

MISSING ORIGINAL LEGISLATION

Resolution / Ordinance Number: 12892

City Council Meeting Date September 16, 2008

Agenda Item No. 32

Recorded Vote 7 AYES, 1 ABSTAIN

Reason for Missing Legislation:

- Draft submitted in agenda packet, original never received
- Council amended legislation at the meeting

Responsible Contact Information

Department Council

Contact Person/Ext. Desley Brooks

Notes (if any)

FILED
OFFICE OF THE CITY CLERK
OAKLAND

08 SEP -8 PM 4:05

REVISED: 9/8/08

7 VOTES REQUIRED FOR PASSAGE

DRAFT

APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCILMEMBER DESLEY BROOKS

City Attorney

OAKLAND CITY COUNCIL

ORDINANCE No. _____ C.M.S.

AN INTERIM ORDINANCE, ADOPTED AS AN URGENCY MEASURE PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 65858, ESTABLISHING A TEMPORARY MORATORIUM ON THE ESTABLISHMENT OR EXPANSION OF AN ACTIVITY OR FACILITY THAT INVOLVES TATTOOING, BODY PIERCING, AND/OR PERMANENT COSMETICS TO TAKE EFFECT IMMEDIATELY UPON ADOPTION

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 for the City's residents, as well as allowing for an environment that is conducive to attracting and retaining positive, job-generating businesses that the City needs for a vibrant economy. Without adequate planning and zoning regulations, sections of the City can quickly deteriorate, with tragic consequences to social, environmental and economic values; and

WHEREAS, it is a primary responsibility of City government to protect the health, safety, and welfare of its residents; and

WHEREAS, businesses involving Tattooing, Body Piercing, and Permanent Cosmetics utilize processes, that, if not performed properly and safely, can have negative consequences to public health, safety and welfare; and

WHEREAS, the Alameda County Health Department currently requires only registration of Tattooing, Body Piercing, and Permanent Cosmetics businesses; and

WHEREAS, the County's registration process does not include inspections to ensure the cleanliness and safety of such businesses; and

WHEREAS, the City of Oakland imposes no additional licensing or inspection requirements on such businesses; and

WHEREAS, the Alameda County Health Department has proposed and the Alameda County Supervisors are currently considering an ordinance that would establish a permitting process for Tattooing, Body Piercing, and Permanent Cosmetics businesses; and

WHEREAS, whereas the proposed Alameda County ordinance would establish health and safety standards that would be confirmed by County Health inspectors; and

WHEREAS, the Alameda County Health Department anticipates that, if adopted, the proposed ordinance would apply to the unincorporated areas of Alameda County but that cities within Alameda County could also adopt the County's ordinance; and

WHEREAS, should the City of Oakland adopt the Alameda County ordinance, Alameda County Health Department inspectors would take responsibility for the permitting and inspection of Oakland businesses that perform Tattooing, Body Piercing, and Permanent Cosmetics; and

WHEREAS, in the event that Alameda County does not adopt the proposed ordinance regulating Tattooing, Body Piercing, and Permanent Cosmetics, the City of Oakland would create legislation to require the permitting and inspection of such businesses; and

WHEREAS, the proposed Alameda County ordinance does not address zoning issues related to the establishment of Tattooing, Body Piercing, and Permanent Cosmetics businesses; and

WHEREAS, the City Council hereby requests that the Planning Department initiate a review of the regulatory mechanisms available to regulate activities or facilities that perform Tattooing, Body Piercing, and Permanent Cosmetics application, 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 Tattooing, Body Piercing, and Permanent Cosmetics businesses; and

WHEREAS, during the period of time required to undertake this task, the City is concerned that, absent the adoption of an urgency measure moratorium, Tattooing, Body Piercing, and Permanent Cosmetics businesses could be expanded or established and such would conflict with contemplated changes to the City's regulatory schemes, 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 that involve Tattooing, Body Piercing, and Permanent Cosmetics, 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, safety and welfare; and

WHEREAS, issuance or approval of any building, planning or other permit for activities or facilities that involve Tattooing, Body Piercing, and Permanent Cosmetics prior to the City's completion of such investigation would result in a current and immediate threat to the public health, safety or welfare, except as provided herein; 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, this ordinance is declared by the 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 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 15061(b)(3), 15301, 15302, 15303, 15307, 15308 and 15311 of the State CEQA Guidelines.

Section 3. Until such time as the City concludes the review described above, adopts new land use controls pertaining to activities or facilities that involve Tattooing, Body Piercing, and Permanent Cosmetics, and determines whether Alameda County Health Department processes will adequately address the City's health and safety concerns, the City of Oakland hereby declares a moratorium on the permitting or approval of any new, modified, or expanded establishments that involve Tattooing, Body Piercing, and Permanent Cosmetics as defined in section 4 below and detailed in Section 6 below .

Section 4. For the term of this Ordinance, as set forth in Section 5 hereof, the following shall apply:

A. Tattooing means any method of placing ink or other pigments into or under the skin or mucosa with needles or any other instruments used to puncture the skin, resulting in permanent coloration of the sin or mucosa. This includes all forms of cosmetic tattooing, as defined in the Health and Safety Code Section 119300(a).

B. Body Piercing means the creation of an opening in the body of a human being for the purpose of inserting jewelry or other decoration. This includes, but is not limited to, piercing of an ear, lip, tongue, nose or eyebrow as defined in the California Health and Safety Code Section 119300(b). Body piercing does not, for the purpose of this moratorium, include piercing an ear with a disposable, single-use stud or solid needle that is applied using a mechanical device to force the needle or stud through the ear.

C. Permanent Cosmetics means the application of pigments to or under the skin of a human being for the purpose of permanently changing the color or other appearance of the skin. This includes, but is not limited to eyebrows, permanent eyeliner, eye shadow, or lip color, as defined in the California Health and Safety Code Section 119300(c)

Section 5. In accordance with Government Code Section 65858, this Ordinance shall be in full force and effect for a period of 45 days from the date of its adoption. This 45-day period may be extended by the City Council in accordance with the provisions of California Government Code Section 65858.

Section 6. During the term of this ordinance as set forth in Section 5 hereof, no building permit, zoning clearance or other permit shall be issued by the City, including any Commission, department, agency, employee or agent of the City to allow for any activities or facilities as set forth in Section 4 above, **except** zoning applications approved by the City and not yet expired, or zoning applications deemed complete by the City as of the effective date of this ordinance, shall be permitted to operate and/or proceed pursuant to the then existing regulations.

Section 7. The City Clerk shall certify as 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, Sections 106 of the Charter of the City of Oakland, and 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 or facility that involves Tattooing, Body Piercing, and Permanent Cosmetics 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, providing appropriate legal and factual support. Within thirty (30) calendar days of receipt of the completed request for relief, the Planning Director, or his/her designee, shall mail to the applicant a written determination accepting or rejecting the request for relief from Moratorium. The applicant may appeal such determination pursuant to Oakland Planning Code section 17.132.020.

Section 11. If any section, subsection, sentence, clause, phrase or word 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, _____

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

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

DATE OF ATTESTATION: _____