

Case File Numbers ZT13-211

August 28, 2013

Location:	Citywide
Proposal:	Discussion of proposed zoning text amendments to introduce a new Activity Classification for and regulations applying to "Crematories"
Applicant:	City Planning Commission
Case File Number:	ZT13-211
Planning Permits Required:	Zoning Text Amendment
General Plan:	All General Plan designations
Zoning:	All Zoning districts
Environmental Determination:	The proposal relies on the previously certified Final Environmental Impact Report (EIR) for the Land Use and Transportation Element of the General Plan (1998); the Oakland Estuary Policy Plan EIR (1998); the EIRs for the West Oakland (2003), Central City East (2003), Coliseum (1995), Central District (2011) and Oakland Army Base (2002 & 2012) Redevelopment Areas. As a separate and independent basis, the proposal is also exempt from CEQA pursuant to CEQA Guidelines Section 15183 "Projects Consistent with a Community Plan, General Plan or Zoning" and Section 15061(b)(3), "General Rule – no possibility of significant environmental impact".
Service Delivery District:	All Service Delivery districts
City Council District:	All City Council districts
Status:	Hearing by the Planning Commission
Action to be Taken:	Recommendation to City Council.
For further information:	Contact: Peterson Z. Vollmann at 238-6167 or email pvollmann@oaklandnet.com .

SUMMARY

Staff is bringing forward a proposal, as directed by the City Council, to establish a new land use activity type for "crematories", as well as develop regulations for such new activity type. Staff is proposing Planning Code Text Amendments (Attachment A) to establish a crematorium as an industrial activity type and only allow them upon the granting of a Major Conditional Use permit within industrial zones, with a further prohibition if located within 1,000 feet of a zone that permits residential activity types and facilities. Staff requests the review of the proposal by the Planning Commission and provide a recommendation for adoption to the City Council.

BACKGROUND

Currently crematoria are classified as General Manufacturing Industrial Activities¹ pursuant to Section 17.10.570 of the Planning Code, and are outright permitted activities within the M-30 General Industrial Zone, M-40 Heavy Industrial Zones, and IG General Industrial Zones. Crematoria are also outright permitted within the CIX-1 and CIX-2 Commercial Industrial Zones

¹ This current classification for crematories is pursuant to recent practice and interpretation. A formal Determination of such classification has been made, which is currently the subject of appeal, which will be presented to the Planning Commission in September 2013.

if located more than 300 feet from a residential zone (but, if located within 300 feet of a residential zone in the CIX-1 and CIX-2 zones, a conditional use permit is required).

The issue of whether it is appropriate to allow crematories as an outright permitted use within zones described above under the use classification of General Manufacturing activities has been raised in the context of potential public exposure to certain types of pollutants and emissions, as well as traffic and other environmental impacts associated with a crematorium use, and the ability of the public and the City to review and consider potential impacts caused by a crematorium use and means for the City to address them.

On May 15, 2012 the City Council adopted Emergency Ordinance 13115 C.M.S. (Attachment B), requiring a Major Conditional Use permit for any new or expanded crematorium activity within the City of Oakland. The Emergency Ordinance was adopted and put into effect immediately for a period of one-year, expiring on May 14, 2013. Prior to expiration of the Emergency Ordinance 13115, a subsequent Emergency Ordinance 13158 C.M.S. (Attachment C) was adopted by the City Council on May 7, 2013, extending the Major Conditional Use permit requirement for any new or expanded crematorium until November 3, 2013 or until permanent regulations are adopted by the City Council. Emergency Ordinance 13158 also gave direction to the Planning Division to proceed with developing permanent regulations for consideration by the City Council upon recommendation by the Planning Commission.

On May 15, 2012, the Alameda County Public Health Department submitted a letter to then Council President Larry Reid and each of the other Councilmembers. The letter stated that crematories emit a number of criteria air pollutants such as particulate matter, nitrogen compounds, sulfur compounds, carbon monoxide and precursor organic compounds and toxic emissions such as acetaldehyde, arsenic, beryllium, cadmium, hexavalent chromium, copper, formaldehyde, hydrogen chloride, hydrogen fluoride, lead, mercury, nickel, selenium, chlorinated dibenzodioxins and furans, and polycyclic aromatic hydrocarbons/ benzo (a) pyrene equivalents. In this letter the County Health Officer expressed support for requiring a Conditional Use permit for crematorium activities.

PROPOSAL

Staff proposes adding the following to Section 17.10 of the Oakland Planning Code to establish an activity type for crematories:

Section 17.10.588 – Crematorium

An activity that includes the cremation of human remains through incineration.

At the recommendation of Bay Area Air Quality Management District (BAQQMD), staff has proposed to exclude the cremation of animals from the activity type since the major concern of health impacts with crematoria is heavily related to the presence of mercury fillings in teeth, which are not likely to be present in animals.

Staff proposes to only allow a crematorium upon the granting of a Major Conditional Use permit within the following industrial zones and only if located more than 1,000 feet from any zone that permits or conditionally permits residential activities (*See Attachment A for specific text amendments*):

- M-20, Light Industrial Zone
- M-30, General Industrial Zone
- M-40, Heavy Industrial Zone
- CIX-1, Commercial Industrial Mix 1 Zone
- CIX-2, Commercial Industrial Mix 2 Zone
- IG, General Industrial Zone
- D-CE-5, Central Estuary District Industrial Zone-5
- D-CE-6, Central Estuary District Industrial Zone-6
- D-GI, Gateway District Industrial Zone

Staff believes that these modifications to the Planning Code will address the concerns that prompted the establishment of the Emergency Ordinances pertaining to crematoria within the City of Oakland by prohibiting such uses within close proximity (1000 feet) to areas that contain residential activities as well as providing notice and a public process through the Major Conditional Use permit procedure whenever such facility is proposed, even if further than 1,000 feet from zones that contain residential activities. Following are the Conditional Use permit findings that would need to be made for any new or expanded crematorium:

SECTION 17.134.050 –CONDITIONAL USE PERMIT FINDINGS:

1. That the location, size, design, and operating characteristics of the proposed development will be compatible with, and will not adversely affect, the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage, and density; to the availability of civic facilities and utilities; to harmful effect, if any upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development.
2. That the location, design, and site planning of the proposed development will provide a convenient and functional living, working, shopping, or civic environment, and will be as attractive as the nature of the use and its location and setting warrant.
3. That the proposed development will enhance the successful operation of the surrounding area in its basic community functions, or will provide an essential service to the community or region.
4. That the proposal conforms to all applicable design review criteria set forth in the DESIGN REVIEW PROCEDURE of Chapter 17.136 of the Oakland Planning Code.
5. That the proposal conforms in all significant respects with the Oakland General Plan and with any other applicable plan or development control map which has been adopted by the City Council.

ENVIRONMENTAL DETERMINATION

The proposal relies on the previously certified Final Environmental Impact Report (EIR) for the Land Use and Transportation Element of the General Plan (1998); the Oakland Estuary Policy Plan EIR (1998); the EIRs for the West Oakland (2003), Central City East (2003), Coliseum (1995), Central District (2011) and Oakland Army Base (2002 & 2012) Redevelopment Areas.

As a separate and independent basis, the proposal is also exempt from CEQA pursuant to CEQA Guidelines Section 15183 "Projects Consistent with a Community Plan, General Plan or Zoning" and Section 15061(b)(3), "General Rule – no possibility of significant environmental impact".

