oakland City Charter section 216, this Ordinance shall take effect immediately after final adoption if it receives at least six (6) affirmative votes; otherwise, it will take effect seven days after final adoption.

Section 7. This Ordinance is enacted to serve the public interest and is necessary to protect and promote the health, safety, and/or welfare of Oakland's Constituents and is enacted pursuant to Article XI, Sections 5 and 7 of the California Constitution, Section 106 of the Oakland City Charter and the City's home rule powers, and the City's General Plan, and other land use plans.

Section 8. The City Council hereby authorizes the City Administrator or designee to make non-substantive, technical conforming changes (essentially correction of typographical and clerical errors), including omnibus cross-referencing conforming changes throughout the Oakland Municipal and Planning Codes, prior to formal publication of these amendments in the Oakland Municipal Code.

Section 9. Nothing in this Ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

Section 10. The Environmental Review Officer, or designee, is directed to cause to be filed a Notice of Exemption from the California Environmental Quality Act with the appropriate agencies.

IN COUNCIL, OAKLAND, CALIFORNIA, JUL 1 9 2016

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID, AND PRESIDENT GIBSON MCELHANEY - 8

NOES- 0

ABSENT- 0

ABSTENTION- 0

Introduction Date

JUN 2 7 2016

ATTEST: LaTonda Simmons

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

DATE OF ATTESTATION: July 27, 2016

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