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JANE BRUNNER
Councilmember
District 1

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TO: Office of the City Manager
ATTN: Deborah Edgerly
FROM: Office of Councilmember Jane Brunner
DATE: October 28, 2003

RE: An Ordinance Enacting A 45-Day Moratorium, Pursuant To California Code Section 65858, Prohibiting The Issuance Of Conditional Use Permits For Massage Establishments And Massage Therapists Under OMC Ch. 17.102.170, Pending Review Of Both OMC 17.102170 And OMC 5.36.

SUMMARY

This ordinance will enact a 45 day moratorium on the granting of any Conditional Use Permits for Massage Establishments and Massage Therapists in the City of Oakland. Staff will use the 45-day moratorium to review all permitting requirements for such businesses and to recommend changes.

FISCAL IMPACT

None. This is a policy and regulatory matter with no direct fiscal impact.

BACKGROUND

In June, 2003, the Temescal Neighborhood Crime Prevention Council (NCPC) brought to the attention of Councilmember Brunner's Office an application that was submitted to open a massage parlor on Telegraph Avenue. NCPC members and other residents were opposed to the new business because they were concerned that the massage parlor would not be an appropriate use in a Neighborhood Commercial District due to the unclear nature of the business and the clientele that such a business could attract.

In the course of examining the application and working with both the Office of Planning and Zoning and the Office of the City Manager's Office, it became clear that there were a number of issues regarding Massage Establishments and the City's regulation of them. It is the intention of this moratorium Ordinance to give staff and the Council the time to review our current regulations and propose any appropriate changes.

KEY ISSUES AND IMPACTS

Oakland's regulations pertaining to Massage Establishments are both out-of-date and difficult to understand. Cities throughout the Bay Area have enacted more stringent regulations to ensure that legitimate Massage Establishments are permitted and encouraged, while discouraging Massage Establishments that are little more than fronts for prostitution and other illegal activities. Oakland's regulations need to be clarified to ensure that we encourage appropriate land uses and have unambiguous permitting regulations, while discouraging more disreputable operations from setting up shop in Oakland.

LAND USE REGULATIONS AND SPECIAL ACTIVITY PERMITS:

Massage Establishments are regulated by two distinct sections of the Oakland Municipal Code, neither of which references the other.

Municipal Code Ch. 17.102.170 states: "Massage service activities are not permitted in any zone except upon the granting of a conditional use permit," and forbids them in any residential zones or in the C-10 zone.

Municipal Code Ch. 5.36 requires a Special Activity Permit for Massage Establishments "to provide minimum fire, sanitation, health and safety standards for massage establishments in the city, and to insure that persons employed as massage therapists meet minimum training standards in that field."

Since there are two different code sections, it is unclear whether either of them supercedes the other, or whether one is required as a condition of receiving the other. Staff in Planning and Zoning handling the CUP may also not be aware of the issues the City Manager's Office is facing with the Special Activity permit, and vice versa.

The 45-day moratorium would be used to clarify both the land use and Special Activity Permit processes so that review and approval are clear to applicants, City staff, and the concerned community members.

STRICTER REGULATION IN BERKELEY AND "SPILLOVER" INTO OAKLAND

In September, 2002, the City of Berkeley completely replaced its massage parlor permit ordinance in an effort to crack down on Massage Establishments with a long history of associated illegal activity. Berkeley's new regulations include more thorough background checks of proprietors, greater levels of professional credentialing for employees, an annual permit renewal requirement and a "one strike" enforcement policy regarding crime at the location.

In July, 2003, the "Euro Health Spa" had a hearing to open a location on Telegraph Avenue, and in September, 2003, the "Health and Healing Center" applied to open on the same stretch of the Temescal Commercial District. In both cases it was quite difficult to discern the true nature of the business, or the background or qualifications of the applicant.

It is highly likely that the stronger regulations and more serious enforcement of Massage Establishments in Berkeley have led to an influx of such businesses into Oakland, where regulations are more lax. Our current requirements contain none of the more stringent requirements contained in the Berkeley ordinance.

The 45-day moratorium would be used to review our current Special Activity Permit processes to further protect the health and safety of Oakland's residents.

CONCLUSION:

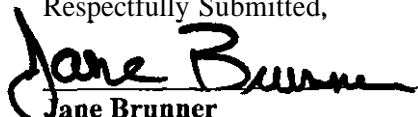
This ordinance will enact a 45 day moratorium on the granting of any Conditional Use Permits for Massage Establishments and Massage Therapists in the City of Oakland. Staff will use the 45-day moratorium to review all permitting requirements for such businesses and to recommend changes.

It is not believed that such a moratorium will have a substantial impact on business activity in the City, while it will provide an opportunity to review a matter that is of grave concern to people throughout the City and essential to guarantee the good health and safety of Oaklanders.

RECOMMENDATIONS:

It is the recommendation of this report that Council approve the moratorium and give direction to staff to review the appropriate regulations and return to Council with any recommendations for changes.

Respectfully Submitted,



Jane Brunner
City Councilmember, District 1

FORWARDED TO THE PUBLIC
SAFETY COMMITTEE



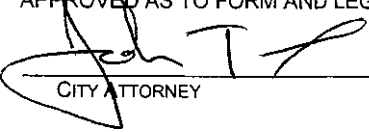
Office of the City Manager

4/5 VOTE REQUIRED FOR PASSAGE

2003 OCT 16 PM 3:21

APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCIL MEMBER _____


CITY ATTORNEY

ORDINANCE NO. _____ C.M.S.

**AN URGENCY MEASURE ADOPTING AN INTERIM ORDINANCE
PURSUANT 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 activity require a significantly higher commitment of police and public safety resources; 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 commercial 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 "Massage Establishments and Massage Therapists" and the other at section 17.102.170 of the OPC "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 an 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

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PUBLIC SAFETY CMTE.
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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 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 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 to the Planning 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 land use controls 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 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), and 15307 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 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 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 to 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 activities which have vested, pursuant to the provisions of 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 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 65858.

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 a 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 any other 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 appellant; 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, _____, 2003, Passed By The
Following Vote:

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

NOTES-

ABSENT-

ABSTENTION-

ATTEST: _____
CEDA FLOYD
City Clerk and Clerk of the Council
of the City of Oakland, California