

ORDINANCE NO. 11-23

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ORANGE ADDING CHAPTER 5.53 TO TITLE 5 OF THE ORANGE MUNICIPAL CODE (BUSINESS TAXES AND REGULATIONS) ESTABLISHING REGULATIONS FOR MOBILE VENDING VEHICLES ON PUBLIC AND PRIVATE PROPERTY

WHEREAS, California Constitution, Article XI, Section 7, authorizes the City of Orange (“City”) to adopt and enforce local police, sanitary, and other ordinances and regulations that are not in conflict with general laws; and

WHEREAS, the Legislature of the State of California, in adopting section 22455 of the California Vehicle Code and 114315(a) of the California Health & Safety Code authorizes the City to adopt regulations to ensure the public safety relating to the type of vending, and the time, place and manner of vending; and

WHEREAS, mobile vending businesses such as those from which merchandise and foods are offered for purposes of retail sale while parked at the curb or on public streets pose traffic hazards and special dangers to the public safety and welfare of children and residents in the City; and

WHEREAS, the City Council hereby declares and finds that:

1. Mobile vending vehicles that are parked and provide services to customers on streets where the speed limit is 35 mph or greater endanger public safety as drivers may have to perform quick maneuvers to avoid patrons on foot or cars slowing down to avail themselves of the mobile vending vehicles, and these conditions can increase congestion and endanger both motorists and the food trucks’ patrons.
2. Mobile vending businesses create litter and noise in residential neighborhoods and commercial corridors. If they are operated on during the hours of rest, they can disturb the quiet enjoyment of residential neighborhoods.
3. Mobile vending businesses, which includes those selling food, dry goods and ice cream, attract attention in residential areas and cause residents to congregate around vehicles, often in the street, and frequently blocking or obstructing the public sidewalks.
4. Mobile vending businesses are often operated by one person who is not capable of controlling crowds, including children who may dart in and out of traffic in order to gain access to the mobile vending business. This is a particular problem near schools, parks, and recreational facilities.

5. The act of looking for prospective buyers while operating a food vending vehicle may make the operator less attentive to pedestrian and vehicular traffic. When done on public roadways, this poses obvious traffic and safety risks to the public, which the City seeks to prevent.
6. Mobile vendors usually have box like trucks that create line of sight problems for motorists if they are parked within 100 feet of an intersection.
7. Using horns and whistles and other attention-getting sounds, mobile vending businesses can cause noise pollution in residential areas.
8. The area around mobile vending businesses is often strewn with wrappings and discarded paper products.
9. The sound of commercial activity during the hours of rest can disturb the quiet enjoyment of residential neighborhoods.
10. In order to operate safely within the City, mobile food vendors must obtain a health permit from the Orange County Health Care Agency; and

WHEREAS, it is the purpose and intent of the City Council in enacting this Ordinance to restrict the time, place and manner for vehicle vending in order to protect the public safety in accordance with California Vehicle Code section 22455, and to provide persons engaged in mobile vending businesses with clear and concise regulations to prevent and avoid such public safety hazards and to protect the physical environment, including aesthetics, and the quiet enjoyment of residential neighborhoods and commercial corridors.

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

SECTION I:

The Ordinance is not a “project” subject to the provisions of the California Environmental Quality Act (“CEQA”) per State CEQA Guidelines Section 15378 because it involves an organizational and administrative activity of the City of Orange that will not result in direct or indirect physical changes in the environment.

SECTION II:

The recitals and findings contained herein are true and correct and incorporated herein.

SECTION III:

Chapter 5.53 (Business Taxes and Regulations – Mobile Vending Vehicle Program) is hereby added to the Orange Municipal Code to read as follows:

Chapter 5.53 MOBILE VENDING VEHICLE PROGRAM

- 5.53.010 Purpose.**
- 5.53.020 Definitions.**
- 5.53.030 Permit Required.**
- 5.53.040 Exemptions.**
- 5.53.050 Applicability of Permit Requirement to Existing Businesses.**
- 5.53.060 Application for Mobile Vending Vehicle Permit.**
- 5.53.070 Investigation and Findings for Mobile Vending Vehicle Permit.**
- 5.53.080 Denial of Mobile Vending Vehicle Permit.**
- 5.53.090 Permit Not Transferable.**
- 5.53.100 Term of Permit and Renewal.**
- 5.53.110 Operators of Mobile Vending Vehicles.**
- 5.53.120 Appeals of Denial or Revocation of Mobile Vending Vehicle Permit.**
- 5.53.130 Conditions and Restrictions Imposed on Permit: Public Safety Justification.**
- 5.53.140 Mobile Vending Operational Regulations.**
- 5.53.150 Prohibited Conduct and Activities for Mobile Vendors.**
- 5.53.160 Exemption Related to City Parks.**
- 5.53.170 Mobile Food Vehicle Vending at Active Construction Sites.**
- 5.53.180 Private Property Use by Mobile Vendors.**
- 5.53.190 Enforcement.**

5.53.010 Purpose.

It is the purpose and intent of the City Council in establishing a Mobile Vending Vehicle Program to eliminate traffic hazards and special dangers to the public safety, to protect the physical environment, including aesthetics and the quiet enjoyment of residential neighborhoods and commercial corridors, and to provide persons engaged in mobile vending businesses with clear and concise regulations to prevent and avoid such public safety hazards and detrimental effects.

5.53.020 Definitions.

As used in this chapter, the following terms and phrases shall have the meaning ascribed to them in this chapter, unless the context in which they are used clearly requires otherwise. If a term or phrase is not defined in this chapter, or elsewhere in this code, the most common dictionary definition is presumed to be correct.

“Cannabis” means the substances defined in Section 5.89.010 of this code or any successor section.

“City” means the City of Orange.

“Certified Farmer’s Market” or “farmer’s market” means a location operated in accordance with Chapter 10.5 (commencing with Section 47000) of Division 17 of the Food and Agricultural

Code and any regulations adopted pursuant to that chapter, or any successor chapter.

“Civic Center” means the buildings, facilities, and parking lots or areas including City Hall location at 300 East Chapman Avenue, Orange, California, or at such other place as may be designated by the Council, fixed as the meeting place for all official meetings of the Council.

“Concessionaire” means the holder of an exclusive agreement with the City for the sale of food and/or merchandise in a City-owned park.

