


CITY ATTORNEY

INTRODUCED BY COUNCILMEMBER _____

ORDINANCE No. 11478 C. M. S.

JPT:cf

**AN ORDINANCE DECLARING THE CITY OF OAKLAND
A NUCLEAR FREE ZONE
AND REGULATING NUCLEAR WEAPONS WORK
AND CITY CONTRACTS WITH AND INVESTMENT
IN NUCLEAR WEAPONS MAKERS**

WHEREAS, the residents of the City of Oakland approved an initiative ordinance entitled "OAKLAND NUCLEAR FREE ZONE ACT" ("Act") at the Special Municipal Election held on November 8, 1988; and

WHEREAS, the United States District Court for the Northern District of California invalidated the Act as being in conflict with the United States Constitution and/or federal statutes, regulations and executive orders, with the exception of two provisions that were not challenged; and

WHEREAS, on or about March 9, 1992, the United States Court of Appeals denied an appeal of the District Court opinion on procedural grounds; and

WHEREAS, the City Council, by adopting this Ordinance, intends to reaffirm, to the extent legally permissible, the City's commitment to peace and prosperity as evidenced by the 1989 Act, by the vote of the City's residents in 1982 to support a bilateral freeze on "the testing, production and further development of all nuclear weapons," and by the Council's vote in 1986 to support a comprehensive nuclear test ban; and

WHEREAS, the expenditure of City funds on goods and services produced by nuclear weapons makers, the investment of City funds in nuclear weapons makers, and the presence of nuclear weapons and work on nuclear weapons within the City directly conflict with the maintenance of the City's public health, safety, morals, economic well-being and general welfare; and

WHEREAS, the emergency response services of the City may be unable to fully contain the effects of an accident following a major fire, traffic accident, earthquake or similar disaster involving nuclear weapons, nuclear reactors or shipments of hazardous radioactive materials;

WHEREAS, the allocation of City resources in the form of police, fire and other services to prepare for and contain the effects of an accident involving nuclear weapons, nuclear reactors and shipments of hazardous radioactive materials diverts the City's limited resources from urgently needed human services such as job training, social services for children, the elderly and disabled, shelter for the homeless, health care, education and drug abatement;

WHEREAS, the public morality is affronted by the expenditure of City funds on goods and services produced by nuclear weapons makers, the investment of City funds in nuclear weapons makers, and the presence of nuclear weapons and work on nuclear weapons which may ultimately lead to widespread death and destruction; and

WHEREAS, the presence of nuclear weapons and work on nuclear weapons poses a threat to the residents of the City by increasing the likelihood that the City will be a target of terrorism, violent protest or nuclear attack.

NOW, THEREFORE, BE IT RESOLVED that the City Council adopts the following:

Section 1: Declaration:

The City of Oakland is hereby declared to be a nuclear free zone. This Ordinance shall be known as the Oakland Nuclear Free Zone Ordinance.

Section 2: Definitions:

As used herein, these words are provided the following definitions:

- (a) "Person" means any natural person, corporation, institution, or other entity. "Person," unless otherwise specified, does not include the governments of the United States and the State of California, or any agency, department, instrumentality, board, or commission thereof.
- (b) "Nuclear Weapon" means any device, the purpose of which is use as a weapon, a weapon prototype, or a weapon test device, the intended detonation of which results from the energy released by reactions involving atomic nuclei, either fission or fusion, or both. "Nuclear weapon" includes the means of deploying, transporting, propelling, guiding, or triggering the weapon if the primary intended function of such means is integral to use of the weapon. "Nuclear Weapon" also includes any device which has the primary intended function of being a component of a nuclear weapon.

