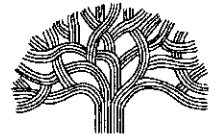


FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

CITY OF OAKLAND



CITY HALL • 1 F 08 MAR 16 09 34 PLAZA • OAKLAND, CA 94612

Larry E. Reid  
Councilmember  
District # 7

(510) 238-7007  
FAX (510) 238-6129

TO : City Council  
CC : City Administrator  
FROM: Council Member Larry Reid  
DATE: March 18, 2008  
RE : Item- Adopt An Ordinance Extending a previously adopted Moratorium,  
Pursuant To California Government Code Section 65858, Extending until May 1, 2008  
On The Establishment Of Any New Activity Or Facility Selling Tobacco Or Tobacco  
Related Products Or Paraphernalia

Dear Council President de la Fuente and Council Members:

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. This 45 day Moratorium was extended on February 8, 2007, for 6 months, and shortly thereafter this moratorium was extended for an additional six months. Currently the Moratorium expires on March 20, 2008. The Moratorium was originally established to allow the Planning Department to establish An Ordinance Amendment to Chapter 17.10 of the Planning and Zoning Use Classifications for the Sale of Tobacco Related Products, Requiring a Major Conditional Use Permit for These activities. The Moratorium is also being extended to allow for a Licensing Program for the Establishment or Expansion of Activities Devoted to the Sale of Tobacco and Tobacco Related Paraphernalia which will be introduced on March 18, 2008.

#### BACKGROUND/KEY ISSUES AND IMPACTS

In addition to the above mentioned legislation, the purpose of these actions is directly attributed to the following facts:

- (1) Retailers, most commonly referred to as Smoke Shops continue to be a blight on a majority of our major corridors, encouraging the use of Drug Paraphernalia, Loitering, and the sale to minors, and;
- (2) Regulations and unlawful activities have been associated with many of the Smoke Shops that are near or next to single family communities and schools:

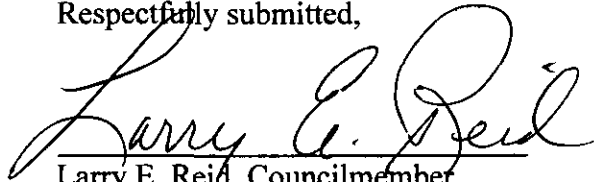
#### CONCLUSION

The action of the Council in accepting this Extended Moratorium will have a positive impact on Public safety and the Quality of Life.

Item \_\_\_\_\_  
City Council  
March 18, 2008

Therefore, I respectfully request that the City Council adopt this request for an extension of this Moratorium until May1, 2008.

Respectfully submitted,

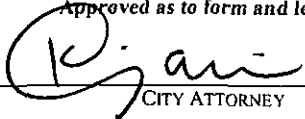
A handwritten signature in cursive script, reading "Larry E. Reid". The signature is written in black ink and is positioned above a horizontal line.

Larry E. Reid, Councilmember  
District 7

2008 MAR -6 PM 4:14

4/5 VOTE REQUIRED FOR PASSAGE

INTRODUCED BY COUNCILMEMBER REID

Approved as to form and legality  
  
CITY ATTORNEY

Ordinance No. \_\_\_\_\_ C.M.S.

**AN URGENCY ORDINANCE, PURSUANT TO CALIFORNIA  
GOVERNMENT CODE SECTION 65858, EXTENDING UNTIL MAY 1,  
2008 A MORATORIUM ON THE ESTABLISHMENT OF ANY NEW  
ACTIVITY OR FACILITY SELLING TOBACCO OR TOBACCO  
RELATED PRODUCTS OR PARAPHERNALIA.**

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**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**, upon expiration of this moratorium on September 20, 2007, the City Council adopted an extension of this moratorium for an additional 6 months, expiring on March 20, 2008;

**WHEREAS**, this moratorium will expire on March 20, 2008;

**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, as well as two readings before the full City Council, the completion of which cannot occur until no earlier than May 1, 2008;

**WHEREAS**, the City of Oakland's Community and Economic Development Agency is in the process of submitting proposed amendment's to the City's regulations on tobacco establishments to the Planning Commission on March 19, 2008 and it is expected that the proposed regulations will be presented to the City Council prior to May 1, 2008;

**WHEREAS**, due notice of the hearing requesting this extension of the moratorium has been given as required under Cal. Gov. Code 65090; 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 compatibility 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 until May 1, 2008.

**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 or 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.

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, \_\_\_\_\_, 2007,**

**Passed By The Following Vote:**

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

NOTES-

ABSENT-

ABSTENTION-

DATE OF ATTESTATION: \_\_\_\_\_

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

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

**AN ORDINANCE, PURSUANT TO CALIFORNIA GOVERNMENT CODE  
SECTION 65858, EXTENDING UNTIL MAY 1, 2008, A MORATORIUM  
ON THE ESTABLISHMENT OF ANY NEW ACTIVITY OR FACILITY  
SELLING TOBACCO OR TOBACCO RELATED PRODUCTS OR  
PARAPHERNALIA.**

**NOTICE AND DIGEST**

By this ordinance, the Oakland City Council extends an interim moratorium until May 1, 2008 on any activities or facilities selling tobacco or tobacco related products.