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OAKLAND

2015 SEP 25 AM 9:05 **AGENDA REPORT**

TO: Sabrina B. Landreth
City Administrator

FROM: Rachel Flynn
Director, Planning and
Building Department

SUBJECT: Unattended Donation/Collection Box
Regulations

DATE: September 14, 2015

City Administrator Approval

Date:

9/24/15

RECOMMENDATION

Staff Recommends That The City Council Conduct A Public Hearing And Upon Conclusion Adopt An Ordinance 1) Establishing Oakland Municipal Code (OMC) Chapter 5.19 "Unattended Donation/Collection Boxes (UDCBs)" Regulating UDCBs; 2) Amending The Master Fee Schedule (Ordinance No. 13171 C.M.S., As Amended) To Establish Fees Related To Applications, Inspection And Appeals For UDCBs; And 3) Amending OMC Sections 1.12.020a And 1.12.060 And Other OMC Provisions To Establish Administrative Citations And Make Other Conforming Changes Relating To UDCBs.

EXECUTIVE SUMMARY

Staff proposes a new Chapter 5.17 in the OMC that would contain requirements for the placement, appearance, operation and maintenance 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. This proposed new chapter would include a recommendation requiring a special permit for the placement of a UDCB and a 1,000 foot separation between UDCBs. Other location proposals include setback requirements and restricting UDCBs to most commercial zones (not including those adjacent to International Boulevard) and all industrial zones. Staff also recommends proposals regarding:

- Application Requirements;
- Implementation processes;
- Maintenance and appearance standards;
- Appeal and petition processes;

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. Thus, this Ordinance is intended to, and does, function without regard to a UDCB, or UDCB Operator's charitable purpose, or lack thereof. In short, except for identification purposes and appropriate registration with the City, all UDCBs, whether operated by non-profits or profit making entities, are regulated in the same manner.

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October 6, 2015

- Liability protections for the City and property owners;
- Standards for information required to be displayed on UDCBs; and
- Code enforcement procedures and citation amounts.

REASON FOR URGENCY

On February 2, 2015, the City Council adopted an emergency ordinance that extended the moratorium on UDCBs to December 31, 2015, but indicated it wanted Staff to return as soon as possible with a permanent set of regulations.

BACKGROUND/LEGISLATIVE HISTORY

Background

Since approximately 2008, UDCBs have been placed at schools, within the right-of-way, grocery stores, gas stations, in parking lots, and near businesses by a variety of non-profit and for-profit organizations. 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. It is estimated there are currently 152 UDCBs in Oakland.

Numerous local governments in California and other parts of the United States have concluded that UDCBs require their own permanent regulations because of unique secondary impacts that adversely affect the public health, safety, and/or welfare. Since the boxes are publicly accessible, but unmonitored, they can become a public nuisance by attracting graffiti, scavenging, and/or illegal dumping in their vicinity. UDCBs are also occasionally placed in required parking spaces or vehicle maneuvering areas, which may affect vehicle and pedestrian circulation and safety. Further, they generate traffic from trucks who service the UDCBs and vehicles that deliver items for contribution into the boxes.

A separate set of UDCB regulations are necessary because existing regulations for other box/container-type facilities are either not appropriate or insufficient for UDCBs. For example:

- Satellite Recycling Collection Centers (defined in Oakland Planning Code (OPC) section 17.10.586A) are facilities that are a maximum of 500 square feet and accept recyclable non-hazardous materials directly from the public by donation, redemption, or purchase. These facilities generally accept beverage containers and are commonly found in supermarket parking lots. These are not permitted in residential zones and most commercial zones and are conditionally permitted in industrial zones. When conditionally permitted, these facilities require City issuance of a minor conditional use permit² and are generally subject to more stringent set of conditions and discretionary approvals than UDCBs because they tend to service larger loads of materials, require larger vehicles, and have greater impacts in terms of noise and odors.

² Minor conditional use permits are decided administratively after a 17-day public notice period to properties within 300 feet of the subject site, and are heard before the City Planning Commission on appeal.

- Detached accessory structures³, such as garages and/or storage structures, have different requirements than UDCBs because they are for personal use of the occupants/residents of the parcel (not members of the public) and thus tend to not create substantial secondary impacts in terms of noise, odor, and/or attraction of blight. UDCBs are, by definition, **not** accessory structures because they are not associated with any principal activity. Since accessory structures are directly associated with a principal activity – that is the owner/operator of the principal activity is the same as the accessory activity -- they have “eyes-on-the-street” thus do not tend to attract as much graffiti, blight and/or dumping because they are **not** unattended.
- Trash and recycling receptacles are required to be screened from public view by OPC section 17.124.045 and trash/recycling cans are required to be timely returned from the curb, to an appropriate storage area, after garbage or recycling pickup (Oakland Municipal Code (OMC) section 8.128.140). Further, under OMC section 8.24.020, recycling materials are required to be contained within a completely enclosed building. However, these requirements are not sufficient for UDCBs because they must be kept available to the public on an around the clock basis, which tends to create blight near and around this type of facility. Also, there are fewer “eyes-on-the-street” issues with trash and recycling receptacles because they are required to be screened from the street and are often in front of residential structures and are not intended for members of the public to use.
- Construction and Demolition debris (C&D) containers also have specific performance standards. In addition, City issued encroachment permits are required if the C&D box is located in the public right of way, which are subject to application fees and conditions of approval. Moreover, C & D containers, unlike UDCBs, are temporary facilities utilized for construction projects and the owners/operators of the C&D boxes charge fees for their rental/usage. Further, blight is not common on active construction sites because they tend to have workers monitoring site conditions and are not intended for members of the public to use.

Legislative History

On May 8, 2012, the Community and Economic Development (CED) Committee directed staff to develop regulations for the placement and maintenance of UDCBs.

To afford staff time to develop a proposal, on April 22, 2014 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 Oakland⁴. 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.

³ OPC defines an "accessory structure" as a building or facility, other than a sign, which is incidental to, and customarily associated with, a specified principal facility, and which meets the applicable regulations set forth in Title 17 of the OPC .

⁴ 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.

The City Council adopted Ordinance No. 13232 C.M.S., which extended the moratorium to March 3, 2015 at their June 3, 2014 meeting.

On February 3, 2015, Staff presented a proposal to the City Council to regulate UDCBs. At that meeting, the City Council directed staff to return with an alternate proposal with stricter regulations and enforcement mechanisms (to better ensure protection of the public's health, safety, and/or welfare) and one that would ban all existing and new UDCBs. The Council also directed staff to bring to Council an item to renew the moratorium on new donation boxes within the City (the moratorium was extended to December 31, 2015 at the February 17, 2015 City Council meeting).

This report provides a revised recommended proposal from staff and also four alternative proposals for consideration by the Council.

ANALYSIS/POLICY ALTERNATIVES

Summary of Recommended Option (Option #1)

As discussed in the February 3, 2015 City Council agenda report and March 24, 2014 CED report (see **Attachments A and B**), staff proposes a new Chapter 5.17 in the OMC that would contain requirements for the placement of UDCBs. Staff recommends the regulations be placed outside the Planning Code (Title 17) to create a more appropriate regulatory structure and to allow violations to apply to the operator of a UDCB, not only to the site. The proposal also includes a recommendation requiring a 1,000 foot separation between UDCBs, which is a separation requirement that is consistent with other regulations in the OPC and other cities that have regulated UDCBs. Other location proposals include setback requirements and restricting UDCBs to most commercial zones (not including those adjacent to International Boulevard) and all industrial zones. The proposed fees (\$535.31 initial and \$245.72 annual fees) are based on a careful analysis of the actual staff time and cost requirements to complete permit tasks. By State law, these fees cannot exceed the cost of processing the permit and are generally consistent with fees charged by other jurisdictions. The February 3rd and March 24th reports (**Attachments A and B**) contain further discussion of these and other proposed requirements. Staff has also included a detailed summary of the proposed regulations, administrative procedures, fees, and code compliance procedures (**Attachment C**) including, but not limited to:

- Application Requirements;
- Implementation processes;
- Maintenance and appearance standards;
- Appeal and petition processes;
- Liability protections for the City and property owners;
- Standards for information required to be displayed on UDCBs; and
- Code enforcement procedures and citation amounts.

A map depicting the location of existing UDCBs, as well as where UDCBs are proposed to be located (**Attachment D**), has been provided for reference.

