



FILED
MAY 21 2014

AGENDA REPORT

TO: FRED BLACKWELL
CITY ADMINISTRATOR

FROM: Rachel Flynn

SUBJECT: Extension of Unattended Donation Boxes Moratorium **DATE:** May 5, 2014

City Administrator
Approval *[Signature]*

Date *5/20/14*

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

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

Extending Ordinance No. 13225 C.M.S., An Interim Ordinance, Adopted As An Urgency Measure Pursuant To California Government Code Section 65858, Establishing A Temporary Moratorium On The Establishment, Installation, Placement, Construction, And/Or Expansion Of Unattended Donation Boxes To Take Immediate Effect, Through March 3, 2015 Or Whenever Permanent Regulations Are Adopted, Whichever Occurs First.

OUTCOME

Adoption of this ordinance will extend Interim Ordinance No. 13225 C.M.S (see *Attachment A*), which declared a temporary, 45-day moratorium on the placement of Unattended Donation Boxes (UDBs), to March 3, 2015 or whenever permanent regulations are adopted, whichever comes first. Staff is concerned that absent the extension of the emergency moratorium on the establishment, installation, placement, construction, and/or expansion (collectively called "Placement") of UDBs, UDBs that conflict with contemplated changes to the City's regulatory proposals could be established in the City. Such Placements could result in blight and enforcement issues. There are also some clarifying amendments proposed to Section 9 of the Temporary Moratorium Ordinance relating to the Petition for Relief.

During the temporary moratorium period, staff will develop the new regulations and seek input from stakeholders. Staff's goal is to return to the full City Council earlier than the March 2015, but this date provides a buffer in case there are some unanticipated delays, and avoids having to return to the Council to seek another extension of the temporary moratorium.

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BACKGROUND/LEGISLATIVE HISTORY

UDBs are unstaffed 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, May 8, 2012, and March 25, 2014 Community and Economic Development Committee meetings and the April 1, 2014 and April 22 City Council meetings, the number of UDBs has increased significantly in the past few years.

UDBs are currently not expressly regulated 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. On the other hand, UDBs can provide a convenient way for Oakland residents to recycle goods rather than place them in the waste stream. Therefore, the City sees some benefits to such facilities but permanent regulations are necessary to allow for effective control of their secondary, adverse impacts.

At its April 1, 2014 meeting, the City Council adopted a motion for staff to return with an emergency ordinance to place a temporary moratorium on the placement of new UDBs, while new regulations were being developed. 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 UDBs in Oakland with the exception of UDBs 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 UDB. Council also directed staff to return with the permanent set of regulations directly to the full Council and not to the CED Committee.

ANALYSIS

Staff is concerned that without an extension of the moratorium on UDBs, operators will accelerate the placement of the bins in the City prior to the adoption of permanent regulations. Therefore, staff recommends extending the moratorium until March 3, 2015 or until permanent regulations are adopted by the City Council, whichever comes first. Staff's goal is to return to the full City Council earlier than the March 2015, but this date provides a buffer in case there are some unanticipated delays and avoids having to return to the Council to seek another extension of the temporary moratorium.

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As mentioned, the additional time will allow staff time to update research on what other jurisdictions have done, formulate best practices and approaches, explore effective and efficient code enforcement options, develop the new regulations and seek input from stakeholders.

There are also some clarifying amendments proposed to Section 9 of the Temporary Moratorium Ordinance relating to the Petition for Relief. Specifically, the imposition of a time period in which the City Council has to make a decision on the appeal and additional submittal requirements to accompany the Petition. These submittal requirements include the proposed location of the UDB; a photograph of the location and adjacent properties; a site plan; a map showing the distance between the proposed UDB and existing UDBs within 2,500 feet of the proposed UDB; plans showing the appearance and dimensions of the UDB; distance between the proposed UDB and the public right of way; whether there will be more than one UDB per parcel, whether the proposed UDB is on a vacant lot, on a lot with blighted property and/or properties where all businesses are closed; authorization from the property owner to allow placement of the UDB, as well as an acknowledgement of responsibility for joint and several liability for violations of conditions and/or public nuisances; and a maintenance plan (including timely graffiti, litter and trash removal on and around the UDB). The City Administrator and/or City Council will utilize reasonable time, place and manner criteria, as described above, to determine if the Petition should be granted or denied as well as imposition of any appropriate operating conditions if the Petition is granted.

PUBLIC OUTREACH/INTEREST

Several meetings, email exchanges, and phone conversations have occurred with Council staff and Planning staff and interested stakeholders on this issue, including, but not limited to, representatives from Goodwill, Salvation Army, St. Vincent DePaul, USAgain, and Campus California. Each of these interested stakeholders will be noticed of this hearing.

