

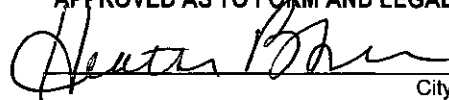
REQUIRES 6 VOTES FOR PASSAGE

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCILMEMBER

2014 MAR 20 PM 12:52



City Attorney

**OAKLAND CITY COUNCIL**  
**ORDINANCE No. 13222 C.M.S.**

**AN EMERGENCY ORDINANCE PURSUANT TO CHARTER SECTION 213, EXTENDING BY ONE HUNDRED AND EIGHTY (180) DAYS EMERGENCY ORDINANCE NUMBER 13196 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 OCTOBER 15, 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**, on October 15, 2013, the City Council adopted Emergency Ordinance Number 13196 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 April 13, 2014 or until permanent regulations are adopted regulating crematoriums; 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 April 13, 2014 expiration date of the Emergency Ordinance to September 28, 2014 to continue to work with an Air Quality consultant to provide information and expertise responding to 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

**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 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, APR 01 2014

**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

Introduction Date **APR 01 2014**

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

DATE OF ATTESTATION: 4-2-14