Table 1, below, summarizes the changes to the recommended proposal since the February 3, 2015 City Council meeting:

TABLE 1	February 3, 2015 Recommended Proposal	Option #1 (Currently Recommended Proposal)	Reason for Change
Inspections	Inspection only required for renewal if there is a history of UDCB related blight over the last year	Inspection upon renewal regardless of blight history	Assure that all UDCBs are appropriately maintained. Often blight in lower income areas are not reported.
Initial Fee	\$535.31	\$535.31	Not applicable
Annual Renewal Fees	\$90.53 plus a \$155.19 inspection fee, if an inspection is necessary.	\$245.72 annual renewal fee, includes inspection	Reflects requirement for yearly inspections
Occupation of Principal building	Requires UDCBs to be on the same lot as a principal building.	Requires UDCBs to be on the same lot as an <u>occupied</u> principal building	Assures there are people who can monitor the daily maintenance of the facilities
RU-5 Urban Residential Zone	<u>Permits</u> UDCBs in the Urban Residential – 5 (RU-5) Zoning designation.	<u>Prohibits</u> UDCBs in the RU-5 zone	Assures that residents are not affected by vehicle traffic and blight associated with UDCBs
International Boulevard	Allowed in the corridor zones facing International Boulevard	Not allowed in the corridor zones facing International Boulevard	Change is consistent with the plans for Transit Oriented Development along the Bus Rapid Transit Route contained in the International Boulevard TOD Plan.
AB939 Reporting	No reporting requirement	Operators required to annually report to the City the tonnage collected from their boxes.	Information that may be needed by the City to comply with AB 939, the State law mandating a decrease in the waste stream.
Only allowing operators with no outstanding violations/administrative citations to establish new UDCBs in the City	No such requirement.	Does <u>not</u> allow permits issued or renewed to operators who have open citations or unpaid fines regarding a UDCB <i>at any site in the City</i> .	Provides additional incentives for operators to maintain the UDCB facilities and timely resolve outstanding violations/administrative citations.
Private Rights of Action	Not in recommendation	Provides a mechanism to privately enforce Ordinance (with recovery of attorneys' fees), allows termination of lease agreement and protects those who take action to enforce requirements of ordinance.	Allows non-City individuals to enforce ordinance, thus increasing likelihood of compliance
Evidence of abatement	Allows <u>ten</u> days to provide evidence of compliance after the owner and operator are	Allows <u>three</u> days (72 hours) to provide evidence of compliance after the owner	Abatement would be expedited

TABLE 1	February 3, 2015 Recommended Proposal	Option #1 (Currently Recommended Proposal)	Reason for Change
	notified of complaint.	and operator are notified of complaint.	
Citations for unpermitted UDCBs	1 st day: \$300 2 nd day: \$500 3 rd and subsequent days: \$1,000 Annual Cap: \$10,000	1 st day: \$750 2 nd day: \$1,000 3 rd and subsequent days: \$1,500 Annual Cap: \$10,000/cited UDCB	Increases incentive to abate code compliance issues.
Type-face on boxes	No type size designated for required text on UDCBs	Two-inch typeface required	Assures information on UDCBs is readable
Non-renewal standards	No numerical standard for when a UDCB permit cannot be renewed	A UDCB permit cannot be renewed if it has received three complaints in the last 12 months	Provides a clear standard for when a UDCB is at an inappropriate site and should be removed
Notice of removal of UDCB	No notice requirement	Notice of removal required at UDCB site	Prevents dumping after removal of the UDCB

Policy Alternatives

The following are policy alternatives that staff is **not** recommending, but are provided at the request of the City Council at their February 3, 2015 meeting.

Option #2: Option #2 is the same as Option #1, except that it would allow UDCBs on the corridor commercial zones (CN and CC zones) on International Boulevard. This option would allow UDCBs on approximately 24 percent of International Boulevard.

Pros: May reduce the waste stream by providing more access to UDCBs than Option #1.

Cons: Trucks for picking up donations, cars for delivering donations, and blight associated with UDCBs are not consistent with the policies that encourage pedestrian orientation in the City's International Boulevard TOD Specific Plan. Accordingly, Planning Staff does **not** recommend this option.

Option #3: This proposal would not permit UDCBs in industrial zones; other requirements would be the same as the recommended Option #1.

Pros: This proposal would reduce the number of UDCBs near the lowest income areas of the City, which tend to be near industrial zones.

Cons: Staff does **not** support this option because it would prohibit UDCBs in the zones that already permit activities with the highest level of impact (industrial zones). Further, prohibiting UDCBs in industrial zones may actually push more UDCBs into commercial zones, where they are more likely to impact residential neighborhoods.

Option #4: The forth proposal would only permit UDCBs in industrial zones and without a 1,000 foot separation requirement; other requirements would be the same as the recommended Option #1.

Pros: This proposal could alleviate UDCB related blight and vehicle traffic in commercial districts and the impacts of UDCBs would be relatively minor compared to other activities in industrial areas.

Cons: This proposal may increase blight in industrial areas where there are fewer people to monitor the facilities. Further, fewer people may use the boxes because industrial zones are less visible to residents than commercial areas. This proposal may also encourage the least responsible operators, who would be less responsive to blight concerns, to illegally place UDCBs in commercial and residential neighborhoods. Accordingly, Planning Staff does **not** recommend this option.

Option #5: This option would require all existing UDCBs in Oakland to be removed after 120 days and not permit the placement of any new UDCBs.

Pros: This option would reduce blight associated with UDCBs.

Cons: This option would limit the availability of these facilities to Oakland residents, which may result in an increase in the waste stream. A ban may also encourage irresponsible operators, who would be less responsive to blight concerns, to illegally place UDCBs in the City. In addition, a complete ban will undoubtedly result in a lawsuit that the City would have to defend. Accordingly, Planning Staff does **not** recommend this option.

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, Recycle For Change (formerly Campus California), and Discovery Books. Each of these interested stakeholders were provided notice of this public hearing.

COORDINATION

The Controller's Bureau, 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.

FISCAL IMPACT

The permit fees will cost recover the 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 significantly decrease in the longer term. Staff does not anticipate that the Bureau of Building will require additional staff under the current proposal. Further, staff will recommend a new set of positions with the Mobile Food Vending proposal that will be responsible for "special activity permit" enforcement, including UDCB permits.

SUSTAINABLE OPPORTUNITIES

Economic: The new regulations 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.

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).

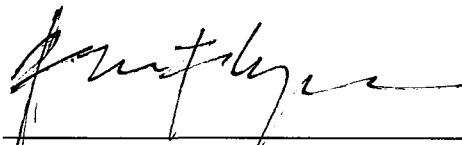
Each of these exemptions provide a separate and independent basis for a CEQA exemption and when viewed collectively provides an overall basis for a CEQA exemption.

ACTION REQUESTED OF THE CITY COUNCIL

Staff requests that the City Council adopt the subject ordinance that will create a new Chapter in Title 5 of the Oakland Municipal Code to regulate the placement, appearance, operation and maintenance of Unattended Donation/Collection Boxes UDCBs. The proposed regulations are summarized in the Analysis section of this report. **Exhibit A** of the Ordinance contains the text of the proposed regulations. **Exhibit B** of the Ordinance contains amendments to the Master Fee Schedule that will allow the City to pay for the administrative costs of implementing the ordinance without a fiscal impact on the City.

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
Strategic Planning Division

Attachments (4):

- A. February 3, 2015 City Council Agenda Report (with Attachments B and C)
- B. March 24, 2014 CED Agenda Report (without Attachments)
- C. Detailed Summary/Framework of Proposed UDCB Regulations
- D. Map of Areas Proposed to Permit UDCBs



FILED
OFFICE OF THE CITY CLERK
OAKLAND
2015 JAN 22 PM 12:02

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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ATTACHMENT A

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.

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.

- 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.

CEQA

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

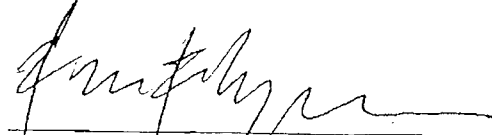
- 15061(b)(3) (the General Rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment);
- 15183 (projects consistent with general and community plans); and/or
- 15308 (actions by regulatory agencies for protection of the environment).

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).