RECOMMENDATIONS

1. Affirm staff's environmental determination;
2. Recommend that City Council approve the proposed text amendments.

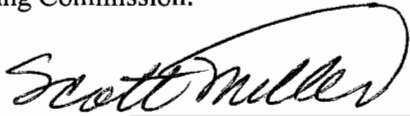
Prepared by:



Peterson Z. Vollmann
Planner III

Approved by:

Approved for forwarding to the
City Planning Commission:



SCOTT MILLER
Zoning Manager
Department of Planning & Building

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RACHEL FLYNN
Director
Department of Planning & Building

ATTACHMENTS:

- A. Proposed Zoning Text Amendments
- B. Emergency Ordinance 13115
- C. Emergency Ordinance 13158

ATTACHMENT A: PROPOSED CHANGES TO THE PLANNING CODE

Items that are underlined are insertions, while items that appear in ~~strikeout~~ are deletions.

Change #1

17.10.030 - Listing of activity classifications.

All activities are classified into the following activity types, which are described in Article II of this chapter. (See Section 17.10.050 for classification of combinations of activities resembling different types.) The names of these activity types start with capital letters throughout the zoning regulations.

D. Industrial Activities:

Custom Manufacturing

Light Manufacturing

General Manufacturing

Heavy/High Impact Manufacturing

Research and Development

Construction Operations

Warehousing, Storage and Distribution

Regional Freight Transportation

Trucking and Truck-Related

Recycling and Waste-Related

Hazardous Materials Production, Storage and Waste Management

Crematorium

Change #2

Part 4 - Industrial Activity Types

17.10.540 - General description of industrial activities.

17.10.550 - Custom manufacturing industrial activities.

17.10.560 - Light manufacturing industrial activities.

17.10.570 - General manufacturing industrial activities.
17.10.580 - Heavy/high impact manufacturing industrial activities.
17.10.581 - Research and development industrial activities.
17.10.582 - Construction operations industrial activities.
17.10.583 - Warehousing, storage, and distribution industrial activities.
17.10.584 - Regional freight transportation industrial activities.
17.10.585 - Trucking and truck-related industrial activities.
17.10.586 - Recycling and waste-related industrial activities.
17.10.587 - Hazardous materials production, storage, and waste management industrial activities.
17.10.588 - Crematorium

Change #3

17.10.588 - Crematorium.

_____ An activity that includes the cremation of human remains through incineration.

Change #4

17.33.030 - Permitted and conditionally permitted activities.

Table 17.33.01 lists the permitted, conditionally permitted, and prohibited activities in the CN zones. The descriptions of these activities are contained in Chapter 17.10. Section 17.10.040 contains permitted accessory activities.

"P" designates permitted activities in the corresponding zone.

"C" designates activities that are permitted only upon the granting of a Conditional Use Permit (CUP) in the corresponding zone (see Chapter 17.134 for the CUP procedure).

"L" designates activities subject to certain limitations or notes listed at the bottom of the table.

"—" designates activities that are prohibited except as accessory activities according to the regulations contained in Section 17.010.040.

Table 17.33.01: Permitted and Conditionally Permitted Activities

Activities	Zones				Additional Regulations
	CN-1	CN-2	CN-3	CN-4	
Industrial Activities					
Custom Manufacturing	C(L4)(L12)	C(L4)(L12)	C(L12)	C	
Light Manufacturing	—	—	—	—	
General Manufacturing	—	—	—	—	
Heavy/High Impact	—	—	—	—	
Research and Development	—	—	—	—	
Construction Operations	—	—	—	—	
Warehousing, Storage, and Distribution					
A. General Warehousing, Storage and Distribution	—	—	—	—	
B. General Outdoor Storage	—	—	—	—	
C. Self- or Mini-Storage	—	—	—	—	
D. Container Storage	—	—	—	—	
E. Salvage/Junk Yards	—	—	—	—	
Regional Freight Transportation	—	—	—	—	
Trucking and Truck-Related	—	—	—	—	
Recycling and Waste-Related					
A. Satellite Recycling Collection Centers	—	—	—	—	
B. Primary Recycling Collection Centers	—	—	—	—	
Hazardous Materials Production, Storage, and Waste Management	—	—	—	—	
Crematorium	—	—	—	—	

Change #5

17.35.030 - Permitted and conditionally permitted activities.

Table 17.35.01 lists the permitted, conditionally permitted, and prohibited activities in the CC zones. The descriptions of these activities are contained in Chapter 17.10. Section 17.10.040 contains permitted accessory activities.

"P" designates permitted activities in the corresponding zone.

"C" designates activities that are permitted only upon the granting of a Conditional Use Permit (CUP) in the corresponding zone (see Chapter 17.134 for the CUP procedure).

"L" designates activities subject to certain limitations or notes listed at the bottom of the table.

"—" designates activities that are prohibited except as accessory activities according to the regulations contained in Section 17.010.040.

Table 17.35.01: Permitted and Conditionally Permitted Activities

Activities	Zones			Additional Regulations
	CC-1	CC-2	CC-3	

Industrial Activities				
Custom Manufacturing	C	C	P	
Light Manufacturing	—	C	P(L10)	
General Manufacturing	—	—	—	
Heavy/High Impact	—	—	—	
Research and Development	—	—	—	
Construction Operations	—	—	—	
Warehousing, Storage, and Distribution				
A. General Warehousing, Storage and Distribution	—	—	P	
B. General Outdoor Storage	—	—	—	
C. Self-or Mini Storage	—	—	—	
D. Container Storage	—	—	—	
E. Salvage/Junk Yards	—	—	—	
Regional Freight Transportation	—	—	—	
Trucking and Truck-Related	—	—	—	
Recycling and Waste-Related				
A. Satellite Recycling Collection Centers	—	—	—	
B. Primary Recycling Collection Centers	—	—	—	
Hazardous Materials Production, Storage, and Waste Management	—	—	—	
<u>Crematorium</u>	—	—	—	

Change #6

17.37.030 - Permitted and conditionally permitted activities.

Table 17.37.01 lists the permitted, conditionally permitted, and prohibited activities in the CR-1 zone. The descriptions of these activities are contained in Chapter 17.10. Section 17.10.040 contains permitted accessory activities.

"P" designates permitted activities in the corresponding zone.

"C" designates activities that are permitted only upon the granting of a Conditional Use Permit (CUP) in the corresponding zone (see Chapter 17.134 for the CUP procedure).

"L" designates activities subject to certain limitations or notes listed at the bottom of the table.

"—" designates activities that are prohibited except as accessory activities according to the regulations contained in Section 17.010.040.

Table 17.37.01: Permitted and Conditionally Permitted Activities

Activities	Zone	Additional Regulations
	CR-1	
Industrial Activities		
Custom Manufacturing	P(L4)	
Light Manufacturing	P(L4)	
General Manufacturing	C(L4)	

Heavy/High Impact	—	
Research and Development	P	
Construction Operations	—	
Warehousing, Storage, and Distribution		
A. General Warehousing, Storage and Distribution	P(L4)	
B. General Outdoor Storage	C(L4)	
C. Self-or Mini Storage	C(L4)	
D. Container Storage	C(L4)	
E. Salvage/Junk Yards	—	
Regional Freight Transportation	C(L4)	
Trucking and Truck-Related	C(L4)	
Recycling and Waste-Related		
A. Satellite Recycling Collection Centers	C(L4)	
B. Primary Recycling Collection Centers	C(L4)	17.103.060
Hazardous Materials Production, Storage, and Waste Management	—	
Crematorium	—	

Change #7

17.58.040 - Permitted and conditionally permitted activities.

