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AGENDA REPORT

TO: HENRY L. GARDNER
INTERIM CITY ADMINISTRATOR

FROM: Rachel Flynn

SUBJECT: Unattended Donation/Collection Box Regulations DATE: January 12, 2015

City Administrator
Approval

Date

1-15-15

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

Staff recommends that the Council conduct a Public Hearing and upon conclusion consider:

Adopting An Ordinance 1) Establishing Oakland Municipal Code (OMC) Chapter 5.19 "Unattended Donation/Collection Boxes" And 2) Amending The Master Fee Schedule (Ordinance No. 13171 C.M.S., As Amended) And OMC Sections 1.12.020A And 1.12.060 To Establish Application, Inspection, Appeal And Other Fees, Administrative Citations And Fines Related To Unattended Donation/Collection Boxes.

OUTCOME

Adoption of this ordinance will create a new Chapter in Title 5 of the Oakland Municipal Code (OMC) that will regulate the operation and placement of Unattended Donation/Collection Boxes (UDCBs)¹. UDCBs are unstaffed drop-off boxes that are typically up to seven feet in width and height, that accept textiles, books and other items to be used by the operator for distribution, resale, or recycling. The proposed regulations are outlined in *Attachment A* of this report and summarized in the Analysis section of this report.

Amendments to the Master Fee Schedule will allow the City to pay for the administrative costs of implementing the ordinance without a fiscal impact on the City.

BACKGROUND/LEGISLATIVE HISTORY

Prior to a 45-day emergency moratorium on new facilities adopted by the City Council on April 22, 2014, UDCBs were not expressly regulated by the City of Oakland. Since approximately

¹ Previous reports have referred to these facilities as Unattended Donation Boxes (UDBs). Staff has renamed them Unattended Donation/Collection Boxes (UDCBs) to clarify that the boxes can be used for either for-profit or nonprofit enterprises.

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2008, UDCBs have been placed at schools, the right-of-way, grocery stores, gas stations, in parking lots and near businesses by a variety of organizations, including non-profit organizations, that operate locally and non-local organizations that may resell donations for profit. Because the boxes are unmonitored, they can become a public nuisance by attracting graffiti, scavenging and illegal dumping in the vicinity. UDCBs are also occasionally placed in required parking spaces or vehicle maneuvering areas, which may affect vehicle and pedestrian circulation and safety. On the other hand, UDCBs can provide a convenient way to reuse goods rather than placing them in the waste stream; however, the City sees some benefits to such facilities but permanent regulations are necessary to control their potentially adverse secondary impacts that adversely affect the public health, safety and welfare of the City.

On May 8, 2012, the CED Committee directed staff to develop regulations for the placement and maintenance of UDCBs. In order to give staff time to develop a proposal, on April 22, 2014 the City Council adopted Ordinance No. 13225 C.M.S. (*see Attachment F*), an emergency ordinance that placed a 45-day moratorium on the placement of UDCBs in Oakland². At this meeting, the City Council also directed staff to return with a permanent set of regulations directly to the full Council without a hearing at a CED Committee meeting. The City Council adopted Ordinance No. 13232 (*see Attachment G*), which extended the moratorium to March 3, 2015 at their June 3, 2014 meeting to provide staff additional time to develop the regulations that are the subject of this report.

ANALYSIS

The proposed OMC Chapter 5.19 is separated into the following four Articles:

- Article I – General Provisions
- Article II – UDCB Permit Requirement and Process
- Article III – Standards and Requirements
- Article IV – Code Enforcement

The following is a summary of each Article. A more detailed outline is contained in *Attachment A*; the full text is contained in *Exhibit A* of the ordinance.

Article I – General Provisions

These sections state the purpose of the UDCB regulations, establishes the property owner's liability for compliance to the requirements of the Chapter and provides definitions for terms used in the Chapter.

² The moratorium did not include UDCBs that are: 1) inside a "principal building" on a lot and not visible from the City's right-of-way; and/or 2) an "accessory activity" to a principal activity that is located on the same parcel as the UDCB.

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Article II – UDCB Permit Requirement and Process

The sections of this Article describe the UDCB application requirements and permit approval process. Staff is proposing an annually renewable permit that would be processed by the Bureau of Planning and Zoning.

UDCBs inside a principal building on a lot would not require a permit under the current proposal because they would not be visible from the street and would be closely monitored by people inside the building. UDCBs that are accessory to a principal facility on the same parcel would also be exempt. For instance, a lot with a used book store could contain a UDCB for book collection without first obtaining a permit from the City. This exception is recommended because these businesses and organizations will be able to closely monitor the UDCB and will tend to remove UDCB related blight to project a positive image of the facility that they operate. Also, the proximity of the box to the organization allows for an easier pickup of donated and collected items. Moreover, there is no evidence that these UDCB are causing any of the nuisance-related problems the regulations are designed to address. Note that these UDCBs will still be required to meet all the requirements and standards of other UDCBs except the 1,000 foot separation required described below.

Applications to permit UDCBs that existed prior to the adoption of the 45-day moratorium on April 22, 2014 would not be accepted until 30 days after final adoption of the ordinance in order to provide adequate time for staff to prepare the appropriate administrative processes, including application materials. Any UDCB that does not have a complete application on file with the City within 90 days of the final adoption of the ordinance will not be considered an existing UDCB under the regulations. Applications for new UDCBs will be only be accepted 150 days after the final adoption of the ordinance. Existing UDCBs will be required to be removed within 120 days after the final adoption of the ordinance if they are in an unpermitted zone or an application has not been submitted to permit their continued use.

The following describes the proposed fees for applying for, renewing and appealing a UCDB permit. By state law, all fees must be reasonably related to the cost of providing the service. **Attachment B** contains a more detailed breakdown of these fees in terms of number of staff hours, hourly cost of staff and hours required per task.

The application fee for the first year would be \$535.31, which is based on a total of 3.42 hours of staff time, spread over the different staff members required to evaluate and process a proposal, including, but not limited to, the time it takes to confer with applicants before and after application submittal, review an application, schedule and perform a site visit, review the UCDB requirements and compare them with a proposal, confer with supervisors regarding a specific proposal (when necessary), research and map UDCB locations, write and review a decision letter including special conditions (when necessary), general administration, record keeping and the implementation of the ordinance (preparation of forms, processes, staff training, handouts, etc.)

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The total fee also includes technology enhancement and record management fees (5.25 and 9.5 percent of the base fee, respectively). Other Post-Employment Benefits Costs will be incorporated into the fee as part of the FY 15-16 Citywide Master Fee Schedule proposal process. The amount of hours required is comparable to Small Project Design Review, which requires a similar level of effort, in addition to the time required for an inspection.

The renewal fee would be \$90.53, which is based on the cost of counter and phone interactions with the applicant, review and research of the application and past violations, writing the renewal letter and record keeping. An inspection fee of \$155.19 could also be required for renewal if there were verified complaints regarding the maintenance of the site in the past year. Applications for renewal of UDCBs that have been repeatedly cited for maintenance issues would not be approved by the City.

For comparison, staff reviewed fees from other jurisdictions in California, such as Alameda County, Berkeley, Elk Grove, Gardena, Sacramento County, the City of Sacramento, San Pablo and Torrance. A table of fees from these jurisdictions, which is contained in *Attachment C*, shows a range from \$676 to \$3,742. The City's total initial fee of \$535.31 is reasonable based upon its own cost structure, as described above, and is also generally consistent with these other jurisdictions.

Several standard items would be required in the application including, but not limited to, a site plan, UDCB design, applicant and owner information and photographs of the site. There would be several additional items required for a UDCB application, including, but not limited to:

- 1) A signed acknowledgement of joint and several liability/responsibility from the parcel owner and the operator for liability for violations;
- 2) A signed authorization from the parcel owner to allow placement of the UDCB;
- 3) A signed affidavit stating that the UDCB existed at the proposed location prior to the adoption of the UDCB moratorium on April 22, 2014;
- 4) A vicinity map showing the proposed location of the UDCB and the distance between the site and all existing UDCBs within 1,000 feet of the proposed site;
- 5) A maintenance plan (including graffiti removal, pick-up schedule as well as litter and trash removal on and around the UDCB); and
- 6) Written proof that the operator who will utilize the unattended donation box is qualified to solicit donations of salvageable personal property pursuant to California Welfare and Institutions Code section 148.3.
- 7) For for-profit operators, evidence of an active business tax certificate with the City of Oakland. For nonprofit operators, evidence that the nonprofit has been registered as a new business with the City of Oakland.

Staff believes that items 1) and 2) are critical to impress upon the property owner that allowing the UDCB on their site could result in code enforcement action, including administrative

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citations, if the UDCB is not properly maintained. Item 3) requires applicants to waive certain code enforcement processes such as appeal rights and noticing requirements, making the code enforcement of permitted UDCBs more efficient. Item 4) is required to enforce the separation requirements stated in Article III – Standards and Requirements, described below. Items 5) and 6) are required to assure the operator will maintain the site and is licensed by the state to solicit salvageable personal property. Item 7) requires the operator to properly register with the City.

A decision regarding a UDCB application by the Bureau of Planning would be required within 60 days of submittal of a complete application. All decisions would be appealable to the City Administrator, who also has 60 days to decide on the appeal. The appeal fee would be \$946.23 (see *Attachment B* for an analysis of this fee).

In addition, the proposal includes a provision stating that any person who contends that the UDCB regulations **as applied to him or her** would be unlawful under and/or conflict with Federal, State, or local law or regulation, would be able to submit a petition to the City requesting relief from the regulations. Failure to submit a petition along with a \$946.23 fee would preclude the applicant from challenging the requirements in court.

After adoption of the ordinance, the permitting of existing UDCBs would take precedence over permitted new locations. Timelines and processes for permitting existing and new UDCBs are described in *Attachment A*.

Article III – Standards and Requirements

Proposed standards for UDCBs are separated into three sections: Location, Physical Attributes and Maintenance. The following describes these requirements.

Location

Separation requirement. Staff recommends that UDCBs be separated by at least 1,000 feet, not including those that are enclosed within a main building on a lot or those operated as accessory to the principal activity on the same lot, such as a UDCB outside a used clothing store. No more than one UDCB would be permitted per parcel unless an additional UDCB from the same operator is required to prevent item overflow.

Separation requirements are a traditional and important land use regulation tool because clustering certain activities can attract more nuisances than if the activities were separated. For instance, a clustering of UDCBs can create the appearance of an informal dumping area and attract unintended items such as couches, appliances and electronics. 1,000 feet is an appropriate requirement because, at less than one-fifth of a mile or about 3.5 city blocks, the facilities would be within easy walking distance of one another but still be clearly separated and distinct. The separation is also consistent with the separation requirements for other activities in the Planning

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Code such as alcohol sales, check cashing and fast-food restaurants (see *Attachment C*) that tend to generate trash or be the focus of undesirable, nuisance-related activities. Further, the 1,000-foot separation is generally consistent with what other jurisdictions require. *Attachment C* also shows that the City of San Pablo has a 1,000-foot and Alameda County has a 2,500-foot separation requirement, while Sacramento County and the Cities of Sacramento and Elk Grove each have a 400-foot separation requirement.

UDCB operators are requesting a 250 foot separation requirement, which would allow UDCB potentially on every block in permissible zones. In contrast, the City is proposing about a 3½ block separation requirement, which the City believes would still allow reasonable access and only represents about a 1½ block difference between what the operators seek.

Staff further proposes to only allow UDCBs within commercial and corridor zoning designations. These designations were chosen to reduce adverse impacts on residential neighborhoods and because the corridors are designed to accommodate the truck traffic required to maintain the UDCBs, as well as providing mass transit options. A map showing these zones and existing UDCBs within these zones is contained in *Attachment D*. A table showing the UDCB counts in the proposed zones of different operators with and without the 1,000 foot separation requirement is shown in *Attachment E*. Although there will be a decrease in the number of existing UDCBs, there are still reasonable opportunities to site new UDCBs in more appropriate locations.

Staff also proposes to prohibit UDCBs at each of the following locations: 1) vacant or surface parking lots; 2) within 15 feet from lots that lie in medium or low density residential zones; 3) within 20 feet of the right of way; and 4) within five feet from all other property lines. These setbacks are proposed to reduce noise and visual impacts on neighboring properties and the street. UDCBs would not be allowed to block or impede access to required parking or driveways, pedestrian routes, building ventilation and exhaust, emergency vehicles, building ingress and egress, handicapped accessibility, or easements.

Physical Attributes

The proposal includes several requirements to assure that UDCBs will be durable and of an appropriate size. A tamper resistant locking mechanism would also be required to prevent people from reaching into the box and scattering donated material around the UDCB.