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 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>

UDCB PERMIT DECISION APPEAL/PETITION FOR RELIEF FEE

Step Description	Mgmt Staff	Staff Planners	Admin Staff	Attorney Staff	TOTAL
	Ave # of Minutes:	Ave # of Minutes:	Ave # of Minutes:	Ave # of Minutes:	
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
<i>Total plus tech and rec (14.75% surcharge)</i>	<i>\$ 258.66</i>	<i>\$ 452.63</i>	<i>\$ 19.78</i>	<i>\$ 215.16</i>	<i>\$ 946.23</i>

UCDB SITE INSPECTION FEE

Step Description	Mgmt Staff	Staff Planners	Admin Staff	Attorney Staff	TOTAL
	Ave # of Minutes:	Ave # of Minutes:	Ave # of Minutes:	Ave # of Minutes:	
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
<i>Total plus tech and rec (14.75% surcharge)</i>	<i>NA</i>	<i>\$ 155.19</i>	<i>NA</i>	<i>NA</i>	<i>\$ 155.19</i>

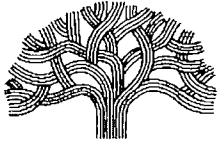
ATTACHMENT C

**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



CITY OF OAKLAND

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OFFICE OF THE CITY CLERK
OAKLAND

2014 MAR 13 PM 12: 07

AGENDA REPORT

TO: FRED BLACKWELL
CITY ADMINISTRATOR

FROM: Rachel Flynn

SUBJECT: Unattended Donation Boxes

DATE: February 25, 2014

City Administrator
Approval

Date

3/12/14

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

Staff recommends that the City Council receive:

A Report and Request for Direction on the Process of Developing Regulations on Unattended Donation Boxes (UDBs) in the City of Oakland

In particular, staff requests that the Council provide input on the following issues:

1. Location of UDBs;
2. Standards to control nuisance activities;
3. Permitting process; and
4. Cost structure of permits.

The following are staff's recommendations regarding the regulation of UDBs:

- Allow UDBs to be located in the City's major corridors and other commercial and industrial zones and be required to be at least 1,500 feet apart from each other.
- Amend Title 5 of the Municipal Code to include standards for UDB maintenance.
- Amend Title 5 of the Municipal Code to require 1) a design review process for installation of UDBs, 2) inspections of UDBs, and 3) an annual renewal of the UDB permit.
- Adopt a fee structure that is fully cost recovering to the City.

OUTCOME

The outcome of this action will be to give staff direction regarding whether to bring the item for input and direction in front of the full Council.

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ATTACHMENT B

BACKGROUND/LEGISLATIVE HISTORY

UDBs are unmanned drop-off boxes that are typically up to seven feet in width and height, that accept textile, book and other donations to be used by the operator for distribution, resale, or recycling. As discussed at the March 27, 2012 and May 8, 2012 Community and Economic Development Committee (CEDC) meetings (see *Attachments A* and *B* for the agenda reports), the number of UDBs has increased significantly in the past few years. UDBs are currently unregulated by the City of Oakland. They have been placed at schools, 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 re-sell donations for profit. Because the boxes are unmonitored, they can become a public nuisance as they attract graffiti, scavenging, and illegal dumping in the vicinity. Sometimes, they are placed in required parking spaces or vehicle maneuvering areas which can affect vehicle and pedestrian circulation and safety.

Committee members and community members provided the following input regarding UDBs at previous hearings related to this matter:

- UDBs support zero-waste policies:
 - UDBs can provide a way for Oakland residents to recycle goods rather than place them in the waste stream.
 - The convenient location of UDBs encourages more people to recycle.
 - UDBs have the potential to be a nuisance because too many UDBs can be unattractive and attract illegal dumping.
- Interest in supporting local non-profits:
 - Can the City control whether UDBs are operated by local and nonprofit businesses or not?
 - Do UDBs support the local community and/or economy?
- Considerations for regulating:
 - Annual fee with required renewal (allows for revocation, if appropriate).
 - Require property owner and/or operator to take responsibility for compliance with any regulations.
 - Regulate location and intensity of UDBs.
 - Limit the number of UDBs per operator.
 - Place a citywide limit on the number of UDB permits.
 - Ban UDBs because the City is understaffed and not be able to effectively enforce meaningful regulations.

ANALYSIS

Goals

Input from the public, the CED Committee, and staff indicate that there is support to allow UDBs to support the City's zero-waste policy. The following primary goals for regulating UDBs are the following:

1. Locate UDBs in areas of the City that are both convenient for residents and appropriate in terms of their possible impacts in residential neighborhoods;
2. Provide standards to control nuisance activities;
3. Create an effective and efficient permitting process; and
4. Provide a permitting cost structure that is both within the City's budgetary constraints and is not excessively burdensome to UDB operators.

The following are staff recommendations regarding each of these issues.

Location of UDBs

There is both an interest in locating UDBs where they are convenient to Oakland residents to support zero-waste initiatives, and a competing interest in controlling the location and distance between UDBs to reduce potential blight and nuisance.

The following table provides three options for the location of UDBs:

UDB LOCATION OPTIONS			
Option	Pros	Cons	Staff Comment
1) Urban Residential zones on the major corridors such as International Boulevard and San Pablo Avenue and commercial and industrial districts anywhere in the City.	Convenience for residents would result in more donations and place the UDBs outside low density areas	UDBs may have more conflicts in residential and commercial districts	This is the more convenient approach for users and would result in a higher yield for operators, but also would result in higher potential for blight and enforcement activities if not appropriately controlled (Recommended) .
2) Only accessory to satellite recycling centers (similar use)	Limits and concentrates impacts away from residential and commercial areas	Less accessible to primary users (residents) than if located in residential and commercial areas	This consolidates UDBs with a use that has similar types of impacts and is still moderately convenient to users (satellite recycling centers are located at many large commercial centers in Oakland)

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UDB LOCATION OPTIONS			
3) Ban UDBs throughout Oakland	No nuisance or blight issues	Elimination of a convenient tool to support zero-waste initiatives	Straightforward to enforce and regulate.

Staff recommends the **first** approach: allow UDBs to be located in high-density residential zones on the major corridors and in commercial and industrial zoning districts throughout Oakland. These locations would support the City's zero waste policies by being convenient to Oakland residents and place the UDBs where commercial and other higher intensity activities already exist.

Standards to control nuisance activities

Based on community and decision-maker input and on staff analysis, staff recommends the following key criteria and standards for UDBs:

- A minimum 1,500-foot distance between bins. This is approximately three to four blocks.
- Site Plan:
 - Bins must be outside of setbacks and at least five feet away from public the right-of-way and property lines.
 - Bins cannot block required parking or driveways, pedestrian access, or emergency vehicle ingress and egress.
 - The donation area must be visible from the street and fully lit so as not to attract crime.
- The following information must be on each UDB
 - Ownership/Operator Identification
 - Permit Information and UDB identification number
 - Statement regarding IRS status
 - Statement regarding tax deductible status of donations to UDB
 - Contact Information for City code enforcement division
- Site Maintenance
 - UDB maintenance plan must be submitted that ensure cleanliness and avoid blight and nuisance
 - The ground underneath the bins must paved with high quality cement
 - Bins must be maintained in good working order, including removal of graffiti and repairs of signage, damage, peeling paint, rust, and collection operating mechanism.
 - Bins must be serviced not less than weekly on weekdays between 7:00 a.m. and 7:00 p.m.

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- Bins must not discharge overflow onto the surrounding site, sidewalk, gutter or storm water inlets.
- The facility operator must maintain a 24-hour telephone service with recording capability for the public to register nuisance activity complaints.
- Other
 - The donation bin cannot be the primary use on the lot.
 - The bins cannot be used for the collection of recyclables, solid waste, or any other hazardous materials.

Staff believes the nuisances created by donation bins will be minimized if these standards are met. The 1,500-foot separation would allow a donation box about every three to four blocks on the City's main corridors such as International Boulevard and San Pablo Avenue. This distance would provide a convenient number of bins without creating clusters that tend to encourage nuisances. The Council could, of course, increase this distance to further limit the number of bins.

Permitting Process

Staff recommends that compliance with new regulations, including application processing and site inspections, be overseen by the Zoning Division because of the extensive site planning requirements. Any necessary code enforcement (based on inspections or complaints and beyond the initial permit issuance and/or annual renewal, as applicable) would be provided by the Building Services Division.

Staff proposes that a special permit from the Planning Department be required to operate a UDB. The application for the permit would require a site plan, maintenance plan, a picture of the proposed bin, and, for new UDBs, a map that indicates no other bins within 1,500 feet of the site. The granting of the permit would be contingent on passing a final inspection. This permit could be renewed annually after a trip to the Zoning Counter with a photograph of the facility, and a site plan showing any revisions to the site. Planning staff may perform a site inspection as part of the renewal process if there is evidence that the UDB does not meet the standards in the Municipal Code or if there has been a history of complaints on any particular site.

