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TO: The Honorable City Council

FROM: David Whitaker, Director   
Legislative Policy Division Staff

DATE: February 28, 2020

RE: Regulations for Commercial Donation Containers

LPD was tasked by Council member Tate to write a report exploring any existing regulations in the Detroit City Code that could possibly address the unkempt condition of donation drop boxes and explore if the City has any authority to restrict or prohibit their placement throughout the city.

#### **BACKGROUND**

Donation drop box bins began appearing in cities across the nation in the early 2000s. The bins aren't necessarily owned by local charities. Some of the bins are owned by non-profits, others are owned by private for-profit businesses that may donate, resell, or recycle the donated clothes locally or around the world. Some for-profit organizations license the use of the name of a charity for a fee; but little or none of the contents inside the bins are given to the charity named, which is considered misleading advertising<sup>1</sup>. Many of the organizations placing the bins are headquartered in other cities or other states<sup>2</sup>, which may lead to some of the bins eventually becoming improperly maintained due to inattentiveness.

The City has the right to remove any donation bins that are on public property. Therefore, many organizations that use donation bins avoid removal by paying a private commercial business to park the

<sup>1</sup> Nessel, Dana. "Clothing Donation Bins - Donor Beware." *AG - Clothing Donation Bins - Donor Beware*, Michigan Department of Attorney General, 2016, [www.michigan.gov/ag/0,4534,7-359-81903\\_20942-399787--,00.html](http://www.michigan.gov/ag/0,4534,7-359-81903_20942-399787--,00.html).

<sup>2</sup> Bitely, Andrea, and Megan Hawthorne. "Schuette: Dearborn-Based Fundraiser to Pay \$35k for Improperly Operating Clothing Donation Bins." *AG - Schuette: Dearborn-Based Fundraiser to Pay \$35k for Improperly Operating Clothing Donation Bins*, Michigan Department of Attorney General, 28 Feb. 2017, [www.michigan.gov/ag/0,4534,7-359-405859--,00.html](http://www.michigan.gov/ag/0,4534,7-359-405859--,00.html).

bins on their property. However, some of the organizations have simply dropped-off their bins overnight without permission from the property owner<sup>3</sup>.

### **CITY CODE**

The City currently does not have any standards in the City Code that directly regulates the use of donation drop-boxes. However, the City's Property Code Maintenance Code prohibits the accumulation of debris on the exterior of property<sup>4</sup>. This regulation may be used to require the removal of items that are not contained within the donation box.

### **LEGAL IMPLICATIONS**

An ordinance cannot completely ban the use of the bins, because it would violate the organization's constitutional first amendment rights to free speech<sup>5</sup>. However, an ordinance may restrict the placement of the bins. Two such ordinances have been upheld in Ypsilanti Township, MI and Oakland, CA<sup>6</sup>. Both, regulated the placement of the bins, as opposed to a complete ban. Oakland, CA approved a new ordinance regulating the design, operation standards (permits, scheduled pickups), and geographic location limitations of the donation bins (see: attached ordinance). While, Ypsilanti Township, MI maintained control over the proliferation of donation bins using a pre-existing ordinance<sup>7</sup> that stated, a property owner must obtain approval from the Township's Planning Commission to make any site plan changes to their property, which would include the installation of the bins. The city of Detroit does not have a similar site approval process that can be used to regulate donations bins, but the City may create regulations similar to Oakland's ordinance<sup>8</sup>. Since then, Ypsilanti Township has also approved an ordinance to regulate the use of donation bins<sup>9</sup>.

### **ORDINANCE RECOMMENDATIONS**

- 1) Bins are only allowed on pavement, on private property, with written (notarized) permission from the property owner.
- 2) Bins that did not get permission from owner or are not properly maintained, can be removed by the property owner within 10 days of notifying the bin owner of its condition.
- 3) Limit the number of bins within a location, such as only 1 or 2 per site, each site has to be at least 1,000 feet apart, and specify the types of properties a bin can be located.
- 4) Require permits that are renewed annually.
- 5) Donated items must be picked up once a week or a pre-approved schedule determined at site plan approved at site plan review.
- 6) Any damaged or vandalized bins must be repaired or removed within 24 - 48 hours.
- 7) Must list the following information on the outside of the box: name and telephone number of the owner/operator, who's responsible for removing any junk that's left, the kinds of items sought for donations and a statement prohibiting liquids and dumping.
- 8) If the owner does not follow the regulations, then the city would be able to confiscate and recycle them or fine the owner after a certain amount of time has lapsed (usually 30 days).

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<sup>3</sup> Bernstein, Sharon. "Battle Erupts in California over Clothes Donation Bins." Reuters, Thomson Reuters, 6 Apr. 2013, [www.reuters.com/article/usa-charity-fight-idUSL2N0CR1OT20130406](http://www.reuters.com/article/usa-charity-fight-idUSL2N0CR1OT20130406).

<sup>4</sup> Detroit, Michigan, Municipal Code. Article XV – Property Maintenance Code. Division 4, Sec. 8-15-101.

<sup>5</sup> *Planet Aid v. City of St. Johns, MI*, (6<sup>th</sup> Cir. 2015) 782 F.3d 318. Planet Aid is a non-profit donation bin organization headquartered in Maryland and has at least 2 known bins in Detroit.

<sup>6</sup> *Recycle for change v. City of Oakland*, 856. F. 3d 666 (2017) & *Planet Aid v. Ypsilanti Township*, 26 F. Supp. 3d 683 (2014). Recycle for change is non-profit donation bin organization headquartered in Richmond, CA and does not have any donation bins in Michigan.

