

ORDINANCE NO. 12 20 5 C.M.S.

AN ORDINANCE AMENDING THE OAKLAND PLANNING CODE TO REQUIRE A CONDITIONAL USE PERMIT FOR ACTIVITIES DEVOTED PRIMARILY TO THE SALES OR EXCHANGE OF TOBACCO RELATED PRODUCTS AND CREATING A ONE-THOUSAND FOOT (1,000) DISTANCE STANDARD BETWEEN SUCH ACTIVITIES AND SENSITIVE USES

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, 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, 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, underage tobacco use continues to rise; and

WHEREAS, approximately 60 percent of smokers start by the age of 13 and 90 percent begin before the age of 20; and

WHEREAS, the average youth smoker starts smoking at age 13 and becomes a daily smoker by 14½; and

WHEREAS, the 1996 California Tobacco Survey (CTS) found that the percentage of youth 12-14 years of age who have never smoked, yet are susceptible to smoking, has risen from 35.5 percent in 1993 to 42 percent in 1996, with increases of over 50 percent by young adolescents (12 years old), African American youth, with much better-than-average school performance, and increases of over 30 percent among girls and Asian Americans; 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, 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 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, a six-month emergency moratorium was adopted on August 9, 1999 for all new tobacco oriented activities (Ordinance No. 12167 C.M.S.); and

WHEREAS, the purpose of Ordinance No. 12167 C.M.S. was to allow time for staff to study and develop appropriate land use and regulatory controls that might apply to new tobacco oriented activities; and

WHEREAS, a duly noticed public hearing was held on this matter by the City Planning Commission on November 17, and December 15, 1999; and

WHEREAS, thereafter on December 15, 1999 the City Planning Commission voted to recommend amending the Oakland Planning Code and further clarified and found that the proposed amendments were not based upon regulating the health effects of smoking; and

WHEREAS, the purpose of this ordinance is to reduce the illegal sale of tobacco related products to minors and not, as the November 17, 1999 Planning Commission report may have suggested, the regulation of health effects associated with smoking; and

WHEREAS, the Council finds and determines that the public safety, health, convenience, comfort, prosperity, and general welfare will be furthered by the proposed text amendment; 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 City Council affirms the environmental determination and findings of the Planning Commission that the ordinance is exempt from CEQA pursuant to CEQA Guidelines section 15061(b)(3).

SECTION 3. The City Council finds and determines that the existing regulations are inadequate or otherwise contrary to the public interest, pursuant to the Rezoning and Law Change Procedure

(Section 17.144.060) of the Zoning Regulations, in part, for the reasons stated in the recitals to this ordinance and the administrative record.

SECTION 4. The Oakland Planning Code is hereby amended to add, delete, or modify sections as set forth below (section numbers and titles are indicated in **bold type**, additions are indicated by underlining and deletions are indicated by ~~strike-out type~~; portions of the code not cited, or not shown in underlining or strike-out type, are not changed):

Chapter 17.09 DEFINITIONS

17.09.40 Definitions

“Tobacco oriented activities” are defined as activities either devoting 20 percent or more 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.

“Tobacco-related products” are defined as any substance containing tobacco leaf, including but not limited to cigarettes, cigars, 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.

Chapter 17.102 GENERAL REGUALTIONS APPLICABLE TO ALL OR SEVERAL ZONES

Section 17.102.350 Regulations applying to tobacco oriented activities.

A. Conditional Use Permit Requirement for Tobacco Oriented Activities. Such uses are permitted only upon the granting of a conditional use permit pursuant to Sections 17.134 and to the following use permit criteria:

1. No tobacco oriented activity shall be located within, nor closer than one-thousand (1000) feet to the boundary of any residential zone, school, public library, c park or playground, recreation center or licensed daycare facility.

Chapter 17.134. CONDITIONAL USE PERMIT PROCEDURE

17.134.020. Definition of major and minor conditional use permits.

A. Major Conditional Use Permit. A Major conditional use permit is a use permit which involves any of the following purposes:

2. Any Adult Entertainment Activity, Massage Service Activity, Tobacco Oriented Activity, Residential Care Activity, Extensive Impact Civic Activity, (but excluding

reverse vending machines and other small recycling collection centers), Convenience Market, Fast-Food Restaurant, Group Assembly, Automotive Servicing, Automotive Repair and Cleaning or Undertaking Service Commercial Activity, Heavy Manufacturing Activity, or Mining and Quarrying Extractive Activity, except where the proposal involves only accessory parking, the resumption of a discontinued nonconforming activity, or an addition to an existing activity which does not increase the existing floor area or display area by more than twenty (20) percent;

SECTION 5. 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 6. 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 7. This Ordinance shall be effective immediately upon its adoption by the City Council pursuant to Section 216 of the City Charter, and shall apply to 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.


SECTION 8. Upon the effective date of this Ordinance, Ordinance No. 12167 C.M.S. is rescinded.