Staff proposes to place the regulations in Title 5: Business Taxes, Permits, and Regulations of the Municipal Code, and not the Planning Code, to allow the annual renewal process and to avoid land use vesting. Permits in a planning code tend to "run with the land," meaning that a permit generally cannot expire once it has been granted and acted upon, although it can be revoked for failure to comply with conditions of approval, applicable rules and regulations, and/or is operating as a public nuisance.

Staffing and Costs

Any proposed regulations would require staff resources for application processing and enforcement. Several cost alternatives and service levels are analyzed below. In 2012, the CED Committee generally believed that any regulation should provide cost recovery fees to the extent possible. This is staff's recommended approach. Note that the fees charged cannot exceed the reasonable cost of providing the service (e.g., processing the applications and inspections).

Staff requests input from the CED Committee regarding its preferred alternative.

- *Cost-recovery Enforcement Option (Recommended)*: The City of Oakland could choose to apply the entire anticipated costs of regulation to the UDB applicants. At a recommended \$649.49 per UDB, this might be a deterrent to the UDB activity in Oakland. The fee is based on the \$450.97 fee for Small Project Design Review approval (the process currently used to approve modifications to commercial buildings) plus the cost of one zoning inspection. This Small Project Design Review fee is recommended because staff estimates that the amount of work required for a Small Project Design Review approval will be similar to that of a UDB.

Currently, UDB operators are not paying any fees in Oakland. There are approximately 80 UDBs located throughout Oakland, operated primarily by two major entities. If an operator has 40 UDBs, cost-recovering permit fees would cost more than \$25,000 in the first year of regulation. This would be a significant new cost to operators. This approach could potentially reduce the number of UDBs located in Oakland as well as divert material from the waste stream, while ensuring code compliance (and thereby reducing code enforcement costs that are currently not cost-covered in Oakland).

- *Semi-cost Recovery Option*: The Semi-cost Recovery Option would charge the fee for a Design Review Exemption Permit (\$266.22) instead of the Small Project Design Review fee. Staff estimates that this option would not fully cover the cost of staff's analysis and report required for a UDB approval. The full fee would be \$464.74 to cover the cost of an inspection by the Zoning Division.
- *Non-cost Recovery Enforcement Option*: The City of Oakland could choose to subsidize the activity by covering a larger portion of the costs of regulation. Increased regulations combined with neutral fees to operators would potentially result in a reduction in blight and nuisance while continuing to divert material from the waste stream. The City of Oakland would be committing enforcement to the activity in support of compliance with adopted Zero-Waste policies.
- *Pilot Area or Program*: The City of Oakland could take any of the approaches listed above and limit the regulations to a pilot area or to a certain number of UDBs. This would allow staff and the community to test and evaluate the efficacy of regulating UDBs.

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- *Ban Use/No Action Options:* Banning UDBs or taking no action at this time would only involve code enforcement costs, currently not cost-covering in Oakland. This would maintain status quo. The proposed regulations do not support this option.

The following table summarizes staff's analysis of each of these options:

Summary of UDB Enforcement Options			
Option	Pros	Cons	Staff comment
Cost-recovery enforcement	<ul style="list-style-type: none"> • Cost-recovering for City; • Effectively reduces blight, nuisance and complaints by providing adequate review and inspections 	<ul style="list-style-type: none"> • Fees may deter a use that supports citywide Zero-Waste policies 	<p><u>Year 1</u> \$450.97 design review fee + \$198.52/ inspection = \$649.49</p> <p><u>Subsequent years</u> \$57.38 design review fee + \$193.76/inspection (if necessary) = \$255.90</p> <p><i>Code enforcement (if needed) not cost-covered</i></p>
Semi-cost recovery enforcement	<ul style="list-style-type: none"> • Reduces blight by enacting regulations • Some revenue from applicant to cover costs • Reduced commitment by City staff • Cost-recovering after first year 	<ul style="list-style-type: none"> • Less reliable compliance due to prohibitive fees • Less ability for City to control nuisance and blight with fewer inspections 	<p><u>Year 1</u> \$266.22 design review fee + \$198.52/ inspection = \$464.74</p> <p><u>Subsequent years</u> \$57.38 design review fee + \$198.52/inspection (if necessary) = \$255.90</p> <p><i>Code enforcement (if needed) not cost-covered</i></p>
Non-cost recovery enforcement	<ul style="list-style-type: none"> • Effectively reduces blight, nuisance and complaints (low fees encourage UDBs to comply with permitting process) • Provides adequate City oversight to reduce blight/nuisance • Less reliance on code compliance • Cost-recovering after first year 	<ul style="list-style-type: none"> • Requires City significant subsidy 	<ul style="list-style-type: none"> • \$200 per year fee (based on other municipalities' fees) <p><i>Code enforcement (if needed) not cost-covered</i></p>

Summary of UDB Enforcement Options			
Option	Pros	Cons	Staff comment
Pilot Program	<ul style="list-style-type: none"> Allows staff and community to evaluate success of regulations Council has flexibility to choose sunseting the pilot program and/or adopting permanent regulations Staff time and costs are limited 	<ul style="list-style-type: none"> Requires City Council action at end of term (otherwise, maintains existing UDBs without regulations) Reduces convenience of UDB locations throughout a large area of Oakland 	<ul style="list-style-type: none"> \$649.49 one-time registration fee includes admin costs and one inspection; Relies on site owner to ensure compliance. <p><i>Code enforcement (if needed) not cost-covered.</i></p>
Ban use	<ul style="list-style-type: none"> Clear and simple; no cost to City 	<ul style="list-style-type: none"> Potentially contradicts Zero-Waste policies Potentially increases illegal dumping Eliminating existing UDBs 	<ul style="list-style-type: none"> Can reconsider regulations when City has available funds to implement regulations Code enforcement not cost-covered Berkeley banned UDBs
No action	<ul style="list-style-type: none"> Maintains existing UDBs Potentially supports Zero-Waste policies 	<ul style="list-style-type: none"> Potentially contributes to blight, nuisance and complaints Complaint-based inspections are not cost-recovering for City 	<ul style="list-style-type: none"> Status quo Code enforcement not cost-covered There could be an increase in UDBs under this approach, especially as nearby jurisdictions restrict UDBs

PUBLIC OUTREACH/INTEREST

This item did not require any additional public outreach other than the required posting on the City’s website. Several meetings, email exchanges, and phone conversations have occurred with various staff members (Council staff and Planning staff) and interested stakeholders on this issued (including, but not limited to, representatives from Goodwill, Salvation Army, St. Vincent DePaul, USAgain, Campus California). Each of these interested stakeholders will be noticed of this hearing.

COORDINATION

Council staff, the City Attorney’s Office, the Building Services Division, and the City Budget Office have been consulted and have reviewed or contributed to this report.

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 CED Committee
 March 25, 2014

COST SUMMARY/IMPLICATIONS

The proposed regulations would only be effective if adequate enforcement is provided. Adequate regulation of unattended donation boxes would include permit application review and issuance by the Zoning Division and one or two inspections (as necessary). As shown above, ensuring compliance with any adopted UDB regulations requires staff time and resources and would involve costs per UDB of up to \$644.73 for the first year under a no-cost recovery enforcement option and assuming the need for enforcement activities. Costs to the City could be less under a cost-recovery approach, as shown above.

SUSTAINABLE OPPORTUNITIES

Economic: The regulation of UDBs could potentially result in both positive and negative effects to the City of Oakland. On the positive side, the regulation of UDBs would result in fewer complaint-based, unfunded inspections by City staff, and would potentially increase donations to locally-serving non-profit organizations, which would re-circulate for sale in their thrift store locations in Oakland. However, cost-covering regulation of the use would effectively make the use cost-prohibitive, and subsidizing regulation of the use would result in costs to the City (see discussion above).

Environmental: The imposition of regulations on this previously unregulated use would reduce blight. Blight often associated with these boxes includes graffiti and debris generated from overflowing boxes, and scavenging and the attraction of illegal dumping nearby. In addition, allowing the use diverts textiles from the waste stream, supporting Zero-Waste policies adopted by the City Council in December 2006.

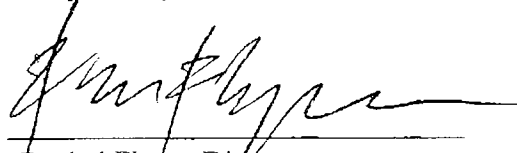
Social Equity: The regulations of these boxes could possibly encourage increased access to donated goods for locally serving non-profit organizations that provide affordable goods to Oakland residents.