“Director” means the Director of Community Development, or designated representative.

“Emergency vehicle access” means the roadway, path, or other surface that provides police or fire vehicular access from the dispatched point of origin to a facility, building, parcel, park, or portion thereof. Emergency vehicle access includes, but is not limited to, fire lanes, public and private streets, parking lot lanes, access roadways, trails, and walkways.

“Fire station” means any facility where fire engines and other equipment of the Orange Fire Department are housed.

“Food” means any type of human edible substance, including any food product or beverage as provided in Health and Safety Code Section 113781 or any successor section.

“Goods” means items, personal property, merchandise, or any other similar item that is generally sold, including food and beverages.

“Major transit stop” means the portion of a site designated as the passenger loading area that contains any of the following: an existing rail transit station, a bus or rail transit service, or the intersection of two or more major bus routes with a service interval of 15 minutes or less during the morning and afternoon peak commute periods.

“Merchandise” means any goods or item(s) that can be sold and immediately obtained from a mobile vendor, which is not considered food. Items for rent shall not be considered merchandise. Merchandise does not include services.

“Mobile food vehicle” means any vehicle, as that term is defined in the California Vehicle Code, which is equipped or primarily used for retail sales of produce and/or prepared, prepackaged, or unprepared, unpackaged food or foodstuffs of any kind, on any public street, alley or highway or private street within the City. The inventory of these vehicles is not necessarily limited to edible items and may include non-food sundries.

“Mobile vendor activities” or “mobile vending activities” means actions that qualify a person as a mobile vendor or actions done in anticipation of becoming a mobile vendor such as,

but not limited to, installation, placement, or maintenance of any mobile vending vehicle on public or private property.

“Mobile vendor” means any person in charge of or driving any motorized mobile vending vehicle requiring a valid state driver license to operate, either as agent, employee, or otherwise under the direction of the owner.

“Mobile vending vehicle permit” or “permit” means a permit established by this chapter that has been issued to an operator engaging in mobile vending activity in the City.

“Mobile vending vehicle” means any motorized vehicle as defined in the California Vehicle Code and registered with the California Department of Motor Vehicles, including but not limited to ice cream trucks, grocery trucks, food trucks, catering trucks, hot trucks, chef trucks, lunch trucks, wagons, food trailers, or any other fully enclosed vehicle or mobile food facility from which fruits, vegetables, merchandise, goods, beverages, prepackaged food or all foods are prepared, cooked and stored inside the vehicle, which are sold, displayed, solicited, or offered for sale or bartered or exchanged, on any portion of any public street within the City or on private property with permission of the property owner.

"Operator" means any person or entity who:

- A. Owns, controls, manages, and/or leases a mobile vending vehicle; or
- B. Contracts with a person(s) to drive, operate, prepare food and/or vend from a mobile vending vehicle; or
- C. Drives, operates, vends and/or prepares food on or from a mobile vending vehicle.

“Owner” means any person having proprietary control of or right to proprietary control of any mobile vending vehicle.

“Park” means any area dedicated or established as a public park owned or operated by the City, including without limitation active and passive parks.

“Pathway” or “pedestrian pathway” means a paved or improved path, or walkway used primarily for pedestrian travel, other than a sidewalk. Pathway or pedestrian pathway does not mean the grassy areas of parks.

“Permitted event” means any event that has a special event permit, park use permit, or lake use permit, including but not limited to farmer’s markets, street fairs, races, and private events.

“Person” means one or more natural persons, groups, businesses, owner, business trusts, companies, corporations, joint ventures, joint stock companies, partnerships, entities, associations, clubs, or organizations composed of two or more individuals (or the manager, lessee, agent,

servant, officer, or employee of any of them), whether engaged in business, nonprofit or any other activity.

“Police station” means any facility where police vehicles and other equipment of the Orange Police Department are housed.

“Private property” means all property that is not public property.

“Public property” means all property owned or controlled by the City, including, but not limited to, alleys, parks, pathways, streets, parking lots, sidewalks, and trails.

“Public right-of-way” means a public easement for streets, alleys, or other uses, other than a sidewalk.

“Residential” means any area zoned exclusively as residential in the zoning code, including without limitation R1-5, R1-6, R1-7, R1-8, R1-10, R1-12, R1-15, R1-20, R1-40, R1-R, R2-6, R2-7, R2-8, R-3, R-4, MH, and any Historic District Zone.

“Restocking” means the transfer of food, goods, or merchandise to a food vending vehicle from any other person or vehicle and includes, but is not limited to, loading and delivery of food, goods, and merchandise.

“School” means any public or private school in which instruction is given in any or all grades, including preschool through grade 12.

“Services” means activities involving the performance of work for others or the provision of intangible items that cannot be returned once they are provided. Examples include, but are not limited to, hair braiding, face painting, massage, yoga, fortune telling, tattooing, and dog training.

“Sidewalk” means a public paved or hardscape sidewalk, parkway, pedestrian path, walkway, or other public right-of-way specifically designed for the exclusive use of pedestrian travel.

“Street or highway” means a public or private vehicular right-of-way other than an alley or private drive.

“Swap meet” means a location operated in accordance with Article 6 (commencing with Section 21660) of Chapter 9 of Division 8 of the Business and Professions Code, and any regulations adopted pursuant to that chapter, or any successor chapter.

“Temporary special permit” means a permit issued by the City for the temporary use of, or encroachment on, the sidewalk or other public property, including, but not limited to, an encroachment permit, special event permit, or temporary event permit, for purposes including, but not limited to, farmer’s markets, swap meets, filming, fireworks shows, parades, athletic events, public assemblies, carnivals, fairs, walks, runs and marathons, festivals, shows, seasonal or holiday events and outdoor concerts or performances.

“Trail” means a paved pathway, which may consist of decomposed granite, designed to be used primarily by bicyclists, horses and other modes of transportation including Class 1 (off street) trails and riding and hiking trails as denoted in the General Plan other than primarily for pedestrian travel.

“Vend” or “vending” means soliciting, displaying, or offering produce, prepared or unprepared food, prepackaged food and/or non-food sundries of any kind for sale or barter or exchange from a mobile vending vehicle on a public or private street, alley, highway, or public place within the city. “Vend” or “vending” includes the movement or standing of a mobile vending vehicle for the purpose of searching for, obtaining and/or soliciting retail sales or produce, prepared food, prepackaged food, or non-food sundries, including, but not limited to, goods, wares, or merchandise. “Vend” and “vending” do not include the offering of services.