Finally, the proposal recommends that the following information be displayed on each UDCB:

1. Ownership/operator Identification;
2. Address and parcel number of the site;
3. UDCB permit information, including a City issued sticker with an identification number;
4. Statement regarding the profit/nonprofit IRS status of the operator;

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5. Statement regarding the tax deductible status of donations to the UDCB;
6. List of accepted and prohibited donation materials;
7. Instructions on the process to register a complaint regarding the UDCB to the operator, including contact information (24-hour phone number, address, email) for the operator, parcel owner and the City Code Enforcement Division;
8. Statement from Bureau of Planning indicating approval and standards/conditions for maintenance.

These items provide disclosure to those who donate material regarding the tax-deductible status of the UDCB operator and informs the public of maintenance requirements and complaint procedures.

Maintenance

The following regulations are proposed to prevent blight at and around UDCBs:

1. No blight would be allowed within 20 feet of the UDCB.
2. UDCBs would be required to be maintained and in good working order. The proposal specifically requires a minimum weekly service schedule, the removal of graffiti and the repair of damaged or under-maintained boxes. Servicing of UDCBs would only be allowed between 7:00am and 7:00pm on weekdays and 10:00am and 6:00pm on weekends.
3. Collection of solid waste recyclables or any hazardous materials would be prohibited.
4. Each UDCB must maintain liability insurance of at least \$1,000,000. The City of Oakland would be required to be named as an additional insured by this policy.

Code Enforcement

Enforcement of UDCBs regulations would be added to the usual code enforcement responsibilities of the Bureau of Building. The following is a description of the two proposed code enforcement procedures: one for UDCBs that have received a permit from the City and another for those that have not received a permit. Staff recommends two different processes because applicants for a UDCB permit would be required to sign a waiver to allow the City to bypass certain typical processes to make code enforcement more efficient. Both these processes would be administered by the Bureau of Building.

The process outlined below is based on the City's existing graffiti abatement regulations, which is the City's most expedited code enforcement process. Consistency with an existing process saves staff time and reduces confusion. Discussions with the Bureau of Building have indicated that creating a new and more expedited process for UDCBs would require additional code enforcement staff. Possible changes could include shorter compliance periods or penalties for operators with several violations at different sites. However, staff recommends additional code enforcement staff if the City Council decides to expedite the following code enforcement procedure.

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1. Blight complaint regarding a permitted UDCB
 - a. Courtesy notice would be emailed to the operator and property owner within three days after a complaint is lodged.
 - b. The property owner or operator would be required to show evidence that the UDCB is compliant with the regulations within ten days after property owner notification. Compliance would be verified through a photograph that is emailed to code enforcement.
 - c. If the violation is not removed, then the following Administrative Citations would be assessed to the property owner until the complaint is abated. These assessments are based on the existing assessments for blight in the OMC.
 1. Not more than \$150 for the 1st day after the ten day abatement period;
 2. Not more than \$250 for the 2nd day after the ten day abatement period; and
 3. Not more than \$500 for the 3rd and each subsequent day. Total administrative citations shall not be more than \$5,000.
 - d. Administrative citations would continue until, after 72 hour notice, the bin is removed by the City at the property owner's expense. The bins would only be removed after at least one week of citations and no more than three weeks after the end of the ten day abatement period.
2. Complaint regarding an unpermitted UDCB
 - a. A Notice of Violation would be sent and an inspection would be required.
 - b. If within 1,000 feet of an existing permitted UDCB, then the property owner would be required to remove the UDCB (and any associated blight) within ten days after property owner and operator are notified or 15 days if the notice is mailed. Removal and cleanup would be verified through a re-inspection and a \$198.52 fee would be charged to the property owner.
 - c. If not within 1,000 feet of an existing permitted UDCB, then all associated blight would be required to be removed and an application for legalization submitted within ten days after the notice or 15 days if the notice is mailed. The applicant would be required to diligently prosecute for completion of permit. Cleanup would be verified through a re-inspection and \$2,045 would be charged to the property owner, per the City's Master Fee Schedule.
 - e. If the violation is not removed, then the following administrative citations are assessed until complaint is abated. These assessments are double those for permitted UDCBs.
 1. Not more than \$300 for the 1st day after the ten day abatement period;
 2. Not more than \$500 for the 2nd day after the ten day abatement period; and
 3. Not more than \$1,000 for the 3rd and each subsequent day. Total administrative citations shall not be more than \$10,000.
 - f. Administrative citations would continue until, after notice, the bin is removed by the City at the owner's expense. The bins would be removed after at least a week of administrative citations and no more than three weeks after the end of the ten day abatement period.

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- h. A party aggrieved by a final administrative decision of the City may seek judicial review of the administrative decision pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6 within the time frame pursuant to those code sections.

PUBLIC OUTREACH/INTEREST

Several meetings, email exchanges and phone conversations have occurred with Bureau of Planning staff and interested stakeholders on this issue, including, but not limited to, representatives from Goodwill, Salvation Army, Seventh Generation Recycling, St. Vincent DePaul, USAgain, Campus California and Discovery Books. Each of these interested stakeholders were provided notice of this public hearing.

COORDINATION

The offices of the Budget, City Attorney and City Administrator have reviewed this report. Bureau of Planning Staff received significant input from the City Attorney and the Bureau of Building regarding the recommendations contained in this report.

COST SUMMARY/IMPLICATIONS

Additional staff is not anticipated under the current proposal as set forth in these regulations. Staff believes that there will be an initial increase in workload for the Bureau of Planning during the 120-day grace period given to UDCB operators and parcel owners to come into compliance, but this workload will decrease in the longer term. The Bureau of Building will not require additional staff under the current proposal unless the above outlined code compliance process is changed and becomes inconsistent with existing procedures.

SUSTAINABLE OPPORTUNITIES

Economic: The proposed moratorium extension will provide economic benefits by preventing blighted conditions within commercial and residential neighborhoods. This reduction in blight will create friendlier shopping conditions and raise property values.

Environmental: Preventing the blight that is often associated with UDCBs will decrease litter and debris in the surrounding neighborhood.

Social Equity: UDCBs have attracted graffiti, dumping and scavenging in the City's lowest income neighborhoods, where blight is a major issue. The regulations will reduce blight.

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CEQA

The adoption of the permanent regulations for UDCBs is exempt from CEQA review pursuant to CEQA Guidelines Sections:

- 15061(b)(3) (the General Rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment);
- 15183 (projects consistent with general and community plans); and/or
- 15308 (actions by regulatory agencies for protection of the environment).

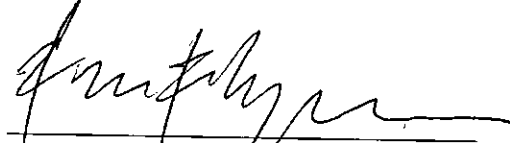
Staff believes that the project meets the General Rule, projects consistent with the general plan, and the 15308 exemption because the project will decrease littering and allow for the orderly removal of recycled items, while promoting the public's health, safety and/or welfare. The proposed requirement for a 1,000-foot separation between UDCBs will improve the environment by reducing blight associated with the clustering of UDCBs while keeping the UDCBs in close enough proximity for convenient drop-off of recycled goods. The proposal will not increase the amount of materials in the waste-stream because the 1,000-foot separation requirement will still allow for an ample frequency of UDCBs on the corridors and commercial zones. Further, there are several other recycling facilities available in Oakland other than UDCBs that accept used items and several sites where UDCBs will not require a 1,000 foot separation (see Analysis, above).

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Each of these exemptions provide a separate and independent basis for a CEQA exemption and when viewed collectively provides an overall basis for a CEQA exemption.

For questions regarding this report, please contact Neil Gray, Planner III, at (510) 238-3878.

Respectfully submitted,



Rachel Flynn, Director
Planning and Building Department

Reviewed by:
Scott Miller, Zoning Manager

Prepared by:
Neil Gray, Planner III

Attachments:

- A. Summary of Proposed Regulations
- B. Fee Calculations
- C. Tables of UDCB permit fees and Separation requirements in Oakland and other jurisdictions
- D. Map showing existing UDCBs within the recommended zones
- E. Table showing number of UDCBs, by operator, within the recommended zones
- F. Ordinance No. 13225 C.M.S. (Initial Moratorium)
- G. Ordinance No. 13232 C.M.S.(Moratorium Extension)

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ATTACHMENT A

SUMMARY OF PROPOSED REGULATIONS

1/12/15

General Regulations and Requirements

1. Unattended Donation/Collection Box (UDCB) Regulations would be located in Title 5: Business Taxes, Permits, and Regulations of the Municipal Code
2. All existing UDCBs that are not in a permitted location must be removed within 120 days of ordinance adoption.
3. No applications will be accepted until 30 days after adoption of the ordinance to allow staff time to complete application materials and implementation tasks and operators to review the new regulations.
4. Applications to permit existing UDCBs in permitted locations must be submitted within 90 days of the date of the ordinance adoption or they will not be considered existing UDCBs
5. Applications for new UDCBs in permitted locations shall only be submitted 150 days after the date of the ordinance adoption.

Location requirements

1. UDCBs only allowed without permits if inside a principal building or where they represent an accessory use to a principal activity on a property owned or leased by the bin operator. However, these bins must still meet each of the requirements in the Standards section, below.
2. A minimum of 1,000 feet is required between UDCBs, except for the UDCBs described in (1), above.
3. UDCBs must be on the same lot as a principal activity, not including Auto Fee Parking (i.e., a donation bin cannot be the only use on the lot or on a surface parking lot)
4. Prohibited in the public right of way
5. Otherwise, UDCBs would be allowed in the following zones, after design review approval. The zones were chosen because they allow a wide range of ground floor commercial activities and are not areas intended to be compact, pedestrian oriented retail nodes:
 - a) RU-5, which is a commercially oriented Urban Residential zone on the major corridors such as International Boulevard and San Pablo Avenue
 - b) Commercial zones on the major corridors. CC-1 and -2, CN-4; CR-1, D-BV-2, and -3; C-40 and -45; S-1 and -2; D-KP-1 through -3; D-CE-1 through -6 (except -3), and D-BV-1, -3, and -4
 - c) All industrial zones

Standards

1. UDCBs shall meet all the following physical standards.
 - a. Cannot be more than eighty-two (82) inches high, sixty (60) inches wide and fifty (50) inches deep.
 - b. Must be fabricated of durable and waterproof materials.
 - c. Cannot be electrically or hydraulically powered or otherwise mechanized.
 - d. Cannot become a fixture of the site and shall not be considered an improvement to real property.
 - e. Must contain an opening with an approved tamper-resistant locking mechanism.
2. Siting of UDCBs must meet all of the following requirements:

- a. Bins must satisfy setbacks and be at least 20 feet away from the public right-of-way and five feet from other property lines. The rear and side setbacks are increased to 15 feet if adjacent to a residential property in a medium or lower density residential zone
 - b. Bins cannot block required parking or driveways, pedestrian access, or emergency vehicle, ADA required ingress and egress, or easements.
 - c. UDCBs cannot impede the functioning of exhaust, ventilation, and fire extinguishing systems and components
 - d. The donation area must be visible from the principal building and be a maximum of 10 feet from a continually operating light source of at least one foot candle
 - e. No more than one UDCB per legal parcel, unless evidence is submitted with the application that a second bin is required by the same operator due to the volume of items delivered to the site, provided, however, that UDCBs must be operating for at least 90 days before such application is submitted.
 - f. UDCBs shall not obstruct required exits and emergency egress from buildings nor obstruct the minimum required egress width of the path of travel to the public right-of-way nor obstruct handicapped accessibility nor impede the functioning of exhaust, ventilation, and fire extinguishing systems and components.
3. The following information must be on each UDCB:
- a. Ownership/Operator Identification
 - b. Address and parcel number of the site
 - c. Permit Information and UDCB identification number on City issued sticker
 - d. Statement regarding IRS status
 - e. A statement that reads, "This collection box is owned and operated by a for-profit company" if the operator is a for-profit business or "This collection box is owned and operated by a non-profit organization." if the operator is a nonprofit organization.
 - f. List of accepted and prohibited donation materials
 - g. Instructions on process to complain about UDCB to the operator, including contact information (24-hour phone number, address, email) for the operator, owner/owner's agent, and the City Code Enforcement Division
 - h. Statement from Bureau of Planning indicating approval and standards/conditions for maintenance
4. Site Maintenance
- a. No blighted conditions within 20 feet of the box including, but not limited to: donation overflow, graffiti, litter, debris, dumped material, etc
 - b. Bins must be maintained in good working order, including removal of graffiti and repairs of signage, damage, peeling paint, rust, and collection operating mechanism.
 - c. Bins must be serviced not less than weekly on weekdays between 7:00 a.m. and 7:00 p.m. and 10:00 a.m. to 6:00 p.m. on weekends. This includes removal of debris and litter w/in 20 feet of the site and graffiti.
 - d. The facility operator must maintain an active email address and a 24-hour telephone service with recording capability for the public to communicate with the operator regarding nuisances regarding a UDCB.
 - e. The bins cannot be used for the collection of recyclables, solid waste, or any hazardous materials.
5. Applicants and/or owner/owners agent shall maintain a minimum general liability insurance of one million dollars (\$1,000,000) for the duration of the operation of a UDCB at each site, to cover any

claims or losses due to the placement, operation, or maintenance of the UDCB and naming the City of Oakland as additional insured.