CEQA

The adoption of regulations for unattended donation boxes is exempt from CEQA review pursuant to CEQA Guidelines Section 15061.b.3 (General Rule Exemption) and 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning).

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

Respectfully submitted,



Rachel Flynn, Director
Department of Planning and Building

Reviewed by:
Scott Miller, Zoning Manager

Prepared by:
Neil Gray, Planner III

Attachments:

- A. March 27, 2012 CED Committee Agenda Report
- B. May 8, 2012 CED Committee Agenda Report

Item: _____
CED Committee
March 25, 2014

ATTACHMENT C

Detailed Summary/Framework of Proposed UDCB Regulations

The following is the detailed summary/framework for staff's recommended proposal to regulate UDCBs:

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. Each UDCB requires an annually renewable permit except: 1) UDCBs inside a principal building are allowed without a permit; and 2) UDCBs that are an accessory use to a principal activity on a property owned or leased by the bin operator are also allowed without a permit, but must meet each of the requirements in the Standards section and items 1 – 3 of the Location Requirements section, below.
3. All existing UDCBs that are not in a permitted location must be removed within 120 days of ordinance adoption.
4. 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.
5. 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.
6. Applications for new UDCBs in permitted locations shall only be submitted 150 days after the date of the ordinance adoption.
7. Provides a mechanism to privately enforce Ordinance (with recovery of attorneys' fees), allows termination of lease agreement and protects those who take action to enforce requirements of ordinance.

Location requirements

1. A minimum of 1,000 feet is required between UDCBs, except for the UDCBs described in General Regulations and Requirements (2), above.
2. UDCBs must be on the same lot as an occupied residential facility or active business not including Auto Fee Parking (i.e., a donation/collection bin cannot be the only use on the lot or on a surface parking lot).
3. UDCBs are prohibited in the public right of way.
4. UDCBs are prohibited on parcels adjacent to International Boulevard because the City's International Boulevard Transit Oriented Development Plan (March, 2011) encourages a pedestrian orientation on the Bus Rapid Transit route. Placement of UDCBs tend to reduce a pedestrian orientation because they are placed in parking lots in front of buildings, require trucks to service the facilities, and generally require cars to take items to the boxes.
5. Otherwise, UDCBs would be allowed in the following zones, after issuance of a permit. 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:
 - Commercial zones on the major corridors and near freeways (not including CN-1 through CN-3, because they are the City's most pedestrian oriented zones): 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.

Detailed Summary/Framework of Proposed UDCB Regulations

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- 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. UDCBs must satisfy setbacks and at be 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 obstruct:
 - Parking or driveways;
 - Pedestrian access;
 - Emergency vehicle access;
 - Required ingress and egress;
 - Handicapped accessibility;
 - Easements; or
 - Trash enclosures.
 - c. UDCBs cannot impede the functioning of exhaust, ventilation, and fire extinguishing systems and components.
 - d. UDCBs cannot be located in a landscaped area
 - e. The donation/collection 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.
 - f. 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.
3. The following information clearly displayed on at least two-inch type must be on each UDCB:
 - a) The name, address, 24-hour telephone number, and, if available, the Internet Web address, and email address of the owner and operator of the UDCB and the parcel owner/owner agent,
 - b) Address and parcel number of the site,
 - c) Instructions on the process to register a complaint regarding the UDCB to the City Code Enforcement Division,
 - d) The type of material that may be deposited,
 - e) A notice stating that no material shall be left outside the UDCB,
 - f) The pickup schedule for the UDCB,
 - g) A City approved identification system that identifies the box as being properly permitted by the City,
 - h) If the UDCB is owned by a nonprofit organization:
 - A statement describing the charitable cause that will benefit from the donations,
 - The Federal Tax identification number of the nonprofit organization operating the UDCB, and

Detailed Summary/Framework of Proposed UDCB Regulations

September 14, 2015

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- The statement "This collection box is owned and operated by a nonprofit organization."
 - i) If the UDCB is owned by a for-profit entity:
 - j) "This donation is not tax deductible." and
 - k) "This collection box is owned and operated by a for-profit organization."
- 4. A sign must be permanently displayed within 20 feet of the UDCB stating that no material shall be left outside the UDCB.
- 5. Site Maintenance
 - a. No blighted conditions within 20 feet of the box including, but not limited to: donation/collection overflow, graffiti, litter, debris, dumped material, etc.
 - b. Bins must be maintained in good working order, including removal of graffiti and repairs of signage and notifications, 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.
- 6. 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.
- 7. UDCB operators are required to report annually the tonnage collected from their boxes, including a breakdown by material type, whether the materials were reused or recycled, and any other information needed by the City to comply with AB 939. Failure to report are grounds for revocation of the operator's UDCB Permit.

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:
 - Initial permit would cost \$535.31¹, which includes the cost of one site visit.
 - The renewal will cost a total of \$245.71¹, which includes the cost of one site visit.
4. Renewals will not be approved if a site has a history of being an attractive nuisance (three verified blight complaints in the previous twelve months), even if incidents of blight were abated.
5. Operators who have unpermitted UDCBs, or open citations or unpaid fines regarding a UDCB at any site in the City are not eligible to apply for a permit or renewal for any UDCB.

¹ These amounts are larger than shown in the fee schedule in Exhibit B of the Ordinance because they include a required 14.75% surcharge for technology enhancement and records management.

Detailed Summary/Framework of Proposed UDCB Regulations

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6. 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.
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 \$946.23¹ and must be decided within 60 days from the date of the appeal filing.
8. Any person seeking placement of a UDCB, 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 \$946.23² 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 petition.
9. Items required in the initial application include, but not limited to:
 - 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, under penalty of perjury, 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 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 nonprofit operators, evidence that the nonprofit has been registered as a non-profit organization with the City of Oakland, is recognized by the Internal Revenue Service as such, and complies with California Welfare and Institutions Code section 148 et. seq. as it may be amended;
 - H. For for-profit operators, proof of an active business tax certificate 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;

¹ These amounts are larger than shown in the fee schedule in Exhibit B of the Ordinance because they include a required 14.75% surcharge for technology enhancement and records management.

Detailed Summary/Framework of Proposed UDCB Regulations

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- M. Elevations showing the appearance, materials, and dimensions of the UDCB, including the information required in this Chapter to be placed on the UDCB and notice sign;
 - 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 UDB operation, placement, and/or maintenance that the Director requires to evaluate the proposal consistent with the requirements of this Chapter.
10. The City shall not issue a UDCB permit or renewal unless each of the following are true:
- a. The applicant has submitted a complete and accurate application accompanied by the applicable fee;
 - b. All existing unpermitted UDCBs that are managed by the proposed operator have been removed;
 - c. 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;
 - d. The proposal is consistent with all the requirements of this Chapter.
 - e. The proposed operator does not have any open citations or unpaid fines regarding a UDCB at any site in the City.
 - f. For renewals, the site does not have a history of being an attractive nuisance (three verified blight complaints in the previous 12 months), even if incidents of blight were abated.
11. 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 UCDB 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

Detailed Summary/Framework of Proposed UDCB Regulations

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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.
12. 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 the Building Division
2. The property owner and operator are jointly and severally liable and responsible for all fees, administrative citations, and compliance with the regulations.
3. Blight complaint regarding a permitted UDCB
 - a. Complaint lodged to code enforcement.
 - b. Notice emailed to the operator and property owner/agent.
 - c. The property owner/agent or operator must show evidence that the UDCB is compliant with the regulations within 72 hours 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 abated or verified compliance is not sent, then the following administrative citations are assessed until the complaint is abated. Each day that a violation is not abated constitutes a new and separate offense.
 - Not more than \$150 for the 1st day after the three day abatement period;
 - Not more than \$250 for the 2nd day after the three day abatement period; and
 - 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 for each UDCB.
 - 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.
4. Complaint regarding an unpermitted UDCB:
 - a. Complaint lodged through existing code enforcement complaint process.
 - b. If within 1,000 feet of an existing permitted UDCB, then the UDCB (and any associated blight) must be removed within seventy-two hours days after notification. Cleanup can be verified by photograph and emailed to the Building Division. Code enforcement will reply to the email with confirmation of compliance.
 - c. If not within 1,000 feet of an existing permitted UDCB, then any associated blight nuisance must be removed and a complete application for a permit must be submitted or the UDCB must be removed within seventy-two hours of the notice. In this case, the applicant must diligently prosecute for completion of permit. Cleanup would be verified through a \$2,428 re-inspection (\$2,428 is the standard Code Enforcement re-inspection fee).

