

CITY OF OAKLAND

AGENDA REPORT

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2008 JUN -5 AM 11:03

TO: Office of the City Administrator
ATTN: Deborah A. Edgerly
FROM: Community and Economic Development Agency
DATE: June 17, 2008

RE: A Report Regarding A Public Hearing and An Interim Ordinance, Adopted As An Urgency Measure Pursuant To California Government Code Section 65858, Establishing A Temporary Moratorium On The Establishment Of Or Expansion Of An Activity Or Facility That Involves Primary Recycling And Intermediate Processing Facilities, To Take Effect Immediately Upon Adoption

SUMMARY

As directed by City Council, staff has prepared an interim ordinance as an urgency measure that establishes a temporary citywide moratorium on the establishment or expansion of Primary Collection Centers and Intermediate Recycling Processing Facilities, as defined in the attached ordinance. The purpose of the urgency interim moratorium ordinance would be to ensure that that the deletion of regulations relating to Primary Collection Centers and Intermediate Recycling Processing Facilities would not result in the absence of any regulations regarding these uses after passage and adoption of the new industrial zone regulations, and also give staff time to develop a proposal of regulations for these uses that could include performance standards in combination with other types of regulation.

FISCAL IMPACT

There should be no direct fiscal impact to the City as a result of this ordinance.

URGENCY INTERIM MORATORIUM ORDINANCE

At their May 20, 2008 meeting, Councilmembers could not reach agreement regarding the regulations pertaining to the location and operation of Primary Collection Centers and Intermediate Recycling Processing Facilities. Rather than delay the passage and adoption of the entire package of proposed changes to the City's industrial zoning district regulations, mapping, and related zoning amendments, the Council decided to introduce the first reading of the ordinance without including the regulations relating to Primary Collection Centers and Intermediate Recycling Processing Facilities (Chapter 17.73 "CIX-1, CIX-2, IG And IO Industrial Zones"). The Council also directed staff to develop a set of performance standards that

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would apply to all new Primary Recycling Collection Centers and Intermediate Recycling Processing Facilities, which would be developed in consultation with residents, the recycling industry and other affected stakeholders. When complete, these performance standards, in conjunction with proposed regulations for Primary Collection Centers and Intermediate Recycling Processing Facilities to be added to Chapter 17.73 would be brought to the Planning Commission and City Council as revisions to the Oakland Planning Code for adoption. The Council also directed staff to study use of “licensing” in combination with performance standards as a possible alternative to a conditional use permit type of regulation.

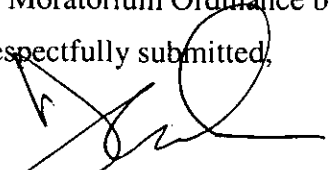
Adoption of the urgency measure would ensure that no new or expanded Primary Collection Centers and Intermediate Recycling Processing Facilities could occur until the new citywide performance standards could be developed. However, as with the proposed industrial zone regulations, zoning applications approved by the City and not yet expired, or to zoning applications deemed complete by the City as of the date of final passage would be exempt from the moratorium and would be allowed to expand/operate under the now existing regulations.

The Interim Urgency Ordinance, if adopted, would be effective immediately upon passage by the City Council and, pursuant to state law, would be in effect for 45 days. Staff will return within the 45-day period to the July 15, 2008 Council meeting (prior to the Council’s Annual Recess) to seek an extension of the Urgency measure since 45-days is not sufficient time to meet with stakeholders and process any revisions.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends adoption of the Urgency Interim Moratorium Ordinance by the City Council.

Respectfully submitted,



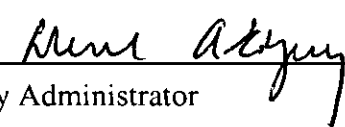
Dan Lindheim
Director
Community & Economic Development Agency

Reviewed by:
Eric Angstadt, Strategic Planning Manager, CEDA

Prepared by:
Alisa Shen, Planner III
Planning and Zoning Division, Strategic Planning, CEDA

Margot Prado, AICP
Industrial and Brownfields Specialist, CEDA

APPROVED AND FORWARDED TO THE
CITY COUNCIL:



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7 VOTES REQUIRED FOR PASSAGE

APPROVED AS TO FORM AND LEGALITY

Mark P. Wald

City Attorney

INTRODUCED BY COUNCILMEMBER _____

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 PRIMARY RECYCLING AND INTERMEDIATE PROCESSING FACILITIES, 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, in March of 1998 the City adopted the Land Use and Transportation Element of the General Plan (LUTE); and

WHEREAS, the development standards contained in a city's zoning code and zoning maps should directly implement the intent for each of these land use classifications contained in the LUTE; and

WHEREAS, Business Mix and General Industrial/Transportation are land use designations in the LUTE; and

WHEREAS, the existing industrial zoning districts and land use classification activity types have not been updated to implement the land use policies of the Business Mix and General Industrial/Transportation land use designations since the LUTE was adopted in 1998; and