Permitting Process

1. Application processing and initial site inspections overseen by the Zoning Division
2. Permits expire after one year with an annual renewal permit from the Planning Department.
3. All fees described below are based on estimated, reasonable staff time and other costs
4. Initial permit would cost \$535.31, including the cost of one site visit.
5. All applications must be decided within 60 days of the submittal of a complete application, except those requesting permitting existing UCDBs that are located within 1,000 feet of another existing UDCB, which would be required to be decided within 90 days to allow time for the process described in 10, below.
6. The renewal will cost \$90.53. A \$155.19 inspection, at the cost of the applicant, may be necessary if the site has had a history of verified blight in the past year. A complaint that has been timely abated would not require a renewal inspection
7. Any decision on an application may be appealed to the City Administrator within 10 days of the initial decision. The cost for appeal would be \$946.23 and must be decided within 60 days from the date of the filing of the appeal.
8. Any person seeking placement of a UDCB (Applicant), which would be affected by the regulations in the Ordinance (Regulations), and who contends that the Regulations as applied to him or her would be unlawful under and/or conflict with Federal, State, or local law or regulation, would be able to submit a petition to the City requesting relief from the Regulations. Failure to submit a petition along with a \$946.23 fee would preclude the Applicant from challenging the requirements in court. The City Administrator or designee would make a determination regarding the petition within sixty calendar days of receipt of the completed petition.
9. Items required in the initial application include, but not limited to:
 - a. Application to include agreement between the City and the property owner and operator to abide by expedited code enforcement process
 - b. For existing UDCBs, a signed affidavit stating that UDCB existed at that location prior to the adoption of Ordinance No. 13225 C.M.S. on April 22, 2014
 - c. Authorization from the property owner/owners agent to allow placement of the UDCB, as well as an acknowledgement of responsibility for joint and several liability for violations of conditions and/or public nuisances;
 - d. The name, address, email, website (if available) and telephone number of the applicant, operator, and property owner/owners agent;
 - e. The proposed location of the UDCB;
 - f. Photographs of the location and adjacent properties;
 - g. A map showing the distance between the proposed UDCB and existing UDCBs within 1,000 feet of the proposed UDCB;
 - h. A site plan showing existing and proposed conditions, distance between the proposed UDCB and the public right of way, driveways, parking spaces, location of the per parcel, and other items required in the City's Basic Application form;

- i. Plans showing the appearance, materials, and dimensions of the UDCB, including location of information and disclosures;
 - j. Proposed locking mechanism,
 - k. A maintenance plan (including timely graffiti, pick up schedule, litter and trash removal on and around the UDCB);
 - l. 24-hour contact information,
 - m. Proof general liability insurance of at least one million dollars (\$1,000,000) covering the applicant's UDCB and naming the City of Oakland as an additional insured.
 - n. Written proof sufficient to establish that the operator who will utilize the unattended donation box is qualified to solicit donations of salvageable personal property pursuant to California Welfare and Institutions Code section 148 3, as amended,
 - o. For for-profit operators, evidence of an active business tax certificate with the City of Oakland and is recognized by the IRS as a non-profit. For nonprofit operators, evidence that the nonprofit has been registered as an organization with the City of Oakland.
10. The following process shall be used to determine which UDCB should be allowed if two UDCBs are within 1,000 feet of each other and both meet all other applicable requirements 90 days after adoption of the ordinance, staff would compile all the permit applications for existing UDCBs that are within 1,000 feet of one another. An email from staff would request that the operators of these UDCBs attempt to negotiate with each other and reach an agreement regarding which facilities would remain and which would be removed. For instance, if Operator A has a UDCB within 1,000 feet of a UDCB owned by Operator B, then Operator A may agree to withdraw its application at this location in return for Operator B withdrawing its application in another part of the City that is within 1,000 feet of a UDCB owned by Operator A.

UDCB operators must notify the City in writing as soon as possible, but not later than 30 days after ordinance adoption if (a) an agreement is not reached or (b) an agreement is reached. If an agreement is reached between different operators both operators will inform the Bureau of Planning in writing and permits will be issued if the applicable criteria are met. If no agreement is reached after 30 days, staff proposes a "draft" to determine which of the remaining UDCBs would be allowed to remain at their current locations. The order of the draft would be chosen at random using a lottery or raffle system

- (1) Each operator would be required to submit a list of their existing UDCBs in order of their most to least preferred sites.
- (2) Staff would allow the most preferred UDCB site of the first operator choosing to stay at its current location.
- (3) The next operator would be allowed to retain its first choice of sites unless it is within 1,000 feet of the UDCB chosen in Step 1. In this case, the operator would not be allowed to retain this UDCB, but would be allowed to retain the next UDCB on their preference list that is more than 1,000 feet from the UDCB chosen in Step 2.
- (4) The next operator would be allowed to retain its first choice of sites, unless it is within 1,000 feet of the UDCB chosen either in Step 2 or 3. In this case, the operator would not be allowed to retain this UDCB, but would be allowed to retain the next UDCB on their preference list that is more than 1,000 feet from the UDCB chosen in Step 2 or 3.
- (5) After each operator has one UDCB chosen ("Round 1"), the pattern would repeat, except the order of operators that chose in Round 1 would be reversed. In other words, if three

operators, A, B, and C, chose in alphabetical order in Round 1, the order of operators choosing in the Round 2 would be C, B, A.

(6) This system would continue until there are no more UDCBs within 1,000 feet of one another.

11. Applications for new UDCBs submitted between 150 – 170 days of ordinance adoption would be chosen using a “draft” system similar to that described in item 10, above. Applications submitted after 170 days of ordinance adoption, will not be chosen under the “draft” system, but will have to be located more than 1,000 feet from a UDCB.

Code Enforcement

1. Enforced by Building Division
2. Blight complaint regarding a permitted UDCB
 - a. Complaint lodged to code enforcement
 - b. Courtesy notice emailed to the operator and property owner/agent within three days.
 - c. The property owner/agent or operator must show evidence that the UDCB is compliant with the regulations within ten days after notification. Compliance is verified through a photograph that is emailed to code enforcement. Code enforcement will reply to the email with confirmation of compliance.
 - d. If the violation is not removed, then the following fines are assessed until the complaint is abated.
 1. Not more than \$150 for the 1st day after the 10 day abatement period;
 2. Not more than \$250 for the 2nd day after the 10 day abatement period; and
 3. Not more than \$500 for the 3rd and each subsequent day. Total administrative citations shall not result in fines of more than \$5,000 in one year
 - e. Administrative citations continue until, after 72 hour notice, the UDCB is removed by the City at the expense of the owner and/or operator. The UDCB will be removed after at least one week of administrative citations and no more than three weeks after the end of the 10 day abatement period.
 - f. The property owner and operator are jointly and severally liable and responsible for all fees, administrative citations, and compliance with the regulations.
3. Complaint regarding an unpermitted UDCB
 - a. Complaint lodged through existing code enforcement complaint process.
 - b. A Notice of Violation is sent to owner and operator (if known) and an inspection is required at the cost of the property owner
 - c. If within 1,000 feet of an existing permitted UDCB, then the UDCB (and any associated blight) must be removed within 10 days after notification or fifteen days if the notice is mailed. Cleanup can be verified by photograph and emailed to the Building Division. Code enforcement will reply to the email with confirmation of compliance.
 - d. If not within 1,000 feet of an existing permitted UDCB, then any associated blight nuisance must be removed and an application for a permit must be submitted within 10 days after the notice or fifteen days if the notice is mailed. Applicant must diligently prosecute for completion of permit. Cleanup would be verified through a \$2,045 re-inspection (\$2,045 is standard Code Enforcement re-inspection fee).
 - e. If the violation is not removed, then the following fines are assessed until it is abated
 1. Not more than \$300 for the 1st day after the 10 day abatement period;

2. Not more than \$500 for the 2nd day after the 10 day abatement period; and
 3. Not more than \$1000 for the 3rd and each subsequent day Total administrative citations shall not result in more than \$10,000 in one year.
- f. Administrative citations continue until, after notice, the bin is removed by the City at the owner's expense. The bins will be removed after at least one week of administrative citations and no more than three weeks after the end of the 10 day abatement period.
 - g. The property owner and operator are jointly and severally liable and responsible for all fees, administrative citations, and compliance with the regulations.
 - h. A party aggrieved by a final administrative decision of the City may seek judicial review of the administrative decision pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6 within the time frame pursuant to those code sections.

ATTACHMENT B: FEE CALCULATIONS

BUREAU OF PLANNING HOURLY STAFF COSTS

Position	Salary & Benefits	Internal Dept Admin	Citywide Support	Total
Mgmt Staff	\$ 92 67	\$ 107 87	\$ 24 87	\$ 225 41
Staff Planner I - IV	\$ 55 60	\$ 64 72	\$ 14 92	\$ 135 24
Admin Staff	\$ 42 53	\$ 49 51	\$ 11 41	\$ 103 45
Attorney Staff				\$ 250 00

* Hourly personnel rate is calculated by dividing annual salary & benefits by 1,950 hours

* Internal admin/indirect rate of 116 4% is applied to hourly personnel rate

* External admin/indirect rate of 26 8% is applied to hourly personnel rate

UDCB PERMIT FEE

Step Description	Mgmt Staff Ave # of Minutes:	Staff Planners Ave # of Minutes:	Admin Staff Ave # of Minutes:	Attorney Staff Ave # of Minutes:	TOTAL
Initial Customer Interaction		35			35
Application review/process implementation		40			40
Site Visit		60			60
Research		5			5
Phone/Meetings/Contact with Developer		10			10
Clerical / admin support					
Decision Letter/Staff Report		10			10
Followup issues	10	15			25
End of data database update / record keeping			20		20
Legal Review					
Total Minutes	10	175	20	0	205
Total Hours per Unit	0 17	2 92	0 33	NA	3 42
Total Hourly cost per Unit	\$ 225 41	\$ 135 24	\$ 103 45	NA	\$ 464 10
Total Cost per Unit	\$ 37 57	\$ 394 45	\$ 34 48	NA	\$ 466 50
<i>Total plus tech and rec (14.75% surcharge)</i>	<i>\$ 43.11</i>	<i>\$ 452.63</i>	<i>\$ 39.57</i>	<i>NA</i>	<i>\$ 535.31</i>

UDCB PERMIT RENEWAL FEE

Step Description	Mgmt Staff Ave # of Minutes:	Staff Planners Ave # of Minutes:	Admin Staff Ave # of Minutes:	Attorney Staff Ave # of Minutes:	TOTAL
Initial Customer Interaction		10			
Application review		5			
Site Visit					
Research		5			
Phone/Meetings/Contact with Developer					
Clerical / admin support					
Decision Letter/Staff Report					
Followup issues		5			
End of data database update / record keeping		5			
Legal Review		5			
Total Minutes	0	35	0	0	
Total Hours per Unit	NA	0 583	NA	NA	0 58
Total Hourly cost per Unit	NA	\$ 135 24	NA	NA	\$ 135 24
Total Cost per Unit	NA	\$ 78 89	NA	NA	\$ 78 89
<i>Total plus tech and rec (14.75% surcharge)</i>	<i>NA</i>	<i>\$ 90.53</i>	<i>NA</i>	<i>NA</i>	<i>\$ 90.53</i>

UCDB PERMIT DECISION APPEAL/PETITION FOR RELIEF FEE

Step Description	Mgmt Staff Ave # of Minutes:	Staff Planners Ave # of Minutes:	Admin Staff Ave # of Minutes:	Attorney Staff Ave # of Minutes:	TOTAL
Initial Customer Interaction		15			15
Application review	5	30			35
Site Visit					
Research		20			20
Phone/Meetings/Contact with Developer	10	20			30
Clerical / admin support					
Decision Letter/Staff Report	45	90			135
Followup issues					
End of data database update / record keeping			10		10
Legal Review				45	45
Total Minutes	60	175	10	45	290
Total Hours per Unit	1 00	2 92	0 17	0 75	4 83
Total Hourly cost per Unit	\$ 225 41	\$ 135 24	\$ 103 45	\$ 250 00	\$ 714 10
Total Cost per Unit	\$ 225 41	\$ 394 45	\$ 17 24	\$ 187 50	\$ 824 60
Total plus tech and rec (14.75% surcharge)	\$ 258.66	\$ 452.63	\$ 19.78	\$ 215.16	\$ 946.23