Detailed Summary/Framework of Proposed UDCB Regulations

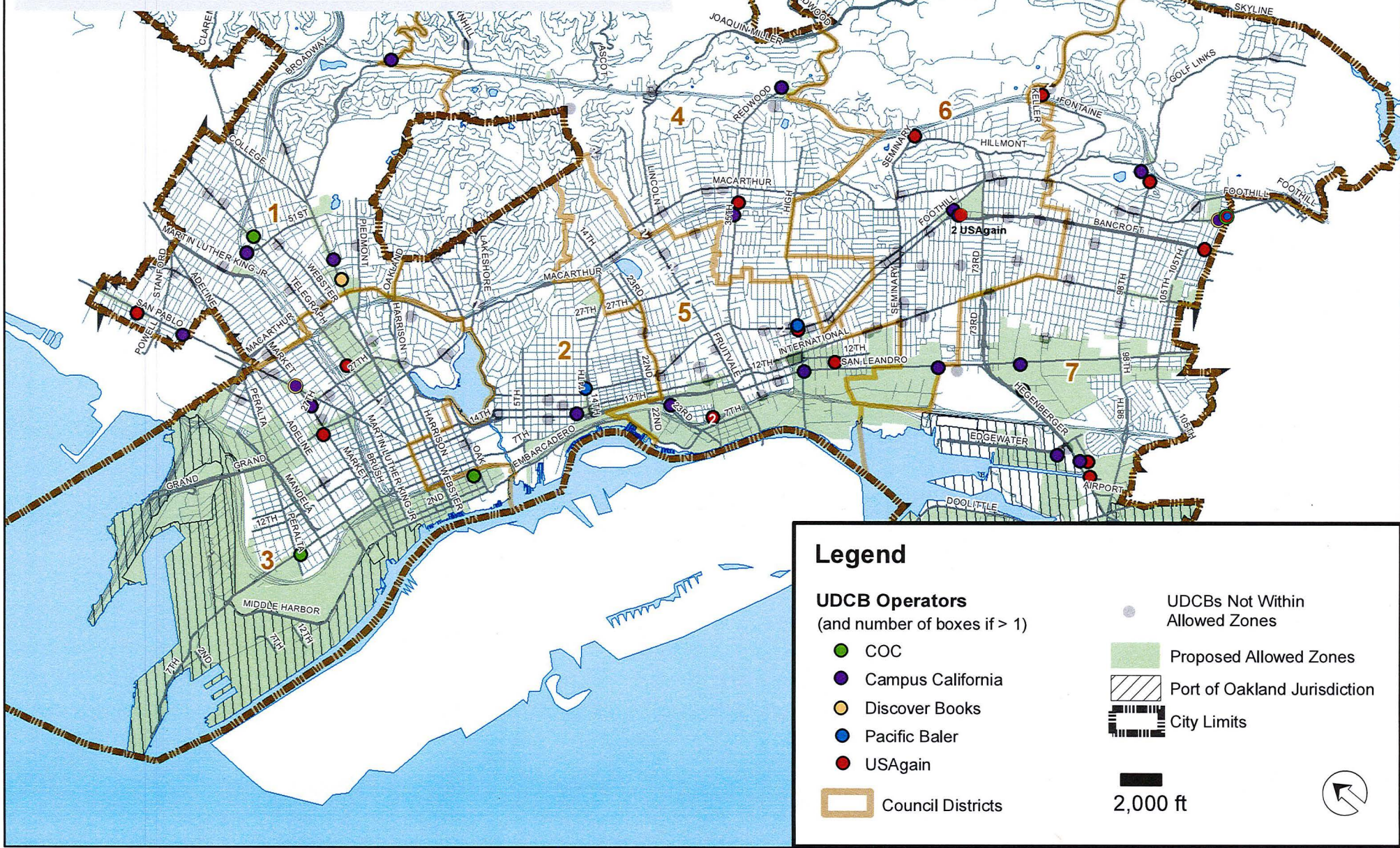
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- e. If the violation is not abated or verified compliance is not sent, then the following fines are assessed until it is abated. Each day that a violation is not abated constitutes a new and separate offense.
 - Not more than \$750 for the 1st day after the 72-hour abatement period;
 - Not more than \$1,000 for the 2nd day after the three 72-hour abatement period; and
 - Not more than \$1,500 for the 3rd and each subsequent day. Total administrative citations shall not result in more than \$10,000 in one year.
5. The daily administrative citations described above shall continue until either the violation is abated or the UDCB is removed. Removal of the UDCB shall be at the expense of the parcel owner and/or operator.
6. Noticing requirement for removal of any UDCB
 - a. Any UDCB scheduled to be removed by either the City or the operator shall clearly display a notice on the UDCB with at least four-inch type stating when the UDCB will be removed.
 - b. For UDCBs required to be removed due to an abatement order, the notice must be posted immediately after the City notifies the operator and/or parcel owner that the facility is required to be removed. The notice shall be posted at the nearest feasible location from the UDCB.
 - c. For permitted UDCBs that are voluntarily removed by the owner or operator, the notice shall be posted at least fourteen calendar (14) days prior to the removal of the facility.
 - d. For unpermitted UDCBs that existed prior to the adoption of Ordinance No. 13225 C.M.S. on April 22, 2014 and are in a prohibited location (i.e. not in an allowed zone or within 1,000 feet of a permitted UDCB) the notice shall be posted at least fourteen (14) days prior to the removal of the facility. The notice shall be posted at the nearest feasible location from the UDCB.
7. 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.
8. 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.

EXISTING UDCBs & PROPOSED PERMITTED ZONES (NOT INCLUDING BRT ROUTE) OPTION 1

Total UDCBs	Existing in Proposed Zones	Existing in Proposed Zones (1,000 ft separation)	Potential Additional Sites in Proposed Zones (1,000 ft separation)	Existing & Potential in Proposed Zones (1,000 ft separation)
152	47	30	107	137



Option 1: Recommended Proposal

FILED
OFFICE OF THE CITY CLERK
OAKLAND

APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCILMEMBER

2015 SEP 25 AM 9:05

Mark P. Wald

City Attorney

OAKLAND CITY COUNCIL

ORDINANCE No. _____ C.M.S.

AN ORDINANCE 1) ESTABLISHING OAKLAND MUNICIPAL CODE (OMC) CHAPTER 5.19 "UNATTENDED DONATION/COLLECTION BOXES (UDCBs)" REGULATING UDCBs; 2) AMENDING THE MASTER FEE SCHEDULE (ORDINANCE NO. 13171 C.M.S., AS AMENDED) TO ESTABLISH FEES RELATED TO APPLICATIONS, INSPECTION AND APPEALS FOR UDCBs; AND 3) AMENDING OMC SECTIONS 1.12.020A AND 1.12.060 AND OTHER OMC PROVISIONS TO ESTABLISH ADMINISTRATIVE CITATIONS AND MAKE OTHER CONFORMING CHANGES RELATING TO UDCBs.

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 has 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 and the regulations themselves; 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 and the Council directed Planning Staff to further explore its regulatory options and report back at a later date; and

WHEREAS, at its February 17, 2015 meeting, the City Council further extended the moratorium to December 30, 2015 (via Ordinance No. 13295 C.M.S.) to enable Planning Staff the time to conduct the necessary research and stakeholder/interested party outreach; and

WHEREAS, on October 6, 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, operation 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/or 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; (b) this Ordinance is **not** intended to, nor does it operate to, discriminate against any particular viewpoint, content, and/or UDCB operators/operations; (c) this Ordinance is the least restrictive means to regulate UDCBs; (d) this Ordinance is intended to, and does, function without regard to a UDCB, or UDCB Operator's charitable purpose, or lack thereof; and (e) UDCBs are deserving of regulatory treatment because UDCBs are not currently regulated in the Municipal Code as they are not considered accessory structures, they can attract dumping, graffiti, and/or blight and existing regulations for other box/container-type facilities are either not appropriate or insufficient for UDCBs.

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 11. 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, as well as develop any implementing regulations, forms and/or other materials that may be necessary and which are consistent with the Ordinance and its purposes and intent.

Section 12. 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.

Section 13. If a court of competent jurisdiction issues a temporary restraining order and/or a

preliminary injunction prohibiting enforcement of this Ordinance, the moratorium extended by Ordinance No. 13295 C.M.S. is hereby automatically readopted and further extended until April 22, 2016, or until such time the court otherwise permits.

