

CITY OF OAKLAND
AGENDA REPORT

2009 SEP -3 PM 5: 07

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Community and Economic Development Agency
DATE: September 15, 2009

RE: **Public Hearing On An Emergency Ordinance, Pursuant to Charter Section 213, Establishing Interim Controls Requiring A Major Conditional Use Permit for all Nail Salons and Laundromats in The City of Oakland, to Take Effect Immediately Upon Introduction and Adoption**

SUMMARY

Vice Mayor De La Fuente has requested that staff research and make recommendations on establishing an over concentration ordinance or other appropriate actions regarding nail salons and self-serve Laundromats in the City of Oakland. In order to allow time for staff to propose a permanent ordinance on this issue, an interim set of controls is proposed to provide discretionary controls over these uses until the final ordinance can be adopted.

Staff proposes that the interim controls sunset after one year. This period allows the Planning Division to study more comprehensive solutions to the issues outlined above.

FISCAL IMPACT

This emergency ordinance has the potential to generate a relatively small increase in permit applications. Any increase in permit application revenue would be deposited into the Development Service Fund (2415). Any increased revenue generated would be small relative to permit application revenue currently budgeted. No new fees would need to be established.

Existing staffing and appropriation levels should be sufficient to process any increase in permit applications; therefore no additional costs are expected to be incurred by the Development Service Fund.

ENVIRONMENTAL DETERMINATION

The proposal relies on the following environmental document to satisfy requirements under the California Environmental Quality Act (CEQA): the previously certified Final Environmental Impact Report for the Land Use and Transportation Element of the Oakland General Plan (General Plan EIR), adopted 1998 (General Plan EIR). Furthermore, the proposal is exempt under CEQA Guidelines section 15061(b)(3), known as the "General Rule," which states a

Item: _____
CED Committee
September 15, 2009

project is exempt from CEQA if there is no possibility that the activity in question will have a significant effect on the environment. Staff finds the "General Rule" applies, because the proposed regulations would have no change in the development intensity of the area, as the proposal does not address residential density or floor area ratio, and the proposal contains no change in regulations regarding height, setback, open space or other regulations that have an effect on the environment. The proposed regulations are more stringent, with regards to permitted activities, than the current zoning and regulatory controls.

KEY ISSUES AND IMPACTS

The proliferation of nail salons and self-serve Laundromats along major retail corridors has become an increasing concern to Councilmembers, retail store owners and merchant associations. These groups are worried that an over concentration of these uses could drive away retail businesses in commercial nodes and along commercial corridors. Staff has been tasked with researching and proposing an ordinance to establish appropriate levels of these uses and propose discretionary controls to regulate locations for these types of activities. In order to allow sufficient time to hold public hearings on this issue, staff is proposing a set of interim discretionary controls.

SUSTAINABLE OPPORTUNITIES

Staff foresees no economic, environmental or social equity opportunities, as a result of the enactment of interim controls.

DISABILITY AND SENIOR CITIZEN ACCESS

Staff does not anticipate any particular barriers or benefits resulting from the ordinance, regarding access issues for the disabled or for senior citizens.

RECOMMENDATION(S) AND RATIONALE

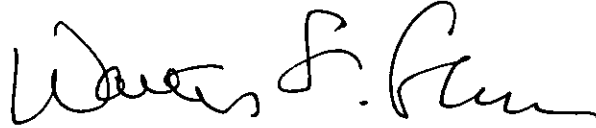
Staff recommends that the City Council approve the emergency ordinance, pursuant to Section 213¹ of the Oakland City Charter, which will provide the City an opportunity to propose a permanent ordinance to regulate these activities. During that time, the Strategic Planning Division will undertake a study of the concentration of nail salons and self-serve Laundromats and return to the Planning Commission and the City Council with recommendations for permanent controls.

¹ Section 213. **Emergency Ordinances.** Any ordinance declared by the Council to be necessary for preserving the public peace, health, or safety in an emergency, and containing a statement of the reasons constituting such necessity, may be introduced and adopted at the same meeting if passed by the affirmative vote of at least six members. Appropriations to meet an urgent need for public expenditure, to protect the public health, safety, or welfare may be made as an emergency ordinance.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt the Emergency Ordinance requiring, for the next year, a Major Conditional Use Permit for nail salons and self-serve Laundromats.

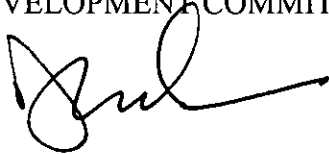
Respectfully submitted,



Walter S. Cohen, Director
Community and Economic Development Agency

Prepared by: Devan Reiff, Planner II
Planning and Zoning Division, CEDA

APPROVED AND FORWARDED TO
THE COMMUNITY AND ECONOMIC
DEVELOPMENT COMMITTEE:



Office of the City Administrator

Item: _____
CED Committee
September 15, 2009

FILED
OFFICE OF THE CITY CLERK
OAKLAND

APPROVED AS TO FORM AND LEGALITY

2009 SEP - 3 PM 5:07
INTRODUCED BY COUNCILMEMBER _____


City Attorney

OAKLAND CITY COUNCIL
ORDINANCE No. _____ C.M.S.

