

REQUIRES 6 VOTES FOR PASSAGE

Approved as to Form and Legality

REVISED

Oakland City Attorney's Office

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

AN EMERGENCY ORDINANCE, PURSUANT TO CHARTER SECTION 213, ESTABLISHING INTERIM CONTROLS THAT REQUIRE A MAJOR CONDITIONAL USE PERMIT TO ESTABLISH A CREMATORIUM, AS IT IS CURRENTLY DEFINED AS MANUFACTURING AND INDUSTRIAL USEAGE TO REMAIN IN EFFECT THROUGH May 10, 2013, OR WHEN PERMANENT REGULATIONS ARE ADOPTED, WHICHEVER OCCURS FIRST.

WHEREAS, Since 1965, Oakland has defined Extensive Impact Civic Activities as including "Cemeteries, mausoleums, and columbarium", and activities accessory thereto, which require a Conditional Use Permit;

WHEREAS, Currently Crematoria are permitted uses in certain industrial areas within the City - under code section 17.10.0570, General Manufacturing Industrial Activities of the Zoning Ordinance. No planning permits or public notice are required prior to issuance of a building permit for such a use

WHEREAS, The issue of whether it is appropriate to allow crematoria as a permitted use under General Manufacturing or under code section 17.10.240 (B) Extensive Impact Civic Activities of the Zone Ordinance has been raised in the context of the public exposure to certain types of pollutants and emissions and the ability to review those impacts

WHEREAS, except as provided in the Interim Controls, these uses do not require discretionary approval under City zoning laws; and

WHEREAS, Crematoria emit particulate matter falling under the category of toxic pollutants, and the possibility of trucking many thousands of bodies into Oakland from the Bay Area and beyond would add to those emissions, increase traffic congestion, and tax Oakland's infrastructure, and

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WHEREAS, in addition to the impacts a cemetery, mausoleum, columbarium and accessory activities may have on a community's character, crematoria emit particulate matter and other toxic pollutants (as described below), and the possibility of trucking many thousands of bodies into Oakland from the Bay Area and beyond would add to those emissions, increase traffic congestion, and tax Oakland's infrastructure, and;

- Acetaldehyde
- Arsenic
- Benzene
- Beryllium
- Cadmium
- Chromium, hexavalent
- Copper
- Formaldehyde
- Hydrogen Chloride
- Hydrogen Fluoride
- Lead
- Mercury
- Nickel
- Selenium
- Zinc
- Chlorinated dibenzo-dioxins and furans of concern
- Polycyclic aromatic hydrocarbons

WHEREAS, the Airport Area Gateway is a recently revitalized corridor, a regional cremation center can displace retail activities and compromise the economic opportunities of the Airport Area Gateway plan

WHEREAS, A Regional cremation center in Oakland would impact the total environment of our neighborhoods and backside efforts to address the cumulative impacts of environmental inequalities in less than fortunate areas of Oakland, and;

WHEREAS, staff would need time to work on permanent regulations that will be adopted by the expiration of the Emergency Ordinance May 10, 2013; and

WHEREAS, the provisions of the California Environmental Quality Act (CEQA) have been satisfied and the proposal relies on the following environmental document to satisfy any requirements under CEQA: the previously certified Final Environmental Impact Report for the Land Use and Transportation Element of the General Plan, adopted in 1998 (General Plan EIR) and for the reasons stated in, the July 7, 2010 Planning Commission report and summarized below; and

WHEREAS, as a separate and independent basis, the proposal also is exempt from CEQA under several CEQA Guidelines: including without limitation, 15061(b)(3), known as the "General Rule," which states that a project is exempt from CEQA if there is no possibility that the activity in question will have a significant effect on the environment; and

WHEREAS, for the reasons set forth above, pursuant to City Charter section 213, the Council declares that this ordinance is necessary to preserve the public peace, health, welfare or safety and to avoid a direct threat to the health, safety, and welfare of the community, and the "Whereas" clauses above taken together constitute the City Council's statement of reasons constitute the City Council's statement of the reasons constituting such necessity and emergency; now, therefore

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

Section 1. The recitals above are true and correct and are an integral part of this Ordinance.

Section 2. This Ordinance complies with the California Environmental Quality Act.

Section 3. Crematoriums or existing crematoria uses expanded shall only be permitted upon the granting of a major conditional use permit pursuant to the conditional use permit procedure in Chapter 17.134 of the Planning Code.

Section 4. No building, zoning or other permit that has been issued for any building or structure for which rights to proceed with said building or structure have not vested pursuant to the provisions of State law shall proceed without complying with this ordinance. Further, no building, zoning or other permit for any building or structure shall be issued by any department, agency, employee or agent of the City of Oakland to allow for any building or structure, without complying with the requirements of Sections 3 above. No use which has not vested prior to the date of this Ordinance shall commence in violation of the provisions of this Ordinance.

Section 5. The controls imposed by this ordinance shall remain in place and be effective for a continuous 1 year period from the effective date of this ordinance, or until the City Council adopts permanent controls for Crematoria, whichever comes first.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL,
SCHAFF, BRUNNER, AND PRESIDENT REID

NOES -
ABSENT -
ABSTENTION -

ATTEST:

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

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