OFFICE OF THE CITY CLERK
OAKLAND

2007 SEP -6 PM 6:15

**4/5 VOTE REQUIRED FOR PASSAGE**

**Approved as to form and legality**

Farimah Faiz
CITY ATTORNEY

INTRODUCED BY COUNCILMEMBER REID

**12826**

**Ordinance No. _____C.M.S.**

**AN URGENCY ORDINANCE, PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 65858, EXTENDING UNTIL MARCH 20, 2008 A MORATORIUM ON THE ESTABLISHMENT OF ANY NEW ACTIVITY OR FACILITY SELLING TOBACCO OR TOBACCO RELATED PRODUCTS OR PARAPHERNALIA.**

**WHEREAS,** on February 6, 2007, the City Council adopted Urgency Ordinance No. 12785 C.M.S. establishing an emergency 45-day moratorium on the establishment of any new activity or facility selling tobacco or tobacco or related products or paraphernalia.

**WHEREAS,** on March 20, 2007, the City Council adopted Urgency Ordinance No. 12788 C.M.S., extending the moratorium to September 20, 2007.

**WHEREAS**, this moratorium will expire on September 20, 2007.

**WHEREAS,** the legislative process by which any proposed permanent amendments to the City's regulations can be adopted requires public hearings before the Planning Commission, the Community and Economic Development Committee, as well as two readings before the full City Council, the completion of which cannot occur until no earlier than March 20, 2008 .

**WHEREAS,** the City of Oakland's Community and Economic Development Agency is in the process of studying proposed amendment's to the City's regulations on tobacco establishments and it is expected that the proposed regulations will be presented to the City Council prior to March 20, 2008

**WHEREAS,** due notice of the hearing requesting this extension of the moratorium has been given as required by law; and

**WHEREAS**, the City of Oakland has an overriding interest in planning and regulating the use of property within the City. Implicit in any plan or regulation is the City's interest in maintaining the quality of urban life and the character of the City's neighborhoods. Without stable, well-planned neighborhoods, sections of the City can quickly deteriorate, with tragic consequences to social, environmental and economic values; and

**WHEREAS,** the proliferation of establishments that sell or display smoking, drug/and or tobacco paraphernalia, and other items promoting the use of tobacco products or promoting the use of illegal drugs or controlled substances and characterizing such paraphernalia as intended for use with tobacco products, may adversely affect the City's ability to attract and retain businesses and shoppers to the City; and

**WHEREAS,** permitting the sale of smoking, drug and/or tobacco paraphernalia may adversely affect the City's economic vitality, may promote the illegal consumption and purchase of illegal drugs by children and minors by increasing their exposure to drug paraphernalia, may result in high concentration of illegal drug-related uses in certain neighborhoods, may result in a threat to public health, safety and welfare and may not be compatible with existing and potential uses of similarly zoned businesses ; and

**WHEREAS,** it is the City's intent, in consideration of other existing and potential uses within the City, to assure a degree of compatility between the location of establishments selling and displaying smoking, drug and/or tobacco paraphernalia and surrounding commercial properties. This intent will be effectuated by a comprehensive study possibly resulting in additional revisions to the Planning Code; and,

**WHEREAS**, an updated Land Use and Transportation Element of the Oakland General Plan was adopted by the Oakland City Council in March, 1998 to guide future land use and development in the city; and

**WHEREAS**, the Land Use and Transportation Element and the Estuary Policy Plan contain goals, objectives, and policies that promote: maintaining and enhancing the vitality of existing neighborhood commercial areas - Objective I/C1.1 Attracting New Business; Policy N1.6 Reviewing Potential Nuisance Activities; Policy 5.1 Environmental Justice; and

**WHEREAS**, the continued establishment of may result in potential conflict with some of the policies and objectives of the Land Use and Transportation Element of the General Plan; and

**WHEREAS**, the City Council hereby requests that the Planning Department continue the review of the regulatory mechanisms available to regulate activities or facilities selling tobacco or tobacco related products with the goal of adopting needed changes to the current regulations, including changes to the Planning Code to protect the public health, safety, and welfare from the negative effects of smoke shops. During the period of time that it undertakes this task, the City is concerned that absent the adoption of an emergency moratorium, activities and facilities that conflict with contemplated changes to the City's regulatory schemes could be established in the City thereby frustrating the realization of the goals of that study; and

**WHEREAS**, until such time that the City concludes its review and adopts new land use controls over such activities or facilities selling tobacco or tobacco related products, the

community is in jeopardy that such businesses could be instituted, modified, or expanded prior to the imposition of new controls necessary for the protection of public health and welfare; and