UCDB SITE INSPECTION FEE

Step Description	Mgmt Staff Ave # of Minutes.	Staff Planners Ave # of Minutes:	Admin Staff Ave # of Minutes: 7	Attorney Staff Ave # of Minutes:	TOTAL
Initial Customer Interaction					
Application review					
Site Visit		60 0			
Research					
Phone/Meetings/Contact with Developer					
Clerical / admin support					
Decision Letter/Staff Report					
Followup issues					
End of data database update / record keeping					
Legal Review					
Total Minutes	0	60 0	0	0	
Total Hours per Unit	NA	1 000	NA	NA	1 00
Total Hourly cost per Unit	NA	\$ 135 24	NA	NA	\$ 135 24
Total Cost per Unit	NA	\$ 135 24	NA	NA	\$ 135 24
Total plus tech and rec (14.75% surcharge)	NA	\$ 155.19	NA	NA	\$ 155.19

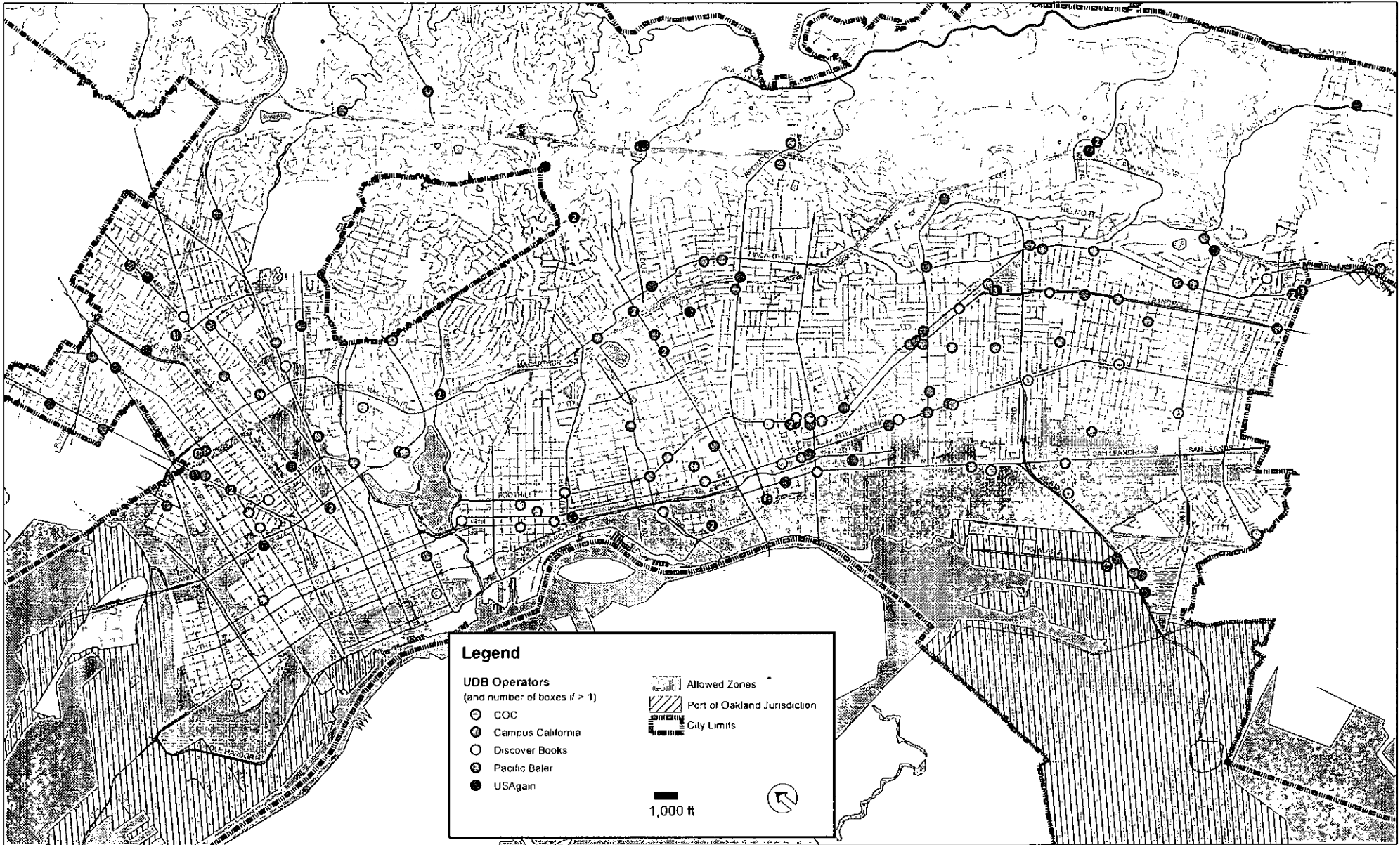
ATTACHMENT C

Separation Requirements and Fees for Unattended Donation/Collection Boxes in Other Cities in California

Jurisdiction	Permit Type	Permit Cost	Distance Requirement Between Boxes
Alameda County	Conditional Use Permit	\$1,500	2,500 feet
Berkeley	Administrative Use Permit	\$878	None
Elk Grove	Annually renewable permit	\$132 (\$66 annual renewal fee)	400 feet
Gardena	Use Permit	\$3,742	None
Sacramento County	Annually renewable permit	\$240 (\$110 annual renewal fee)	400 feet
Sacramento	Permit	\$150 per applicant (\$30 each location)	400 feet
San Pablo	Individual Use Permit	\$1,800	1,000 feet
Torrance	Planning Administrative Action	\$676	500 feet
Oakland (proposed)	UDCB Permit	\$535.31 (\$90 53 annual fee)	1,000 feet

Separation Requirements for Various Activities in Oakland's Planning Code

Activity	Distance from Other Such Activity
Adult Entertainment Activity	300 feet
Alcoholic Beverage Sales Commercial	1,000 feet
Check Cashier and Check Cashing Commercial	1,000 feet
Fast-Food Commercial	1,000 feet, except for the Central Business District
Residential Care, Service-Enriched Permanent Housing, Transitional Housing, Or Emergency Shelter Residential	300 feet
Laundromats	500 feet
Special Health Care Civic (includes needle exchange)	2,500 feet
Unattended Donation/Collection Boxes (proposed)	1,000 feet



Existing Unattended Donation Box Locations

ATTACHMENT D

ATTACHMENT E

Count of Existing UDCBs by Operator and Estimate of existing UDCBs remaining in proposed permitted areas under a 1,000-ft separation requirement¹

Operator	Total Existing UCDBs	Percent	Existing UDCBs in proposed permitted areas
Campus CA	72	47%	27
ReUse Clothes and Shoes	14	9%	10
Discover Books	8	5%	4
Pacific Baler	7	5%	6
USAgain	51	34%	26
TOTAL	152	100%	73²

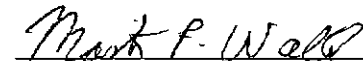
- 1 The above figures are provided by the operators
- 2 Staff estimates that approximately 43 of the existing 73 UCDBs in the permitted areas will remain under the proposed 1,000-foot separation requirement. Staff also estimates that an additional 57 UDCBs could potentially be installed in the remaining proposed permitted areas under the 1,000 foot requirement.

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2014 APR 10 PM 1:01

7 VOTES REQUIRED FOR PASSAGE

Approved as to form and legality


CITY ATTORNEY

Ordinance No. 13225 C.M.S.

INTERIM ORDINANCE, ADOPTED AS AN URGENCY MEASURE PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 65858, ESTABLISHING A TEMPORARY MORATORIUM ON THE ESTABLISHMENT, INSTALLATION, PLACEMENT, CONSTRUCTION, AND/OR EXPANSION OF UNATTENDED DONATION BOXES, TO TAKE EFFECT IMMEDIATELY UPON ADOPTION

WHEREAS, the City of Oakland has an overriding interest in planning and regulating the use of property within the City. Implicit in any plan or regulation is the City's interest in maintaining the quality of urban life and the character of the City's neighborhoods; and

WHEREAS, blighted areas can quickly deteriorate, with terrible consequences to social, environmental and economic values; and

WHEREAS, it is the City's intent to limit blighted conditions; and

WHEREAS, the recent proliferation and concentration of portable, unattended boxes for the reverse vending of salvageable personal property including, but not limited to, clothing and books (Unattended Donation Boxes or UDBs) has resulted in blighted conditions, including, but not limited to trash, debris, illegal dumping and graffiti on and around the UDBs; and

WHEREAS, many of the UDBs and the areas around the UDBs have not been properly or consistently maintained and this has resulted in blighted conditions in many areas of the City.

WHEREAS, an updated Land Use and Transportation Element of the Oakland General Plan was adopted by the Oakland City Council in March, 1998 to guide future land use and development in the city; and

WHEREAS, the Land Use and Transportation Element defines several goals and objectives to promote the quality of the City's neighborhoods and contains specific

policies regarding reviewing potential nuisance activities (Policy N1.7) and alleviating public nuisances (Policy N11.4); and

WHEREAS, the continued establishment, installation, placement, construction; and/or expansion (collectively called "Placement") of UDB facilities may result in potential conflict with some of the policies and objectives of the Land Use and Transportation Element of the General Plan; and

WHEREAS, the City Council previously requested, on April 1, 2014, that the City Administrator initiate a review of the regulatory mechanisms available to regulate UDBs, including changes to the Municipal and/or Planning Codes, to protect the public health, safety, and/or welfare from the negative effects of UDBs. During the period of time that it undertakes this task, the City is concerned that absent the adoption of an emergency moratorium on the Placement of UDBs, UDBs that conflict with contemplated changes to the City's regulatory schemes could be established in the City thereby frustrating the realization of the goals of that study and regulatory scheme, and

WHEREAS, until such time that the City concludes its review and adopts new regulatory controls over UDBs, the community is in jeopardy that Placement of such facilities could occur prior to the imposition of new controls necessary for the protection of public health, safety and/or welfare; and

WHEREAS, allowing the Placement of UDBs prior to the City's completion of such investigation would result in a current and immediate threat to the public health, safety and/or welfare; and

WHEREAS, pursuant to Government Code Section 65858 a city, including a charter city, may adopt an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan or zoning proposal that the legislative body is considering or intends to study within a reasonable time; and

WHEREAS, for the reasons set forth above, this ordinance is declared by the Council to be necessary for preserving the public health, safety and/or welfare and to avoid a current, immediate and direct threat to the health, safety and/or welfare of the community, and the "Whereas" clauses above taken together constitute the City Council's statement of the reasons constituting such necessity and urgency.

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

SECTION 1. The City Council finds and determines the foregoing recitals to be true and correct and hereby makes them a part of this ordinance.

SECTION 2. The City Council finds and determines the adoption of this ordinance is exempt from CEQA under Sections 15061(b)(3), 15183, and/or 15308 of the State CEQA Guidelines, each of which provides a separate and independent basis for a

CEQA exemption and when viewed collectively provides an overall basis for a CEQA exemption.

SECTION 3. Until such time as the City concludes the review described above and adopts permanent regulatory controls pertaining to UDBs, the City of Oakland hereby declares a moratorium on the Placement of any UDBs; except, this moratorium does **not** apply to (i) UDBs that are inside a "Principal Building" and not visible from the City's right-of-way; and/or (ii) UDBs that are "Accessory" to a "Principal Activity" that is located on the same parcel as the UDB.

SECTION 4. For purposes of this Ordinance, the following definitions shall apply:

"Accessory activity" means an activity that is incidental to, and customarily associated with, a specified principal activity, and which meets the applicable conditions set forth in Section 17.10.040 of the Planning Code.

"Placement" means the establishment, installation, placement, construction, and/or expansion of UDBs.

"Principal activity" means an activity that fulfills a primary function of an establishment, institution, household, or other entity.

"Principal Building" means a main building that is designed for or occupied by a principal activity.

"Unattended Donation Boxes (UDBs)" means portable, primarily unattended boxes for the reverse vending of salvageable personal property including, but not limited to, clothing and books.

SECTION 5. In accordance with Government Code Section 65858, this Ordinance shall be in full force and effect for a period of 45 days from the date of its adoption. This 45-day period may be extended by the City Council in accordance with the provisions of California Government Code § 65858.

SECTION 6. The City Clerk shall certify to the passage and adoption of this Ordinance causing it to be posted, as required by law, and it shall thereafter be in full force and effect. This Ordinance shall become effective immediately as an interim urgency ordinance, in order to protect the public health, safety and welfare.

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

SECTION 8. This Ordinance is enacted pursuant to the City of Oakland's general police powers, Section 106 of the Charter of the City of Oakland, Article XI of the California Constitution and Government Code section 65858.

SECTION 9. Petition for Relief from Moratorium ("Petition").

