

AGENDA REPORT

TO: DEANNA J. SANTANA
CITY ADMINISTRATOR

FROM: RACHEL FLYNN

SUBJECT: Extend Emergency Ordinance Requiring
A Conditional Use Permit for Crematories

DATE: September 17, 2013

City Administrator
Approval

Date

7/23/13

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

Staff recommends that the City Council adopt:

An Emergency Ordinance Pursuant To Charter Section 213, Extending By One Hundred And Eighty (180) Days Emergency Ordinance Number 13158 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 Hundred and Eighty (180) Day Emergency Ordinance Adopted May 7, 2013)

OUTCOME

If the existing Emergency Ordinance is extended, any newly proposed or expanded crematories within the City of Oakland will require a Major Conditional Use permit authorization for a period of one-hundred and eighty (180) days from the date of adoption or until permanent regulations addressing crematories are adopted by the City Council, unless the crematorium has a vested right to proceed with the project. In the 180 days after adopting staff will work to further analyze issues related to crematories at the request of the Planning Commission and return with proposed legislation for permanent regulations.

BACKGROUND/LEGISLATIVE HISTORY

On May 15, 2012 the City Council adopted Emergency Ordinance 13115 C.M.S., 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, or until permanent regulations addressing crematories were put into effect.

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Prior to expiration of the Emergency Ordinance, a subsequent Emergency Ordinance No. 13158 C.M.S. 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 No. 13158 C.M.S. 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. The item was heard by the Planning Commission on September 11, 2013. At the September 11, 2013 Planning Commission hearing the Commission voted to continue the item to a future date and directed staff to return with additional background information regarding the health impacts associated with crematories and recommended that staff consider the effect on existing crematories within the City and possibly open up additional zones that would allow the use outside of only industrial zones as was recommended by staff.

Under Planning Code section 17.144.020, the City Council may not amend any provision of the Planning Code until after it has received a recommendation from the Planning Commission. As a result of the Planning Commission decision to continue the item to a future date, the Council has not yet received the required Planning Commission recommendation, and the existing Emergency Ordinance 13158 C.M.S. would expire prior to a proposal being able to proceed to the City Council for consideration.

ANALYSIS

Currently crematories 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 Zones, M-40 Heavy Industrial Zones, IG General Industrial Zones, D-CE-5 & D-CE-6 Central Estuary Industrial Zones, and the D-GI Gateway Industrial Zone. Crematories are also 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). Thus, absent Ordinance No. 13158 C.M.S. (which staff proposes be extended), no discretionary planning permits or public notice are required prior to issuance of a building permit for a crematorium within these industrial zones.

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 crematoria use, and the ability of the public and the City to review and consider potential impacts caused by crematoria use and means for the City to address them.

On May 15, 2012, the Alameda County Public Health Department submitted a letter to then Council President Larry Reid and each of other Councilmembers. The letter stated that

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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. In this letter the County Health Officer expressed support for requiring a Conditional Use permit for crematorium activities. On August 29, 2012 the Planning Commission and City staff received a similar letter from the Alameda County Public Health Department.

At present Emergency Ordinance 13158 requires a Conditional Use permit for any new or expanded crematorium, but is set to expire on November 3, 2013. By extending the Emergency Ordinance, the Conditional Use Permit requirement will remain in place for an additional 180 days while staff provides additional information as requested by the Planning Commission prior to bringing forth the proposal to the City Council for consideration.

PUBLIC OUTREACH/INTEREST

From a legal standpoint, this item did not require any additional public outreach other than the required posting on the City's website.

COORDINATION

The Agenda report on the proposed extension to Emergency Ordinance 13158 C.M.S. has been reviewed by the City Attorney's Office and the Budget Office.

COST SUMMARY/IMPLICATIONS

The proposed extension of the Emergency Ordinance will have no direct fiscal impact on the City. No additional staffing will likely be necessary to draft legislation addressing potential impacts from Crematories. No additional costs are expected to be incurred.

SUSTAINABLE OPPORTUNITIES

Economic: Staff sees no economic opportunities from the proposed extension of the Emergency Ordinance.

Environmental & Social Equity: The extension of the Emergency Ordinance will allow staff to further analyze the potential impacts from crematoria which may emit toxic air pollutants and have the potential to impact the health of our neighborhoods, many of which already suffer from highly disproportionate rates of illness related to air pollution in comparison to the rest of Alameda County. The extension of the Emergency Ordinance requiring a Major Conditional Use

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permit will also provide public notice of any such activities in the interim period while staff works to develop appropriate regulations addressing any potential issues.