5.53.030 Permit Required.

No person, either as owner, operator, agent, or any other person, shall engage, operate, conduct, maintain or advertise as a mobile vendor within the City without first applying for and receiving a City business license from the Finance Department in accordance with Chapter 5.06 and a Mobile Vending Vehicle Permit from the Community Development Department in accordance with this chapter.

5.53.040 Exemptions.

A. This chapter shall not apply to persons delivering goods, wares, merchandise, groceries, or prepared foods upon order of, or by agreement with, a customer from a fixed store, restaurant or other fixed place of business or distribution or warehouse.

B. This chapter shall not apply to mobile vendors participating in farmer’s markets, street fairs, swap meets, or any other activity or permitted events authorized by a temporary special permit or as a sidewalk vendor holding a valid Sidewalk Vending Permit pursuant to Chapter 5.54.

5.53.050 Applicability of Permit Requirement to Existing Businesses.

The provisions of this chapter, including the permit requirement, shall be applicable to all persons and businesses described herein whether the activities were established before or after the effective date of this ordinance. All such persons and businesses shall have 30 days from the effective date of this ordinance to file a completed application for a Mobile Vending Vehicle Permit as required by this chapter. All other regulations herein shall apply on the effective date of the ordinance.

5.53.060 Application for Mobile Vending Vehicle Permit.

A. Every person, prior to engaging in, conducting, operating, maintaining, advertising, or carrying on the business as a mobile vendor shall file an application with the Community Development Department on a City-approved form. Such application shall be accompanied by a

non-refundable permit application fee in an amount established by resolution of the City Council, and shall contain, at a minimum, the following information:

1. The legal name, date of birth, current mailing address and telephone number of the operator who will be solely responsible for the Mobile Vending Vehicle Permit regardless of that person being employed or engaged by another individual or a business or using a mobile vending vehicle owned by another individual or a business. The operator must be at least 18 years of age and have a valid California driver license.

2. If the operator is an agent of an individual, company, partnership, corporation, or other entity, the name, current telephone, email, and business address of the principal.

3. A copy of the operator's government-issued photo identification, California driver license or identification number, social security card, individual taxpayer identification number, or municipal identification number, which shall not be available to the public and shall not be disclosed except as required to administer the permit or comply with a state law or state or federal court order.

4. The legal name, date of birth, current mailing address and telephone number of all person(s) who will be employed by the operator who will work as a mobile vendor.

5. A copy of any employee's government-issued photo identification, California driver license or identification number, social security card, individual taxpayer identification number, or municipal identification number, which shall not be available to the public and shall not be disclosed except as required to administer the permit or comply with a state law or state or federal court order.

6. Whether the operator intends to vend food, merchandise, or both.

7. If the mobile vendor is selling food, a description of the type of food to be sold, and whether such foods are prepared onsite or are prepackaged offsite.

8. If the mobile vendor is selling merchandise, a description of the merchandise to be sold.

9. The hours of operation per day and the day(s) per week which the operator proposes for mobile vending activities.

10. A description of the general or specific location, address, map, or drawing of the area(s)/route which the operator proposes for the mobile vending vehicle.

11. Vehicle make, model, year, body type, license plate number, VIN, and proof of current vehicle registration containing the vehicle ownership.

12. A description of the logo, color scheme, insignia, and any other distinguishing characteristics of the operator's mobile vending vehicle along with attached color photographs showing all sides of the vehicle.

13. A maintenance plan that includes litter pickup and food waste disposal in the vicinity of the mobile vending location.

14. If the operator proposes operating a mobile food vehicle, a certification of completion of a food handler course and proof of all required approvals from the Orange County Health Care Agency Environmental Health Division including a copy of the operator's current and valid Orange County Food Facility Health Permit.

15. A copy of a current and valid business license issued pursuant to Chapter 5.06.

16. A copy of a current and valid vehicle insurance policy as required by California law, in the amount set forth in subsection 20, below, which shall be maintained during the pendency of the mobile vendor's permit.

17. A copy of a current and valid California Department of Tax and Fee Administration seller's permit issued to the operator, which shall be maintained during the pendency of the mobile vendor's permit.

18. Submittal of two (2) high resolution color passport photos of the operator and its employee(s), if applicable, taken within 60 days of the application filing. The photos shall be as follows:

- a. 2 x 2 inches (51 x 51 mm);
- b. Head must be between 1 - 1 3/8 inches (25 - 35 mm) from the bottom of the chin to the top of the head and showing the shoulder;
- c. Printed on matte or glossy quality paper;
- d. Not digitally changed and not blurry, grainy, or pixelated.

19. A list of any convictions of the operator and its employee(s), if applicable, of any and all felony or misdemeanor offenses for the 5 years preceding the date of the application.

20. The operator shall maintain and provide proof of comprehensive general liability insurance with minimum policy limits of one million dollars (\$1,000,000) per occurrence, combined single limit coverage, and one million dollars (\$1,000,000) in the aggregate against any injury, death, loss, or damage as a result of wrongful or negligent acts or omissions by the operator. Such insurance shall name as additional insured the City, its officers, and employees, and shall further provide that the policy shall not be terminated, reduced, or cancelled without 30 days' advance written notice to the City.

21. An acknowledgment that the operator will comply with all other generally applicable local, county, state, and federal laws.

22. Certification by the operator, business owner and employees (if applicable), under penalty of perjury, that the information contained in the application is true to the best of their knowledge and belief.

23. An agreement by the operator to defend, indemnify, release and hold harmless the City, its City Council, boards, commissions, officers and employees from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorneys' fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to the permit or the vendor's mobile vending activities. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, or proceeding whether incurred by the permittee or City.

24. An acknowledgement that the operator's use of public property is at their own risk and that the City does not take any steps to ensure public property is safe or conducive to mobile vending activities.

25. Any other reasonable information regarding the time, place, and manner of the proposed mobile vending activities.

B. The operator and its employees, if applicable, shall also submit a complete set of fingerprints to the Chief of the Orange Police Department or designee, in a manner and form approved by the Chief of Police. The operator and its employees shall pay for any fees for the fingerprints. Pursuant to California Penal Code Sections 11105 and 13300, the City Council authorizes the Chief of Police to obtain such information as it relates to disqualifying convictions or conduct related to the crimes or offenses described in this chapter.