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 UDBs will decrease litter and debris in the surrounding neighborhood.

Social Equity: UDBs have attracted graffiti, dumping, and scavenging in the City's lowest income neighborhoods, where blight is a major issue. The moratorium will reduce blight by not allowing the Placement of UDBs.

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CEQA

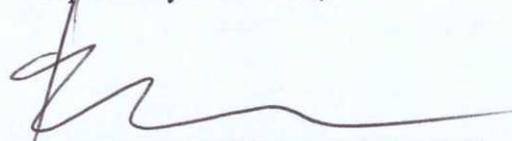
The adoption of the extended moratorium for the Placement of unattended donation boxes is exempt from CEQA review pursuant to CEQA Guidelines Sections:

- 15183 (Projects Consistent with a Community plan, General Plan, or zoning);
- 15061(b)(3) (the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment); and/or
- 15308 (Actions by Regulatory Agencies for Protection of the Environment).

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. Ordinance No. 13225 C.M.S.
- B. April 1, 2014 City Council Agenda Report (without attachments)

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June 3, 2014

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 F. 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) Any person seeking Placement of a UDB, which would be affected by this Moratorium, and who contends that the Moratorium as applied to him or her would be unlawful under and/or conflict with Federal, State, or local law or regulation, must submit a Petition to the City requesting relief from the Moratorium. Petitions must be on the Appeal Form provided by the Planning Bureau of the Planning and Building Department for the City of Oakland and submitted to the Agency at 250 Frank H. Ogawa Plaza, Suite 2114, to the attention of the Planning Director. Failure to submit such a Petition will preclude such person from challenging the moratorium in court. The Petition shall identify the name and address of the applicant, the affected application number, and shall state specifically and completely how the Moratorium as applied to him or her would be unlawful under and/or in conflict with Federal, State, or local law or regulation, and shall include payment of fees in an amount of \$1,352.91. Failure to raise each and every issue that is contested in the Petition and provide appropriate supporting evidence will be grounds to deny the Petition and will also preclude the Petitioner from raising such issues in court. Within thirty calendar days of receipt of the completed Petition, the City Administrator, or her designee, shall mail to the applicant a written determination accepting or rejecting the Petition
- (b) If a Petitioner seeks to challenge the written determination of the City Administrator, the Petitioner must appeal to the City Council and such appeal must be filed within ten (10) calendar days of the date from which the City Administrator's written determination was issued and by 4:00p.m. Appeals must be on the form provided by the Planning Bureau of the Planning and Building Department for the City of Oakland and submitted to the Agency at 250 Frank H. Ogawa Plaza, Suite 2114, to the attention of the Planning Director. The Appeal must state specifically wherein it is claimed there was error or abuse of discretion by the City Administrator or wherein the decision is not supported by substantial evidence. The Appeal also must include payment of \$1,352.91. Failure to make a timely appeal will preclude you from challenging the City's decision in court. The appeal itself must raise each and every issue that is contested, along with all arguments and evidence in the record which supports the basis for the appeal. Failure to do so will preclude you from raising such issues during your appeal and/or in court. However, the appeal will be limited to issues and/or evidence presented in the Petition to the City Administrator.

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

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

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

Passed By The Following Vote:

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

NOES- 0

ABSENT- 0

ABSTENTION- 0

ATTEST: _____

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

Introduction Date **APR 22 2014**

DATE OF ATTESTATION: _____

mpw

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OAKLAND

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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.



CITY OF OAKLAND

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OAKLAND

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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.

ATTACHMENT B

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CED Committee
March 25, 2014

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.

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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 sunsetting 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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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.

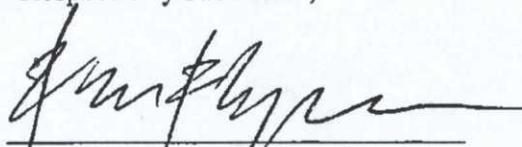
Social Equity: The regulations of these boxes could possibly encourage increased access to donated goods for locally serving non-profit organizations that provide affordable goods to Oakland residents.

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

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FILED
OFFICE OF THE CITY CLERK
OAKLAND

2014 MAY 22 PM 3:33

7 VOTES REQUIRED FOR PASSAGE

APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCILMEMBER _____

Mark P. Wald

City Attorney

OAKLAND CITY COUNCIL
ORDINANCE No. _____ C.M.S.

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

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

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

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

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

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

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

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

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

SECTION 9. Petition for Relief from Moratorium (“ Petition”)

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

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

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

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

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

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

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

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

DATE OF ATTESTATION: _____