(a) Any person seeking Placement of a UDB, which would be affected by this Moratorium, and who contends that the Moratorium as applied to him or her would be unlawful under and/or conflict with Federal, State, or local law or regulation, must submit a Petition to the City requesting relief from the Moratorium. Petitions must be on the Appeal Form provided by the Planning Bureau of the Planning and Building Department for the City of Oakland and submitted to the Agency at 250 Frank H. Ogawa Plaza, Suite 2114, to the attention of the Planning Director. Failure to submit such a Petition will preclude such person from challenging the moratorium in court. The Petition shall identify the name and address of the applicant, the affected application number, and shall state specifically and completely how the Moratorium as applied to him or her would be unlawful under and/or in conflict with Federal, State, or local law or regulation, and shall include payment of fees in an amount of \$1,352.91. Failure to raise each and every issue that is contested in the Petition and provide appropriate supporting evidence will be grounds to deny the Petition and will also preclude the Petitioner from raising such issues in court. Within thirty calendar days of receipt of the completed Petition, the City Administrator, or her designee, shall mail to the applicant a written determination accepting or rejecting the Petition

(b) If a Petitioner seeks to challenge the written determination of the City Administrator, the Petitioner must appeal to the City Council and such appeal must be filed within ten (10) calendar days of the date from which the City Administrator's written determination was issued and by 4:00p.m. Appeals must be on the form provided by the Planning Bureau of the Planning and Building Department for the City of Oakland and submitted to the Agency at 250 Frank H. Ogawa Plaza, Suite 2114, to the attention of the Planning Director. The Appeal must state specifically wherein it is claimed there was error or abuse of discretion by the City Administrator or wherein the decision is not supported by substantial evidence. The Appeal also must include payment of \$1,352.91. Failure to make a timely appeal will preclude you from challenging the City's decision in court. The appeal itself must raise each and every issue that is contested, along with all arguments and evidence in the record which supports the basis for the appeal. Failure to do so will preclude you from raising such issues during your appeal and/or in court. However, the appeal will be limited to issues and/or evidence presented in the Petition to the City Administrator.

SECTION 10. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council declares that it would have adopted this Ordinance and each section, subsection,

sentence, clause and phrase thereof, irrespective of the fact that any one or more section, subsection, sentence, clause, or phrase be declared invalid.

In Council, Oakland, California, APR 22 2014, 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
City Clerk and Clerk of the Council
of the City of Oakland, California

Introduction Date APR 22 2014

DATE OF ATTESTATION _____

mpw

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2014 APR 10 PM 1:01

NOTICE AND DIGEST

INTERIM ORDINANCE, ADOPTED AS AN URGENCY MEASURE PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 65858, ESTABLISHING A TEMPORARY MORATORIUM ON THE ESTABLISHMENT, INSTALLATION, PLACEMENT, CONSTRUCTION, AND/OR EXPANSION OF UNATTENDED DONATION BOXES, TO TAKE EFFECT IMMEDIATELY UPON ADOPTION

By this ordinance, the Oakland City Council imposes an interim moratorium, for a 45-day period, on the establishment, installation, placement, construction, and/or expansion of unattended donation boxes, which are portable, unattended boxes for the reverse vending of salvageable personal property including, but not limited to, clothing and books.

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2014 MAY 22 PM 3:33

7 VOTES REQUIRED FOR PASSAGE

APPROVED AS TO FORM AND LEGALITY

Mark P. Wall

City Attorney

INTRODUCED BY COUNCILMEMBER _____

OAKLAND CITY COUNCIL
ORDINANCE NO. ~~13232~~ 13232 C.M.S.

EXTENSION OF ORDINANCE NO. 13225 C.M.S., AN INTERIM ORDINANCE, ADOPTED AS AN URGENCY MEASURE PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 65858, ESTABLISHING A TEMPORARY MORATORIUM ON THE ESTABLISHMENT, INSTALLATION, PLACEMENT, CONSTRUCTION, AND/OR EXPANSION OF UNATTENDED DONATION BOXES TO TAKE IMMEDIATE EFFECT, THROUGH MARCH 3, 2015 OR WHENEVER PERMANENT REGULATIONS ARE ADOPTED, WHICHEVER OCCURS FIRST.

WHEREAS, the City Council adopted Ordinance No. 13225 C.M.S. on April 22, 2014; and

WHEREAS, pursuant to State law, first passage of an interim ordinance is only permitted for a period of 45 days; and

WHEREAS, an extension of the interim ordinance through March 3, 2015 is necessary because 45-days is not sufficient time to meet with stakeholders and develop regulations for the use, placement, and appearance of unattended donation boxes; and

WHEREAS, for the reasons set forth above and in Ordinance No. 13225 C.M.S., this ordinance is declared by the Council to be necessary for preserving the public peace, health, or safety and to avoid a current, immediate and direct threat to the health, safety, or welfare of the community, and the "Whereas" clauses above taken together constitute the City Council's statement of the reasons constituting such necessity and urgency; now, therefore

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

Section 1. The City Council finds and determines the foregoing recitals to be true and correct and hereby makes them a part of this ordinance.

Section 2. The City Council finds and determines the adoption of this ordinance is exempt from CEQA under Sections 15061(b)(3), 15183, and/or 15308 of the State CEQA Guidelines, each of which provides a separate and independent basis for a CEQA exemption and when viewed collectively provides an overall basis for a CEQA exemption.

Section 3. Ordinance No. 13225 C.M.S. is hereby extended by the City Council through March 3, 2015, or whenever permanent regulations are adopted, whichever occurs first, and all its terms and provisions shall remain in full force and effect, except Section 9 is amended as follows (deletions are shown in ~~strike-out~~ and additions in underscore):

SECTION 9. Petition for Relief from Moratorium (" Petition")

(a) Any person seeking Placement of a UDB, which would be affected by this Moratorium, and who contends that the Moratorium as applied to him or her would be unlawful under and/or conflict with Federal, State, or local law or regulation, must submit a Petition to the City requesting relief from the Moratorium. Petitions must be on the Appeal Form provided by the Planning Bureau of the Planning and Building Department for the City of Oakland and submitted to the Agency at 250 Frank H. Ogawa Plaza, Suite 2114, to the attention of the Planning Director. Failure to submit such a Petition will preclude such person from challenging the moratorium in court. The Petition shall identify the name and address of the applicant and property owner, the affected application number, and shall state specifically and completely how the Moratorium as applied to him or her would be unlawful under and/or in conflict with Federal, State, or local law or regulation, and shall include payment of fees in an amount of \$1,352.91. In addition, the Petition must include all of the following: the proposed location of the UDB; a photograph of the location and adjacent properties; a site plan; a map showing the distance between the proposed UDB and existing UDBs within 2,500 feet of the proposed UDB; plans showing the appearance and dimensions of the UDB; distance between the proposed UDB and the public right of way, whether there will be more than one UDB per parcel; whether the proposed UDB is on a vacant lot, on a lot with blighted property and/or properties where all businesses are closed; authorization from the property owner to allow placement of the UDB, as well as an acknowledgement of responsibility for joint and several liability for violations of conditions and/or public nuisances, and a maintenance plan (including timely graffiti, litter and trash removal on and around the UDB). Failure to raise each and every issue that is contested in the Petition and provide appropriate supporting evidence will be grounds to deny the Petition and will also preclude the Petitioner from raising such issues in court. Within thirty calendar days of receipt of the completed Petition, the City Administrator, or her designee, shall mail to the applicant a written determination accepting or rejecting the Petition. The City Administrator will utilize reasonable time, place and manner criteria, as described above, to determine if the Petition should be granted or denied. If the Petition is granted, the City may impose reasonable time, place and manner-related conditions on the UDB.

(b) If a Petitioner seeks to challenge the written determination of the City Administrator, the Petitioner must appeal to the City Council and such appeal must be filed within ten (10) calendar days of the date from which the City Administrator's

written determination was issued and by 4:00p.m. Appeals must be on the form provided by the Planning Bureau of the Planning and Building Department for the City of Oakland and submitted to the Agency at 250 Frank H. Ogawa Plaza, Suite 2114, to the attention of the Planning Director. The Appeal must state specifically wherein it is claimed there was error or abuse of discretion by the City Administrator or wherein the decision is not supported by substantial evidence. The Appeal also must include payment of \$1,352.91. Failure to make a timely appeal will preclude any interested person you from challenging the City's decision in court. The appeal itself must raise each and every issue that is contested, along with all arguments and evidence in the record which supports the basis for the appeal. Failure to do so will preclude you any interested person from raising such issues during the appeal and/or in court. However, the appeal will be limited to issues and/or evidence presented in the Petition to the City Administrator. Within sixty calendar days of receipt of an appeal, the City Council will conduct a public hearing and render a final administrative decision on the appeal. The City Council will utilize reasonable time, place and manner criteria, as described above, to determine if the Petition should be granted or denied. If the Petition is granted, the City may impose reasonable time, place and manner-related conditions on the UDB.

Section 4. The City Clerk shall certify as to the passage and adoption of this Ordinance causing it to be posted, as required by law, and it shall thereafter be in full force and effect. This Ordinance shall become effective immediately as an interim urgency ordinance, in order to protect the public health, safety and/or welfare.

Section 5. This Ordinance is enacted pursuant to the City of Oakland's general police powers, Sections 106 of the Charter of the City of Oakland, Article XI of the California Constitution and Government Code section 65858.

Section 6. If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more section, subsection, sentence, clause, or phrase be declared invalid.

JUN 3 2014

IN COUNCIL, OAKLAND, CALIFORNIA _____

PASSED BY THE FOLLOWING VOTE:

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

NOES:

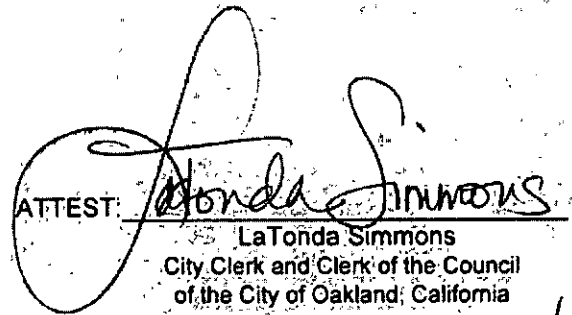
ABSENT:

ABSTENTION:

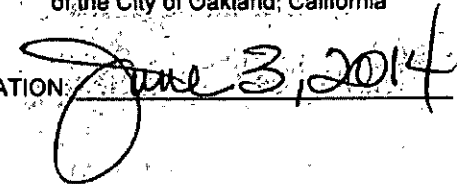
Introduction Date

JUN 3 2014

ATTEST:


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

DATE OF ATTESTATION



OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

AN ORDINANCE 1) ESTABLISHING OAKLAND MUNICIPAL CODE (OMC) CHAPTER 5.19 "UNATTENDED DONATION/COLLECTION BOXES" AND 2) AMENDING THE MASTER FEE SCHEDULE (ORDINANCE NO. 13171 C.M.S., AS AMENDED) AND OMC SECTIONS 1.12.020A AND 1.12.060 TO ESTABLISH APPLICATION, INSPECTION, APPEAL AND OTHER FEES, ADMINISTRATIVE CITATIONS, AND FINES RELATED TO UNATTENDED DONATION/COLLECTION BOXES.

WHEREAS, the City of Oakland has an overriding interest in planning and regulating the use of property within the City. Implicit in any plan or regulation is the City's interest in maintaining the quality of urban life and the character of the City's neighborhoods; and

WHEREAS, blighted areas can quickly deteriorate, with terrible consequences to social, environmental and economic values; and

WHEREAS, it is the City's intent to limit nuisance-related and blighted conditions; and

WHEREAS, the recent proliferation and concentration of portable, unattended boxes for the reverse vending of salvageable personal property including, but not limited to, clothing and books (Unattended Donation/Collection Boxes or UDCBs) has resulted in nuisance-related conditions, including, but not limited to trash, debris, illegal dumping and graffiti on and around the UDCBs; and

WHEREAS, many of the UDCBs and the areas around the UDCBs have not been properly or consistently maintained and this has resulted in blighted conditions in many areas of the City; and

WHEREAS, an updated Land Use and Transportation Element of the Oakland General Plan was adopted by the Oakland City Council in March, 1998 to guide future land use and development in the city; and

WHEREAS, the Land Use and Transportation Element defines several goals and objectives to promote the quality of the City's neighborhoods and contains specific policies regarding reviewing potential nuisance activities (Policy N1.7) and alleviating public nuisances (Policy N1 1.4); and

WHEREAS, the continued unregulated establishment, installation, placement, construction, and/or expansion of UDCBs may result in potential conflict with some of the policies and objectives of the Land Use and Transportation Element of the General Plan; and

WHEREAS, the placement of UDCBs has proliferated in recent years and have not been expressly regulated by the City; and

WHEREAS, although UDCBs can become a public nuisance, as described above, they also provide a convenient way to reuse goods rather than place them in the waste stream; and

WHEREAS, recognizing that UDCBs must be regulated, at its April 22, 2014 meeting, the City Council adopted Ordinance No. 13225 C.M.S., an emergency ordinance that placed a 45-day moratorium on the placement of UDCBs in Oakland and directed staff to return with a permanent set of regulations directly to the full Council; and

WHEREAS, at its June 17, 2014 meeting, the City Council extended the moratorium to March 3, 2015 (via Ordinance No. 13232 C.M.S.); and

WHEREAS, prior to the UDCB moratorium UDCBs have not been expressly regulated by the City of Oakland; and

WHEREAS, as part of its efforts to develop a permanent set of regulations, staff undertook a public outreach effort since adoption of the moratorium and met with UDCB operators and citizens concerned with the nuisances associated with UDCBs and have exchanged numerous drafts of the Summary of the Proposed Regulations (Attachment A to the City Council Agenda Report); and

WHEREAS, on February 3, 2015 a duly noticed public hearing was held before the City Council to consider the proposed regulations and all interested parties were provided an ample opportunity to participate in said hearing and express their views; now, therefore

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

Section 1. The City Council finds and determines the forgoing recitals to be true and correct and hereby makes them a part of this Ordinance.