AN EMERGENCY ORDINANCE, PURSUANT TO CHARTER SECTION 213, ESTABLISHING INTERIM CONTROLS REQUIRING A MAJOR CONDITIONAL USE PERMIT FOR NAIL SALONS AND SELF-SERVE LAUNDROMATS IN THE CITY OF OAKLAND, TO TAKE EFFECT IMMEDIATELY UPON INTRODUCTION AND ADOPTION

WHEREAS, the Oakland Municipal Code and the Oakland Planning Code (“OPC”) regulate the distribution of uses and urban design in the City of Oakland; and

WHEREAS, among other activities, the City permits outright, without any discretionary planning review, nail salons and self-serve Laundromats; and

WHEREAS, these uses can displace retail activities and compromise the economic diversity of retail corridors; and

WHEREAS, the City is developing a City-wide retail strategy that focuses on encouraging pedestrian-oriented retail development on the major transportation corridors; and

WHEREAS, interrupting pedestrian-oriented retail nodes with these activities can detract from the success of these nodes; and

WHEREAS, these uses do not require discretionary approval under City zoning laws; and

WHEREAS, the Land Use and Transportation Element of the Oakland General Plan places priority on the successful and attractive development of the transportation corridors; and

WHEREAS, requiring a major conditional use permit from the City for establishing or expanding nail salons and self-serve laundromats provide the City a tool to enhance the appearance of these corridors and better promote the public’s health, safety and welfare, while permanent controls are being developed; and

WHEREAS, there is insufficient time to develop permanent controls regulating these activities and present them to the City Planning Commission and City Council for review, recommendation, and adoption; and

WHEREAS, the provisions of the California Environmental Quality Act (CEQA) have been satisfied and the proposal relies on the following environmental document to satisfy any requirements under the California Environmental Quality Act (CEQA): the previously certified Final Environmental Impact Report for the Land Use and Transportation Element of the General Plan, adopted in 1998 (General Plan EIR); and

WHEREAS, as a separate and independent basis, the proposal is also exempt from CEQA under several CEQA Guidelines: section 15061(b)(3), known as the “General Rule,” that states a project is exempt from CEQA if there is no possibility that the activity in question will have a significant effect on the environment; and

WHEREAS, for the reasons set forth above, pursuant to City Charter section 213, the Council declares that this ordinance is necessary to preserve the public peace, health, welfare or safety and to avoid a direct threat to the health, safety, and welfare of the community, and the “Whereas” clauses above taken together constitute the City Council’s statement of the reasons constituting such necessity and emergency; now, therefore

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Section 1. The recitals above are true and correct and are an integral part of this Ordinance.

Section 2. This Ordinance complies with the California Environmental Quality Act.

Section 3. That nail salons and self-serve Laundromats shall only be permitted upon the granting of a major conditional use permit pursuant to the conditional use permit procedure in Chapter 17.134 of the Planning Code.

Section 4. No building, zoning or other permit that has been issued for any building or structure for which rights to proceed with said building or structure have not vested pursuant to the provisions of State law shall proceed without complying with this ordinance. Further, no building, zoning or other permit for any building or structure shall be issued by any department, agency, employee or agent of the City of Oakland to allow for any building or structure, without complying with the requirements of Sections 3 above. No use which has not vested prior to the date of this Ordinance shall commence in violation of the provisions of this Ordinance.

Section 5. The controls imposed by this ordinance shall remain in place and be effective for a continuous one year from the effective date of this ordinance, or until the City Council adopts permanent controls for nail salons and/or self-serve Laundromats, whichever comes first.

Section 6. The Community and Economic Development Agency is directed, over the next one year, to conduct a study and develop a draft set of permanent amendments to the Planning Code and/or Municipal Code regarding the subject matter of this ordinance.

Section 7. For the term of this ordinance, as set forth in Section 5 above, the provisions of this ordinance shall govern, and 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, all such

conflicting provisions shall be suspended.

Section 8. This ordinance shall be effective immediately upon its adoption by the City Council, subject to the provisions of Section 213 of the Charter of the City of Oakland.

Section 9. This Ordinance is enacted pursuant to the City of Oakland's general police powers, Sections 106 and 213 of the Charter of the City of Oakland, and Article XI of the California Constitution.

Section 10. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, the remainder of this ordinance and the application of such provisions to other persons or circumstances shall not be affected thereby.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20_____

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

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

DATE OF ATTESTATION: _____