WHEREAS, the existing industrial zoning districts and land use classification activity types are outdated, reflecting land use patterns and development trends of the 1960s when the majority of the regulations were written; and

WHEREAS, updating the planning and zoning regulations for the City's industrial areas is an important step toward revitalizing these areas to reflect current priorities, technologies, and building practices; and

WHEREAS, it is the City's intent, in consideration of other existing and potential uses within the City, to minimize nuisances and assure a degree of compatibility between industrial and commercial uses with a higher potential to generate off-site impacts and adjacent residential zones. This intent will be effectuated by a comprehensive study resulting in additional revisions to the Planning Code; and

WHEREAS, the LUTE contain goals, objectives, and policies that promote maintaining and enhancing the vitality of City's industrial and commercial uses, and ensuring compatibility between these uses and adjacent residential zones – Policy I/CI.1 Attracting New Business, Policy I/CI.2 Retaining Existing Business, Objective I/C4 Minimize land use compatibility conflicts in commercial and industrial areas through achieving a balance between economic development values and community values; and

WHEREAS, there is a history of problematic establishment of some Primary Recycling Collection Centers and Intermediate Processing Facilities relating to off-site impacts on neighboring residential zones; and

WHEREAS, the Planning Commission and City Council have considered the appropriate regulatory controls for Primary Recycling Collection Centers and Intermediate Processing Facilities, but the City Council believes that more study needs to be undertaken; and

WHEREAS, the City Council is concurrently considering adoption of an ordinance amending the Oakland Planning Code to add Chapter 17.73 "CIX-1, CIX-2, IG And IO Industrial Zones" which originally included regulations regarding Primary Recycling Collection Centers and Intermediate Processing Facilities, and amending the City's Zoning Maps to map these proposed zones in areas in the City that currently have the General Plan land use designations of Business Mix and General Industrial/Transportation; and

WHEREAS, the City Council does not want to delay adoption of the CIX zones until the issues relating to Primary Recycling Collection Centers and Intermediate Processing Facilities are resolved; and

WHEREAS, the City Council, on May 20, 2008, introduced for first reading the CIX zoning ordinance without regulations relating to Primary Recycling Collection Centers and Intermediate Processing Facilities; and

WHEREAS, the City Council has directed the Planning Department to further review the regulatory mechanisms available to regulate activities or facilities that involve Primary Recycling Collection Centers and Intermediate Processing Facilities, 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 potential negative off-site impacts of Primary Recycling Collection Centers and Intermediate Processing Facilities. During the period of time that it undertakes this task, the City is concerned that absent the adoption of an urgency measure

moratorium, Primary Recycling Collection Centers and Intermediate Processing Facilities 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 Primary Recycling Collection Centers and Intermediate Processing Facilities, 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 Primary Recycling Collection Centers and Intermediate Processing Facilities 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, and adopts new land use controls pertaining to activities or facilities that involve Primary Recycling Collection Centers and Intermediate Processing Facilities, the City of Oakland hereby declares a moratorium on the permitting or approval of any new, modified, or expanded establishments that involve Primary Recycling Collection Centers and Intermediate Processing Facilities 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. Primary Recycling Collection Center are defined as: An activity accepting recyclable non-hazardous materials by donation, redemption, or purchase at facilities occupying an area of

more than five hundred (500) square feet that are not operated incidental to a host use and that may have a permanent building. Primary collection centers typically use power-driven equipment to sort and condense material for shipment to an intermediate processor or other user. Primary collection centers may have a combination of outdoor processing and storage.

B. Intermediate Processing Facility are defined as: An activity serving as a collection point for receiving, processing, storage, and distribution of large quantities of recyclable materials delivered from recycling collection centers or other sources. Processing of most or all material typically occurs inside a building, using mechanical and/or chemical processing equipment to alter the physical form of incoming material. Processed materials may be stored in outdoor areas prior to sale to manufacturers or other end users. Intermediate processing facilities do not accept materials from but may sell goods to the public. This classification does not include facilities that handle or process hazardous materials and solid waste facilities and transfer stations.

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, zoning 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 Primary Recycling Collection Centers and Intermediate Processing Facilities 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: _____

MPW

NOTICE AND DIGEST

AN INTERIM ORDINANCE, ADOPTED AS AN URGENCY MEASURE PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 65858, ESTABLISHING A TEMPORARY MORATORIUM ON THE ESTABLISHMENT OF OR EXPANSION OF AN ACTIVITY OR FACILITY THAT INVOLVES PRIMARY RECYCLING AND INTERMEDIATE PROCESSING FACILITIES, TO TAKE EFFECT IMMEDIATELY UPON ADOPTION

Adoption of this ordinance will result in the establishment of a temporary citywide moratorium on the establishment of any new or expansion of existing Primary Collection Centers and Intermediate Recycling Processing Facilities, as defined in the ordinance, except for 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, which shall be permitted to operate and/or proceed pursuant to the then existing regulations. Upon adoption, this Ordinance would be effective immediately upon passage by the City Council and, pursuant to state law, would be in effect for 45 days.