

ORDINANCE NO. 05-10 N.S.

AN URGENCY ORDINANCE, PURSUANT TO GOVERNMENT CODE SECTION 65858, BY THE CITY OF RICHMOND, ESTABLISHING A TEMPORARY MORATORIUM ON THE ACCEPTANCE, PROCESSING AND APPROVAL OF APPLICATIONS AND PERMITS FOR TOBACCO-ORIENTED RETAIL ESTABLISHMENTS

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

WHEREAS, the City of Richmond Planning and Building Services Department (“Planning Department”) is in the process of studying proposed amendments to the City’s Zoning Ordinance related to tobacco retailers; and

WHEREAS, on September 3, 2009, the Planning Department presented to the Planning Commission a proposed zoning amendment to ban “tobacco-oriented retail establishments” in all zoning districts; and

WHEREAS, in that proposed zoning amendment, “tobacco-oriented retail establishment” was defined as “any commercial retail establishment that (a) has a total sales area of less than 10,000 square feet and devotes 15 cubic feet or more of sales or product display area to the sale or exchange of tobacco products and/or tobacco paraphernalia as defined in California Penal Code Sections 308 through 308.3; or (b) has a total sales area of 10,000 square feet or more and devotes 20% or more of sales or product display area to the sale or exchange of tobacco products and/or tobacco paraphernalia as defined in California Penal Code Sections 308 through 308.3”; and

WHEREAS, after reviewing Planning Department recommendations and public testimony, the Planning Commission directed staff to return in December 2009 with a zoning amendment that does not ban any tobacco retail establishments but provides locational criteria for tobacco retailers and requires a conditional use permit for the sale of tobacco and/or tobacco paraphernalia; and

WHEREAS, the City Council finds and determines that the approval of new applications for tobacco-oriented retail establishments, as defined above, while possible amendments to the Zoning Ordinance 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 that overall public health, safety and welfare are detrimentally affected; and

WHEREAS, significant concerns have been raised in the community regarding the inadequacy of the current regulations to address the increasing number of permit applications for tobacco-oriented retail establishments; and

WHEREAS, citizens of the City of Richmond have expressed concerns regarding the impact that a proliferation of tobacco-oriented retail establishments within the City may have on the community as a whole, including, safety, noise, litter and other public health impacts; and

WHEREAS, it is the intent of the Richmond City Council to consider and adopt new zoning regulations pertaining to tobacco retailers, including but not limited to tobacco-oriented retail establishments, in order to provide clear, consistent, and uniform guidance to businesses and individuals regarding the siting and operating characteristics of tobacco retailers, while addressing the significant community concerns described above; and

WHEREAS, the Richmond City Council has determined that a temporary moratorium on the approval of applications to establish tobacco-oriented retail establishments within the City will allow the City time to complete its review and revisions to its Zoning Ordinance while ensuring to the maximum extent feasible that the siting requirements and other objectives of the revised ordinance may be achieved; and

WHEREAS, for reasons set forth above, this ordinance is declared by the Richmond City 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 recitals above taken together constitute the City Council's statements of the reasons constituting such necessity and urgency; and

WHEREAS adoption of this ordinance is exempt from review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines 15061(b)(3), 15308, and 15183.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RICHMOND does ordain as follows:

SECTION 1. The City Council finds and determines the foregoing recitals to be true and correct and hereby makes them part of this ordinance.

SECTION 2. The City Council hereby directs the Planning and Building Services Department to prepare a zoning amendment governing the siting and operating characteristics of tobacco retailers and to present that zoning amendment to the Planning Commission as soon as possible in order for the Planning Commission to make a recommendation to the City Council.

SECTION 3. For the maximum period allowed under California law, or until such time as the City concludes the review described above and amends the Zoning Ordinance to address tobacco retailers, the City of Richmond hereby declares a moratorium on the acceptance, processing or approval of applications to establish tobacco-oriented retail establishments in any zoning district within the City. "Tobacco-oriented retail establishment" is defined as "any commercial retail establishment that (a) has a total sales area of less than 10,000 square feet and devotes 15 cubic feet or more of sales or product display area to the sale or exchange of tobacco products and/or tobacco paraphernalia as defined in California Penal Code Sections 308 through 308.3; or (b) has a total sales area of 10,000 square feet or more and devotes 20% or more of sales or product display area to the sale or exchange of tobacco products and/or tobacco paraphernalia as defined in California Penal Code Sections 308 through 308.3"

SECTION 4. In accordance with Government Code Section 65858, this Ordinance is effective immediately as an interim urgency ordinance and 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 5. Severability. 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 they 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.

Finally passed and adopted at a regular meeting of the Council of the City of Richmond held, January 19, 2010, by the following vote:

AYES: Councilmembers Bates, Butt, Ritterman, Rogers, Viramontes, and Mayor McLaughlin

NOES: None

ABSTENTIONS: None

ABSENT: Vice Mayor Lopez

DIANE HOLMES

CLERK OF THE CITY OF RICHMOND
(SEAL)

Approved:

GAYLE McLAUGHLIN
Mayor

Approved as to form:

RANDY RIDDLE
City Attorney

I certify that the foregoing is a true copy of Ordinance No. 05-10 N.S., finally passed and adopted by the Council of the City of Richmond at a regular meeting on January 19, 2010.