CEQA

The proposal relies on the following two 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 Oakland General Plan (General Plan EIR), adopted 1998 (General Plan EIR). Furthermore, the proposal is exempt under CEQA Guidelines section 15061(b)(3), known as the "General Rule," which 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. Staff finds the "General Rule" applies, because the proposed regulations would have no change in the development intensity of the area, as the proposal does not address residential density or floor area ratio, and the proposal contains no change in regulations regarding height, setback, open space or other regulations that have an effect on the environment. The proposed regulations are more stringent, with regards to permitted activities, than the current zoning and regulatory controls.

For questions regarding this report, please contact Pete Vollmann, Planner III, at (510) 238-6167.

Respectfully submitted,



RACHEL FLYNN
Director of Planning and Building

Reviewed by:
Scott Miller, Zoning Manager

Prepared by:
Pete Vollmann, Planner III
Planning & Zoning

Attachments:

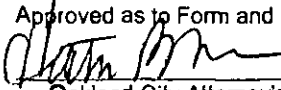
- A. Emergency Ordinance 13115 C.M.S.
- B. Emergency Ordinance 13158 C.M.S.
- C. Letter from Alameda County Public Health Department dated May 15, 2012
- D. Letter from Alameda County Public Health Department dated August 29, 2012

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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 A

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,

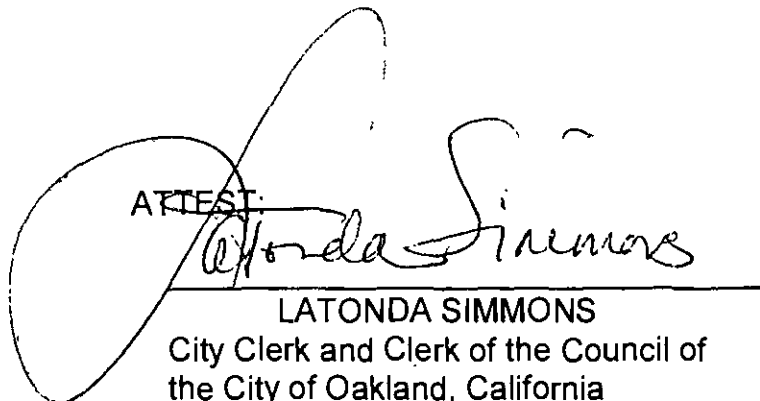
SCHAAF, BRUNNER, AND PRESIDENT REID – 8

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 COUNCIL MEMBER _____
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 B

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 pennitted 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

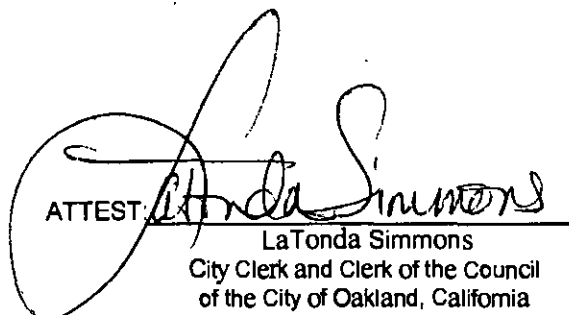
PASSED BY THE FOLLOWING VOTE:

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.



ALAMEDA COUNTY HEALTH CARE SERVICES AGENCY
PUBLIC HEALTH DEPARTMENT

Alex Briscoe, Director
Anita Sicgl, RN, MPH, Director

Office of the Director

1000 Broadway, 5th Floor
Oakland, CA 94607

Rebecca Fournay, MPH
Deputy Director of Planning, Policy and Health Equity
(510) 267-8020
FAX: (510) 268-7012

May 15, 2012

City Council President Larry Reid
Oakland City Hall
1 Frank H. Ogawa Plaza
Oakland, CA 94612
Via e-mail: lreid@oaklandnet.com

RE: Crematorium Activity and Public Health

Council President Reid:

The Alameda County Public Health Department (ACPHD) employs a range of strategies for protecting individual and community health, including analyzing public health impacts of land use planning decisions. I write to express our support of your resolution to require a Major Conditional Use Permit to establish crematoriums.

Cremators emit a number of criteria and toxic air pollutants such as particulate matter, sulfur compounds, lead, arsenic, hexavalent chromium, mercury and chlorinated dibenzodioxins, and furans.¹ Several of these emissions are known to exacerbate chronic conditions such as asthma, and have been linked to cancer.²

Given these potential health impacts, we agree that there should be public notice and a public process to determine conditions of approval, which would be required through a Major Conditional Use Permit. We understand that a crematorium, Sentihel Cremation Societies, is currently being proposed for East Oakland and will emit a range of pollutants.³ This community already faces a disproportionate burden from illness associated with air pollution: the rate of asthma Emergency Department (ED) visits in East Oakland is over two times higher than the Alameda County rate and one of the highest in the county, and among children under five years of age, the asthma ED-visit rate in East Oakland is more than two times the County rate.⁴

¹ The criteria air pollutants from these cremators include: particulate matter, nitrogen compounds, sulfur compounds, carbon monoxide and precursor organic compounds. The toxic emissions from these cremators include: 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.