Introduced - 1/25/00
IN COUNCIL, OAKLAND, CALIFORNIA, FEB - 8 2000₂₀₀₀

PASSED BY THE FOLLOWING VOTE:

AYES- BRUNNER, CHANG, ~~MILEY~~, NADEL, REID, RUSSO, SPEES, AND
PRESIDENT DE LA FUENTE - 7

NOTES- None
ABSENT- Miley - 1
ABSTENTION- None

ATTEST 
CEDA FLOYD
City Clerk and Clerk of the Council
of the City of Oakland, California

The Oakland Tribune

c/o ANG Newspapers

Tribune Tower, 401 13th Street, Oakland, CA 94612

Legal Advertising

(510) 208-6340

Legal No. **1718569**

ORIGINAL

PUBLIC NOTICE

NOTICE AND DIGEST

AN ORDINANCE AMENDING THE OAKLAND PLANNING CODE TO REQUIRE A CONDITIONAL USE PERMIT FOR ACTIVITIES DEVOTED PRIMARILY TO THE SALES OR EXCHANGE OF TOBACCO RELATED PRODUCTS AND CREATING A ONE-THOUSAND FOOT (1,000) DISTANCE STANDARD BETWEEN SUCH ACTIVITIES AND SENSITIVE USES

This Ordinance was introduced at the regular council meeting, Tuesday evening January 25, 2000 and passed to print 8 Ayes, 0 Noes. Hearing on final adoption is set for regular Council Meeting at One City Hall Plaza, Council Chambers, on the third floor in Oakland, California, Tuesday evening February 8, 2000 at 7:00 p.m.

Three full copies are available for use and examination by the public in the office of the City Clerk at One City Hall Plaza, 1st Floor, Oakland, California.

CEDA FLOYD, City Clerk

The Oakland Tribune, #1718569
February 3, 2000

PROOF OF PUBLICATION

In the matter of:

SALES AND EXCHANGE OF TOBACCO

The undersigned below, deposes and says that he/she was the public Notice Advertising Clerk of the OAKLAND TRIBUNE a newspaper of general circulation as defined by Government Code Section 6000 adjudicated as such by the Superior Court of the State of California, County of Alameda (Order Nos. 237798, December 4, 1951) which is published and circulated in Oakland Township in said county and state seven days a week.

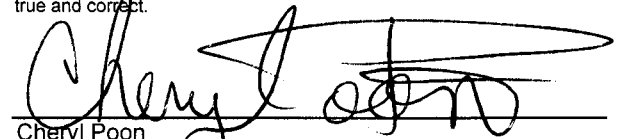
That the

NOTICE AND DIGEST

of which the annexed is a printed copy, was published in every issue of the OAKLAND TRIBUNE, on the following dates:

February 3, 2000

I certify (or declare) under the penalty of perjury that the foregoing is true and correct.



Cheryl Poon

Public Notice Advertising Clerk

February 3, 2000

post

N O T I C E A N D D I G E S T

ORDINANCE AMENDING THE OAKLAND MUNICIPAL CODE
TO PROHIBIT THROUGH TRUCKS EXCEEDING FOUR AND
ONE-HALF TONS ON CERTAIN STREETS

D I G E S T

An ordinance amending Section 10.52.060 of the Oakland Municipal Code (OMC) to prohibit through trucks exceeding four and one-half tons on the listed streets.

The Oakland Tribune

c/o ANG Newspapers

Tribune Tower, 401 13th Street, Oakland, CA 94612

Legal Advertising

(510) 208-6340

Legal No. **1718571**

PUBLIC NOTICE NOTICE AND DIGEST

ORDINANCE AMENDING THE OAKLAND MUNICIPAL CODE TO PROHIBIT THROUGH TRUCKS EXCEEDING FOUR AND ONE-HALF TONS ON CERTAIN STREETS

An ordinance amending Section 10.52.060 of the Oakland Municipal Code (OMC) to prohibit through trucks exceeding four and one-half tons on the listed streets.

This Ordinance was introduced at the regular council meeting, Tuesday evening January 25, 2000 and passed to print 8 Ayes, 0 Noes. Hearing on final adoption is set for regular Council Meeting at One City Hall Plaza, Council Chambers, on the third floor in Oakland, California, Tuesday evening February 8, 2000 at 7:00 p.m.

Three full copies are available for use and examination by the public in the office of the City Clerk at One City Hall Plaza, 1st Floor, Oakland, California.

CEDA FLOYD, City Clerk

**The Oakland Tribune, #1718571
February 3, 2000**

ORIGINAL

PROOF OF PUBLICATION

In the matter of:

PROHIBIT TRUCKS EXCEEDING FOUR AND ONE-HALF TONS ON STS.

The undersigned below, deposes and says that he/she was the public Notice Advertising Clerk of the OAKLAND TRIBUNE a newspaper of general circulation as defined by Government Code Section 6000 adjudicated as such by the Superior Court of the State of California, County of Alameda (Order Nos. 237798, December 4, 1951) which is published and circulated in Oakland Township in said county and state seven days a week.

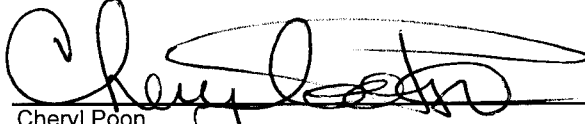
That the

NOTICE AND DIGEST

of which the annexed is a printed copy, was published in every issue of the OAKLAND TRIBUNE, on the following dates:

February 3, 2000

I certify (or declare) under the penalty of perjury that the foregoing is true and correct.



Cheryl Poon

Public Notice Advertising Clerk

February 3, 2000