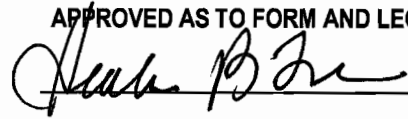


REQUIRES 6 VOTES FOR PASSAGE

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.**

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**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

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                    

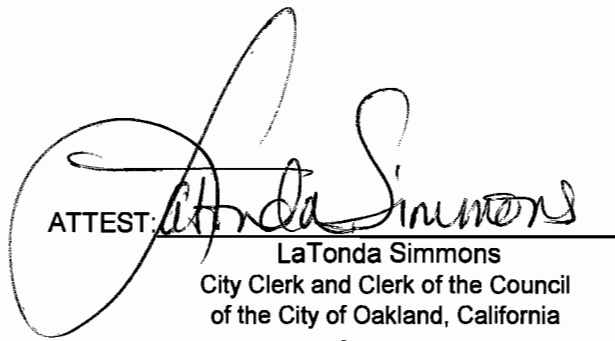
**PASSED BY THE FOLLOWING VOTE:**

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

*Hee*

## NOTICE AND DIGEST

**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 THAT BECAME EFFECTIVE MAY 15, 2012)**

This Emergency Ordinance amends the Oakland Planning Code to extend the requirement adopted by Emergency Ordinance No. 13115 C.M.S. requiring approval of a Major Conditional Use Permit prior to establishing new crematoria or expanding existing crematoria uses within the City of Oakland. This Ordinance was passed pursuant to Section 213 of the Oakland City Charter, and, by an affirmative vote of six (6) members of the City Council and the making of the findings required under Charter Section 213, takes effect immediately upon one reading. This Ordinance will remain in effect for a period of one-hundred and eighty (180) days from the date of adoption or until permanent regulations addressing crematoria are adopted by the City Council. The Ordinance directs staff to develop permanent controls for crematoria uses during the effective period of this Ordinance.