Section 2. The Oakland Municipal Code is hereby amended to create Chapter 15.19, which will regulate the placement, appearance, and maintenance of UDCBs, as detailed in *Exhibit A*, hereby incorporated by reference as fully set forth herein.

Section 3. The Master Fee Schedule (Ordinance No. 13171 C.M.S., as amended) is amended to establish new fees as detailed in *Exhibit B*, hereby incorporated by reference as fully set forth herein. Amounts collected from these fees shall be deposited and appropriated in the Planning Organization (84211) fund.

Section 4. The City Council expressly finds and determines: (a) the sole purpose of this

Ordinance is to promote the public health, safety and welfare by reducing and/or eliminating the secondary, nuisance-related conditions that have become associated with UDCBs in a content neutral manner, based upon reasonable time, place and manner restrictions; and (b) this Ordinance is **not** intended to, nor does it operate to, discriminate against any particular viewpoint, content, and/or UDCB operators/operations.

Section 5. The following process/procedures shall be utilized to initially regulate UDCBs:

- A) UDCBs that existed prior to the adoption of the 45-day moratorium of UDCBs on April 22, 2014 (Ordinance No. 13225 CMS) and are in the zoning designations that permit UDCBs as described in this ordinance are considered “Existing” for the purpose of this ordinance.
- B) Applications to permit Existing UCDBs can only be submitted after 30 calendar days from the date of final passage/adoption of this Ordinance. Any UDCB that does not have a complete application on file with the City within 90 calendar days of the final adoption date of this ordinance will no longer be considered an existing UDCB and must be removed in accordance with Section C below.
- C) All UDCBs that are not in a zoning designation that allows UDCBs, and that have not applied for permits, shall be removed within 120 calendar days of the final adoption date of this ordinance.
- D) The following process shall be used when two or more existing UDCBs apply for permits, are within 1,000 feet of each other, and each meet all other applicable requirements. Ninety days after adoption of the ordinance, staff will compile all the permit applications for existing UDCBs that are within 1,000 feet of one another. An email from staff will request that the operators of these UDCBs attempt to negotiate with each other and reach an agreement regarding which facilities will remain and which will be removed. For instance, if Operator A has a UDCB within 1,000 feet of a UDCB owned by Operator B, then Operator A may agree to withdraw its application at this location in return for Operator B withdrawing its application in another part of the City that is within 1,000 feet of a UDCB owned by Operator A.

UDCB operators shall notify the City in writing as soon as possible, but not later than 30 days after ordinance adoption if (a) an agreement is not reached or (b) an agreement is reached. If an agreement is reached between different operators both operators will inform the Bureau of Planning in writing and permits will be issued if the applicable criteria are met. If no agreement is reached after 30 days, staff will conduct a “draft” to determine which of the remaining UDCBs will be allowed to remain at their current locations. The order of the draft will be chosen at random using a lottery or raffle system.

- 1) Each operator will submit a list of their existing UDCBs in order of their most to least preferred sites.
- 2) Staff will allow the most preferred UDCB site of the first operator choosing to stay at its current location.
- 3) The next operator will be allowed to retain its first choice of sites unless it is within 1,000 feet of the UDCB chosen in Step 1. In this case, the operator will

not be allowed to retain this UDCB, but will be allowed to retain the next UDCB on their preference list that is more than 1,000 feet from the UCDB chosen in Step 2.

- 4) The next operator will be allowed to retain its first choice of sites, unless it is within 1,000 feet of the UDCB chosen either in Step 2 or 3. In this case, the operator will not be allowed to retain this UDCB, but will be allowed to retain the next UDCB on their preference list that is more than 1,000 feet from the UCDB chosen in Step 2 or 3.
- 5) After each operator has one UDCB chosen ("Round 1"), the pattern will repeat, except the order of operators that chose in Round 1 will be reversed. In other words, if three operators, A, B, and C, chose in alphabetical order in Round 1, the order of operators choosing in the Round 2 will be C, B, A.
- 6) This system will continue until there are no more UDCBs within 1,000 feet of one another.

E. Applications for new UDCBs submitted between 150 – 170 days of ordinance adoption will be chosen using a "draft" system similar to that described in Section 5(D), above. Applications for new UDCBs submitted after 170 days of ordinance adoption, will not be chosen under the "draft" system described in Section 5(D), but will have to be located more than 1,000 feet from a UDCB and meet all other applicable standards.

F. The zoning manager shall have the authority to refine/clarify any of the procedures in this Section to better implement/effectuate this ordinance.

Section 6. Nothing in this Ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

Section 7. The provisions of this Ordinance are severable. If a court of competent jurisdiction determines that a word, phrase, clause, sentence, paragraph, subsection, section, Chapter or other provision is invalid, or that the application of any part of the provision to any person or circumstance is invalid, the remaining provisions of this Ordinance that can be given effect without the invalid provision or application and the application of those provisions to other persons or circumstances are not affected by that decision. The City Council declares that the City Council would have adopted this Ordinance irrespective of the invalidity of any particular portion of this Ordinance.

Section 8. That the record before this Council relating to this Ordinance includes, without limitation, the following:

1. all final staff reports, and other final documentation and information produced by or on behalf of the City, including without limitation supporting technical studies and all related/supporting final materials, and all final notices relating to the UDCB regulations and attendant hearings;
2. all oral and written evidence received by the CED Committee and City Council during the public hearings on the UDCB regulations; and all written evidence received by the relevant City Staff before and during the public hearings on the UDCB regulations;

3. all matters of common knowledge and all official enactments and acts of the City, such as (a) the General Plan; (b) Oakland Municipal Code, including, without limitation, the Oakland real estate regulations and Oakland Fire Code; (c) other applicable City policies and regulations; and (d) all applicable state and federal laws, rules and regulations;

Section 9. That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based, are respectively: (a) Planning and Building Department –Bureau of Planning, 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, California; and (b) Office of the City Clerk, One Frank H. Ogawa Plaza, 1st Floor, Oakland California.

Section 10. This Ordinance is exempt from CEQA under CEQA Guidelines Section 15061(b)(3) (general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment); CEQA Guidelines section 15183 (projects consistent with general and community plans); and/or section 15308 of the CEQA Guidelines (Actions by Regulatory Agencies for Protection of the Environment), each of which provides a separate and independent basis for CEQA compliance. The Environmental Review Officer, or designee, is directed to cause to be filed a Notice of Exemption with the appropriate agencies.

Section 12. The City Council hereby authorizes the City Administrator or designee to make non-substantive, technical conforming changes (essentially correction of typographical and clerical errors), prior to formal publication of the Amendments in the Oakland Municipal Code.

Section 13. Pursuant to Oakland City Charter section 216, this Ordinance shall be become effective immediately upon receiving the affirmative vote of at least six members of the Council, otherwise, it shall be effective upon the seventh day after final adoption; provided, that within three days after said date of final adoption, the Mayor may file in the Office of the City Clerk written notice to the Council that he has suspended the taking effect of the ordinance.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, GALLO, GUILLEN, KALB, KAPLAN, REID, CAMPBELL-WASHINGTON, and PRESIDENT GIBSON MCELHANEY

NOES-

ABSENT-

ABSTENTION-

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

DATE OF ATTESTATION _____

EXHIBIT A: TEXT AMENDMENTS

PART 1

Chapter 5.19 is added to the O.M.C. as follows:

CHAPTER 5.19: UNATTENDED DONATION/COLLECTION BOXES

Article I – General Provisions

5.19.010 – Purpose.

5.19.020 – Conflicting Provisions.

5.19.030 – Violation.

5.19.040 – Responsibility.

5.19.050 – Definitions.

Article II – UDCB Permit Requirement and Process

5.19.060 – Permit required for UDCBs.

5.19.070 – Application Requirements.

5.19.080 – Requirements for the approval of a UDCB permit.

5.19.090 – Time Limit for Final Decision.

5.19.110 – UDCB permit Expiration and Renewal.

Article III – Standards and Requirements

5.19.120 – Location.

5.19.130 – Physical Attributes.

5.19.140 – Maintenance.

5.19.150 – Liability Insurance.

Article IV – Code Enforcement

5.19.160 – Compliance Process.

Article I – General Provisions

5.19.010 – Purpose.

The purpose of these regulations is to promote the health, safety, and welfare of the public by providing minimum standards for the operation of Unattended Donation Boxes (UDCBs). This includes establishing criteria to ensure that material is not allowed to accumulate outside of the UDCBs, the UDCBs remain free of graffiti and blight, UDCBs are maintained in sanitary conditions, and users are fully informed of those who operate the UDCBs.

5.19.020 – Conflicting Provisions.

Where a conflict exists between the regulations or requirements in this Chapter and applicable regulations or requirements contained in other Chapters of the OMC, the applicable regulations or requirements of this Chapter shall prevail.

5.19.030 – Violation.

Failure to comply with any of the provisions of this Chapter is declared to be prima facie evidence of an existing violation and a continuing blight and shall be abated by the Director in accordance with the provisions of this Chapter.

15.19.040 – Responsibility.

The parcel owner and the UDCB operator (operator) have joint and several liability for conditions or regulations, fees, citations, and/or public blight relating to a UDCB. The parcel owner remains liable for any violation of duties imposed by this Chapter even if the parcel owner has, by agreement, imposed on the operator the duty of complying with the provisions of this Chapter.

5.19.050 – Definitions.

“Accessory Activity” means an activity that is incidental to, and customarily associated with, a specified principal activity.

“Agent” means a person who is authorized by the parcel owner to act on their behalf to be the applicant for a UDCB permit. To be considered an agent, a person must be given written authorization from the parcel owner on a form provided by the City to apply specifically for a UDCB permit. For the purpose of this chapter, a person who is only given general authorization to act on the behalf of a parcel owner for various activities and transactions in regards to a property is not considered an agent.

“Blight” or “nuisance” means the conditions as set forth in Oakland Municipal Code Section 8.24.020.

“Building Official” means the Director of the Bureau of Building and his or her successor in title and his or her designees.

“Bureau of Building” and “Bureau of Planning” includes their successors in title, if any.

“Director” means the Director of the Bureau of Planning and Building and his or her successor in title and his or her designees

“Donated/Collected Material” means salvageable personal property, such as clothing and books and household items that is collected for periodic transport off-site for processing or redistribution or both.

“Parcel Owner” means the owner of real property on which a UDCB is or is proposed to be placed.

“Principal Activity” means an activity that fulfills a primary function of an establishment, institution, household, or other entity.

“Principal Building” means a main building that is occupied a principal activity.

“UDCB Operator” or “Operator” means a person or entity who utilizes or maintains a UDCB to solicit donations of salvageable personal property.

“UDCB Permit” means the City of Oakland permit required to place, operate, maintain, or allow a UDCB within the Oakland City limits.

“Unattended Donation/Collection Boxes” or “UDCBs” means unstaffed drop-off boxes, containers, receptacles, or similar facility that accept textiles, shoes, books and/or other salvageable personal property items to be used by the operator for distribution, resale, or recycling.

“Unpermitted UDCB” means a UDCB established either without a UDCB permit or with a UDCB permit that was issued in error or on the basis of incorrect or incomplete information supplied, or in violation of any law, ordinance, rule, or regulation.

Article II – UDCB Permit Requirement and Process

5.19.060 – Permit required for UDCBs.