Table 17.58.01 lists the permitted, conditionally permitted, and prohibited activities in the CBD-R, CBD-P, CBD-C and CBD-X zones. The descriptions of these activities are contained in Chapter 17.10.

"P" designates permitted activities in the corresponding zone.

"C" designates activities that are permitted only upon the granting of a conditional use permit (see Chapter 17.134 for the CUP procedure) in the corresponding zone.

"L" designates activities subject to certain limitations or notes listed at the bottom of the Table.

"—" designates activities that are prohibited except as accessory activities according to the regulations contained in Section 17.010.040.

Table 17.58.01: Permitted and Conditionally Permitted Activities

Activities	Primary Zones				Combining Zones*	Additional Regulations
	CBD-R	CBD-P	CBD-C	CBD-X	CBD-P/CH	
Industrial Activities						
Custom Manufacturing	—	—	—	C(L13)	—	
Light Manufacturing	—	—	—	C(L13)	—	
General Manufacturing	—	—	—	—	—	
Heavy/High Impact	—	—	—	—	—	
Research and Development	—	—	C(L13)	C(L13)	—	
Construction Operations	—	—	—	—	—	
Warehousing, Storage, and Distribution						
A. General Warehousing, Storage and Distribution	—	—	—	C(L13)	—	
B. General Outdoor Storage	—	—	—	—	—	
C. Self- or Mini Storage	—	—	—	—	—	

D. Container Storage	—	—	—	—	—	
E. Salvage/Junk Yards	—	—	—	—	—	
Regional Freight Transportation	—	—	—	—	—	
Trucking and Truck-Related	—	—	—	—	—	
Recycling and Waste-Related						
A. Satellite Recycling Collection Centers	—	—	C	C	—	
B. Primary Recycling Collection Centers	—	—	—	—	—	
Hazardous Materials Production, Storage, and Waste Management	—	—	—	—	—	
Crematorium	—	—	—	—	—	

Change #8

17.65.030 - Permitted, conditionally permitted, and prohibited activities.

The following table lists the permitted, conditionally permitted, and prohibited activities in the HBX zones. The descriptions of these activities are contained in Chapter 17.10. A legally constructed facility shall be allowed to contain or be converted to contain any activities listed as permitted in the table below if they meet all applicable regulations.

"P" designates permitted activities in the corresponding zone.

"C" designates activities that are permitted only upon the granting of a conditional use permit (see Chapter 17.134) in the corresponding zone.

"L" designates activities subject to certain limitations listed at the bottom of the table.

"—" designates uses that are prohibited in the corresponding zone.

Activity	Regulations			Additional Regulations
	HBX-1	HBX-2	HBX-3	
Industrial Activities				
Custom Manufacturing	P(L3)	P(L3)	P(L3)	17.120
Light Manufacturing	P(L3)(L8)	P(L3)(L8)	P(L3)(L8)	17.120
General Manufacturing	—	—	—	
Heavy/High Impact Manufacturing	—	—	—	
Research and Development	P(L3)(L8)	P(L3)(L8)	P(L3)(L8)	
Construction Operations	P(L9)	P(L9)	P(L9)	
Warehousing, Storage, and Distribution				
A. General Warehousing, Storage and Distribution	P(L3)	P(L3)	P(L3)	
B. General Outdoor Storage	C	C	C	
C. Self- or Mini-Storage	C(L11)	C(L11)	C(L11)	
D. Container Storage	--	--	--	
E. Salvage/Junk Yards	--	--	--	
Regional Freight Transportation	--	--	--	
Trucking and Truck-Related	--	--		
Recycling and Waste-Related				
A. Satellite Recycling Collection Centers	--	--	--	
B. Primary Recycling Collection Centers	--	--	--	
Hazardous Materials Production, Storage, and Waste Management	--	--	--	
Crematorium	=	=	=	

Change #9

17.72.030 Permitted and Conditionally Permitted Activities

Table 17.72.01 lists the permitted, conditionally permitted, and prohibited activities in the M-20, M-30, and M-40 zones. The descriptions of these activities are contained in Chapter 17.10. Section 17.10.040 contains permitted accessory activities.

- “P” designates permitted activities in the corresponding zone.
- “C” designates activities that are permitted only upon the granting of a Conditional Use permit (CUP) in the corresponding zone (see Chapter 17.134 for the CUP procedure).
- “L” designates activities subject to certain limitations or notes listed at the bottom of the table.
- “--” designates activities that are prohibited except as accessory activities according to the regulations contained in Section 17.010.040.

Table 17.72.01: Permitted and Conditionally Permitted Activities				
Activities	Zones			Additional Regulations
	M-20	M-30	M-40	
Industrial Activities				
Custom Manufacturing	P(L8)	P	P	
Light Manufacturing	P(L9)	P	P	
General Manufacturing	C(L9)	C(L9)	C(L9)	
Heavy/High Impact	--	--	C	
Research and Development	C	C	P	
Construction Operations	C	P	P	
Warehousing, Storage, and Distribution				
A. General Warehousing, Storage and Distribution	C	P	P	
B. General Outdoor Storage	C	P	P	
C. Self- or Mini Storage	P	P	P	
D. Container Storage	C	P	P	
E. Salvage/Junk Yards	C	C	P(L10)	
Regional Freight Transportation	C	C	C	
Trucking and Truck-Related				
A. Freight/Truck Terminal	C	P(L7)(L11)	P(L7)(L11)	
B. Truck Yard	C	P(L7)(L11)	P(L7)(L11)	
C. Truck Weigh Stations	C	P(L7)(L11)	P(L7)(L11)	

D. Truck and Other Heavy Vehicle Sales, Rental and Leasing	C	P(L7)(L11)	P(L7)(L11)	
E.Truck and Other Heavy Vehicle Service, Repair and Refueling	C	P(L7)(L11)	P(L7)(L11)	
Recycling and Waste-Related				
A. Satellite Recycling Collection Centers	C	C	C	
B. Primary Recycling Collection Centers	--	C	P	17.103.060
Hazardous Materials Production, Storage, and Waste Management	C(L12)	C(L12)	C(L12)	
<u>Crematorium</u>	<u>C(L14)</u>	<u>C(L14)</u>	<u>C(L14)</u>	

Limitations on Table 17.72.01:

L1. The total floor area devoted to these activities on any single lot may only exceed fifteen thousand (15,000) square feet upon the granting of a Conditional Use Permit (see Chapter 17.134 for the CUP procedure).

L2. No new or expanded Special Health Care Civic Activity shall be located closer than two thousand five hundred (2,500) feet from any other such activity or five hundred (500) feet from any K-12 school or Transitional Housing, Enriched Housing, or Licensed Emergency Shelters Civic Activity. See Section 17.103.020 for further regulations regarding Special Health Care Civic Activities.

L3. Communications equipment installation and exchanges are only permitted upon the granting of a Conditional Use Permit (see Chapter 17.134 for the CUP procedure).

L4. The total floor area devoted to these activities on any single lot may only exceed three thousand (3,000) square feet upon the granting of a Conditional Use Permit (see Chapter 17.134 for the CUP procedure).

