



**WHEREAS**, Section 308 of the California Penal Code makes it unlawful for any person under the age of 18 years to obtain, possess or control any tobacco products in the State of California, and prohibits the sale or furnishing of any tobacco products to a person under 18 years of age by any person engaged in the manufacture or sale of tobacco products in the State of California; and

**WHEREAS**, even after passage of Federal Regulations in 1996 designed to make tobacco purchases more difficult, 70 percent of under-age youth who tried to buy tobacco were able to do so, and even in towns that performed tobacco stings, 50 percent of youth were able to buy tobacco; and

**WHEREAS**, despite laws in every state making it illegal to sell tobacco to minors, teens and children purchase over half a billion packs of cigarettes and twenty-six million containers of smokeless tobacco products each year; and

**WHEREAS**, recently, businesses devoted primarily to the sale of tobacco products have either begun operation or have declared an intent to begin operation within Oakland in the near future, and such businesses can be expected to continue to seek to establish operations in Oakland; and

**WHEREAS**, the Centers for Disease Control and Prevention notes that public attitudes toward tobacco, tobacco-related health issues, and control of the advertisement, promotion, sale and use of tobacco products have been changing, with support for stronger controls growing; and

**WHEREAS**, the City of Oakland Planning Code currently regulates convenience markets, but does not specifically regulate tobacco-related businesses nor identify particular areas that are appropriate for the location of such businesses; and

**WHEREAS**, businesses devoted primarily to the sale of tobacco products have been establishing new outlets at a rapid pace with a July 29, 1999 Oakland Tribune article quoting one rapidly-growing national tobacco store chain which is presently seeking to establish outlets in Oakland as saying they have been, "opening a store a day"; and

**WHEREAS**, the City needs to address this expected proliferation of tobacco-related businesses; and

**WHEREAS**, the requirements of the California Environmental Quality Act (CEQA) of 1970, as prescribed by the Secretary of Resources, and the City of Oakland's environmental review requirements have been satisfied, and that in accordance with Sections 15061(b)(3), of the California Code of Regulations, this project is exempt from the provisions of CEQA; and

**WHEREAS**, because of the foregoing, it is both urgent and essential to the general health, safety, and welfare of the community and its citizens and promotion of

proper land use, to immediately prohibit for a limited time the issuance of building, zoning and other permits for activities devoted primarily to the sale of tobacco-related products, to allow time to study the issue so that appropriate land use controls can be developed;

**WHEREAS**, the City Council expressly finds and declares that this ordinance is necessary for protecting the public peace during this emergency situation. Urgent action is needed due to:

- (1) the reasons set forth in the recital (“Whereas”) paragraphs of this Ordinance;
- (2) potential proliferation of tobacco-related businesses;
- (3) ambiguities in the City’s zoning regulations;
- (4) strong public outcries and protests in sections of the City regarding the proliferation of tobacco-related businesses;
- (5) the City Council’s recess schedule; and
- (6) the City’s need to study the zoning impacts of tobacco –related business uses.

**WHEREAS**, the Council finds and determines that the public safety, health, convenience, comfort, prosperity, and general welfare will be furthered by the proposed moratorium ; now, therefore,

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

**SECTION 1.** The City Council finds and determines the foregoing recitals to be true and correct and hereby makes them a part of this Ordinance.

**SECTION 2.** The requirements of the California Environmental Quality Act (CEQA) of 1970, as prescribed by the Secretary of Resources, and the City of Oakland’s environmental review requirements have been satisfied, and that in accordance with Sections 15061(b)(3), of the California Code of Regulations, this project is exempt from the provisions of CEQA.

**SECTION 3.** The moratorium shall remain in place for a period of six months or until the date a decision is rendered by the City Council to adopt permanent land use controls for the establishment or expansion of activities devoted primarily to the sale of tobacco-related products, whichever occurs earlier, to allow the completion of the City’s analysis to provide the City Council with sufficient time to review the analysis and consider adoption of appropriate land use controls.

**SECTION 4.** For the term of this Ordinance, no building, zoning, or other permits shall be issued for the establishment or expansion of activities devoted primarily to the sale or exchange of tobacco-related products.

**SECTION 5.** "Tobacco-related products" are any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipes, tobacco, snuff, chewing tobacco and dipping tobacco; cigarette papers; or any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco and products prepared from tobacco.

**SECTION 6.** "Activities devoted primarily to the sale or exchange of tobacco-related products" are activities either devoting 20 percent of floor area or display area to, or deriving 75 percent or more of gross sales receipts from, the sale or exchange of tobacco-related products.

**SECTION 7.** An analysis which examines appropriate land use controls and other strategies to address the establishment or expansion of, and appropriate location for, activities devoted primarily to the sale of tobacco-related products is hereby authorized and will be completed within six months.

**SECTION 8.** The public safety, health and general welfare will be furthered by this Emergency Ordinance.

**SECTION 9.** This Ordinance shall be effective immediately upon its adoption by the City Council pursuant to Section 213 of the City Charter, and shall apply to: (1) the sale or exchange of tobacco-related products from facilities devoted primarily to the sale or exchange of tobacco-related products, where no City building, zoning or other permit is required to establish the sale or exchange of such tobacco-related products, excluding such sales or exchanges of tobacco-related products that were legally established prior to the effective date of this Ordinance. Notwithstanding the foregoing, this Ordinance shall be applicable to all expansions of activities devoted primarily to the sale or exchange of tobacco-related products that are made after the effective date of this Ordinance; and (2) all applications for building, zoning, and other permits, unless, prior to the effective date of this Ordinance, the applicant has received from the City all required permits, including final building permits for his/her project and has completed substantial construction in reliance thereon.