- (c) "Nuclear Weapons Work" means any work that has as its primary purpose the development, production, possession, maintenance or storage of a nuclear weapon. It does not include theoretical or basic research not having as its primary purpose the development, production, possession, maintenance or storage of a nuclear weapon.
- (d) "Nuclear Weapons Maker" means any person knowingly engaged in nuclear weapons work; subsidiaries, affiliates and divisions under operating control of such person; the parent entities that have operating control over such person, and the subsidiaries, affiliates and divisions under operating control of such parent entity.
- (e) "Nuclear Reactor" means any device that has as its purpose the release of energy from non-explosive reactions involving the fission of atomic nuclei.
- (f) "Hazardous Radioactive Materials" means any material having a specific activity greater than 0.002 microcuries per gram (uCi/g). Specific activity of a radionuclide means the activity of the radionuclide per unit mass of that nuclide. The specific activity of a material in which the radionuclide is essentially uniformly distributed is the activity per unit mass of the material. "Hazardous Radioactive Materials" does not include radioactive materials contained in medical devices, radiopharmaceuticals, and consumer products such as smoke detectors, light-emitting watches and clocks and similar applications.
- (g) "City Manager" means the City Manager of the City of Oakland, or any authorized representative of the City Manager.

Section 3: Exclusions:

The provisions of this Ordinance do not apply to the following persons, except as otherwise provided herein:

- (a) The government of the United States, its agencies, departments, instrumentalities, boards and commissions;
- (b) the government of the State of California, its agencies, departments, boards and commissions;
- (c) the Port of Oakland;

- (d) the chartered retirement systems of the City of Oakland;
- (e) the chartered boards and commissions of the City of Oakland;
- (f) the Oakland Housing Authority; and
- (g) the Oakland School District.

Section 4: Nuclear Weapons Work Restriction:

- (a) Any and all nuclear weapons work within the City of Oakland shall occur on land owned or leased by the government of the United States or the State of California or in other areas as permitted by the City Manager.
- (b) A nuclear weapons work permit must be obtained for all nuclear weapons work which will occur on land that is not owned or leased by the United States or the State of California and which is commenced after the effective date of this Ordinance. Existing nuclear weapons work conducted on land other than that owned or leased by governments of the United States or the State of California, shall cease within one hundred twenty (120) days of the effective date of this ordinance unless a permit for such work is obtained.
- (c) The City Manager shall consider the following factors, where relevant, in reviewing applications for nuclear weapons work permits:
 - (i) The proximity of the proposed work site to active earthquake faults;
 - (ii) the proximity of the proposed work site to residential neighborhoods;
 - (iii) ease of access to the proposed work site by emergency response personnel; and
 - (iv) the findings set forth in the preamble hereinabove.A nuclear weapons work permit shall not be issued unless the City Manager determines that the risk posed by nuclear weapons work occurring at the proposed location is clearly outweighed by the benefit of the work occurring at that location to the residents of the City. Any approval or denial of an application for a nuclear weapons work permit by the City Manager shall be reported to the City Council.

- (d) Any interested person is entitled to appeal such approval or denial to the City Council. An appeal must be filed within 30 days from the date of notification to the City Council by the City Manager. The City Council shall review such appeals pursuant to the standards set forth in subpart (c) of this section.

Section 5: Transportation of Nuclear Weapons and Hazardous Radioactive Materials

- (a) Transportation of nuclear weapons and hazardous radioactive materials on the streets of the City of Oakland shall occur only on designated routes. Such routes shall be designated by the City Manager upon the effective date of this Ordinance and approved by the City Council after public hearing. The designations shall be reviewed on an annual basis, or more frequently as required, and amended as necessary.
- (b) Any deviation from the designated routes requires prior approval by the City Manager. The City Manager shall approve requested deviations unless the alternative route would pose greater risks to the public health and safety than the designated routes.
- (c) The City Manager shall request all known transporters of nuclear weapons and hazardous radioactive materials, including the governments of the United States and the State of California, to transport such materials on the designated routes during designated times within the City of Oakland.
- (d) The City Manager shall report shipments of nuclear weapons and hazardous radioactive materials to the City Council. Where practicable, the City Manager shall provide the report to the City Council prior to shipments of such weapons and materials.
- (e) The provisions of this section do not apply to the transportation of nuclear weapons and hazardous radioactive materials on highways of the State of California and interstate highways of the United States within the City of Oakland.