L5. See Section 17.102.170 for special regulations relating to massage services. Also, no new or expanded laundromat shall be located closer than five hundred (500) feet from any existing laundromat. See Section 17.102.450 for further regulations regarding laundromats.

L6. No new or expanded adult entertainment activity shall be located closer than one thousand (1,000) feet to the boundary of any residential zone or three hundred (300) feet from any other adult entertainment activity. See Section 17.102.160 for further regulations regarding adult entertainment activities.

L7. No facility accommodating either of these activities that is located within one hundred fifty (150) feet of any residential zone boundary shall be constructed, established, or altered in exterior appearance, unless the proposal have been approved pursuant to the Design Review Procedure (see Chapter 17.136 for the Design Review Procedure).

L8. These activities are only permitted upon the granting of a Conditional Use Permit if located within one hundred fifty (150) feet of a residential zone (see Chapter 17.134 for the CUP procedure).

L9. Electroplating activities are prohibited.

L10. Salvage/Junk Yards Industrial Activities in the M-40 zone are only permitted upon the granting of a Conditional Use Permit if located within four hundred (400) feet of any zone except the M-30 zone (see Chapter 17.134 for the CUP procedure). The following regulations shall apply to all Salvage/Junk Yards Industrial Activities in the M-40 zone that do not require for a conditional use permit: Except for accessory off-street parking, landscaping, and screening, said activities shall be conducted entirely within an enclosed building or behind a solid lumber, masonry, or sheet metal fence or wall not less than ten (10)

feet high, subject to the standards for required landscaping and screening in Chapter 17.124. All openings in such fence or wall shall be equipped with solid gates or doors of the same height as the fence or wall, and said gates or doors shall be kept securely closed at such times as the establishment is not open for business. Open storage of vehicles and other scrap material shall not exceed twenty (20) feet in height.

L11. Only permitted upon the granting of a Conditional Use Permit (see Section 17.134 for the CUP procedure) in the West Oakland Community Development District, defined to include all areas between Interstate 980 to the east, 3rd Street to the south, Interstate 880 to the west, and Interstate 580 to the north.

L12. These activities are prohibited when located within two thousand (2,000) feet from a residential facility. When not within two thousand (2,000) feet of a residential facility, Hazardous Materials Production, Storage, and Waste Management is only permitted upon the granting of a Conditional Use Permit (see Chapter 17.134 for the CUP procedure). In addition to the CUP criteria contained in Section 17.134.050, this activity must meet the following use permit criteria:

1. That the project is not detrimental to the public health, safety or general welfare of the community;
2. That the project is or will be adequately served by roads and other public or private service facilities;
3. That the project is consistent with the regional fair-share facility needs assessment and siting criteria established in the Alameda County Hazardous Waste Management Plan;
4. That the cumulative effects of locating the project within the proposed area have been analyzed and where applicable, measures have been incorporated into the project.

L13. Crop and Animal Raising is only permitted upon the granting of a Conditional Use Permit (see Chapter 17.134 for the CUP procedure). In addition to the CUP criteria contained in Section 17.134.050, this activity must meet the following use permit criteria:

1. The proposal will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood in terms of noise, water and pesticide runoff, farming equipment operation, hours of operation, odor, security, and vehicular traffic;
2. Agricultural chemicals or pesticides will not impact abutting properties or the surrounding neighborhood; and
3. The soil used in growing does not contain any harmful contaminants and the activity will not create contaminated soil.

L14. Prohibited within 1,000 feet of any zone that permits or conditionally permits residential activities.

Change #10

17.73.020 - Permitted and conditionally permitted uses and facilities.

The following table lists the permitted, conditionally permitted, and prohibited uses and facilities in the CIX-1, CIX-2, IG and IO zones. The descriptions of these uses are contained in Chapter 17.10.

"P" designates permitted uses and facilities in the corresponding zone.

"C" designates uses and facilities that are permitted only upon the granting of a conditional use permit (see Chapter 17.134) in the corresponding zone.

"L" designates uses and facilities subject to certain limitations listed at the bottom of the Table.

"—" designates uses and facilities that are prohibited in the corresponding zone.

Table 17.73.020: Permitted and Conditionally Permitted Uses and Facilities

Uses	Zones				Additional Regulations
	CIX-1	CIX-2	IG	IO	
Industrial Uses					
Custom Manufacturing	P	P	P	P	
Light Manufacturing	P	P	P	P	
General Manufacturing	L3	L3	P	—	
Heavy Manufacturing	—	—	C	—	
Research and Development	P	P	P	P	
Construction Operations	L3	L3	L3	C	
Warehousing, Storage and Distribution					
A. General Warehousing, Storage and Distribution	P	P	P	P	No retail component of this use allowed in IG or IO. Also, see Sections 17.73.060
B. General Outdoor Storage	C	L3	P	P	
C. Self or Mini Storage	C	C	—	C	
D. Container Storage	—	L3	P	—	
E. Automotive Salvage and Junk Yards	—	—	L3	—	
Regional Freight and Transportation:					
A. Seaport	—	—	P	C	
B. Rail Yard	—	C	P	—	
Trucking and Truck-Related:					
A. Freight/Truck Terminal	L5	L3	P	—	The establishment of new or expanded trucking and trucking-related activities requires Regular Design Review approval if located within 150 feet of any residential zone (see Chapter 17.136 for the Design Review procedure).
B. Truck Yard	L5	C	P	C	
C. Truck Weigh Stations	—	P	P	—	
D. Truck and Other Heavy Vehicle Sales, Rental and Leasing	L6	P	P	P	
E. Truck and Other Heavy Vehicle Service, Repair, and Refueling	L5	P	P	—	
Recycling and Waste-Related Activities					
A. Satellite Recycling Collection Centers	C	C	C	C	
B. Primary Recycling Collection Centers	L10	L10	L11	—	
Hazardous Materials Production, Storage and Waste-Related Activities					L12 See also Health and Safety Protection Zone (S-19)
A. Small Scale Transfer and Storage	—	C	C	—	

B. Industrial Transfer/Storage	—	—	C	—
C. Residuals Repositories	—	—	C	—
D. Oil and Gas Storage	—	—	L2	—
Crematorium	C(L14)	C(L14)	C(L14)	—

Limitations:

L1. Limited to location on a ground floor in CIX-2, IG and IO. Over five thousand (5,000) sf floor area requires a conditional use permit in CIX-2, IG, and IO.

L2. Prohibited within three hundred (300) feet of a residential zone and requires a conditional use permit elsewhere throughout the zone. (Conditional use permit is required in CIX-2).

L3. A conditional use permit is required if within three hundred (300) feet of a residential zone; Permitted if beyond three hundred (300) feet of a residential zone.

L5. Prohibited within six hundred (600) feet of a residential zone. A conditional use permit is required elsewhere throughout the zone. Also, only permitted upon the granting of a Conditional Use Permit (see Chapter 17.134 for the CUP procedure) in the West Oakland Community Development District, defined to include all areas between Interstate 980 to the east, 3rd Street to the south, Interstate 880 to the west, and Interstate 580 to the north.

L6. A conditional use permit is required: a) if within three hundred (300) feet of a residential zone, and b) if located anywhere in the district when outdoor repair and service activity exceeds fifty percent (50%) of site area. Also, only permitted upon the granting of a Conditional Use Permit (see Chapter 17.134 for the CUP procedure) in the West Oakland Community Development District, defined to include all areas between Interstate 980 to the east, 3rd Street to the south, Interstate 880 to the west, and Interstate 580 to the north.