C. The operator must immediately notify the City in writing of any changes to the information provided in the application or this chapter after the issuance of a Mobile Vending Vehicle Permit. A Mobile Vending Vehicle Permit Change of Information Fee shall be assessed against any operator who has been issued a Mobile Vending Vehicle Permit and changes any information as provided in the application or this chapter. Said fee shall be as established by resolution of the City Council.

D. Payment of an application permit fee and renewal permit fees. Each application for a Mobile Vending Vehicle Permit shall be accompanied by an application permit fee or renewal permit fee as established by resolution of the City Council. The application permit fee and renewal permit fees are only applicable to the operator named in the application. The application permit fee and renewal permit fee are non-refundable, and may not be assigned or prorated.

E. Payment of an employee application permit fee, if applicable, and renewal permit fees. For each person who will be employed or engaged in mobile vending activity for an operator of a Mobile Vending Vehicle Permit, an employee application shall be submitted and accompanied by an application permit fee or renewal permit fee as established by resolution of the City Council. The application permit fee and renewal permit fee are non-refundable, and may not be assigned or prorated.

5.53.070 Investigation and Findings for Mobile Vending Vehicle Permit.

A. Determination of Completeness. The Director shall, within 30 calendar days, review the submission of any application for a Mobile Vending Vehicle Permit to determine if the application contains all the requisite information set forth in Section 5.53.060. Any application that is missing required information or that is not accompanied by the requisite fee shall be deemed incomplete and shall not be processed by the Director. In such case, the Director shall issue a Notice of Incompleteness to the operator specifying the information that is missing. Failure of the operator to submit the missing information within 30 calendar days of the Notice of Incompleteness shall be deemed an administrative withdrawal of the Mobile Vending Vehicle Permit application by the operator.

B. Investigation and findings. Upon receipt of a complete Mobile Vending Vehicle Permit application (and requisite fees), the Director shall conduct a thorough investigation of the application and shall make a determination upon the application within 60. The Director may request supplemental investigation, information, reports, and/or recommendations pertaining to relevant zoning, building, health, safety, fire, law enforcement, or other factors from any appropriate department of the City or other appropriate agency.

C. Notwithstanding the provisions of this code, the Director shall approve the issuance of a Mobile Vending Vehicle Permit unless the Director determines that any of the following disqualifications exist:

1. The operator has failed to submit any of the information, documentation, or fees required pursuant to Section 5.53.060 of this chapter;
2. The operator does not possess all federal, state, and/or local permits, licenses, certificates, and/or approvals required to engage in the activity subject to the permit;
3. The operator has made one or more materially false, misleading, or fraudulent misstatements or misrepresentations in the application or supplemental information;
4. The operator's proposed mobile vending activity, as described in the application, is inconsistent with the standards, conditions, prohibitions, or requirements set forth in this chapter;
5. The operator has failed to demonstrate an ability to conform to the standards, conditions, prohibitions, or requirements set forth in this chapter;

6. The conduct of the mobile vendor will unduly interfere with traffic or pedestrian movement, tend to interfere with or endanger the public peace or rights of nearby residents to the quiet and peaceful enjoyment of their property, or otherwise be detrimental to the public peace, health, safety, or general welfare;

7. The conduct of the mobile vendor will unduly interfere with normal governmental or City operations, threaten to result in damage or detriment to public property, or result in the City incurring costs or expenditures in either money or personnel not reimbursed in advance by the vendor;

8. The conduct of such mobile vending activity will constitute a fire hazard;

9. The conduct of such mobile vending activity will require the diversion of police officers to properly police the area of such activity as to interfere with normal police protection for other areas of the City;

10. The operator has had a Mobile Vending Vehicle Permit revoked or denied within the previous year;

11. The operator has not paid all previous administrative fine(s), completed all community service, or completed any other alternative disposition associated in any way with a previous violation of this chapter;

12. The operator including its employee(s), if applicable, has been convicted of any felony or misdemeanor offense during the last 5 years prior to the date of the application involving any moral turpitude, driving under the influence of alcohol or other controlled substance; any crime involving the sale, use of, or transportation of narcotics; any crime involving reckless driving; any suspension of driver license; a criminal assault; any crime involving theft or embezzlement; or any child annoyance or sex-related crime, or is otherwise still on probation or parole for a felony or misdemeanor offense as set forth in this section;

13. The operator including its employee(s), if applicable, has been convicted of any felony offense involving the sale of a controlled substance specified in California Health and Safety Code sections 11054, 11055, 11056, 11057 or 11058 within 5 years prior to the date of the application, or is otherwise on probation or parole for any offenses set forth in this section;

14. The operator including its employee(s), if applicable, is required to register under the provisions of California Penal Code section 290 (or an equivalent section in any other State);

15. The operator has not maintained required insurance to protect the City from liability associated with the mobile vendor's activities, including naming of the City as an additional insured, as determined by the City's risk manager; or

16. The operator has not satisfactorily provided all additional information requested by the Director to consider the operator's application.

5.53.080 Denial of Mobile Vending Vehicle Permit.

A. If a Mobile Vending Vehicle Permit is denied pursuant to this chapter, the operator shall be notified in writing of the denial of the permit, along with the grounds for denial. The notice shall also advise the operator of the ability to appeal the denial in the manner set forth in Section 5.53.120 of this chapter. Notice shall be mailed to the operator at the address listed in the application.

B. Any operator who has been denied a Mobile Vending Vehicle Permit pursuant to this chapter shall not be eligible to re-apply for a Mobile Vending Vehicle Permit for a period of one year from the date of the written denial.

5.53.090 Permit Not Transferable.

A Mobile Vending Vehicle Permit issued pursuant to the provisions of this chapter shall not be assignable or transferable to any other entity or person. Any change in ownership, mobile operation or vending activity of an issued Mobile Vending Vehicle Permit requires the filing of an application for a new permit under this chapter.

5.53.100 Term of Permit and Renewal.

A. A Mobile Vending Vehicle Permit issued pursuant to the provisions of this chapter shall automatically expire one year from the date issued unless an earlier expiration date is noted on the permit.

