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OFFICE OF THE CITY CLERK  
OAKLAND  
2013 APR 25 PM 2:28

# AGENDA REPORT

TO: DEANNA J. SANTANA  
CITY ADMINISTRATOR

FROM: RACHEL FLYNN

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

DATE: April 18, 2013

City Administrator  
Approval

Date

4/24/13

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 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)**

## OUTCOME

If the existing Emergency Ordinance is extended, any newly proposed or expanded crematoria 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 crematoria are adopted by the City Council, unless the crematorium has a vested right under State law. In the 180 days after adopting staff will work to analyze issues related to crematoria and bring forward 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 crematoria were put into effect.

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## ANALYSIS

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 also outright permitted within the CDX-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. 13115 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 crematoria 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 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 13115 requires a Conditional Use permit for any new or expanded crematorium, but is set to expire on May 14, 2013.<sup>1</sup> By extending the Emergency Ordinance, the Conditional Use Permit requirement will remain in place for 180 days while staff develops proposed regulations to bring forth to the City Council for consideration. This proposed Ordinance also clarifies that it is the City Council's intent for the Ordinance to control over any other provision of the Oakland Municipal Code (e.g., section 17.102.040) that suggests the City

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<sup>1</sup> The title of Ordinance No. 13115 mentions a potential expiration date of May 10, 2013. However, the operative text of the Emergency Ordinance, which was adopted May 15, 2013 and became effective immediately, states that it would expire one year after "the effective date of this ordinance" if permanent controls had not been adopted. (See Ordinance No. 13115, Section 5.)

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may not impose new land use regulations on a property owner or developer after the City has issued a building or other permit.

### **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. However, an applicant, Stewart Enterprises, had previously obtained Zoning approval for a crematorium at 9850 Kitty Lane (August 30, 2011) and a Building Permit (May 10, 2012) and was affected by the Emergency Ordinance; construction had not commenced at the subject property and therefore was not vested under State Law. This applicant has been contacted and made aware of the proposed extension of the Emergency Ordinance.

### **COORDINATION**

The Agenda report on the proposed extension to Emergency Ordinance 13115 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 Crematoria. 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 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.


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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:

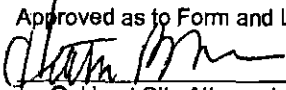
- A. Emergency Ordinance 13115 C.M.S.
- B. Letter from Alameda County Public Health Department dated May 15, 2012
- C. Letter from Alameda County Public Health Department dated August 29, 2012

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FILED  
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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.

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**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,

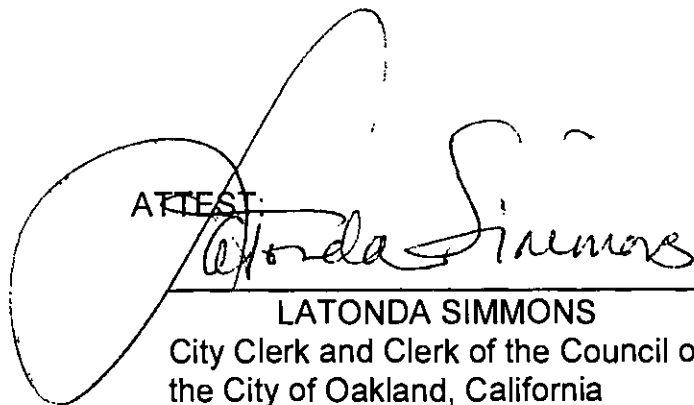
SCHAAF, BRUNNER, AND PRESIDENT REID – 8

NOES – 0

ABSENT – 0

ABSTENTION – 0

ATTEST:



A large, stylized handwritten signature in black ink, reading "Latonda Simmons". The signature is written over a horizontal line that serves as a separator between the signature and the printed name below.

LATONDA SIMMONS

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





ALAMEDA COUNTY HEALTH CARE SERVICES AGENCY  
PUBLIC HEALTH DEPARTMENT

Alex Briscoe, Director  
Anita Siggel, RN, MPH, Director

Office of the Director

1000 Broadway, 5<sup>th</sup> Floor  
Oakland, CA 94607

Rebecca Flournoy, 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](mailto: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.<sup>1</sup> Several of these emissions are known to exacerbate chronic conditions such as asthma, and have been linked to cancer.<sup>2</sup>

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, Sentinel Cremation Societies, is currently being proposed for East Oakland and will emit a range of pollutants.<sup>3</sup> 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.<sup>4</sup>

<sup>1</sup> 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.

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

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

<sup>4</sup> 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 Unit with 2008-2010 data from California Office of Statewide Health Planning and Development (OSHPD).

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,

A handwritten signature in black ink, appearing to read "Rebecca Flourney", with a long, sweeping underline that extends to the right.

Rebecca Flourney, 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 Nadel, 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, MO, 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.tmong@gmail.com; pvollnian@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. Crematoriums 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.<sup>1</sup> Several of these emissions are known to exacerbate chronic conditions such as asthma, and have been linked to cancer.<sup>2</sup>

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.<sup>3</sup>

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.<sup>4</sup>

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.

<sup>1</sup> The criteria air pollutants from these crematoriums include: particulate matter, nitrogen compounds, sulfur compounds, carbon monoxide and precursor organic compounds. The toxic emissions from these crematoriums 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.

<sup>2</sup> California Air Resources Board. 2009. Air Pollution and Health Fact Sheet.

<http://www.arb.ca.gov/research/health/fs/fs1/fs1.htm>

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

<sup>4</sup> 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,



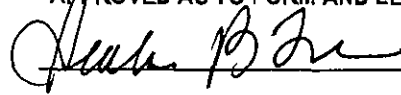
Muntu Davis, MD, MPH  
Alameda County Health Officer

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

REQUIRES 6 VOTES FOR PASSAGE

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND  
INTRODUCED BY COUNCILMEMBER \_\_\_\_\_  
2013 APR 25 PH 2: 33

APPROVED AS TO FORM AND LEGALITY



City Attorney

## OAKLAND CITY COUNCIL

ORDINANCE NO. \_\_\_\_\_ 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, \_\_\_\_\_

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: \_\_\_\_\_

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.