L7. A conditional use permit is required for entertainment uses. Also, No new or expanded adult entertainment activity shall be located closer than one thousand (1,000) feet to the boundary of any residential zone or three hundred (300) feet from any other adult entertainment activity. See Section 17.102.160 for further regulations regarding adult entertainment activities.

L8. Entertainment, educational and athletic services are not permitted.

L10. Prohibited within three hundred (300) feet of a residential zone; a conditional use permit containing requirements no less stringent than the performance standards set out in Section 17.73.035 is required if beyond three hundred (300) feet of a residential zone boundary.

L11. Prohibited within three hundred (300) feet of a residential zone, permitted outright beyond three hundred (300) feet with a standard set of performance standards that would apply to existing, new or expanded uses, as detailed in Section 17.73.035.

L13. Crop and Animal Raising is only permitted upon the granting of a Conditional Use Permit (see Chapter 17.134 for the CUP procedure). In addition to the CUP criteria contained in Section 17.134.050, this activity must meet the following use permit criteria:

1. The proposal will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood in terms of noise, water and pesticide runoff, farming equipment operation, hours of operation, odor, security, and vehicular traffic;

2. Agricultural chemicals or pesticides will not impact abutting properties or the surrounding neighborhood; and
3. The soil used in growing does not contain any harmful contaminants and the activity will not create contaminated soil.

L14. Prohibited within 1,000 feet of any zone that permits or conditionally permits residential activities.

Change #11

17. 101E.030 Permitted and Conditionally Permitted Activities

For the purposes of this chapter only, the following definition is added as an Activity. Definitions for the other Activities listed in Table 17.101E.01 are contained in the Oakland Planning Code Chapter 17.10.

A. Definitions

1. Boat and Marine Related Sales, Rental, Repair and Servicing Activities include the sale, rental, leasing and incidental cleaning, servicing, and repair of boats and other vehicles and facilities associated with water- and marine-based travel and movement. This classification also includes activities associated with docks and marinas where boats and ships are anchored, moored, rented, sold or serviced.

Table 17.101E.01 lists the permitted, conditionally permitted, and prohibited activities in the D-CE zones. The descriptions of these activities are contained in Chapter 17.10. Section 17.10.040 contains permitted accessory activities.

“P” designates permitted activities in the corresponding zone.

“C” designates activities that are permitted only upon the granting of a Conditional Use permit (CUP) in the corresponding zone (see Chapter 17.134 for the CUP procedure).

“L” designates activities subject to certain limitations or notes listed at the bottom of the table.

“--” designates activities that are prohibited except as accessory activities according to the regulations contained in Section 17.010.040.

Table 17.101E.01 Permitted and Conditionally Permitted Activities

Activities							Additional Regulations
	D-CE-1	D-CE-2	D-CE-3	D-CE-4	D-CE-5	D-CE-6	
Industrial Activities							
Custom Manufacturing	C	P	P (L3)	P (L3)	P	P	17.102.040
Light Manufacturing	C	P	P(L2)(L10)	P(L3)(L10)	P	P	17.102.040
General Manufacturing	--	--	--	--	P	P	
Heavy/High Impact	--	--	--	--	--	C	

Table 17-101E-01 Permitted and Conditionally Permitted Activities

Activities							Additional Regulations
	D-CE-1	D-CE-2	D-CE-3	D-CE-4	D-CE-5	D-CE-6	
Research and Development	P (L2)	P(L3)(L10)	P(L3)(L10)	P(L3)(L10)	P	P	
Construction Operations	--	--	--	C	P (L14)	P (L14)	
Warehousing, Storage, and Distribution							
A. General Warehousing, Storage and Distribution	C	--	P (L2)	P (L3)	P	P	
B. General Outdoor Storage	--	--	--	--	P (L14)	P (L14)	
C. Self- or Mini Storage	--	--	--	C	C	--	
D. Container Storage	--	--	--	--	P (L14)	P (L14)	
E. Salvage/Junk Yards	--	--	--	--	--	C	
Regional Freight Transportation							
A. Seaport	--	--	--	--	--	C	
B. Rail Yard	--	--	--	--	C	C	
Trucking and Truck-Related							
A. Freight/Truck Terminal	--	--	--	--	P (L14)	P(L14)	
B. Truck Yard	--	--	--	--	C	P(L14)	
C. Truck Weigh Stations	--	--	--	--	P	P(L14)	
D. Truck & Other Heavy Vehicle Sales, Rental & Leasing	--	--	--	--	P(L14)	P(L14)	
E. Truck & Other Heavy Vehicle Service, Repair, and Refueling	--	--	--	--	P(L14)	P(L14)	
Recycling and Waste-Related							

Table 17.101E.01: Permitted and Conditionally Permitted Activities

Activities							Additional Regulations
	D-CE-1	D-CE-2	D-CE-3	D-CE-4	D-CE-5	D-CE-6	
A. Satellite Recycling Collection Centers	--	P (L15)	P (L15)	P (L15)	P (L15)	P (L15)	17.10.040
B. Primary Recycling Collection Centers	--	--	--	--	--	C (L16)	17.73.035
Hazardous Materials Production, Storage, and Waste Management							
A. Small Scale Transfer and Storage	--	--	--	--	C	C(L14, L17)	
B. Industrial Transfer/Storage	--	--	--	--	--	C(L14, L17)	
C. Residuals Repositories	--	--	--	--	--	C(L14, L17)	
D. Oil and Gas Storage	--	--	--	--	--	C(L14, L17)	
<u>Crematorium</u>	--	--	--	--	<u>C(L19)</u>	<u>C(L19)</u>	

Limitations on Table 17.101E.01:

- L1. No Residential Care, Service-Enriched Permanent Housing, Transitional Housing, or Emergency Shelter Residential Activity shall be located closer than three hundred (300) feet from any other such activity. See Section 17.102.212 for other regulations regarding these activities.
- L2. The total floor area devoted to these activities by a single establishment shall only exceed ten thousand (10,000) square feet upon the granting of a Conditional Use Permit (see Chapter 17.134 for the CUP procedure).
- L3. The total floor area devoted to these activities by a single establishment shall only exceed twenty-five thousand (25,000) square feet upon the granting of a Conditional Use Permit (see Chapter 17.134 for the CUP procedure).
- L4. The total floor area devoted to a grocery store shall only exceed twenty thousand (20,000) square feet upon the granting of a Conditional Use Permit (see Chapter 17.134 for the CUP procedure). The total floor area devoted to a restaurant shall only exceed three thousand (3,000) square feet upon the granting of a conditional use permit (see Chapter 17.134 for the CUP procedure).
- L5. These activities are only allowed on the ground floor of a building. Except in D-CE-4, the total floor area devoted to these activities by any single establishment may only exceed five-thousand (5,000) square feet upon the granting of a Conditional Use Permit (see Chapter 17.134 for the CUP procedure).
- L6. Retail is only allowed as an accessory use per Section 17.10.040.