B. Renewal of permit. Any operator who has been issued a Mobile Vending Vehicle Permit and seeks to continue mobile vending must renew before the Mobile Vending Vehicle Permit has expired through the same application process described in Section 5.53.060 of this chapter. Unless timely renewed, any Mobile Vending Vehicle Permit issued pursuant to this chapter shall expire and become null and void at the end of its term.

C. Renewal of permit after revocation. Any operator whose Mobile Vending Vehicle Permit is revoked may not renew their permit for one year from the date it is revoked.

D. Denial of permit. Any operator who has been denied a Mobile Vending Vehicle Permit pursuant to this chapter shall not be eligible to re-apply for a Mobile Vending Vehicle Permit for a period of one year from the written denial.

5.53.110 Operators of Mobile Vending Vehicles.

A. No person, including the operator and/or its employee(s), shall engage, furnish, operate, conduct, maintain or advertise as any mobile vendor in any mobile vending vehicle if such person has been convicted during the last 5 years of any felony or misdemeanor crime involving driving under the influence of alcohol or other controlled substance; any crime involving the sale, use of, or transportation of narcotics; any crime involving reckless driving; any offense resulting

in suspension of driver's license; a criminal assault; any crime involving theft or embezzlement; or any child annoyance or sex-related crime that requires registry as a sex offender and unless that person holds a valid driver's license authorizing the operation of such vehicle type.

B. All operators and employees shall undergo a background investigation with the Orange Police Department and meet the qualifications prior to issuance of a Mobile Vending Vehicle Permit. If a Mobile Vending Vehicle Permit has been issued and later determined that said person was convicted of any felony or misdemeanor crimes listed above, then the Mobile Vending Vehicle Permit shall be immediately revoked unless appealed pursuant to 5.53.120.

5.53.120 Appeals of Denial or Revocation of Mobile Vending Vehicle Permit.

A. Appeal of denial or revocation of Mobile Vending Vehicle Permit.

1. Any person who has been denied a Mobile Vending Vehicle Permit or who has had a Mobile Vending Vehicle Permit revoked by the Director pursuant to the provisions of this chapter may appeal such determination to the City hearing officer, by filing a request for an appeal with the City Clerk, and tendering a filing and appeal fee as set by resolution of the City Council, within 21 calendar days of service of the notice of such denial or revocation. The request for an appeal shall contain, at a minimum, the following:

- a. The name, current mailing address, and telephone number of the appellant;
- b. The date of denial or revocation by the Director;
- c. A statement as to all grounds for appeal in sufficient detail to enable the City hearing officer to understand the nature of the controversy; and
- d. The signature of the appellant under penalty of perjury as to the contents of the request for appeal.

2. An appeal shall be scheduled for a hearing before the City hearing officer within 30 calendar days of the filing of the appeal along with the appeal fee unless both the appellant and the City hearing officer consent to a later date.

3. The City hearing officer shall give notice in writing to the appellant of the time and location of the appeal hearing. At the hearing, the City hearing officer shall review the record of the decision for denial of a Mobile Vending Vehicle Permit or revocation of a Mobile Vending Vehicle Permit by the Director, examine evidence and hear testimony of the appellant, if any, the operator, and any other interested party. The appeal shall be reviewed and determined on a de novo basis.

B. After the hearing, the City hearing officer shall affirm, modify, or reverse the original denial or revocation. When a denial or revocation is modified or reversed, the City hearing officer shall state the specific reasons for modification or reversal. Decisions on appeals shall be

rendered within 30 calendar days of the close of the hearing. The City hearing officer shall mail notice of a decision to the appellant. Such notice shall be mailed within 5 working days after the date of the decision to the appellant. The decision of the hearing officer shall be final.

5.53.130 Conditions and Restrictions Imposed on Permit: Public Safety Justification.

A. Mobile vendors shall adhere to all operating conditions and requirements set forth in this chapter, and all restrictions, limitations, and operating requirements set forth in this chapter shall constitute conditions upon any Mobile Vending Vehicle Permit issued pursuant to this chapter.

B. The conditions, restrictions and operating requirements set forth in this chapter are intended to protect the health, welfare and public safety of vendors, their patrons, and the general public for reasons including, but not limited to:

1. Reducing exposure to pedestrian versus vehicle contact;
2. Ensuring better visibility of drivers entering or existing driveways;
3. Protecting access to public rights-of-way by disabled persons to comply with the Americans with Disabilities Act;
4. Ensuring safe pedestrian pathways in areas commonly utilized by pedestrians;
5. Preventing the appearance of "marketplace" vending which is more likely to generate crowding on public sidewalks that would impede pedestrians and accessible use of sidewalks by disabled persons;
6. Reducing the chance pedestrians will enter vehicular right of ways or block the entrance or exit of a business;
7. Reducing the danger that children will enter into traffic and be injured or killed trying to reach a vendor especially near schools, day care facilities, parks and recreational facilities;
8. Reducing unnecessary or unanticipated slowing of vehicles approaching on-ramps, immediately adjacent to curb and sidewalk, or exiting freeway off-ramps where drivers are merging into oncoming traffic which is likely to cause accidents;
9. Reducing the possibility that drivers will be distracted in their line of site by a vendor in the way of oncoming traffic;
10. Causing visual distraction to the driving public such as lighting;
11. Causing excessive noise that disturbs the peace;

12. Eliminating litter, refuse and food waste from the public right-of-way; and
13. Reducing the likelihood of contamination deposited into the City's storm drain system.

