

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2014 APR 10 PM 1:01

7 VOTES REQUIRED FOR PASSAGE

Approved as to form and legality

*Mark P. Wall*  
CITY ATTORNEY

Ordinance No. 13225 C.M.S.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**SECTION 7.** For the term of this ordinance, as set forth in Section 5 hereof, the provisions of this ordinance shall govern, to the extent there is any conflict between the provisions of this ordinance and the provisions of any other City code, ordinance, resolution or policy, and all such conflicting provisions shall be suspended.

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

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

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

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

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

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

In Council, Oakland, California, APR 22 2014, 2014,

**Passed By The Following Vote:**

AYES- BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF, and PRESIDENT KERNIGHAN - 8

NOES- 0

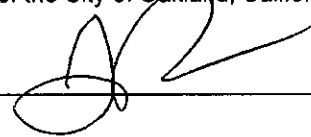
ABSENT- 0

ABSTENTION- 0

ATTEST: \_\_\_\_\_

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

Introduction Date APR 22 2014

DATE OF ATTESTATION:  \_\_\_\_\_

mpw

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**NOTICE AND DIGEST**

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

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