- L7. The total floor area devoted to these activities by a single establishment shall not exceed five thousand (5,000) square feet.
- L8. Entertainment, educational and athletic services are not permitted.
- L9. Administrative activities accessory to an existing industrial activity are limited to twenty percent (20%) of floor area in D-CE-6.
- L10. Not including accessory activities, this activity shall take place entirely within an enclosed building. Other outdoor activities shall only be permitted upon the granting of a conditional use permit (see Chapter 17.134 for the CUP procedure).
- L11. These activities are only allowed in the Tidewater South area of D-CE-5, not permitted in any other areas of D-CE-5.
- L12. This activity is only permitted upon the granting of a Conditional Use Permit (see Chapter 17.134) if it is the principal activity on a lot that is twenty five thousand (25,000) square feet or larger or covers twenty five thousand (25,000) square feet or more of floor area.
- L13. This activity is only permitted upon the granting of a Conditional Use Permit (see Chapter 17.134 for the CUP procedure) and that all repair and servicing is performed in an enclosed building.
- L14. A Conditional Use Permit is required if located within 300 feet of: a) the estuary shoreline; b) the D-CE-3 zone; or c) any Open Space zone (see Chapter 17.134 for the CUP procedure). This activity is permitted if beyond 300 feet.
- L15. Permitted within a grocery store or other large associated development, but if it is a stand alone collector center then a Conditional Use Permit (see Chapter 17.134 for the CUP procedure) is required. If the recycling collection is placed within the parking lot the overall parking requirements for the principal activity shall still be met.
- L16. A Conditional Use Permit (see Chapter 17.134 for the CUP procedure) is required for this activity, but is not permitted within 300 feet of: a) the estuary shoreline; b) the D-CE-1, D-CE-2, D-CE-3, or D-CE-4 zone; or c) any Open Space zone. All special regulations for primary collection centers in the industrial zones must be met as listed in Section 17.73.035.
- L17. This activity is only permitted upon determination that the proposal conforms to the general use permit criteria set forth in the Conditional Use Permit procedure in Chapter 17.134 and to all of the following additional use permit criteria:
 - 1. That the project is not detrimental to the public health, safety, or general welfare of the community;
 - 2. That the project is or will be adequately served by roads and other public or private service facilities;
 - 3. That the project is consistent with the regional fair-share facility needs assessment and siting criteria established in the Alameda County Hazardous Waste Management Plan;
 - 4. That the cumulative effects of locating the project within the proposed area have been analyzed and where applicable, measures that minimize adverse impacts to the surrounding community have been incorporated into the project.
- L18. Crop and Animal Raising is only permitted upon determination that the proposal conforms to the general use permit criteria set forth in the Conditional Use Permit procedure in Chapter 17.134 and to all of the following additional use permit criteria:
 - 1. The proposal will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood in terms of noise, water and pesticide runoff, farming equipment operation, hours of operation, odor, security, and vehicular traffic;
 - 2. Agricultural chemicals or pesticides will not impact abutting properties or the surrounding neighborhood; and

3. The soil used in growing does not contain any harmful contaminants and the activity will not create contaminated soil.

L19. Prohibited within 1,000 feet of any zone that permits or conditionally permits residential activities.

Change #12

17.101F.030 - Permitted and conditionally permitted activities.

Table 17.101F.01 lists the permitted, conditionally permitted, and prohibited activities in the D-GI zone. The descriptions of these activities are contained in Chapter 17.10. Section 17.10.040 contains permitted accessory activities.

"P" designates permitted activities in the zone.

"C" designates activities that are permitted only upon the granting of a Conditional Use Permit (CUP) in the corresponding zone (see Chapter 17.134 for the CUP procedure).

"L" designates activities subject to certain limitations or notes listed at the bottom of the table.

"—" designates activities that are prohibited except as accessory activities according to the regulations contained in Section 17.010.040.

Table 17.101F.01: Permitted and Conditionally Permitted Activities

Activities	Zone	Additional Regulations
	D-GI	
Industrial Activities		
Custom Manufacturing	P	
Light Manufacturing	P	
General Manufacturing	P	
Heavy/High Impact	C	
Research and Development	P	
Construction Operations	P(L2)	
Warehousing, Storage, and Distribution		
A. General Warehousing, Storage and Distribution	P	
B. General Outdoor Storage	P	
C. Self-or Mini Storage	P	
D. Container Storage	P	
E. Salvage/Junk Yards	—	
Regional Freight Transportation		
A. Seaport	P	
B. Rail Yard	P	
Trucking and Truck-Related		
A. Freight/Truck Terminal	P	
B. Truck Yard	P	
C. Truck Weigh Stations	P	

D. Truck and Other Heavy Vehicle Sales, Rental, and Leasing	P	
E. Truck and Other Heavy Vehicle Service, Repair, and Refueling	P	
Recycling and Waste-Related		
A. Satellite Recycling Collection Centers	P	
B. Primary Recycling Collection Centers	P(L7)	17.73.035
Hazardous Materials Production, Storage, and Waste Management		
A. Small Scale Transfer and Storage	C	
B. Industrial Transfer/Storage	C	
C. Residuals Repositories	C	
D. Oil and Gas Storage	C	
<u>Crematorium</u>	<u>C(L8)</u>	

Limitations on Table 17.101F.01:

- L1.** Community gardens and botanical gardens are prohibited.
- L2.** These activities are limited to establishments that support or are associated with trucking, warehousing, or maritime-related activities.
- L3.** Community Assembly Activities are limited to public and private nonprofit clubs, lodges, and meeting halls.
- L4.** Nonassembly Cultural Activities are limited to museums and commemorative exhibits pertaining to trucking, warehousing, or maritime-related activities or the history of the site.
- L5.** Convenience Markets are limited to establishments located on the same lot as an Automobile and Other Light Vehicle Gas Station and Servicing Activity or a Truck and Other Heavy Vehicle Service, Repair, and Refueling Activity.
- L6.** Group Assembly Activities and Personal Instruction and Improvement Services Activities are limited to instructional services.
- L7.** Primary Recycling Collection Centers shall comply with the performance standards set forth in Section 17.73.035.
- L8.** Prohibited within 1,000 feet of any zone that permits or conditionally permits residential activities.

Change #13

17.134.020 - Definition of major and minor conditional use permits.

- A. Major Conditional Use Permit. A conditional use permit is considered a major conditional use permit if it involves any of the following:
 - 1. Thresholds. Any project that meets any of the following size thresholds:
 - a. The actual project site (including only portions of the lot actually affected by the project) exceeds one acre;

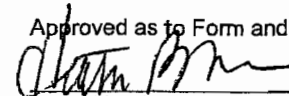
- b. Nonresidential projects involving twenty-five thousand (25,000) square feet or more of floor area, except in the R-80, CBD-R, CBD-P (when not combined with the S-7 zone), CBD-C, CBD-X, S-2, or S-15 zones;
 - c. Residential projects requiring a conditional use permit for density resulting in a total number of living units as follows:
 - i. Three (3) or more dwelling units in the RM-2 zone,
 - ii. Seven (7) or more dwelling units in the RM-3 or RM-4 zone.
 - d. Residential projects requiring a conditional use permit to exceed the basic or permitted density which results in seven (7) or more living units in the RU or CBD-R zone.
 - e. Large Scale Developments. Any development which is located in the R-80, CBD-R, CBD-P (when not combined with the S-7 zone), CBD-C, CBD-X, S-2, or S-15 zone and results in more than one hundred thousand (100,000) square feet of new floor area.
2. Uses. Any project that involves any of the following activity or facility types except where the proposal involves only accessory parking, the resumption of a discontinued nonconforming activity, or an addition to an existing activity which does not increase the existing floor area by more than twenty percent (20%):
- a. Activities:
 - i. Residential Care Residential,
 - ii. Service Enriched Housing Residential,
 - iii. Transitional Housing Residential,
 - iv. Emergency Shelter Residential,
 - v. Extensive Impact Civic,
 - vi. Fast-food Restaurant Commercial,
 - vii. Convenience Market Commercial,
 - viii. Alcoholic Beverage Sales Commercial or sale of alcoholic beverages at any full-service restaurant in a location described by Section 17.103.030(B),
 - ix. Heavy Manufacturing,
 - x. Small Scale Transfer and Storage Hazardous Waste Management,
 - xi. Industrial Transfer/Storage Hazardous Waste Management,
 - xii. Mining and Quarrying Extractive,
 - xiii. Special Health Care Civic Activities.
 - xv. Crematorium