² California Air Resources Board. 2009. Air Pollution and Health Fact Sheet. <http://www.arb.ca.gov/research/health/fv/fs1/fs1.htm>

³ Bay Area Air Quality Management District. Engineering Evaluation Report. Sentihel Cremation Societies, Inc. Plant #20905, Application #23669.

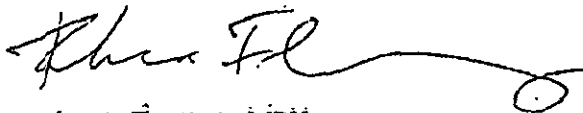
⁴ For Zip codes 94621 & 94603, the rate of asthma ED visits is 1,230 per 100,000 residents; the Alameda County rate is 553 per 100,000. The asthma ED visit rate for children is 2,048 per 100,000 (0-4 year-olds) compared to the Alameda County rate of 1,301 per 100,000. Asthma inpatient hospitalization rate is 339 per 100,000 residents; the county rate is 147 per 100,000. The childhood asthma hospitalization rate is 905 per 100,000; the county rate is 477 per 100,000. Source: ACPHD CAPE Unit with 2008-2010 data from California Office of Statewide Health Planning and Development (OSHPD).

ATTACHMENT C

Given the existing disproportionate burden of disease, a public process is necessary to protect community health.

ACPHD is dedicated to improving health of all Alameda County residents. Thank you for your leadership in advancing this important policy.

Sincerely,



Rebecca Floumoy, MPH
Deputy Director and Director of Planning, Policy, and Health Equity.

cc: Councilmember Brooks;
Councilmember Brunner;
Councilmember De La Fuente;
Councilmember Kaplan;
Councilmember Kemighan;
Councilmember Nadcl, and
Councilmember Schaaf



ALAMEDA COUNTY HEALTH CARE SERVICES AGENCY
PUBLIC HEALTH DEPARTMENT

Alex Briscoe, Director
Anita Siegel, Director

Office of the Health Officer
1000 Broadway, Ste. 5000
Oakland, California 94607

Muntu Davis, MD, MPH
County Health Officer
(510) 267-8010
(510) 267-3223

August 29, 2012

Oakland Planning Commission
City Hall
1 Frank H. Ogawa Plaza
Oakland, CA 94612
Via e-mail: vienv.truong@gmail.com; pvollman@oaklandnet.com

RE: Agenda Item 7, 9850 Kitty Lane, Appeal for Crematorium requiring a Major CUP

Chair Truong and members of the City Planning Commission:

I write to express our support for requiring a Major Conditional Use Permit (CUP) to establish crematoriums. Cremators emit a number of criteria and toxic air pollutants such as particulate matter, sulfur compounds, lead, arsenic, hexavalent chromium, mercury and chlorinated dibenzodioxins, and furans.¹ Several of these emissions are known to exacerbate chronic conditions such as asthma, and have been linked to cancer.²

Given these potential health impacts, we believe that there should be public notice and a public process to determine conditions of approval, which would be required through a Major CUP for crematorium uses, as determined by the Planning Director on May 16, 2012. We understand that a crematorium, Sentinel Cremation Societies aka Sentinel Enterprises, is currently seeking an appeal to a decision to obtain a Major CUP for their facility at 9850 Kitty Lane in East Oakland and will emit a range of pollutants.³

The East Oakland community already faces a disproportionate burden from illness associated with air pollution: the rate of asthma Emergency Department (ED) visits is over two times higher than the Alameda County rate and one of the highest in the county, and, among children under five years of age, the asthma ED visit rate is more than two times the County rate.⁴

In light of the existing disproportionate burden of disease, a public process, as required in the Major CUP process, is necessary to protect community health.

¹ The criteria air pollutants from these cremators include: particulate matter, nitrogen compounds, sulfur compounds, carbon monoxide and precursor organic compounds. The toxic emissions from these cremators include: 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.

² California Air Resources Board. 2009. Air Pollution and Health Fact Sheet.
<http://www.arb.ca.gov/research/hcalih/is/fs1/ts1.htm>

³ Bay Area Air Quality Management District. Engineering Evaluation Report. Sentinel Cremation Societies, Inc. Plant #20905, Application #23669.