5.53.140 Mobile Vending Operational Regulations.

A. Any person or operator vending from a mobile vending vehicle shall comply with the following regulations:

1. Mobile vendors shall operate in compliance with all applicable federal, state, county, and City laws, ordinances, and regulations.
2. Mobile vendors shall continuously maintain vehicle operation in compliance with safety provisions contained in the California Vehicle Code.
3. Mobile vendors shall only conduct vending operations at the location, area or route approved by the Director and shall display a City-issued Mobile Vending Vehicle Permit and business license on the right-side portion of the mobile vending vehicle. An operator who has been issued a valid Mobile Vending Vehicle Permit shall always be at the approved location, area or route while conducting mobile vending activities except as permitted by law for reasonable time away due to rest, restroom, and meal breaks. The operator and any employee(s) shall also display a photo identification issued by the City upon their person in a conspicuous manner at all times while conducting mobile vending activities.
4. Any health permit required by law for vending any food items shall be displayed at all times in a conspicuous place upon each mobile vending vehicle.
5. Every mobile vending vehicle shall have the name, address, and telephone number of the operator permanently affixed on both the left and right sides of the vehicle. Such information shall be in letters and numerals not less than four inches in height and shall contrast with the color of the background upon which the letters are placed.
6. Mobile vendor operators shall comply with all applicable laws relating to the employment of minors. Any minor assisting with or engaged in mobile vending shall be accompanied by a mobile vendor with a valid vending permit. Any and all actions of the minor related to vending, including any violations committed by the minor, are attributable to the mobile vendor.
7. Every mobile vendor shall maintain the area immediately surrounding the vending area in a neat, clean, orderly, and sanitary condition. Prior to leaving any vending location, the mobile vendor shall pick up, remove, and lawfully dispose of all byproducts (including fats, oils, and grease) and litter generated by the vending operation (whether by the vendor or customer) within 25 feet of the vending location. Mobile vendors shall not cause, permit, or suffer any litter, food, or other discarded or abandoned object to be thrown, deposited, or left in or upon any public

or private street, alley, highway, sidewalk, gutter, storm drain, inlet, catch basin, or other drainage structure, or upon any public or private land in the City.

8. Mobile vendors may place waste containers on public sidewalks, provided that a minimum of 48 inches of accessible path of travel for pedestrians is maintained.

9. Any mobile vending vehicle may stop for a maximum of 4 hours per stop in any commercial or industrial zone excluding residential zones but may only occupy one parking space or two parking spaces for vehicles attached with a vending trailer on public or private streets, alleys, or highways. Normal parking rates for each parking space, either wholly or partially occupied and/or posted parking restriction signage shall apply. The vendor must move at least one whole block before making another stop.

10. If applicable, a mobile vending trailer must be attached to a tow vehicle while engaging in mobile vending activities.

11. Any mobile food vehicle that is vending in the City for longer than one hour during any 24-hour period must be legally parked within 200 feet of an approved and readily available toilet and hand-washing facility, or as otherwise approved by the City and/or Orange County Health Care Agency Environmental Health Division, to ensure that restroom facilities are available to the mobile food vehicle operator and its employees. The mobile food vehicle operator must provide written evidence to the City upon demand that they have permission from an adjoining private property owner to use their restroom facilities.

12. Any mobile vending vehicle in a residential zone shall move continuously except when necessary to complete a sales transaction but must not exceed a maximum of 10 minutes to complete the transaction.

13. Vending may only occur when the mobile vending vehicle is legally parked in a public or private street, alley, or highway. Mobile vendors shall comply with the California Vehicle Code, along with Title 10 (Vehicles and Traffic) and Title 12 (Streets, Sidewalks and Public Places) of this code, including all posted signage relating to parking, stopping, standing, loading/unloading zones, fire lanes, red curbs and or any other restrictions at all times.

14. Vending within the public right-of-way shall not be conducted before 7:00 a.m. or after 7:00 p.m. in any residential zone.

15. Mobile vendors shall ensure that all customer queuing, waiting areas, or lines do not block, hinder, or interfere with pedestrian thoroughfare of a minimum of 48 inches of accessible path of travel on the sidewalk in front of the mobile vending vehicle or vehicular traffic along, over, or across public or private property.

16. Mobile vendors shall discourage congregation of customers within 25 feet of the vending location.

17. Mobile vending vehicles shall park in a manner which ensures that customers shall be able to order and pick up food or merchandise safely without stepping into a parking space, into a street, or into landscaped area.

18. Mobile vendors engaged in the vending of food or beverages shall have hand sanitizer located in a conspicuous location readily available for use by customers.

19. Mobile vendors shall not use any portable cooking equipment, gas-fueled appliance, or any open flame unless approved and permitted by Director, Orange City Fire Department and/or Orange County Health Care Agency Environmental Health Division.

20. Mobile vendors who vend any food, beverage, or liquid products must implement the following best management practices:

a. Possess spill kits that are comprised of paper towels, cloth towels, cat litter, or sand at all times while vending;

b. Remove all spill materials from the public right-of-way and sidewalks once the spilled material is absorbed off the ground;

c. Capture and prevent spills leaving the area and moving into the surrounding streets from entering the storm water conveyance system, including curbs, gutters, and storm drains;

d. Properly dispose of grease, either by hiring and utilizing an on-site grease collector or collection system, or at an acceptable facility; and

e. Ensure that any water or rinse residue used for mobile vending activities (e.g., cooler water, ice, food preparation water) is not disposed in the curbs, gutters, streets, drains, or on any public or private property.

21. During an urgent or emergency public safety event or incident, including, but not limited to, a traffic accident, crime scene, medical emergency, gas leak, natural disaster, fire, on-site construction, sidewalk or road work or related work on a capital improvement project, the City may temporarily require the mobile vendor to relocate to another location or area if doing so is necessary to protect the public's safety, health or welfare.

22. Mobile vendors shall present a valid government-issued photo identification, California driver license or identification card, Mobile Vending Vehicle Permit, business license, and other applicable license or permit, upon the request of any City official including a City code compliance officer, police officer, firefighter, fire prevention specialist or examiner, and Orange County health inspector authorized to enforce the provisions of this chapter.

5.53.150 Prohibited Conduct and Activities for Mobile Vendors.

No person or operator vending from a mobile vending vehicle which is stopped, parked, or standing on any applicable public or private street, property, alley, highway, parking space, landscaped area, vacant lot, sidewalk, or other right-of-way shall:

- A. Sell or offer to sell services, or engage in or offer to engage in any type of rental activity, including the rental of any goods or services.
- B. Display merchandise or food that is not available for immediate sale.
- C. Utilize outdoor wood burning ovens, charcoal, or propane barbecue grills on mobile vending vehicles unless approved by the Director, Orange City Fire Department and Orange County Health Care Agency Environmental Health Division.
- D. Utilize gasoline or kerosene as part of any cooking or heating element.
- E. Utilize portable generators unless approved by the Director, Orange City Fire Department and/or Orange County Health Care Agency Environmental Health Division.
- F. Except as otherwise specified in this chapter, conduct mobile vending activities between the hours of 10:00 p.m. and 7:00 a.m. daily or consistent with the hours of operation of the businesses on the same street block.
- G. Utilize a sidewalk vending cart as defined in Section 5.54.020.
- H. Touch the person(s) being offered to purchase food or merchandise without that person's consent.
- I. Use any luminaire, flashing lights or any other animated devices or signs. Mobile vendors shall only utilize the minimum amount of luminaires necessary for the safe operation of the mobile vending activity as determined by the City.
- J. Sell, use, or vend any of the following:
 - 1. Live animal(s);
 - 2. Adult-oriented material depicting, describing, or relating to specified anatomical areas or specified sexual activities;
 - 3. Alcohol, cannabis, marijuana, or tobacco products that contain nicotine or any product used to smoke (or “vape”) nicotine, cannabis, or marijuana;
 - 4. Weapons, including knives, guns, or explosive devices; airsoft guns, paintball guns, BB devices or imitation firearms;
 - 5. Pharmaceuticals;

6. Illegal or counterfeit merchandise; or
7. Any other food, merchandise or products prohibited by local, state, and federal laws.

K. Use or operate, or permit to be played, used, or operated, any radio, receiving set, musical instrument, phonograph, loudspeaker, sound amplifier, or other machine or device for the producing or reproducing of sound. Furthermore, no mobile vendor shall use, operate, or permit horns, bells, whistles, or other noisemaking devices.

L. Allow any mobile vending equipment to touch, lean against or be affixed or fastened at any time to any building, structure or above-ground structure including, but not limited to poles, trees, lampposts, parking meters, mailboxes, traffic signals, fire hydrants, benches, bus shelters, newsstands, trashcans, waste receptacles, or traffic barriers.

M. Set up a customer seating or eating area such as but not limited to equipment, tables, chairs, tents, or canopies.

N. Vend in congested areas where it may impede or block the public or create a traffic or pedestrian hazard.

O. Display flashing neon or electronic display signs or visual displays that are intended to, or do in fact, distract drivers, and draw attention to the mobile vending vehicle.

P. Attach to or receive any electrical power or other utilities from any public or private property.

Q. Install, place, fabricate, or otherwise use jacking, lifting, or static platforms whether they are hydraulic or mechanical, of any sort, within any public or private street, alley, or highway in order to level the vehicle for operation.

R. Engage in restocking of the mobile vending vehicle.

S. For public safety concerns, including but not limited to pedestrian, vehicular, public, and mobile vendor safety, no mobile vending vehicle shall stop, park, or stand to make sales transactions from the following locations, or within the number of feet designated below from the nearest portion of the following locations:

1. Within 50 feet of any street intersection;
2. Within 50 feet of any traffic control device (including traffic signals and traffic signs);
3. Within 50 feet of a fire hydrant or connection, fire lane, fire call box, or other emergency facility;

4. On any designated emergency vehicle access way;
5. Within 50 feet of any driveway or driveway apron;
6. Within 50 feet of a marked crosswalk;
7. Within 50 feet of a curb return of an unmarked crosswalk or curb ramp;
8. Within 50 feet of any loading and unloading zone, parking space, or access ramp or parking space designed for individuals with disabilities;
9. Within 50 feet of a bus stop, taxi stand, bus bench, or bus shelter;
10. Within 50 feet of any entrance, fire escape or emergency exit of any business during the hours that the business is open to the public or to persons having or conducting lawful business therein;
11. Within 50 feet of another mobile vendor or sidewalk vendor;
12. Within 500 feet of any permitted certified farmer's market, permitted swap meet, or an area designated for use pursuant to a temporary special permit, during the operating hours or duration of the certified farmer's market, swap meet, or temporary special permit;
13. Within 500 feet of the nearest property line of any property on which a school, recreational facility, a place of worship, or a child day-care facility, unless authorized to do so in writing by the school district, owner or legal representative of the recreational facility, place of worship, or child day-care facility, and with a special event permit, if applicable;
14. Within 500 feet of the nearest property line of any private homeowners association as defined in Section 17.04.027 of this code, park or City park except at specific City parks pursuant to Section 5.53.160;
15. Within 500 feet of any property on which a private and post-secondary education, college or university building or campus is located, unless authorized to do so in writing by the private and post-secondary education, college or university, and with a special event permit, if applicable;
16. Within 50 feet of any parking lot or parking structure;
17. Within 50 feet of any railroad crossing or train tracks;
18. Within 500 feet of any major transit stop;
19. Within 25 feet of any active encroachment permit issued and displayed during the time and dates listed in the permit;

20. Within 25 feet of any automated teller machine (ATM) or parking pay station;
21. Within 25 feet of any outdoor dining or patio area of a business;
22. Within 500 feet of a freeway on-ramp or off-ramp;
23. Within 500 feet of a backup City Emergency Operations Center, identified in the City's Emergency Operations Plan, during the operational period;
24. Within 500 feet of any Civic Center, Police and Fire station or facility, public utility facility, United States Postal Service office or facility, or other governmental building or facility;
25. When the posted speed limit sign on the public or private street, alley or highway is greater than 35 miles per hour;
26. When it is parked in violation of any other provision of this code or the California Vehicle Code;
27. Unless it has been brought to a complete stop and parked adjacent to a curb in a lawful manner;
28. When it is open to prospective customers on the side of the vehicle other than next to the right side of the public or private street, sidewalk, alley, or highway;
29. When the prospective customer is standing or sitting in another vehicle;
30. When the prospective customer is in that portion of the public or private street, alley or highway which is open to vehicular traffic; and
31. When the mobile food vehicle has passed a prospective customer and must drive in reverse to make or attempt a sale.

5.53.160 Exemption Related to City Parks.

The following exemption shall apply: the Director of Community Services may review and approve mobile vending activities as part of a special event permit and/or as a concessionaire conducted by a permitted mobile vendor on City property operated under the jurisdiction of the Community Services Department and promulgate rules of operation in park locations, including operation hours.

5.53.170 Mobile Food Vehicle Vending at Active Construction Sites.

A. The regulations contained in this section apply specifically to an operator who holds a valid Mobile Vending Vehicle Permit for the mobile food vehicle who solely intends on vending

food and/or drinks at an active construction site that has a valid City building permit in a commercial, manufacturing, industrial or residential zone

B. Vending at active construction sites. Mobile food vehicles may park on private or public property at the request and with written consent of the person who is in legal control of the property where the performance of lawful construction activity with a valid City building permit has been issued for the property. The sole purpose of the mobile food vehicle is exclusively for the sale of food and/or drinks to construction employees performing lawful construction on a private property located in a commercial, manufacturing, industrial or residential zone.