FILED
OFFICE OF THE CITY CLERK
OAKLAND

REQUIRES 6 VOTES FOR PASSAGE

2012 JUL 27 AM 11:26

Approved as to Form and Legality


Oakland City Attorney's Office

OAKLAND CITY COUNCIL

ORDINANCE NO. . 13115 " C.M.S.

AN EMERGENCY ORDINANCE, PURSUANT TO CHARTER SECTION 213, ESTABLISHING INTERIM CONTROLS THAT REQUIRE A MAJOR CONDITIONAL USE PERMIT TO ESTABLISH A CREMATORIUM, AS IT IS CURRENTLY DEFINED AS MANUFACTURING AND INDUSTRIAL USEAGE TO REMAIN IN EFFECT THROUGH May 10, 2013, OR WHEN PERMANENT REGULATIONS ARE ADOPTED, WHICHEVER OCCURS FIRST.

WHEREAS, Since 1965, Oakland has defined Extensive Impact Civic Activities as including "Cemeteries, mausoleums, and columbarium", and activities accessory thereto, which require a Conditional Use Permit;

WHEREAS, Currently Crematoria are permitted uses in certain industrial areas within the City - under code section 17.10.0570, General Manufacturing Industrial Activities of the Zoning Ordinance. No planning permits or public notice are required prior to issuance of a building permit for such a use

WHEREAS, The issue of whether it is appropriate to allow crematoria as a permitted use under General Manufacturing or under code section 17.10.240 (B) Extensive Impact Civic Activities of the Zone Ordinance has been raised in the context of the public exposure to certain types of pollutants and emissions and the ability to review those impacts

WHEREAS, except as provided in the Interim Controls, these uses do not require discretionary approval under City zoning laws; and

WHEREAS, Crematoria emit particulate matter falling under the category of toxic pollutants, and the possibility of trucking many thousands of bodies into Oakland from the Bay Area and beyond would add to those emissions, increase traffic congestion, and tax Oakland's infrastructure, and

ATTACHMENT B

WHEREAS, in addition to the impacts a cemetery, mausoleum, columbarium and accessory activities may have on a community's character, crematoria emit particulate matter and other toxic pollutants (as described below), and the possibility of trucking many thousands of bodies into Oakland from the Bay Area and beyond would add to those emissions, increase traffic congestion, and tax Oakland's infrastructure, and;

- Acetaldehyde
- Arsenic
- Benzene
- Beryllium
- Cadmium
- Chromium, hexavalent
- Copper
- Formaldehyde
- Hydrogen Chloride
- Hydrogen Fluoride
- Lead
- Mercury
- Nickel
- Selenium
- Zinc
- Chlorinated dibenzo-dioxins and furans of concern
- Polycyclic aromatic hydrocarbons

WHEREAS, the Airport Area Gateway is a recently revitalized corridor, a regional cremation center can displace retail activities and compromise the economic opportunities of the Airport Area Gateway plan

WHEREAS, A Regional cremation center in Oakland would impact the total environment of our neighborhoods and backslide efforts to address the cumulative impacts of environmental inequalities in less than fortunate areas of Oakland, and;

WHEREAS, staff would need time to work on permanent regulations that will be adopted by the expiration of the Emergency Ordinance May 10, 2013; and

WHEREAS, the provisions of the California Environmental Quality Act (CEQA) have been satisfied and the proposal relies on the following environmental document to satisfy any requirements under CEQA: the previously certified Final Environmental Impact Report for the Land Use and Transportation Element of the General Plan, adopted in 1998 (General Plan EIR) and for the reasons stated in the July 7, 2010 Planning Commission report and summarized below; and

WHEREAS, as a separate and independent basis, the proposal also is exempt from CEQA under several CEQA Guidelines: including with limitation, 15061(b)(3), known as the "General Rule," which states that a project is exempt from CEQA if there is no possible that the activity in question will have a significant effect on the environment; and

WHEREAS, for the reasons set forth above, pursuant to City Charter section 213, the Council declares that this ordinance is necessary to preserve the public peace, health, welfare or safety and to avoid a direct threat to the health, safety, and welfare of the community, and the "Whereas" clauses above take together constitute the City Council's statement of reasons constitute the City Council's statement of the reasons constituting such necessity and emergency; now, therefore

NOW THEREFORE BE IT RESOLVED, THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Section 1. The recitals above are true and correct and are an integral part of this ordinance.

Section 2. This Ordinance complies with the California Environmental Quality Act.

Section 3. Crematoriums or existing crematoria uses expanded shall only be permitted upon the granting of a major conditional use permit pursuant to the conditional use permit procedure in Chapter 17.134 of the Planning Code.

Section 4. No building, zoning or other permit that has been issued for any building or structure for which rights to proceed with said building or structure have not yet vested pursuant to the provisions of State law shall proceed without complying with this ordinance. Further, no building, zoning or other permit for any building or structure shall be issued by any department, agency, employee or agent of the City of Oakland to allow for any building or structure, with complying with the requirements of Section 3 above. No use which has not vested prior to the date of this Ordinance shall commence in violation of the provisions of this Ordinance.

Section 5. The controls imposed by this ordinance shall remain in place and be effective for a continuous 1 year period from the effective date of this ordinance, or until the City Council adopts permanent controls for Crematoria, whichever comes first.

IN COUNCIL, OAKLAND, CALIFORNIA

MAY 15 2012

PASSED BY THE FOLLOWING VOTE:

AYES – BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL,

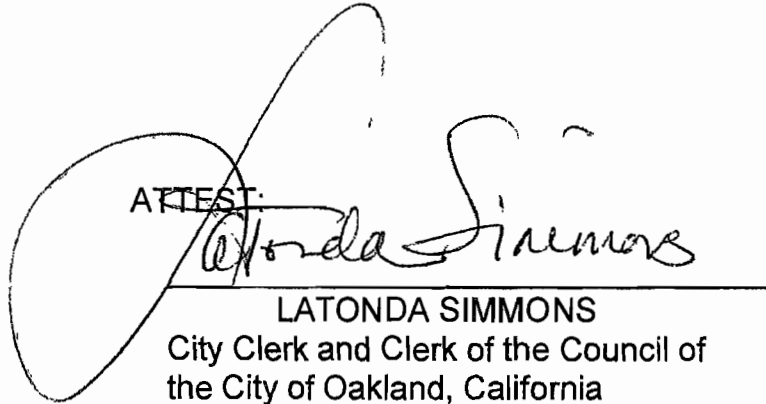
SCHAAF, BRUNNER, AND PRESIDENT REID — 8

NOES — 0

ABSENT — 0

ABSTENTION — 0

ATTEST:




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

REQUIRES 6 VOTES FOR PASSAGE

FILED
OFFICE OF THE CITY CLERK
OAKLAND
INTRODUCED BY COUNCILMEMBER _____
2013 APR 25 PM 2:33

APPROVED AS TO FORM AND LEGALITY



City Attorney

OAKLAND CITY COUNCIL
ORDINANCE NO. 13158 C.M.S.

