

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. ~~13225~~ 13232 C.M.S.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

JUN 3 2014

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_

**PASSED BY THE FOLLOWING VOTE:**

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

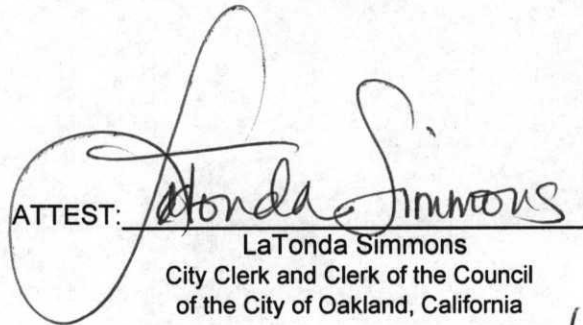
NOES- 0

ABSENT- 0

ABSTENTION- 0

Introduction Date

= JUN 3 2014

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

DATE OF ATTESTATION: 