**WHEREAS**, issuance or approval of any building, planning or other permit for activities or facilities selling tobacco or tobacco related products /paraphernalia prior to the City's completion of such investigation would result in a current and immediate threat to the public health, safety or welfare; and

**WHEREAS**, pursuant to Government Code Section 65858 a city, including a charter city, may adopt an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan or zoning proposal that the legislative body is considering or intends to study within a reasonable time; and

**WHEREAS,** for the reasons set forth above and in Ordinances Nos. 12785 and 12788 C.M.S., this ordinance is declared by the Oakland City Council to be necessary for preserving the public peace, health, or safety and to avoid a current, immediate and direct threat to the health, safety, or welfare of the community, and the "Whereas" clauses above taken together constitute the City Council's statement of the reasons constituting such necessity and urgency.

**NOW, THEREFORE, THE CITY 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 finds and determines, for the reasons stated in the recitals, the adoption of this ordinance is exempt from CEQA under Sections 15060 (c)(3), 15061(b)(3), 15301, 15303, and 15307 of the State CEQA Guidelines.

**SECTION 3.** Until such time as the City concludes the review described above, and adopts new land use controls pertaining to activities or facilities selling tobacco or tobacco related products, the City of Oakland hereby declares a moratorium on the permitting or approval of any new, modified, or expanded establishments selling tobacco or tobacco related products as defined in section 4 below.

**SECTION 4.** For purposes of this Ordinance, the following definitions shall apply:

> Tobacco related products are defined as any substance containing tobacco including but not limited to cigarettes, cigars, chewing tobacco and dipping tobacco; cigarette papers; or any other instruments or paraphernalia for the smoking or ingestion of tobacco and products prepared from tobacco.

For the purposes of this Ordinance, the following activities shall be exempt:

(1) Any activity using more than 10,000 square feet.
(2) Any activity that sells tobacco or tobacco related products in conjunction with the sale of gasoline.

**SECTION 5.** In accordance with Government Code Section 65858, this Ordinance shall be in full force and effect for a period of 6 months.

**SECTION 6.** During the term of this ordinance as set forth in Section 5 hereof, no use permit, building, zoning or other permit that has been issued for any activity or facility selling anything as set forth in section 4 above for which rights to proceed with the permit have not vested pursuant to the provisions of State law shall proceed, and no use permit, building, zoning or other permit shall be issued by any department, agency, employee or agent of the City of Oakland to allow for any activities or facilities selling items as set forth in section 4 above.

**SECTION 7.** The City Clerk shall certify to the passage and adoption of this Ordinance causing it to be posted, as required by law, and it shall thereafter be in full force and effect. This Ordinance shall become effective immediately as an interim urgency ordinance, in order to protect the public health, safety and welfare.

**SECTION 8.** For the term of this ordinance, as set forth in Section 5 hereof, the provisions of this ordinance shall govern, to the extent there is any conflict between the provisions of this ordinance and the provisions of any other City code, ordinance, resolution or policy, and all such conflicting provisions shall be suspended.

**SECTION 9.** This Ordinance is enacted pursuant to the City of Oakland's general police powers, Section 106 of the Charter of the City of Oakland, Article XI of the California Constitution and Government Code section 65858.

**SECTION 10.** Petition for Relief from Moratorium. Any person who has applied to construct , modify establish an activity selling tobacco or tobacco related products which would be affected by this Moratorium, and who contends that the Moratorium as applied to him or her would be unlawful under Federal, State, or local law or regulation, may submit a written application to the Planning Director requesting relief from the Moratorium. The request for relief from moratorium shall identify the name and address of the applicant, the affected application number, and shall state how the Moratorium as applied to him or her would be unlawful under Federal, State, or local law or regulation. Within fourteen (14) calendar days of receipt of the completed request for relief, the City Administrator, or her designee, shall mail to the applicant a written determination accepting or rejecting the request for relief from Moratorium.

**SECTION 11.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, such

decision shall not affect the validity of the remaining portions of this ordinance. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more section, subsection, sentence, clause, or phrase be declared invalid.

**In Council, Oakland, California,** SEP 18 2007**, 2007,**

**Passed By The Following Vote:**

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT DE LA FUENTE – 8

NOTES- 0

ABSENT- 0

ABSTENTION- 0

ATTEST: LaTonda Simmons

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

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## NOTICE AND DIGEST

By this ordinance, the Oakland City Council extends an interim moratorium, for a 6 month period, on any activities or facilities selling tobacco or tobacco related products.