AN EMERGENCY ORDINANCE PURSUANT TO CHARTER SECTION 213, EXTENDING BY ONE HUNDRED AND EIGHTY (180) DAYS EMERGENCY ORDINANCE NUMBER 13115 C.M.S. REQUIRING A MAJOR CONDITIONAL USE PERMIT TO ESTABLISH OR EXPAND A CREMATORIUM WITHIN THE CITY OF OAKLAND, TO TAKE EFFECT IMMEDIATELY UPON INTRODUCTION AND ADOPTION (EXTENDS THE ONE-YEAR EMERGENCY ORDINANCE ADOPTED MAY 15, 2012)

WHEREAS, on May 15, 2012, the City Council adopted Emergency Ordinance Number 13115 C.M.S., to establish interim controls for crematoria, requiring a Major Conditional Use permit to establish a crematorium for a period of one year until May 14, 2013 or until permanent regulations are adopted regulating crematoriums, whichever comes first; and

WHEREAS, currently crematoria are classified as General Manufacturing Industrial Activities pursuant to Section 17.10.570 of the Planning Code, and are outright permitted activities within the M-30 General Industrial Zone, M-40 Heavy Industrial Zones, and IG General Industrial Zones. Crematoria are outright permitted within the CIX-1 and CIX-2 Commercial Industrial Zones if outside of 300 feet from a residential zone (but, if located within 300 feet of a residential zone in the CIX-1 and CIX-2 zones a conditional use permit is required). No discretionary planning permits or public notice are required prior to issuance of a building permit for a crematorium within these industrial zones; and

WHEREAS, the issue of whether it is appropriate to allow crematoria as an outright permitted use within industrial zones under the use classification of General Manufacturing activities has been raised in the context of public exposure to certain types of pollutants and emissions and the ability to review those impacts; and

WHEREAS, except as provided in the Interim Controls, the City permits outright, without any discretionary planning review, crematoria under the classification of a General Manufacturing Industrial activity, within the M-30 General Industrial Zone, M-40 Heavy Industrial Zones, and IG General Industrial Zones. Crematoria are outright permitted within the CIX-1 and CIX-2 Commercial Industrial Zones if outside of 300 feet from a residential zone; and

WHEREAS, crematoria emit particulate matter falling under the category of toxic pollutants; and

WHEREAS, on May 15, 2012, the City Council receive, and on August 29, 2012 the Planning Commission and City staff received, letters from the Alameda County Public Health Department stating that cremators used within crematoria emit a number of criteria air pollutants such as particulate matter, nitrogen compounds, sulfur compounds, carbon monoxide and precursor

ATTACHMENT C

organic compounds and toxic emissions such as acetaldehyde, arsenic, beryllium, cadmium, hexavalent chromium, copper, formaldehyde, hydrogen chloride, hydrogen fluoride, lead, mercury, nickel, selenium, chlorinated dibenzodioxins and furans, and polycyclic aromatic hydrocarbons/ benzo (a) pyrene equivalents; and

WHEREAS, a cremation center can displace commercial activities and negatively effect the economic revitalization of any community in which a crematorium would locate; and

WHEREAS, a crematorium in any part of Oakland has the potential to impact the health of persons in our neighborhoods, many of whom already suffer from highly disproportionate rates of illness related to air pollution in comparison to the rest of Alameda County; and

WHEREAS, staff needs additional time beyond the May 14, 2013 expiration date of the Emergency Ordinance to November 2, 2013, due to staffing limitations and numerous changes in leadership within the Planning and Building Department over the past year; and

WHEREAS, the provisions of the California Environmental Quality Act (CEQA) have been satisfied and the proposal relies on the following environmental documents to satisfy any requirements under the California Environmental Quality Act (CEQA): the previously certified Final Environmental Impact Report for the Land Use and Transportation Element of the General Plan, adopted in 1998 (General Plan EIR); and

WHEREAS, as a separate and independent basis, the proposal is also exempt from CEQA under several CEQA Guidelines: section 15061(b)(3), known as the "General Rule," that states a project is exempt from CEQA if there is no possibility that the activity in question will have a significant effect on the environment; and

WHEREAS, for the reasons set forth above, pursuant to City Charter section 213, the Council declares that this ordinance is necessary to preserve the public peace, health, welfare or safety and to avoid a direct threat to the health, safety, and welfare of the community, and the "Whereas" clauses above taken together constitute the City Council's statement of the reasons constituting such necessity and emergency; now, therefore

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Section 1. The recitals above are true and correct and are an integral part of this Ordinance.

Section 2. This Ordinance complies with the California Environmental Quality Act.

Section 3. Any new crematorium or expansion of any existing crematorium shall only be permitted upon the granting of a conditional use permit pursuant to Planning Code Chapter 17.134.

Section 4. No building, zoning or other permit that has been issued for any building or structure for which rights to proceed with said building or structure have not yet vested pursuant to the provisions of State law shall proceed without complying with this ordinance. Further, no building, zoning or other permit for any building or structure shall be issued by any department, agency, employee or agent of the City of Oakland to allow for any building or structure without complying with the requirements of Section 3 above. No use which has not vested prior to the date of this ordinance shall commence in violation of the provisions of this ordinance. To the extent that this Ordinance may conflict with any other provisions of the Oakland Municipal or Planning Code, this Ordinance controls over any other provision of the Oakland Municipal Code

(including, without limitation,, section 17.102.040, which states or suggests the City may not impose new land use regulations on a property owner or developer after the City has issued a building or other permit).

Section 5. The controls imposed by this ordinance shall remain in place and be effective for a continuous one hundred and eighty (180) days from the effective date of this ordinance, or until the City Council adopts permanent controls for crematoria, whichever comes first.

Section 6. The Planning and Zoning Division is directed, over the next one hundred and eighty (180) days, to conduct a study and develop a draft set of permanent amendments to the Planning Code and/or Municipal Code regarding the subject matter of this ordinance.

Section 7. For the term of this ordinance, as set for the in Section 5 above, the provisions of this ordinance shall govern, and 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, all such conflicting provisions shall be suspended.

Section 8. This ordinance shall be effective immediately upon its adoption by the City Council, subject to the provisions of Section 213 of the Charter of the City of Oakland.

Section 9. This Ordinance is enacted pursuant to the City of Oakland's general police powers, Sections 106 and 213 of the Charter of the City of Oakland, and Article XI of the California Constitution.

Section 10. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, the remainder of this ordinance and the application of such provisions to other persons or circumstances shall not be affected thereby.

IN COUNCIL, OAKLAND, CALIFORNIA, MAY 7 2013

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF, and PRESIDENT KERNIGHAN - 8

NOES- 0

ABSENT- 0

ABSTENTION- 0

ATTEST: 

LaTonda Simmons

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

DATE OF ATTESTATION: 5/14/13