⁴ For Zip codes 94621 & 94603, the rate of asthma ED visits is 1,230 per 100,000 residents; the Alameda County rate is 553 per 100,000. The asthma ED visit rate for children is 2,048 per 100,000 (0-4 year-olds) compared to the Alameda County rate of 1,301 per 100,000. Asthma inpatient hospitalization rate is 339 per 100,000 residents; the county rate is 147 per 100,000. The childhood asthma hospitalization rate is 908 per 100,000; the county rate is 477 per 100,000. Source: ACPHD CAPE Unite with 2008-2010 data from California Office of Statewide Health Planning and Development (OSHPD).

The Alameda County Public Health Department (ACPHD) employs and recommends a range of strategies to protect individual and community health, including analyzing the public health impacts of land use planning decisions.

We are dedicated to improving the health of all Alameda County residents. Thank you for considering our recommendations for maximizing the public health protections and implementing this important policy. Please do not hesitate to contact me with any questions or concerns.

Sincerely,



Muntu Davis, MD, MPH
Alameda County Health Officer


cc: Council President Reid;
Vice Chair Huntsman;
Commissioner Colbruno;
Commissioner Coleman;
Commissioner Moore;
Commissioner Patillo;
Commissioner Whales;
Scott Miller
Anita Siegel, ACPHD Director

REQUIRES 6 VOTES FOR PASSAGE

FILED
OFFICE OF THE CITY CLERK
OAKLAND

INTRODUCED BY COUNCIL MEMBER _____
2013 OCT - 2 PM 12:38

APPROVED AS TO FORM AND LEGALITY


City Attorney

OAKLAND CITY COUNCIL

ORDINANCE No. _____ C.M.S.

AN EMERGENCY ORDINANCE PURSUANT TO CHARTER SECTION 213, EXTENDING BY ONE HUNDRED AND EIGHTY (180) DAYS EMERGENCY ORDINANCE NUMBER 13158 C.M.S. REQUIRING A MAJOR CONDITIONAL USE PERMIT TO ESTABLISH A CREMATORIUM WITHIN THE CITY OF OAKLAND, TO TAKE EFFECT IMMEDIATELY UPON INTRODUCTION AND ADOPTION (EXTENDS THE ONE HUNDRED AND EIGHTY (180) DAY EMERGENCY ORDINANCE ADOPTED MAY 7, 2013)

WHEREAS, on May 15, 2012, the City Council adopted Emergency Ordinance Number 13115 C.M.S., to establish interim controls for crematories, requiring a Major Conditional Use permit to establish a crematorium for a period of one year until May 10, 2013 or until permanent regulations are adopted regulating crematoriums; and

WHEREAS, on May 7, 2013, the City Council adopted Emergency Ordinance Number 13158 C.M.S., to extend interim controls for crematories, requiring a Major Conditional Use permit to establish a crematorium for an additional period of one hundred and eighty (180) days until November 3, 2013 or until permanent regulations are adopted regulating crematoriums; and

WHEREAS, on September 11, 2013 staff presented proposed permanent regulations for crematories within the City of Oakland to the Planning Commission, which voted to continue the item to a future date and requested staff provide additional information, thus delaying the item past the expiration date of the existing Emergency Ordinance 13158 C.M.S.; and

WHEREAS, currently crematories 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 Zones, M-40 Heavy Industrial Zones, IG General Industrial Zones, D-CE-5 & D-CE-6 Central Estuary Industrial Zones, and the D-GI Gateway Industrial Zone. Crematories are outright permitted within the CIX-1 and CIX-2 Commercial Industrial Zones if outside of 300 feet from a residential zone. No discretionary planning permits or public notice are required prior to issuance of a building permit for a crematorium within these industrial zones. Only if located within 300 feet of a residential zone in the CIX-1 and CIX-2 zones is a conditional use permit required.; 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 received, 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 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; and

WHEREAS, a cremation center can displace commercial activities and negatively affect 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 our neighborhoods, many of which 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 November 3, 2013 expiration date of the Emergency Ordinance to April 13, 2014 due the request from the Planning Commission for staff to return to the Planning Commission with additional information relating to the health risks associated with crematories and direction to possibly allow the activity within zones other than just industrial zones; 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 pennitted upon the granting of a major conditional use permit pursuant to Planning Code Section 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.

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 crematories, whichever comes first.

Section 6. The Planning and Zoning Division is directed, over the next one hundred and eighty (180) days, to conduct further studies 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, _____

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

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

DATE OF ATTESTATION: _____