Section 14. This Ordinance is enacted pursuant to the City of Oakland’s general police powers, Sections 106 of the Charter of the City of Oakland and Article XI of the California Constitution.

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

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 – UDCB permit Expiration and Renewal.
- 5.19.090 – Requirements for the approval and renewal of a UDCB permit.
- 5.19.100 – Time Limit for Final Decision.
- 5.19.110 – Appeal and Petition Processes.

Article III – Standards and Requirements

- 5.19.120 – Location.
- 5.19.130 – Physical Attributes.
- 5.19.140 – Maintenance.
- 5.19.150 – Liability Insurance.
- 5.19.160 – AB 939 Reporting.

Article IV – Code Enforcement

- 5.19.170 – Compliance Process.
- 5.19.180 Private Rights of Action.

Article V – Noticing Procedure for Removal

- 5.17.190 Notice Required for Removal.

Article I – General Provisions

- 5.19.010 – Purpose.**

The purpose of these regulations is to promote the health, safety, and/or welfare of the public by providing minimum blight-related performance standards for the operation of Unattended Donation/Collection 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 residents and/or users are fully informed of those who operate the UDCBs so that they can be contacted if there are any blight-related questions or concerns.

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, a continuing blight and a declared public nuisance and shall be abated by the Director in accordance with the provisions of this Chapter. Any person in violation will be subject to administrative penalties, citations, civil action and/or other legal remedies.

15.19.040 – Responsibility.

The parcel owner and the UDCB operator (operator) have joint and several liability for blight-related conditions and/or compliance with this Ordinance, including fees, administrative citations, civil actions, and/or legal remedies 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 express 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” or “Property 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/collections of salvageable personal property.

"UDCB Permit" means the City of Oakland's annually renewable 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 an annually renewable 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 (H), 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 requirements contained in 5.19.120(A), (B) and/or (C).
- 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.

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, under penalty of perjury, 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 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 nonprofit operators, evidence that the nonprofit has been registered as a non-profit organization with the City of Oakland, is recognized by the Internal Revenue Service as such, and complies with California Welfare and Institutions Code section 148 et. seq. as it may be amended;
- H. For for-profit operators, proof of an active business tax certificate 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 information required in this Chapter to be placed on the UDCB and notice sign;
- 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 UDB operation, placement, and/or maintenance that the Director requires to evaluate the proposal consistent with the requirements of this Chapter.

5.19.080 – 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. The UDCB permit renewal 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:
 - 1. 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;
 - 2. Photographs of the existing UDCB;
 - 3. A non-refundable application fee in an amount set by the Master Fee Schedule;
 - 4. A signed authorization from the parcel owner/agent to allow placement of the UDCB;
 - 5. 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 blight relating to the UDCB;
 - 6. Proof of general liability insurance of at least \$1,000,000 (one million dollars) covering the applicant's UDCB and naming the City of Oakland as an additional insured;

7. For nonprofit operators, evidence that the nonprofit has been registered as a non-profit organization with the City of Oakland, is recognized by the Internal Revenue Service as such, and complies with California Welfare and Institutions Code section 148 et. seq. as it may be amended;
 8. For for-profit operators, proof of an active business tax certificate with the City of Oakland;
 9. Name and telephone number of any entity that may share or profit from items collected via the UDCB;
 10. The name, address, email, website (if available) and telephone number of the UDCB operator and parcel owner, including 24-hour contact information; and
 11. Any other reasonable information regarding time, place, and manner of UDB operation, placement, and/or maintenance that the Director requires to evaluate the proposal consistent with the requirements of this Chapter.
- C. The Director shall either approve or deny the renewal of a UDCB permit within thirty (30) 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 5.19.090 or that would justify the revocation of the UDCB permit as specified in Section 5.19.170(G).
- E. See Section 5.19.110 for the appeal and petition processes for UDCB permit decisions, including decisions regarding renewal.

5.19.090 – Requirements for the approval and renewal of a UDCB permit.

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

- A. The applicant has submitted a complete and accurate application accompanied by the applicable fee;
- B. There are no open citations, unpaid fines or unresolved violations or complaints related to any UDCB managed by the proposed operator;
- C. All existing unpermitted UDCBs that are managed by the proposed operator have been removed;
- E. 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
- F. The proposal is consistent with all the requirements of this Chapter.
- G. For renewals, the site does not have a history of being an attractive nuisance even if incidents of blight were abated. For the purpose of this subsection, “history of attractive nuisance” means three (3) verified blight complaints in the previous twelve (12) months.

5.19.100 – 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.

5.19.110 – 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 application must be complete and 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.

If a hearing is held on the appeal, then during such hearing, the appellant will be limited to issues and/or evidence previously raised in the appeal itself. The appellant shall not be permitted to present any other issues and/or oral, written and/or documentary evidence during the appeal process.

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.

If a hearing is held on the Petition, then during such hearing, the Petitioner will be limited to issues and/or evidence previously raised in the Petition itself. The Petitioner shall not be permitted to present any other issues and/or oral, written and/or documentary evidence during the Petition process.

Within 60 (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.

Article III – Standards and Requirements

5.19.120 – Location.

- A. No UDCB shall be located within one thousand (1,000) feet from any other UDCB, except those described in Subsection 5.19.060 (B).
- B. With the exception of areas described in (C), below, 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:
 - 1. CC-1 and CC-2;
 - 2. CN-4;
 - 3. CR-1;
 - 4. D-BV-2 and D-BV-3;
 - 5. C-40 and C-45;
 - 6. S-1 and S-2;
 - 7. D-KP-1, D-KP-2, and D-KP-3;
 - 8. D-CE-1, D-CE-2, D-CE-4, D-CE-5, and D-CE-6;
 - 9. D-BV-1, D-BV-3, and D-BV-4; or
 - 10. All Industrial Zones.
- C. No UDCBs are permitted within three hundred (300) feet of International Boulevard.
- D. A UDCB is only permitted on a lot that also contains a principal building that contains at least one operating business, occupied residential unit, or other ongoing activity, not including a surface Auto Fee Parking Commercial Activity as defined in Section 17.10 of the Oakland Municipal Code.
- E. UDCBs are prohibited within any of the following locations:
 - 1. Fifteen (15) 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. The public right of way and twenty (20) feet of the public right of way;
 - 3. Five (5) feet from any property line; or
 - 4. Landscaping.
- F. UDCBs cannot block or impede access to:
 - 1. Required parking or driveways;
 - 2. Pedestrian routes;
 - 3. Emergency vehicle routes;
 - 4. Building ingress and egress;
 - 5. Required handicapped accessibility routes;
 - 6. Required easements; or
 - 7. Trash enclosure areas or access to trash bins/trash enclosures.
- G. UDCBs cannot impede the functioning of exhaust, ventilation, or fire extinguishing systems.
- H. 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 ninety (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.
- I. The donation/collection 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. Be more than eighty-two (82) inches high, sixty (60) inches wide and fifty (50) inches deep;
 5. Not be electrically or hydraulically powered or otherwise mechanized;
 6. Not be a fixture of the site or considered an improvement to real property; and
 7. Have the following information conspicuously displayed on at least two-inch type visible from the front on the UDCB:
 - i. The name, address, 24-hour telephone number, and, if available, the Internet Web address, and email address of the owner and operator of the UDCB and the parcel owner/owner agent,
 - ii. Address and parcel number of the site,
 - iii. Instructions on the process to register a complaint regarding the UDCB to the City Code Enforcement Division,
 - iv. The type of material that may be deposited,
 - v. A notice stating that no material shall be left outside the UDCB,
 - vi. The pickup schedule for the UDCB,
 - vii. A City approved identification system that identifies the box as being properly permitted by the City,
 - viii. If the UDCB is owned by a nonprofit organization:
 - A. A statement describing the charitable cause that will benefit from the donations,
 - B. The Federal Tax identification number of the nonprofit organization operating the UDCB, and
 - C. The statement "This collection box is owned and operated by a nonprofit organization."
 - ix. If the UDCB is owned by a for-profit entity:
 - a. "This donation is not tax deductible." and
 - b. "This collection box is owned and operated by a for-profit organization."
- B. The parcel containing the UDCB shall display a sign with text in at least two (2) inch typeface stating that no material shall be left outside the UDCB. This sign shall be installed at a visually conspicuous location within a radius of twenty (20) feet from the UDCB.

5.19.140 – Maintenance.

- A. No blight shall be within twenty (20) feet of the UDCB including, but not limited to donation/collection 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 and/or any hazardous materials.