- A. With the exception of UDCBs described in Subsection B, below, it is unlawful to place, operate, maintain or allow a UDCB on any real property unless the parcel owner/agent and/or operator first obtain a UDCB permit from the City. A separate UDCB permit is required for each UDCB unless a second UDCB is required for overflow items per Subsection 5.19.120 (G), in which case the permit for the first UDCB can include the second UDCB on a parcel.
- B. UDCBs that are either enclosed within a principal building or are accessory to a principal activity on a property owned or leased by the bin operator shall not require a UDCB permit. However, UDCBs that are accessory to a principal activity on a property owned or leased by the bin operator shall meet all other requirements of this Chapter except the separation requirement contained in 5.19.120(A).
- C. The UDCB permit applicant shall be the UDCB operator and the permit may not be transferred, conveyed or otherwise assigned to another person or entity.
- D. Decisions regarding UDCB permit applications shall be made by the Director and the Director shall be considered the investigating official acting for the City Administrator under Section 5.02.060.

5.19.070 – Application Requirements.

The UDCB permit application shall be made on a form provided by the Bureau of Planning and Zoning. All applications shall be filed with the Bureau of Planning and Zoning and shall include:

- A. A signed agreement stating that the parcel owner/agent and operator will abide by all the processes and requirements described in this Chapter and an expedited code enforcement process;
- B. A non-refundable application fee in an amount set by the Master Fee Schedule.
- C. For permit applications for existing UDCBs, a signed affidavit stating that the UDCB existed at the proposed location prior to the adoption of Ordinance No. 13225 C.M.S. on April 22, 2014;
- D. A signed authorization from the parcel owner/agent to allow placement of the UDCB;
- E. A signed acknowledgement of responsibility from the parcel owner/agent and the operator for joint and several liability for violations of conditions or regulations, and/or public blight relating to the UDCB;
- F. Proof of general liability insurance of at least one million dollars (\$1,000,000) covering the applicant’s UDCB and naming the City of Oakland as an additional insured.
- G. For operators soliciting for charitable purposes, proof sufficient to establish that the operator who will utilize the unattended donation box is qualified to solicit donations of salvageable personal property pursuant to California Welfare and Institutions Code Section 148.3, as amended;
- H. For for-profit operators, proof of an active business tax certificate with the City of Oakland. For nonprofit operators, evidence that the nonprofit has been registered with the City of Oakland;

- I. The name, address, email, website (if available) and telephone number of the UDCB operator and parcel owner, including 24-hour contact information;
- J. A vicinity map showing 1) the proposed location of the UDCB; and 2) the distance between the site and all existing UDCBs within 1,000 feet of the proposed UDCB location;
- K. Photographs of the location and adjacent properties;
- L. A site plan containing:
 - 1. Location and dimensions of all parcel boundaries;
 - 2. Location of all buildings;
 - 3. Proposed UDCB location;
 - 4. Distance between the proposed UDCB and parcel lines buildings; and
 - 5. Location and dimension of all existing and proposed driveways, garages, carports, parking spaces, maneuvering aisles, pavement and striping/markings.
- M. Elevations showing the appearance, materials, and dimensions of the UDCB, including the location of information and disclosures required in this Chapter;
- N. A description and/or diagram of the proposed locking mechanism of the UDCB;
- O. A maintenance plan (including graffiti removal, pick-up schedule, and litter and trash removal on and around the UDCB) that is sufficient to prevent/eliminate blight-related conditions; and
- P. Any other reasonable information regarding time, place, and manner of UDCB operation, placement, and/or maintenance that the Director requires to evaluate the proposal consistent with the requirements of this Chapter.

5.19.080 – Requirements for the approval of a UDCB permit.

The Director shall not issue a UDCB permit unless each of the following is true:

- A. The applicant has submitted a complete and accurate application accompanied by the applicable fee;
- B. Any verified blight on the subject property has been abated and any case of a complaint to the City regarding blighted conditions on the subject property has been closed; and
- C. The proposal is consistent with all the requirements of this Chapter.

5.19.090 – Time Limit for Final Decision.

The Director shall provide a written decision regarding the placement of a UDCB within sixty (60) days of the submission of a complete application for a UDCB permit.

5.19.100 – Appeal and Petition Processes.

- A. Within ten (10) calendar days after the date of a decision by the Director on an application for a UDCB permit or a renewal of such, an appeal from said decision must be filed by the applicant or any other interested party. The appeal shall be submitted to the Bureau of Planning at 250 Frank H. Ogawa Plaza, 2nd Floor, Oakland, CA 94612. In the event the last date of appeal falls on a weekend or holiday when City offices are closed, the next date such offices are open for business shall be the last date of appeal. Such appeal shall be made on a form prescribed by the Bureau of Planning and shall be filed with such Department, along with the appropriate fees required by the City's Master Fee Schedule. The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Director or wherein his or her decision is not supported by the evidence in the record. The appeal itself must raise each and every issue that is contested, along with all the arguments and evidence in the record, which supports the basis of the appeal; failure to do so will preclude the appellant from raising such issues during the appeal and/or in court. In considering the appeal, the City Administrator shall determine whether the proposal conforms to the

requirements of this Chapter, and may grant or deny a permit or require such changes in the proposed use or impose such reasonable conditions of approval as are in its judgment necessary to ensure conformity to said criteria. The written decision of the City Administrator shall be final and shall be made within sixty (60) days of the submission of the appeal.

- B. The applicant seeking placement of a UDCB which would be affected by this ordinance and who contends that the ordinance as applied to him or her would be unlawful under and/or conflict with Federal, State, or local law or regulation, must submit a Petition to the City Administrator requesting relief from the ordinance. Petitions must be on the appeal form provided by the Bureau of the Planning and submitted to the Bureau at 250 Frank H. Ogawa Plaza, Suite 2114. Failure to submit such a Petition will preclude such person from challenging the ordinance as applied in court. The Petition shall identify the name and address of the applicant and property owner, the affected application number, and shall state specifically and completely how the ordinance as applied to him or her would be unlawful under and/or in conflict with Federal, State, or local law or regulation, and shall include payment of fees in accordance with the City's Master Fee Schedule. Failure to raise each and every issue that is contested in the Petition and provide appropriate supporting evidence will be grounds to deny the Petition and will also preclude the Petitioner from raising such issues in court. Within sixty calendar days of receipt of the completed Petition, the City Administrator, or designee, shall mail to the applicant a written determination accepting or rejecting the Petition. The written decision of the City Administrator is final. The City Administrator will utilize reasonable time, place and manner criteria to determine if the Petition should be granted or denied consistent with this Chapter. If the Petition is granted, the City may impose reasonable time, place and manner-related conditions on the UDCB consistent with this chapter.

5.19.110 – UDCB permit Expiration and Renewal.

- A. Unless renewed as described in Subsection B, below, each UDCB permit shall expire and become null and void annually on the anniversary of its date of issuance.
- B. A UDCB operator may apply for permit renewal by submitting to the Bureau of Planning at least one month prior to the expiration of the active UDCB permit. Renewal requires an application and a non-refundable renewal fee in an amount set by the Master Fee Schedule.
- C. The Director shall either approve or deny the renewal of a UDCB permit within thirty (60) days of receipt of the complete renewal application and payment of the renewal fee. The failure of the Bureau of Planning to act within this timeframe shall constitute approval of the UDCB permit renewal.
- D. The Director shall approve the renewal of a UDCB permit if he or she finds that no circumstances existed during the term of the UDCB permit or existed at any time during the review of the application for renewal that are inconsistent with any criteria required for approval of a new UDCB permit as specified in Section 5.19.080 or that would justify the revocation of the UDCB permit as specified in Section 5.19.160(E).
- E. See Section 5.19.100 for the appeal and petition processes for UDCB permit decisions, including decisions regarding renewal.

Article III – Standards and Requirements

5.19.120 – Location.

- A. No UDCB shall be located within one thousand (1,000) feet from another UDCB, except those described in Subsection 5.19.060 (B).
1. UDCBs are only allowed to be located in the following zones, which are designated in the zoning maps described in Chapter 17 of the Oakland Municipal Code:
 - a. RU-5;

- b. CC-1 and CC-2;
 - c. CN-4;
 - d. CR-1;
 - e. D-BV-2 and D-BV-3;
 - f. C-40 and C-45;
 - g. S-1 and S-2;
 - h. D-KP-1, D-KP-2, and D-KP-3;
 - i. D-CE-1, D-CE-2, D-CE-4, D-CE-5, and D-CE-6;
 - j. D-BV-1, D-BV-3, and D-BV-4; and
 - k. All industrial zones.
- B. A UDCB is only permitted on a lot that also contains both a principal building and a principal activity, not including a surface Auto Fee Parking Commercial Activity as defined in Section 17.10 of the Oakland Municipal Code.
 - C. UDCBs are prohibited if they are within any of the following locations: 1) fifteen feet from lots that lie in a Hillside Residential, Detached Unit Residential, or Mixed Housing Type Residential zone as designated in the City's zoning maps; 2) 20 feet of the right of way; or 3) five feet from any property line.
 - D. UDCBs are not permitted in the right-of-way.
 - E. UDCBs cannot block or impede access to required parking or driveways, pedestrian routes, emergency vehicles, building ingress and egress, handicapped accessibility, or required easements.
 - F. UDCBs cannot impede the functioning of exhaust, ventilation; or fire extinguishing systems.
 - G. No more than one UDCB is permitted per parcel unless documented evidence is submitted to the Director that a second bin is required due to the volume of items delivered to the site. A UDCB must be operating at a site for at least 90 days in order to establish that a second bin is required. Both UDCBs shall have the same operator. No fee is required to submit an application for this second bin.
 - H. The donation area must be visible from the principal building and be no more than ten (10) feet from a continually operating light source of at least one foot candle.

5.19.130 – Physical Attributes.

- A. UDCBs shall:
 - 1. Be fabricated of durable and waterproof materials;
 - 2. Be placed on ground that is paved with durable cement.
 - 3. Have a collection opening that has a tamper-resistant locking mechanism;
 - 4. Have the following information clearly displayed:
 - a. Ownership and operator identification;
 - b. Address and parcel number of the site;
 - c. UDCB permit information and UDCB identification number on a City issued sticker;
 - d. Statement regarding the IRS status of the operator;
 - e. A statement that reads, "This collection box is owned and operated by a for-profit company" if the operator is a for-profit business or "This collection box is owned and operated by a non-profit organization." if the operator is a nonprofit organization.
 - f. Instructions on process to register a complaint regarding the UDCB to the City Code Enforcement Division;
 - g. Contact information (24-hour phone number, address, email) for the operator and the parcel owner/owner's agent;
 - h. A statement from Bureau of Planning indicating standards and conditions for maintenance; and
 - i. A description of accepted and prohibited donation materials.

- B. UDCBs shall not:
1. Be more than eighty-two (82) inches high, fifty-six (60) inches wide and fifty (50) inches deep;
 2. Be electrically or hydraulically powered or otherwise mechanized; or
 3. Be a fixture of the site or considered an improvement to real property.

5.19.140 – Maintenance.

- A. No blight shall be within twenty (20) feet of the UDCB including, but not limited to donation overflow, litter, debris, and dumped material.
- B. UDCBs shall be maintained and in good working order. Items to be repaired, removed, and/or abated include, but are not limited to graffiti, removed or damaged signs and notifications, peeling paint, rust, and broken collection operating mechanisms.
- C. UDCBs shall be serviced not less than weekly between 7:00 a.m. and 7:00 p.m. on weekdays and 10:00 a.m. and 6:00 p.m. on weekends. This servicing includes the removal of donated/collected material and abatement of the blight described this section.
- D. The operator shall maintain an active email address and a 24-hour telephone service with recording capability for the public to register complaints.
- E. UDCBs cannot be used for the collection of solid waste recyclables or any hazardous materials.

5.19.150 – Liability Insurance.

Applicants and/or owner/owners agent shall maintain a minimum general liability insurance of one million dollars (\$1,000,000) for the duration of the operation of a UDCB at each site, to cover any claims or losses due to the placement, operation, or maintenance of the UDCB and naming the City of Oakland as additional insured.

Article IV – Code Enforcement

5.19.160 – Compliance Process.

- A. Whenever the Building Official determines that a UDCB with a valid permit does not conform to any requirement in this Chapter he/she shall promptly notify the parcel owner and UDCB operator through electronic mail of the violation. The violation must be abated within ten (10) days after receipt of such notification.
- B. If an unpermitted UDCB is within one thousand (1,000) feet of an existing permitted UDCB, then both the UDCB and any blight within twenty (20) feet of the UDCB shall be removed within ten (10) days after the parcel owner/agent is notified of the violation or fifteen (15) days if the notice is mailed.
- C. If an unpermitted UDCB is not within one thousand (1,000) feet of an existing permitted UDCB, then any blight within twenty (20) feet of the site shall be removed and the parcel owner/agent or operator shall either: 1) apply for all UDCB permits required by this Chapter within ten (10) days after the parcel owner/agent is notified of the violation or fifteen (15) days if the notice is mailed; or 2) remove the UDCB as described in Subsection B.
- D. The City shall assess administration citations pursuant to O.M.C. Chapter 1.12 against a parcel owner who fails to timely resolve a violation relating to a UDCB after notice.
 1. For permitted UDCBs, the City shall issue administrative citations pursuant to O.M.C. Chapter 1.12:
 - a. Not more than \$150 for the 1st day after the 10 day abatement period;
 - b. Not more than \$250 for the 2nd day after the 10 day abatement period; and
 - c. Not more than \$500 for the 3rd and each subsequent day. Total fines resulting from administrative citations shall not be more than \$5,000 within one year.