Section 6: Contracting and Purchasing Preferences:

- (a) Pursuant to the findings set forth in the preamble hereinabove, it shall be City policy to minimize the expenditure of City funds on goods and services produced by nuclear weapons makers.

- (b) For the purposes of this section, "person" and "sealed bid" are defined as follows:
- (1) "person" includes the seller, vendor, distributor, manufacturer and provider of products or services to the City.
 - (2) "sealed bid" means any bid governed by Section 5 of Ordinance No.7937 C.M.S. or other written bids which pursuant to City administrative procedures have been submitted in sealed envelopes to prevent the contents from being revealed or known before the deadline for submission of all bids.
- (c) **Contracts and Purchases Requiring Sealed Bids.** Except as provided in subdivisions (d) and (e) of this section, for all contracts and purchases for which sealed bids are submitted, persons not designated as nuclear weapons makers shall receive a 5% preference, unless:
- (1) the use of preferences is specifically prohibited by the governments of the United States and/or the State of California, or any party from whom funding for the contract or purchase is received; or
 - (2) the City Council determines that, for any bid governed by Section 5 of Ordinance No. 7937 C.M.S., the use of preferences would result in an additional cost of \$10,000.00 or more to the City.
- (d) **Sole Source Contracts.**
The City shall make every reasonable effort to enter into sole source contracts and sole source purchases with persons not designated as nuclear weapons makers.
- (1) All sole source contracts or sole source purchases entered into pursuant to subsection (i)(2) of section 5 of Ordinance No. 7937 C.M.S., shall be made with persons not designated as nuclear weapons makers, unless the City Council finds that no reasonable alternative product or service exists, or that additional costs would exceed \$10,000.00 or 5% of the cost of the product or service manufactured or provided by the nuclear weapons maker, whichever is less.
 - (2) All sole source contracts or purchases which are not governed by the requirements of subsection (i)(2) of section 5 of Ordinance No. 7937 C.M.S., but which exceed \$2000, shall be made with persons not designated as nuclear weapons makers, unless the City Manager finds that no reasonable alternative product or service exists or that unreasonable

additional costs would result from the use of available alternatives.

- (3) For all sole source contracts or sole source purchases under \$2,000.00, all efforts will be undertaken to avoid contracting with nuclear weapons makers.
- (e) Professional Services Contracts.
The City shall make every reasonable effort to enter into professional service contracts with persons not designated as nuclear weapons makers.
- (1) All professional service contracts entered into pursuant to subsection (i)(1) of section 5 of Ordinance No. 7937 C.M.S., shall be made with persons not designated as nuclear weapons makers, unless the City Council finds that no reasonable alternative product or service exists, or that additional costs would exceed \$10,000.00 or 5% of the cost of the service provided by the nuclear weapons maker, whichever is less.
 - (2) All professional service contracts which are not governed by the requirements of subsection (i)(1) of section 5 of Ordinance No. 7937 C.M.S., but which exceed \$2,000, shall be made with persons not designated as nuclear weapons makers, unless the City Manager finds that no reasonable alternative product or service exists or that unreasonable additional costs would result from the use of available alternatives.
 - (3) For all professional services contracts under \$2,000.00, all efforts will be undertaken to avoid contracting with nuclear weapons makers.
- (f) All public works and construction bid advertisements and contracts shall state the City policy set forth in subdivision (a) of this section and urge contractors to comply with the policy in making purchases and subcontracts.
- (g) For contracts and purchases other than those governed by subdivisions (c), (d), (e), and (f) of this section, the City Manager shall promulgate an Administrative Instruction pursuant to section 11 to ensure that City departments comply, to the extent reasonable and practicable, with the intent of this Ordinance.

- (h) For the purposes of determining which persons are nuclear weapons makers, the City Manager shall rely on information published by reliable sources and information released by public agencies.
- (i) Any person who is identified as a nuclear weapons maker and potentially affected by this section shall be notified of the determination. Any such person shall be entitled to a review of the determination by appeal to the City Manager. Request for such review shall be made within forty five (45) days of notification, or seven (7) days of the date of City advertisement of a pending contract or purchase, of interest to the person seeking review. Any person so identified or any other interested person may appeal the City Manager's determination to the City Council, within fifteen (15) days of the City Manager's determination.
- (j) The City Manager may phase in implementation of this section as necessary for reasonable and practicable effectuation of its requirements.

