

OFFICE OF THE CITY CLERK
CITY OF OAKLAND

INTRODUCED BY COUNCIL MEMBER JANE BRUNNER
2006 JUL 13 PM 5:36

4/5 VOTE REQUIRED FOR PASSAGE

APPROVED AS TO FORM AND LEGALITY

Mark P. Wahl

Oakland City Attorney's Office

ORDINANCE NO. _____ C.M.S.

AN URGENCY ORDINANCE, PURSUANT TO GOVERNMENT CODE SECTION 65858, ESTABLISHING A TEMPORARY MORATORIUM ON THE APPROVAL AND ISSUANCE OF DEMOLITION PERMITS FOR PROPERTIES LOCATED ON TELEGRAPH AVENUE, BETWEEN 40TH STREET AND THE BERKELEY BORDER

WHEREAS, Government Code § 65858 allows a city, including a charter city, without following the procedures otherwise required prior to the adoption of a zoning ordinance, to adopt, as an urgency measure, an interim ordinance prohibiting any uses which may be in conflict with a contemplated general plan, specific plan, or zoning proposal which the legislative body, planning commission, or planning department is intending to study within a reasonable time; and

WHEREAS, it is a legal requirement in the City of Oakland for Oakland's zoning to be in conformance with its General Plan. North Oakland's Temescal neighborhood is one area where the General Plan and the underlying zoning are not in conformance, and a staff analysis and a community process are currently underway to meet the conformance requirement; and

WHEREAS, the City of Oakland's Community Economic Development Agency, in cooperation with Councilmember Jane Brunner, is currently facilitating a community planning process in the Temescal neighborhood, one of the outcomes of which will be a vision of what the character of development along Telegraph Avenue should be and possible amendments to existing zoning code regulations or general plan; and

WHEREAS, given the ongoing community planning process, and the fact that the demolition of potentially historic buildings can permanently alter the character of a neighborhood, the City Council supports a moratorium on the issuance of demolition permits until such time that the City and the community conclude their process and adopt any new land use regulations governing development along Telegraph Avenue;

WHEREAS, the City Council finds and determines that the approval of pending or new demolition permits during the moratorium period, in which possible amendments to the Zoning Code and general plan are being studied, could result in conflicts with any proposed amendments and would undermine the purpose of studying such amendments, thereby reducing the quality of life within the community to the extent the overall public health, safety and welfare are detrimentally affected; and

WHEREAS, The planning process and this moratorium seek to define acceptable development character, standards and other requirements along Telegraph Avenue. The City

Council asserts that the issuance of demolition permits in the middle of an ongoing community planning process has the potential to undermine the process and frustrate the work of the community and City staff, as well as jeopardize a number of potentially historic structures in the Temescal neighborhood and the overall character of this historic neighborhood with regard to destruction of the historic street character, development patterns and structures; and

WHEREAS, it is the intent of the Oakland City Council to consider new zoning or land use regulations pertaining to development on Telegraph Avenue and/or the demolition or relocation of potentially historic buildings along Telegraph Avenue; and

WHEREAS, the Oakland City Council has determined that a temporary moratorium on the issuance of demolition permits along Telegraph Avenue from 40th Street to the Berkeley border will allow the City time to complete its review and adopt appropriate revisions of its land use regulations;; and

WHEREAS, for the reasons set forth above, this ordinance is declared by the Oakland City Council to be necessary for preserving the public health, safety or welfare and to avoid a current, immediate and direct threat to the health, safety, or welfare or 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 15061(b)(3), 15307, 15308, and 15183 of the State CEQA Guidelines.

SECTION 3. The City Council hereby directs the Community and Economic Development Agency to assist the Temescal neighborhood’s community planning process and to submit, if necessary, any new land use, general plan or zoning regulations pertaining to Telegraph Avenue for consideration by the Planning Commission and City Council.

SECTION 4. Until such time as the City concludes the review described above, the City of Oakland hereby declares a moratorium on the approval and/or issuance of demolition permits for properties along Telegraph Avenue, from 40th Street to the Berkeley border, except as provided in Sections 7 and 9 below.

SECTION 5. For purposes of this Ordinance, the following definitions shall apply:

- a. “Demolition Permit” as set forth in OMC 15.36.010 but only for properties along Telegraph Avenue, from 40th Street to the Berkeley border.

- b. "Properties along Telegraph Avenue" shall include all properties with any street frontage on Telegraph Avenue and/or any property with a recorded Telegraph Avenue address.

SECTION 6. 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, i.e., from July 18 through and including September 1, 2006, prohibiting the approval of and issuance of demolition permits, except as provided in Sections 7 and 9 below. This 45-day period may be extended by the City Council in accordance with the provisions of California Government Code Section 65858.

SECTION 7. Exceptions.

- a. Any demolition permit associated with, related to, or necessary for a project that has approved by the Community and Economic Development Agency or has been considered and/or approved by the City Planning Commission on or before July 19, 2006, shall be exempt from this Ordinance.

- b. During the term of this ordinance, a demolition permit may be issued by the City if the structure to be demolished is declared an unsafe structure or a public nuisance, as provided in OMC section 15.36.080B.

- c. During the term of this ordinance, a demolition permit may be approved by the City Council, on a case-by-case basis if the applicant submits a written application to the Planning Director requesting the City Council grant relief from the Moratorium. The application shall consist of the standard demolition permit application (and related fees) plus an explanation of the reasons why the Council should approve the demolition permit.

SECTION 8. During the term of this ordinance as set forth in Section 6 hereof, no demolition permit shall be approved or issued by any department, agency, employee, or agent of the City of Oakland, except as provided in Section 7 above or Section 9 below. An application for a demolition permit may be processed during the moratorium, and any extension of the moratorium. However, the application shall be processed at the applicant's sole cost and expense and with the understanding that no permit shall be issued until the moratorium, including any extension of the moratorium, has expired and that, the permit may not be issued if it is inconsistent with any amendments to city laws, ordinances or regulations that are amended by reason of the review that occurs during the moratorium.

SECTION 9. Petition for Relief from Moratorium. Any person who has applied for a demolition permit 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. The determination of the City Administrator shall be final and not appealable.

SECTION 10. The City Clerk shall certify to the passage and adoption of this Ordinance causing it to be posted, as required by the 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 11. 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 12. 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 13. 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, _____, 2006

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

ABSTENTION -

ATTEST:

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