C. The following restrictions apply to such vending at active construction sites:

1. No sales of food or drinks shall be made to the general public.
2. A mobile food vehicle shall not be parked for a period of more than one hour.
3. A mobile food vehicle must either park on the construction site of the private property or immediately in front of it on the public street abiding by any and all parking restrictions, codes or laws.
4. Nothing in this section shall be construed to excuse a valid mobile food vehicle vendor from complying with any and all of the provisions of this chapter.

5.53.180 Private Property Use by Mobile Vendors.

A. No property owner shall allow any mobile vehicle vendor operations on their property (i) unless the vendor holds a valid Mobile Vending Vehicle Permit issued by the City authorizing the vendor to operate and vend on the private property and (ii) except in compliance with the following requirements:

1. Mobile vendors shall have the private property owner's written authorization to operate and vend on the private property in their possession at all times. The written authorization shall describe the approved location and operation schedule. Documentation of the private property owner's written authorization shall be provided to code compliance upon filing of an application for a Mobile Vending Vehicle Permit and/or upon request.
2. Mobile vending shall only be conducted on private property used for nonresidential purposes, such as in commercial, manufacturing, or industrial zones except as otherwise permitted by any other provisions of this code.
3. Only one mobile vendor is allowed on any individual private property at any given time that the mobile vending activity is in operation.
4. Mobile vendors shall only occupy parking spaces not required to meet the minimum requirements of the current permitted uses on the private property per Title 17 of this

code (Zoning), or of other off-site uses if those spaces are leased under a shared parking facility agreement with a conditional use permit. This requirement does not apply if the hours of operation for the mobile vendor and the permitted uses on the private property do not coincide.

5. Mobile vendors shall not occupy any paved area required for loading, circulation, or fire access.

6. Nothing in this section shall be construed to excuse mobile vendors from complying with any and all of the provisions of this chapter.

7. Mobile vending operations on private property beyond the requirements of this section or provisions contained in this chapter may be allowed by permit pursuant to Title 17 (Zoning). In addition, the Director may require a permit whenever it appears that mobile vending activities are having an adverse impact on the use of the property or neighboring properties, including traffic, circulation, parking availability, noise, trash, or other reasons of public safety or health.

B. This section does not apply to any private event in a commercial, manufacturing, industrial or residential zone where a mobile food vendor with a valid Mobile Vending Vehicle Permit has obtained the private property owner's written permission to cater for a private event that is held exclusively on the private property and that is not open to the general public. No sales of food or drinks shall be made to the general public including any persons who are attendees of the privately catered event. Nothing in this section shall be construed to exempt a valid mobile food vehicle vendor providing private catering services on private property from complying with any and all of the provisions of this chapter.

5.53.190 Enforcement.

A. Violations deemed a nuisance. It is unlawful and declared a public nuisance for any owner, operator, or person to operate, conduct, or maintain a mobile vending vehicle contrary to the provisions of this chapter.

B. Criminal penalties. Any owner or person who violates any provision of this chapter is guilty of a misdemeanor punishable by a fine of up to \$1,000, or by imprisonment in the County jail not exceeding 6 months, or by both; except the City Attorney, in their discretion, may prosecute a violation of this chapter as an infraction subject to the penalties in of this code.

C. Administrative citations. Administrative citations may be issued for violations of the provisions of this chapter, as set forth in Chapter 1.10 of this code.

D. Civil or equitable enforcement. The City Attorney may bring a civil or equitable action to seek the abatement of any violation of this chapter.

E. Aiding, abetting, and omissions. Whenever in this chapter any act or omission is made unlawful, it shall include causing, permitting, aiding, abetting, suffering, or concealing the fact of such act or omission.

F. Ongoing violations. Each and every day a violation is maintained, caused, aided, abetted, concealed, suffered, or permitted is a separate offense.

G. Remedies cumulative. The remedies, procedures, and penalties provided by this chapter are cumulative to each other and to any other remedies, procedures, and penalties available under City, state, or federal law.

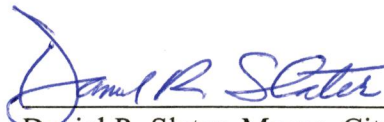
SECTION IV:

If any section, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each section, subdivision, paragraph, sentence, clause and phrase thereof, irrespective of the fact that any one (or more) section, subdivision, paragraph, sentence, clause or phrase had been declared invalid or unconstitutional.

SECTION V:

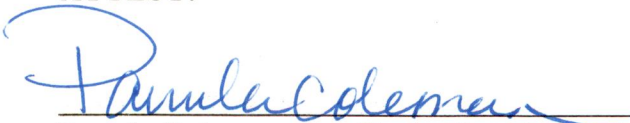
The City Clerk is hereby directed to certify the adoption of this Ordinance and cause the same to be published as required by law. This Ordinance shall take effect thirty (30) days from and after the date of its final passage.

ADOPTED this 25th day of July, 2023.



Daniel R. Slater, Mayor, City of Orange

ATTEST:

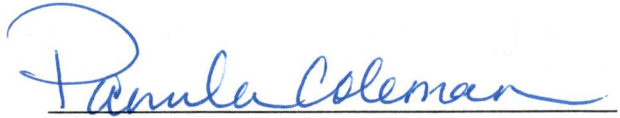


Pamela Coleman, City Clerk, City of Orange

STATE OF CALIFORNIA)
COUNTY OF ORANGE)
CITY OF ORANGE)

I, PAMELA COLEMAN, City Clerk of the City of Orange, California, do hereby certify that the foregoing Ordinance was introduced at the regular meeting of the City Council held on the 11th day of July, 2023, and thereafter at the regular meeting of said City Council duly held on the 25th day of July, 2023 was duly passed and adopted by the following vote, to wit:

AYES: COUNCILMEMBERS: Slater, Barrios, Dumitru, Tavoularis, Bilodeau, Gutierrez,
Gyllenhammer
NOES: COUNCILMEMBERS: None
ABSENT: COUNCILMEMBERS: None
ABSTAIN: COUNCILMEMBERS: None


Pamela Coleman
Pamela Coleman, City Clerk, City of Orange