<sup>7</sup> Ypsilanti Township, Michigan, Municipal Code. Site Plan review Sec 2115.

<sup>8</sup> Oakland California, Municipal Code. Chapter 5.19 - Unattended Donation/ Collection Boxes.

<sup>9</sup> Ypsilanti Township, Michigan, Municipal Code. Article VIII - Outdoor Collection Boxes

## **MICHIGAN STATE LAW**

In 2010, Michigan's former Governor, Jennifer Granholm, added an amendment to the Charitable Organizations and Solicitations Act to address the use of donation bins<sup>10</sup>. The Act requires an organization that plans to solicit in Michigan to register and renew annually; it prohibits misleading advertisements on the outside of the bins; and all bins must have information regarding how the donations are distributed written on it. If the City believes an organization may be in violation of this Act, the City can make a complaint to the Michigan Attorney General's office or the prosecuting attorney for Wayne County to initiate an investigation.

Please, do not hesitate to call upon us if you have any questions or concerns.

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<sup>10</sup> Charitable Organization and Solicitations Act of 1975. Sec. 400.272 and Sec 400.289. 5 October 2010.

## Chapter 5.19 - UNATTENDED DONATION/COLLECTION BOXES

### 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.

(Ord. No. 13335, § 2(Exh. A), 10-20-2015)

#### 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.

(Ord. No. 13335, § 2(Exh. A), 10-20-2015)

#### 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.

(Ord. No. 13335, § 2(Exh. A), 10-20-2015)

#### 5.19.040 - Responsibility.

The parcel owner and the UDCB operator (operator) have joint and several liability for blight-related conditions and/or compliance with this chapter, 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.

(Ord. No. 13335, § 2(Exh. A), 10-20-2015)

#### 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.

(Ord. No. 13335, § 2(Exh. A), 10-20-2015)

## 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 Subsection 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.

(Ord. No. 13335, § 2(Exh. A), 10-20-2015)

#### 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 \$1,000,000.00 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.

(Ord. No. 13335, § 2(Exh. A), 10-20-2015)

#### 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 \$1,000,000.00 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 60 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 Subsection 5.19.170(G).
- E. See Section 5.19.110 for the appeal and petition processes for UDCB permit decisions, including decisions regarding renewal.

(Ord. No. 13335, § 2(Exh. A), 10-20-2015)

#### 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;
- D. Reserved.
- 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 verified blight complaints in the previous 12 months.

(Ord. No. 13335, § 2(Exh. A), 10-20-2015)

5.19.100 - Time limit for final decision.

The Director shall provide a written decision regarding the placement of a UDCB within 60 days of the submission of a complete application for a UDCB permit.

(Ord. No. 13335, § 2(Exh. A), 10-20-2015)

5.19.110 - Appeal and petition processes.

- A. Within ten 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, 2<sup>nd</sup> 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 60 days of the submission of the appeal.

- B.

The applicant seeking placement of a UDCB which would be affected by this chapter 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 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.

(Ord. No. 13335, § 2(Exh. A), 10-20-2015)

## Article III - Standards and Requirements

### 5.19.120 - Location.

- A. No UDCB shall be located within 1,000 feet from any other UDCB, except those described in Subsection 5.19.060(B).

- B. With the exception of areas described in Subsection (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 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 Chapter 17.10 of the Oakland Municipal Code.
- E. UDCBs are prohibited within any of the following locations:
1. Fifteen 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 20 feet of the public right-of-way;
  3. Five 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 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 feet from a continually operating light source of at least one foot candle.

(Ord. No. 13335, § 2(Exh. A), 10-20-2015)

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 82 inches high, 60 inches wide and 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-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 20 feet from the UDCB.

(Ord. No. 13335, § 2(Exh. A), 10-20-2015)

#### 5.19.140 - Maintenance.

- A. No blight shall be within 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.

(Ord. No. 13335, § 2(Exh. A), 10-20-2015)

#### 5.19.150 - Liability.

Applicants and/or owner/owners agent shall maintain a minimum general liability insurance of \$1,000,000.00 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.

(Ord. No. 13335, § 2(Exh. A), 10-20-2015)

#### 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 60 days of the end of the calendar year. Failure to report will be grounds for revocation of the UDCB permit.

(Ord. No. 13335, § 2(Exh. A), 10-20-2015)

### 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 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 20 feet of the UDCB shall be removed within 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 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 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 \$150.00 for the first citation after the 72-hour abatement period;
    - b. Not more than \$250.00 for the second citation after the 72-hour abatement period; and
    - c. Not more than \$500.00 for the third and each subsequent citation after the 72-hour abatement period. Total fines resulting from administrative citations shall not be more than \$5,000.00 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 \$750.00 for the first citation after the 72-hour abatement period;
  - b. Not more than \$1,000.00 for the second citation after the 72-hour abatement period; and
  - c. Not more than \$1,500.00 for the third and each subsequent citation after the 72-hour abatement period. Total fines resulting from administrative citations shall not be more than \$10,000.00 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.

(Ord. No. 13335, § 2(Exh. A), 10-20-2015)

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 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 chapter.

(Ord. No. 13335, § 2(Exh. A), 10-20-2015)

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 14 calendar days prior to the removal of the facility.

(Ord. No. 13335, § 2(Exh. A), 10-20-2015)