Further, for the term of this Ordinance and beginning with the effective date of this Ordinance, no activity primarily devoted to the sale or exchange of tobacco-related products shall be expanded, established, or opened in any facility or zone in the City of Oakland, excepting therefrom activities established pursuant to Section 12 of this Ordinance. This Ordinance shall be applicable to all activities primarily devoted to the sale or exchange of tobacco-related products, notwithstanding how such activities are classified by City of Oakland Zoning Regulations and regardless of whether such activities are permitted or conditionally permitted activities. Moreover, the moratorium established by this Ordinance shall be applicable to expansions and establishments of activities primarily related to the sale or exchange of tobacco-related products, even where no City of Oakland building, zoning or other permit is required or otherwise needed for such activities to be established or expanded.

**SECTION 10.** This Ordinance is enacted pursuant to the City of Oakland's general police powers, Section 106 of the Charter of the City of Oakland, and Article XI of the California Constitution.

**SECTION 11.** If any provision of this Ordinance or the application thereof to any person or circumstances is finally held invalid, the remainder of this Ordinance and the application of such provisions to other persons or circumstances shall not be affected

**SECTION 12.** The City, on a case by case basis, shall have the authority upon a showing of good cause by an applicant, to waive the moratorium imposed by this Ordinance and to allow for the granting of permits to said applicant pursuant to the otherwise suspended and applicable zoning provisions of the Oakland Planning Code. Good cause shall mean a factual and evidentiary showing by the applicant that the moratorium, if not waived, will deprive the applicant of substantially all reasonable use of his/her property. All such applications for waiver shall be filed with the City Planning Department with appropriate fee. Said applications shall be reviewed and decided by the City Planning Commission. Within 10 calendar days after the date of a decision by the City Planning Commission, an appeal from said decision may be taken to the City Council by the applicant, the permit holder, or any other interested party. In event the last date of appeal falls on a weekend or holiday when City offices are closed, the next date such offices are open for business shall be the last date of appeal. Such appeal shall be made on a form prescribed by the Commission and shall be filed with the City Clerk. The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Commission or wherein its decision is not supported by the evidence in the record. Upon receipt of the appeal, the Council shall set the date for consideration thereof. The City Clerk shall notify the Secretary of the City Planning Commission of the receipt of said appeal and of the date set for consideration thereof; and said Secretary shall, not less than ten days prior thereto, give written notice to: the applicant, the appellant in those cases where applicant is not the appellant; adverse party or parties, or the attorney, spokesperson, or representative of such party or parties; other interested groups and neighborhood associations who have requested notification; and to similar groups and individuals as the Secretary deems appropriate, of the date and place of the hearing on the appeal. The decision of the City Council shall vote on the appeal within thirty (30) days after its first hearing of the appeal. If the Council is unable to decide the appeal at that meeting, it shall appear for a vote on each regular meeting of the Council thereafter until decided. Fees for waiver applications and associated appeals shall be the same as those charged for Major Conditional Use Permits.

**SECTION 13.** To the extent this Ordinance is inconsistent with any other provisions of the Oakland Municipal Code or the Oakland Planning Code, the more stringent regulations shall apply. This Ordinance suspends contrary regulations in the Oakland Municipal Code or Planning Code.

**SECTION 14.** The City's Planning Director, or her designee, shall have the authority in the first instance to interpret the provisions of this Ordinance and their applicability to particular parcels, individuals and situations. Following the procedures

and requirements of § 17.132.020 of the Oakland Planning Code, an appeal may be taken to the City Planning Commission by any interested party, from any administrative determination or interpretation made by the City's Planning Director, or her designee, under this ordinance. The decision of the City Planning Commission shall be final. Except as otherwise provided in this Section 14 of this Ordinance, the provisions of § 17.132.030 of the Oakland Planning Code shall be applicable to all such appeals.

**SECTION 15.** The provisions of Chapter 107.152 of the Oakland Planning Code shall be applicable to this Ordinance.

*Introduced = 8-9-99*

IN COUNCIL, OAKLAND, CALIFORNIA, (AUGUST AUG - 9, 1999)

**PASSED BY THE FOLLOWING VOTE:**

AYES- BRUNNER, CHANG, MILEY, NADEL, REID, RUSSO, SPEES,  
AND PRESIDENT DE LA FUENTE - 8

NOTES- *None*

ABSENT- *None*

ABSTENTION- *None*

ATTEST: \_\_\_\_\_

CEDA FLOYD

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

APPROVED DURING CITY COUNCIL RECESS

PURSUANT TO RESOLUTION NO. \_\_\_\_\_

C.M.S., DATED \_\_\_\_\_

## Notice and Digest

### **AN EMERGENCY ORDINANCE ESTABLISHING A SIX-MONTH MORATORIUM ON THE ISSUANCE OF BUILDING, ZONING AND OTHER PERMITS FOR THE ESTABLISHMENT OR EXPANSION OF ACTIVITIES DEVOTED PRIMARILY TO THE SALE OR EXCHANGE OF TOBACCO-RELATED PRODUCTS**

The Emergency Ordinance establishes a six-month moratorium prohibiting the issuance of any building, zoning, or other permits for the establishment or expansion of activities devoted primarily to the sale of tobacco-related products. Such activities are defined as businesses either devoting 20 percent of floor area or display area to, or deriving 75 percent or more of gross sales receipts from, the sale of tobacco-related products, including cigarettes, cigars, pipes, tobacco, snuff, chewing tobacco, cigarette papers, etc.

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