



OFFICE OF THE CITY CLERK

4/5 VOTE REQUIRED FOR PASSAGE

APPROVED AS TO FORM 2005 JAN 26 PM 4:21

INTRODUCED BY COUNCILMEMBER DANNY WAN

Farinah Faiz
CITY ATTORNEY

ORDINANCE NO. 12647 C.M.S.

**AN URGENCY MEASURE ADOPTING AN INTERIM ORDINANCE,
PERSUANT TO GOVERNMENT CODE SECTION 65858, IMPOSING A
MORATORIUM ON MASSAGE SERVICE ACTIVITIES**

WHEREAS, due to a history of association with prostitution and other illegal activities, Massage Service Activities present unique challenges for local government; and

WHEREAS, Massage Service Activities that serve as fronts for illegal activities require significantly higher commitment of police resources and neighborhood scrutiny; and

WHEREAS, currently, a high concentration of massage establishments, some of which the Police Department has determined offer prostitution services, pervades the Chinatown neighborhood and threatens efforts to revitalize and attract new businesses into Chinatown, an integral part of the broader downtown area; and

WHEREAS, the City of Oakland's recent receipt of a \$2.2 million streetscape improvement grant from the Metropolitan Transportation Commission demonstrates that the Chinatown neighborhood is in the midst of urban renewal that could be threatened by further proliferation of massage establishments and activities; and

WHEREAS, the current ordinance governing Massage Service Activities lacks control over the location of establishments in relation to one another and sensitive uses, such as schools and playgrounds, and the City would benefit from a moratorium during which time such controls can be studied and considered to safeguard against over-concentration in certain neighborhoods; and

WHEREAS, Massage Service Activities increased dramatically in the City of Oakland in 2004-2005, as evidenced by the 36.7% increase in applications for massage therapist permits compared to the marginal increase of 2.7% from 2003-2004; and

WHEREAS, the surge in Massage Service Activities and the demographic profile of new massage therapist applicants in 2004, wherein Asian women constituted 71.3% of new massage therapist applications despite no net increase in the number of permitted massage establishments, has alerted the District 2 Council Office and Oakland Police Department of potential illegal activity, as evidenced by three arrests for solicitation of prostitution and forty-eight citations for massage ordinance violations between June 2004 and January 2005; 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 areas (Policy I/C3.4; Policy T2.3, Objective I/C1.1; Objective N1); and

WHEREAS, the City of Oakland currently regulates Massage Establishments using two separate regulatory schemes, one found at Chapter 5.36 of the OMC entitled "massage Establishments and Massage Therapists" and the other at section 17.102.170 of the OPC, entitled "Special regulations applying to massage service activities"; and

WHEREAS, the establishment of Massage Service Activities that serve as fronts for illegal activity may have negative impacts on commercial areas by creating and uninviting and potentially dangerous environment; and

WHEREAS, such potential impacts may conflict with some of the policies and objectives of the Land Use and Transportation Element of the General Plan; and

WHEREAS, the City has initiated a review of the regulatory schemes it uses to regulate massage establishments and massage service activities with the goal of adopting needed changes to the current regulations, including changes to the Planning Code, Municipal Code, and General Plan to protect the public health, safety, and welfare from the negative effects of Massage Service Activities that serve as fronts for illegal activity and during the period of time that it undertakes this task, the City is concerned that absent the adoption of an emergency moratorium, massage establishments that conflict with the contemplated changes to the City's regulatory schemes could be established in the City of Oakland, conducting an update of the Oakland Planning Code to comply with the Land Use and Transportation Element and Estuary Policy Plan; and

WHEREAS, the City is investigating modifications of the Planning Code, Municipal Code, and General Plan to protect the public health, safety, and welfare from the negative effects of Massage Service Activities that serve as fronts for illegal activity; and

WHEREAS, until such time that the City concludes its review and adopts and institutes new permitting and enforcement procedures over such Massage Service Activities, the community is in jeopardy that such Massage establishments 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 such uses (newly instituted, modified, or expanded) 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, 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 CITY COUNCIL FO 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), and 15307 of the State CEQA guidelines.

