-----Original Message-----
From: lora jo foo <ljfoo70@gmail.com>
To: 'Marla Schmalle' via NCIO Discuss <ncio-discuss@googlegroups.com>
Sent: Thu, Jan 7, 2016 9:34 pm
Subject: [NCIO-Discuss] Simple majority needed to ban coal

All,
Rumors and misinformation persists that the city council needs 7 out of 8 votes to pass an ordinance to ban coal. This is disinformation from Tagami's people. To pass such an ordinance, all we need is 5 out of 8 votes. When Mayor Schaaf repeated this misinformation at a public meeting back in September, I sent the message below to Mayor Schaaf correcting her on her misunderstanding.
lora jo

-----From lora jo foo <ljfoo70@gmail.com>
Date: Tue, Sep 15, 2015 at 12:26 PM
Subject: Simple majority vote or 4/5ths vote
To: tmoss@oaklandnet.com, snosakhare@oaklandnet.com
Cc: "Farmer, Casey" CFarmer@oaklandnet.com

Greetings Tomiquia and Shereda,

I am with the No Coal in Oakland coalition. One of our members was at an event recently with Mayor Schaaf discussing the possible passage of an ordinance or regulation banning coal. To our surprise, the mayor stated that 7 out of 8 votes are needed for the City Council to adopt such an ordinance. Can you advise us what statute requires such a super-majority vote?
Our understanding is that the City Council can decide by a simple majority vote to adopt an ordinance to ban coal exports. There are very rare instances where a 4/5ths vote or 7 – 8 vote is required. The only one we know of is provided for in Government Code Section 65858. See below. That section allows for Interim Ordinances to impose temporary moratoriums while the council is considering or studying an issue. In our case, we aren't requesting for an Interim Ordinance. And the city council will be following normal procedures required to adopting an ordinance.
So we are confused why Mayor Schaaf believes a 4/5ths vote is required. Can you cite to the statute that she is relying on? I am copying Casey at Council Chair McElhaney's office also in case she can assist in answering our question.

Section 65858. (a) Without following the procedures otherwise required prior to the adoption of a zoning ordinance, the legislative body of a county, city, including a charter city, or city and county, to protect the public safety, health, and welfare, may adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, planning commission or the planning department is considering or studying an issue. In our case, we aren't requesting for an Interim Ordinance. And the city council will be following normal procedures required to adopting an ordinance.

That urgency measure shall require a four-fifths vote of the legislative body for adoption. The interim ordinance shall be of no further force and effect 45 days from its date of adoption. After notice pursuant to Section 65090 and public hearing, the legislative body may extend the interim ordinance for 10 months and 15 days and subsequently extend the interim ordinance for
one year. Any extension shall also require a four-fifths vote for adoption. Not more than two extensions may be adopted.
(b) Alternatively, an interim ordinance may be adopted by a four-fifths vote following notice pursuant to Section 65090 and public hearing, in which case it shall be of no further force and effect 45 days from its date of adoption. After notice pursuant to Section 65090 and public hearing, the legislative body may by a four-fifths vote extend the interim ordinance for 22 months and 15 days.
(c) The legislative body shall not adopt or extend any interim ordinance pursuant to this section unless the ordinance contains legislative findings that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional subdivisions, use permits, variances, building permits, or any other applicable entitlement for use which is required in order to comply with a zoning ordinance would result in that threat to public health, safety, or welfare. In addition, any interim ordinance adopted pursuant to this section that has the effect of denying approvals needed for the development of projects with a significant component of multifamily housing may not be extended except upon written findings adopted by the legislative body, supported by substantial evidence on the record, that all of the following conditions exist:
(1) The continued approval of the development of multifamily housing projects would have a specific, adverse impact upon the public health or safety. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date that the ordinance is adopted by the legislative body.
(2) The interim ordinance is necessary to mitigate or avoid the specific, adverse impact identified pursuant to paragraph (1).
(3) There is no feasible alternative to satisfactorily mitigate or avoid the specific, adverse impact identified pursuant to paragraph (1) as well or better, with a less burdensome or restrictive effect, than the adoption of the proposed interim ordinance.
(d) Ten days prior to the expiration of that interim ordinance or any extension, the legislative body shall issue a written report describing the measures taken to alleviate the condition which led to the adoption of the ordinance.
(e) When an interim ordinance has been adopted, every subsequent ordinance adopted pursuant to this section, covering the whole or a part of the same property, shall automatically terminate and be of no further force or effect upon the termination of the first interim ordinance or any extension of the ordinance as provided in this section.
(f) Notwithstanding subdivision (e), upon termination of a prior interim ordinance, the legislative body may adopt another interim ordinance pursuant to this section provided that the new interim ordinance is adopted to protect the public safety, health, and welfare from an event, occurrence, or set of circumstances different from the event, occurrence, or set of circumstances that led to the adoption of the prior interim ordinance.
(g) For purposes of this section, "development of multifamily housing projects" does not include the demolition, conversion, redevelopment, or rehabilitation of multifamily housing that is affordable to lower income households, as defined in Section 50079.5 of the Health and Safety
Code, or that will result in an increase in the price or reduction of the number of affordable units in a multifamily housing project.

(h) For purposes of this section, "projects with a significant component of multifamily housing" means projects in which multifamily housing consists of at least one-third of the total square footage of the project. (Emphasis added.)

Sincerely,
lora jo
lora jo foo
No Coal in Oakland

510-282-9454