5.19.150 – Liability.

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.

5.19.160 – AB 939 Reporting.

Permitted UDCB operators shall be required to report annually the tonnage collected from their UDCBs within the City, including a breakdown by material type, whether the materials were reused or recycled, and any other information needed by the City to comply with AB 939. This information must be available to the City within sixty (60) days of the end of the calendar year. Failure to report will be grounds for revocation of the UDCB permit.

Article IV – Code Enforcement

5.19.170 – 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/agent and UDCB operator through electronic mail of the violation. The violation must be abated and proof of such submitted to the City within seventy-two (72) hours after receipt of such notification.
- B. If an unpermitted UDCB is not within a permissible geographic area according to Section 5.19.120, then both the UDCB and any blight within twenty (20) feet of the UDCB shall be removed within seventy-two (72) hours after the parcel owner/agent and UDCB operator is notified of the violation.
- C. If an unpermitted UDCB is within a permissible geographic area according to Section 5.19.120 then any blight within twenty (20) feet of the site shall be removed and the parcel owner/agent and/or operator shall either: 1) apply for all UDCB permits required by this Chapter; or 2) remove the UDCB. This requirement shall be met within seventy-two (72) hours after the parcel owner/agent and/or UDCB operator are notified of the violation.
- D. Each day that a violation of a requirement of this Chapter is not abated constitutes a new and separate offense.
- E. The operation or maintenance of an unpermitted UDCB may be abated or summarily abated by the City in any manner by this Code or otherwise by law for the abatement of public nuisances. Pursuant to Government Code Section 38773, all expenses incurred by the City in connection with any action to abate a public nuisance will be chargeable to the persons creating, causing, committing, or maintaining the public nuisance.
- F. The City shall assess administration citations pursuant to O.M.C. Chapter 1.12 against a parcel owner and/or operator who fails to timely resolve a violation or verified compliance is not sent to the City showing the resolution of the 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 citation after the 72 (seventy-two) hour abatement period;
 - b. Not more than \$250 for the 2nd citation after the 72 (seventy-two) hour abatement period; and
 - c. Not more than \$500 for the 3rd and each subsequent citation after the 72 (seventy-two) hour abatement period. Total fines resulting from administrative citations shall not be more than \$5,000 within one year for each cited UDCB.
 2. For unpermitted UDCBs, the City shall issue administrative citations pursuant to O.M.C. Chapter 1.12:
 - a. Not more than \$750 for the 1st citation after the 72 (seventy-two) hour abatement period;
 - b. Not more than \$1,000 for the 2nd citation after the 72 (seventy-two) hour abatement period; and
 - c. Not more than \$1,500 for the 3rd and each subsequent citation after the 72 (seventy-two) hour abatement period. Total fines resulting from administrative citations shall not be more than \$10,000 within one year for each cited UDCB.

- G. The daily administrative citations described in Subsection F shall continue until either the violation is abated or the UDCB is removed. Pursuant to Government Code section 38773, removal of the UDCB shall be at the expense of the parcel owner and/or operator. Any UDCBs removed shall also have any of its UDCB permits revoked.
- H. The property owner and operator are jointly and severally liable and responsible for all fees, administrative citations, and compliance with the regulations.
- I. 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.
- J. 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.
- K. 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, as well as placed on the UDCB itself. If the City cannot reasonably determine the name and/or address of the unpermitted UDCB operator, placing the written notice on the UDCB itself constitutes sufficient notice. All notices regarding permitted UDCBs shall be through electronic mail.
- L. Administrative citations established in this chapter are in addition to any other administrative or legal remedy which may be pursued by the City to address violations identified in this chapter.

5.19.180 Private Rights of Action

- A. Any person claiming a violation of this Chapter may bring an action in the Municipal Court or Superior Court of the State of California, as appropriate, to enforce the provisions of this Chapter. Violations of this Chapter are declared to irreparably harm the public.
- B. The Court shall award reasonable attorney's fees, witness fees and costs to any plaintiff who prevails in an action to enforce this Chapter.
- C. No criminal penalties shall attach for any violation of this Chapter.
- D. No remedy set forth in this Section is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights hereunder in a court of law.
- E. Nothing in this chapter shall be interpreted to authorize a right of action against the City, nor shall this Section give rise to any cause of action for damages against the City.
- F. The property owner or owner's agent shall have the right to rescind consent for a UDCB to be placed on the property, provided written notice of the rescission is provided to the UDCB Operator, as provided in their agreement but in no event less than ten (10) business days prior to the UDCB being removed.
- G. The property owner or owner's agent shall be held harmless by the UDCB Operator for the removal of an unauthorized UDCB where removal is necessary to comply with this ordinance.

Article V – Noticing Procedure for Removal

5.19.190 Notice Required for Removal.

- A. Any UDCB scheduled to be removed by either the City or the operator shall clearly display a notice on the UDCB with at least four-inch type visible from the front on the UDCB that states the following text in capital letters: "THIS BOX WILL BE REMOVED BY" followed by the date the UDCB is scheduled for removal. The operator and property owners are jointly and severally responsible for the placement of the notice.

- B. For UDCBs required to be removed by the City of Oakland due to an abatement order, the notice shall be posted immediately after the City notifies the operator and/or parcel owner that the facility is required to be removed.
- C. Notice that a UDCB will be removed by the owner or operator shall be posted at least fourteen (14) calendar days prior to the removal of the facility.

PART 2

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

1.12.020 - Scope.

- A. This chapter authorizes the administrative assessment of citations to effect abatement of:
 - 1. Any violations of the following provisions of the Oakland Municipal Code: the Oakland Building Code (CIVIC Chapter 15.04), the Oakland Housing Code (OMC Chapter 15.08), Uniform Fire Code (CIVIC Chapter 15.12), Fire Damaged Area Protection & Improvement Code (CIVIC Chapter 15.16) Bedroom Window Security Bar & Smoke Detector Permit Code (CIVIC Chapter 15.64), Oakland Planning Code (CIVIC Title 17), Oakland Sign Code (OMC Chapter 146), Transient Occupancy Tax Code (OMC Chapter 4.24), ~~Unattended Donation/Collection Boxes (OMC Chapter 5.19)~~, Hotel Rates & Register Code (CIVIC Chapter 5.34), Animal Code (OMC Title 6), Health & Safety Code (OMC Title 8), Public Peace, Morals and Welfare Code (OMC Title 9), Vehicles and Traffic Code (OMC Title 10), Streets, Sidewalks & Public Places Code (OMC Title 12) and Creek Protection, Storm Water Management and Discharge Control Code (OMC Chapter 13.16); or
 - 2. The occurrence of anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal; or
 - 3. The occurrence of any public nuisance as known at common law or in equity jurisprudence.
 - 4. The violation of any state or federal law or regulations under which such violation is deemed a public nuisance.
- B. Administrative citations established in this chapter are in addition to any other administrative or legal remedy which may be pursued by the city to address violations of the codes and ordinances identified in this chapter.

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. ~~For offenses involving violations of Oakland Municipal Code~~

Sections 5.19.170(F)(2), 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, ~~T~~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, ~~A~~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, ~~A~~ny 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 (6) 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.



**City of Oakland
Master Fee Schedule**

PLANNING & BUILDING

FEE DESCRIPTION	FEE UNIT
A. ZONING CONFIRMATION LETTER	44.00 Each
1 Standard - No Research Required	177.00 Hour or Fraction of
2 Research Required	
B. MILLS ACT	524.00 Application
1 Application Fee	245.00 Inspection
2 Inspection Fee	
C. NEIGHBORHOOD MEETING STAFF ATTENDANCE FEE (PER STAFF MEMBER REQUESTED BY PROJECT SPONSOR)	
1 Attendance at 1st Community Meeting	333.00 Hour
2 Attendance at 2nd Community Meeting	422.00 Each Staff Member
3 Attendance at 3rd Community Meeting	633.00 Each Staff Member
4 Attendance at 4th (and subsequent) Community Meeting	633.00 Each Staff Member
Q SPECIAL DESIGN REVIEW	
1 Track One	448.00 Report
2 Track Two	566.00 Report
R Unattended Donation/Collection Boxes (UDCB)	
1 UDCB Permit Application (includes one permit inspection)	467.00 Permit
2 UDCB Permit Renewal (includes one permit inspection)	214.00 Renewal
3 UDCB Permit Inspection (not including first permit/renewal inspection)	135.00 Inspection
4 UDCB Appeal to City Administrator's office/petition	825.00 Appeal/Petition

EXHIBIT B