SECTION 3. Until such time as the City concludes the reviews described above, and adopts new land use controls pertaining to Massage Service Activities, the City of Oakland hereby declares a moratorium on the permitting or approval of any new, modified, or expanded Massage Service Activities.

SECTION 4. For the purposes of this Ordinance, the following definitions shall apply:

- a) "Massage Service Activity" is as defined in OPC Ch 17.09.040

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 65858.

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 Massage Service Activity development project, facility, or activity, for which rights proceed with the Massage Service Activity development, facility or activity have not vested pursuant to the provisions of State law shall proceed, and no use permit, building, zoning or other permit for any Massage Service Activity development project, facility or activity, shall be issued by any department, agency, employee or agent of the City of Oakland to allow for any Massage Service Activity development, facility or activity. Only Massage Service Activity use permits, development projects, facilities, or other activities which have vested, pursuant to the provisions of the State law, prior to the date of this Ordinance shall proceed in violation of the provisions of this Ordinance.

SECTION 7. 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 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 65868.

SECTION 10. 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.

SECTION 11. The City, on a case by case basis, shall have the authority upon showing of good cause by an applicant, to waive the interim controls imposed by this Ordinance and to allow for the granting of permits to said applicant pursuant to the Major Variance provisions of the Oakland Planning Code. Good cause shall mean a factual and evidentiary showing by the applicant that the interim controls, if not waived, will deprive the applicant of substantially all reasonable use of his/her property. All such applications for waiver shall be filed with the City Planning Department. Said applications shall be reviewed and decided by the City Planning Commission. Within 10 calendar days after the date of a decision by the City Planning Commission, an appeal from said decision may be taken to the City Council by the applicant, the permit holder, or another interested party. In event the last date of appeal falls on a weekend or holiday when City offices are closed, the next date such offices are open for business shall be the last date of appeal. Such appeal shall be made on a form prescribed by the Commission and shall be filed with the City Clerk. The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Commission or wherein its decision is not supported by the evidence in the record. Upon receipt of the appeal, the Council shall set the date for consideration thereof. The City Clerk shall notify the Secretary of the City Planning Commission of the receipt of said appeal and of the date set for consideration thereof; and said Secretary shall, not less than ten days prior thereto, give written notice to: the applicant, the appellant in those cases where the applicant is not the applicant; adverse party or parties, or the attorney, spokesperson, or representative of such party or parties; other interested groups and neighborhood associations who have requested notification; and to similar groups and individuals as the Secretary deems appropriate, of the date and place of the hearing on the appeal. The decision of the City Council shall be made by resolution and shall be final. The City Council shall vote on the appeal within thirty (30) days after its first hearing of the appeal. If the Council is unable to decide the appeal at that meeting, it shall appear for a vote on each regular meeting of the Council thereafter until decided. Fees for waiver applications and associated appeals shall be the same as those charged for Major Variance.

In Council, Oakland, California, FEB 1 2005, 2005, Passed By The Following Vote:

AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, ~~REID~~, and PRESIDENT DE LA FUENTE - 6 DISTRICT 2 - VACANT

NOTES- ~~0~~
ABSENT- ~~0~~
ABSTENTION- ~~0~~

EXCUSED - REID - 1

Introduction Date: FEB 01 2005

ATTEST: *LaTonda Simmons*
Interim LaTonda Simmons
City Clerk and Clerk of the Council
Of the City of Oakland, California

NOTICE AND DIBEST

**AN URGENCY MEASURE ADOPTING
AN INTERIM ORDINANCE
PERSUANT TO GOVERNMENT CODE
SECTION 65866, IMPOSING A
MORATORIUM ON MASSAGE SERVICE
ACTIVITIES**

Notice of Publication

This Ordinance will be introduced at the City Council meeting, Tuesday evening February 1, 2005. As an Urgency Ordinance. Hearing or final adoption has also been scheduled for the City Council meeting Tuesday evening February 1, 2005 8:00 p.m., at One Frank H. Ogawa Plaza, Council Chambers, on the third floor in Oakland, California.

Three full copies are available for use and examination by the public in the Office of the City Clerk at One Frank H. Ogawa Plaza, 1st floor, Oakland, California.

LaTonda Simmons, Interim City Clerk

**Oakland Tribune #488366
January 28, 2005**