2. For unpermitted UDCBs, the City shall issue administrative citations pursuant to O.M.C. Chapter 1.12:
 - a. Not more than \$300 for the 1st day after the 10 day abatement period;
 - b. Not more than \$500 for the 2nd day after the 10 day abatement period; and
 - c. Not more than \$1,000 for the 3rd and each subsequent day. Total fines resulting from administrative citations shall not be more than \$10,000 within one year.
- E. The administrative citations described in Subsection D shall continue until, after 72 hour notice, the bin is removed by the City and any UDCB permit for the bin shall be revoked at the expense of the parcel owner and/or operator. The bins will be removed after one week or more of administrative citations.
- F. Administrative citations for unpermitted UDCBs may be appealed administratively pursuant to appeals of administrative actions set forth in the Oakland Municipal Code or as developed by the City Administrator. Administrative citations for permitted UDCBs are not appealable.
- G. A party aggrieved by a final administrative decision of the City may seek judicial review of the administrative decision pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6 within the time frame pursuant to those code sections.
- H. All notices for unpermitted UDCBs shall be in writing and personally delivered to the parcel owner/agent and UDCB operator or by depositing such notice in the United States mail, postage paid, and addressed to the parcel owner/agent at the owner(s) last known address as it appears on the last Alameda County equalized assessments roll. All notices regarding permitted UDCBs shall be through electronic mail.

PART 2

The following text amendments to the OMC are shown in underline/~~strikeout~~ format (additions are in underline and deletions are in ~~strikeout~~).

1.12.060 – Assessment.

- A. The City Manager, or his or her designee, is authorized to establish a schedule of violations and assessments or similar guidelines for issuing administrative citations.
- B. Except as otherwise provided herein, administrative citations, excluding accruing interest, shall not be assessed at more than five thousand dollars (\$5,000.00) cumulatively per calendar year for an individual parcel or separate structure thereon for any related series of violations. The citation amount shall not exceed one hundred dollars (\$100.00) for the first issuance, two hundred fifty dollars (\$250.00) for the second issuance, and five hundred dollars (\$500.00) for all subsequent issuances for any related series of violations occurring within a calendar year. These amounts may double for the administrative citations described in 5.19.160(D)(1). For offenses involving violations of Oakland Municipal Code Sections 8.28.060, 8.28.070, 8.28.150, 8.28.160, 13.16.100 and 13.16.110, administrative citations shall not exceed seven hundred fifty dollars (\$750.00) for the first issuance, one thousand dollars (\$1000.00) for the second issuance, and one thousand five hundred dollars (\$1500.00) for all subsequent issuances for any related series of violations occurring within a calendar year.
- C. The issuance of administrative citations may begin to accrue on the date of initial occurrence of the violation, as identified by the city.
- D. The issuance of administrative citations shall cease when all violations are wholly and permanently corrected.
- E. Administrative citations shall be issued in accordance with the following factors:
 1. The duration and frequency of recurrence of the violation;

2. The detrimental effects of the violation on the occupants of the property and the surrounding neighborhood and the community at large;
3. The history of compliance efforts by the responsible person to correct the violation wholly and permanently;
4. The viability of the administrative citation to effect abatement of the violation wholly and permanently;
5. Other factors that serve justice.

5.02.020 – Application.

With the exception of Unattended Donation/Collection Box permits required in Chapter 5.19, an application for any permit referred to in Section 5.02.010 shall be filed with the City Clerk in triplicate, the original of which shall be duly acknowledged before some person lawfully authorized to administer oaths, and upon forms to be furnished by said City Clerk, and shall set forth the following information:

- A. A full identification of the applicant and all persons to be directly or indirectly interested in the permit if granted;
- B. The residence and business address and the citizenship of the applicant, including all members of any firm or partnership, or all officers and directors of any corporation applying;
- C. The location of the proposed business, establishment, place, thing, etc., for which the permit is requested, and the name of the owner and the present use of such premises;
- D. The exact nature of the proposed business, establishment, place, thing, etc., for which the permit is requested, and the name under which it is to be operated;
- E. The past experience of the applicant in the matter to which the requested permit appertains; and the name, address, and past experience in such business or matter of the person to be in charge of the premises or business;
- F. Whether or not any permit has been revoked, and if so, the circumstances of such revocation;
- G. Such further information as the City Manager, or such official of the city to whom the application may be referred, may require.

5.02.030 – Procedure on application.

With the exception of Unattended Donation/Collection Box permits required in Chapter 5.19, immediately on the filing of any application for a permit as provided in Sections 5.02.010 and 5.02.020, the City Clerk shall place the acknowledged copy in the permanent records of his office, refer one copy to the City Administrator and one copy to such official of the city the administrative functions of whom are those primarily concerned with the granting or denying of such permit, which latter official, hereinafter in this chapter referred to as the "investigating official," shall make such investigation of the applicant and of the facts set forth in such application as he or she shall deem advisable, and shall make a written report of such investigations, together with his or her recommendations relative to disposal of the application, to the City Administrator, who shall proceed to act upon said application after a hearing set by the City Clerk for a day certain, not more than forty-five (45) days from the date of filing completed said application. At such hearing all persons interested shall be entitled to file objections, protests or recommendations in the premises. Such hearing may, by the City Administrator, be continued over from time to time as circumstances may require; provided, however, that if hereinafter in this chapter specifically provided, the investigating official may grant the permit applied for without referring the same to the City Administrator, and with or without a hearing thereon, as may be provided.

5.02.060 – Action on application.

With the exception of Unattended Donation/Collection Box permits required in Chapter 5.19, the City Administrator or the investigating official acting thereon, shall deny the granting of any permit applied for if it shall appear to his or her satisfaction that the applicant is not a fit and proper person, either for financial, moral, or other reasons, to conduct or maintain the business, establishment, place, or other thing, to which the application appertains; that the applicant has not complied with the provisions of this code which directly appertain to the maintenance or conduct of the business, establishment, place, or other thing in question or for the violation of any law appertaining thereto; or for any other reason hereinafter in this chapter more specifically set forth.

In granting or denying such permit, and in specifying the conditions, if any, upon which it is granted, the City Administrator, other official acting thereon, shall consider the character of the applicant as respects morality, honesty and integrity, and all pertinent acts which may concern the health, safety, and general welfare of the public, and shall exercise a reasonable and sound discretion in the premises. The City Administrator, or other official acting thereon, in acting upon an application for a permit, shall notify the investigating official to whom such application was referred, of such action.

5.02.080 – Revocation and suspension of permit.

With the exception of Unattended Donation/Collection Box permits required in Chapter 5.19, any permit granted pursuant to the provisions of this chapter may be revoked or suspended by the City Manager as in his or her discretion may seem meet and just, for any reason for which a granting of such permit might be lawfully denied, or for any other reason hereinafter in this chapter specifically provided. Such revocation or suspension shall be made only upon a hearing granted to the holder of the permit so revoked or suspended, held before the City Manager after five days' notice to such permit holder, stating generally the grounds of complaint against him or her and stating the time and place where such hearing will be held. In the event of such revocation or suspension, any certificate issued in connection with the granting of such permit shall, by the holder thereof, be forthwith surrendered to the City Manager.

Such revocation or suspension of any permit shall be in addition to any other penalties more specifically provided in this chapter.

5.02.100 – Appeals.

With the exception of Unattended Donation/Collection Box permits required in Chapter 5.19, any person excepting to any denial, suspension or revocation of a permit applied for or held by him or her pursuant to the provisions of this chapter, or pursuant to the provisions of this code where the application for said permit is made to, or the issuance thereof is by the City Manager, or any person excepting to the granting of, or to the refusal to suspend or revoke, a permit issued to another pursuant to the provisions of this chapter, or issued to another by the City Manager pursuant to the provisions of this Code, may appeal in writing to the City Council by filing with the City Clerk a written notice of such appeal setting forth the specific grounds thereof. Such notice must be filed within fourteen (14) days after notice of such action appealed from is posted in the United States mail. Upon receipt of such notice of appeal the Council shall set the time for consideration thereof. The City Clerk shall cause notice thereof to be given (A) to the appellant and (B) to the adverse party or parties, or to the attorney, spokesman, or representative of such party or parties, not less than five days prior to such hearing. At such hearing the appellant shall show cause on the grounds specified in the notice of appeal why the action excepted to should not be approved. Such hearing may, by the Council, be continued over from time to time and its findings on the appeal shall be final and conclusive in the matter.

5.02.140 – City Clerk to be notified of actions on permits.

With the exception of Unattended Donation/Collection Box permits required in Chapter 5.19, any official of the city taking any action upon any application for a permit or upon any permit to operate or maintain any business, establishment or place within the city as in this chapter provided for, shall notify the City Clerk of such action, and shall, so far as possible, supply the City Clerk with copies of all communications, findings and records pertaining to such applications and permits, and the City Clerk shall place the same on file with the applications and permits to which they pertain.

5.02.150 – Expiration of permit.

With the exception of Unattended Donation/Collection Box permits required in Chapter 5.19, any permit granted pursuant to the provisions of this chapter but under which the thing herein permitted has not been done, carried on or maintained within six months from the time of the issuance of such permit, shall expire by limitation and cease to be valid for any purpose. Provided, however, that the City Manager or other official originally granting such permit may renew such permit upon written application being made prior to its expiration.

EXHIBIT B: AMENDMENT TO THE MASTER FEE SCHEDULE

The following is an amendment to the City's Master Fee Schedule. Additions are underlined.



City of Oakland
Master Fee Schedule
Effective July 1, 2014

PLANNING & BUILDING

FEE DESCRIPTION	FEE UNIT	%
PLANNING & ZONING		
L. PLAN CHECKING AND/OR PROCESSING OF		
3 Consultation Services or Plan Review Requested Outside Regular Hours (Two Hour Minimum)	191 00 Hour or Fraction of	
4 Major Projects contract services for permit review, plan a Associated fixed fees may be reduced by the City Manager provided that all City costs are covered	Actual cost Each	
M. WRITTEN DETERMINATION BY ZONING		
N. ZONING CONFIRMATION LETTER		
1 Standard - No Research Required	34 00 Each	
2 Research Required	131 00 Hour or Fraction of	
O. MILLS ACT		
1 Application Fee	524 00 Application	
2 Inspection Fee	131 00 Inspection	
P. NEIGHBORHOOD MEETING STAFF ATTENDANCE FEE		
1 Attendance at 1st Community Meeting	OT Plan Check Hour Rate	
2 Attendance at 2nd Community Meeting	350 00 Each Staff Member	
3 Attendance at 3rd Community Meeting	700 00 Each Staff Member	
4 Attendance at 4th (and subsequent) Community Meeting	300 00 Each Staff +250 00 per Member hour after 1st hour	
Q. <u>UNATTENDED COLLECTION/DONATION BOX</u>		
1 <u>Permit Fee</u>	<u>535 31 Per Application</u>	
2 <u>Permit Renewal Fee</u>	<u>90 53 Per Application</u>	
3 <u>Appeal/Petition Fee</u>	<u>946 23 Per Application</u>	
4 <u>Inspection Fee</u>	<u>155 19 Per Inspection</u>	

Mr W

NOTICE & DIGEST

AN ORDINANCE 1) ESTABLISHING OAKLAND MUNICIPAL CODE (OMC) CHAPTER 5.19 "UNATTENDED DONATION/COLLECTION BOXES" AND 2) AMENDING THE MASTER FEE SCHEDULE (ORDINANCE NO. 13171 C.M.S., AS AMENDED) AND OMC SECTIONS 1.12.020A AND 1.12.060 TO ESTABLISH APPLICATION, INSPECTION, APPEAL AND OTHER FEES, ADMINISTRATIVE CITATIONS, AND FINES RELATED TO UNATTENDED DONATION/COLLECTION BOXES.

This Ordinance establishes new regulations for the maintenance and placement of unattended donation/collection boxes (UDCBs) in the City of Oakland. This includes a new permit for the placement of UDCBs, requirements to prevent nuisance-related conditions associated with UDCBs, separation requirements between UDCBs and enforcement mechanisms.