Section 7: Investment Restrictions

- (a) The City of Oakland shall, after the effective date of this section, refrain from making any investments in stocks, bonds, securities, or other obligations issued by nuclear weapons makers.
- (b) Within two years after the effective date of this section, the City shall divest itself of any and all investments in stocks, bonds, securities or other obligations issued by nuclear weapons makers, unless the Director of Finance determines, and so reports to Council, that such divestment would result in substantial and immediate losses of investment income, or would require the City to sell investments at prices materially below their fair market value.

Section 8: Siting Of Nuclear Reactors:

The City Manager shall notify the applicable agencies or departments of the State of California and the United States, in response to any proposed siting of a nuclear reactor within the City of Oakland, that, due to seismic dangers and the City's population density, the potential adverse economic effect on the City, and all other relevant factors, the City strongly opposes such siting.

Section 9: Public Hearings and Reports:

- (a) Two public hearings before Council shall be held within the first year following the date of passage of this Ordinance to evaluate implementation of and compliance with the provisions of this Ordinance. One public hearing shall be held each year thereafter.

- (b) Two weeks prior to each public hearing held pursuant to subsection (a), the City Manager shall issue a report describing the implementation of the provisions of this Ordinance and compliance therewith. The City Manager may recommend amendments to this Ordinance to further its purposes.

Section 10: Severability

This Ordinance shall be enforced to the full extent of the authority of the City of Oakland. If any section, subsection, paragraph, sentence or word of this Ordinance is deemed to be invalid or beyond the authority of the City of Oakland, either on its face or as applied, the invalidity of such provision shall not affect the other sections, subsections, paragraphs, sentences or words of this Ordinance, and the applications thereof; and to that end the section, subsections, paragraphs, sentences and words of this Ordinance shall be deemed severable.

Section 11: Rules and Regulations

The City Manager shall be authorized to promulgate any rules and regulations necessary or appropriate to carry out the purposes and requirements of this Ordinance, effective upon approval of the City Council.

Section 12: Effective Date

The provisions of this Ordinance, except Sections 6 and 7, shall become effective sixty (60) days after its passage. Sections 6 and 7 shall become effective six (6) months after passage of this Ordinance.

Section 13: Enforcement

- (a) Any person violating Section 4 of this Ordinance shall be guilty of an infraction. An infraction is punishable upon first conviction by a fine of not more than \$100.00 and, for a second conviction within a period of one year, by a fine of not more than \$200.00 and, for a third or subsequent violation within a one year period, by a fine of not more than \$500.00. A violation beyond the third conviction within a one-year period may be charged as a misdemeanor. Penalty for conviction of the misdemeanor shall be a fine of not more than \$1,000.00 or imprisonment in the County Jail for a period of not more than six months or by both.

- (b) Any person violating Section 5 of this Ordinance or knowingly supplying false information in connection with a designation of nuclear weapons makers under sections 6 and 7 of this Ordinance shall be guilty of a misdemeanor and punishable therefor pursuant to subsection (a) above.
- (c) The City shall refrain from conducting business with persons found to have knowingly supplied false information used in fulfillment of the requirements of this Ordinance.

Section 14:

The City shall make all reasonable attempts to insure that the information required to be provided by this Ordinance is accurate. However, the City shall not be responsible for the accuracy of information provided by entities and individuals pursuant to this Ordinance, or for the accuracy of information obtained from the public record or released by public agencies.

IN COUNCIL, OAKLAND, CALIFORNIA, JUN 30 1992, 19 _____

PASSED BY THE FOLLOWING VOTE:

AYES— BAZILE, CANNON, GIBSON HASKELL, MILEY, MOORE, OGAWA, RILES, SPEES, and PRESIDENT HARRIS , - 9

NOES— NONE

ABSENT— NONE

ABSTENTION— NONE

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ATTEST: 

ARRECE JAMESON

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