

AGENDA REPORT

TO: FRED BLACKWELL
CITY ADMINISTRATOR

FROM: Rachel Flynn

SUBJECT: Unattended Donation Boxes Moratorium **DATE:** April 8, 2014

City Administrator

Date

Approval 

4/9/14

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

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

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 Effect Immediately Upon Adoption

OUTCOME

Adoption of this interim ordinance will place a temporary moratorium on the placement of Unattended Donation Boxes (UDBs). Staff is currently undertaking the review, formulation and adoption of new regulations regarding the use of UDBs. During this necessary review process, staff is concerned that absent the adoption of an 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 schemes could be established in the City. Such establishments or expansions could result in blight and enforcement issues.

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, May 8, 2012, and March 25, 2014 Community and Economic Development Committee (CEDC) meetings (see *Attachments A, B, and C* for the agenda reports) and the April 1, 2014 City Council meeting, the number of UDBs has increased significantly in the past few years.

Item: _____
City Council
April 22, 2014

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 their April 1, 2014 meeting, the City Council adopted a motion that directed the City Administrator to develop regulations that would ban new/expanded UDBs and regulate existing UDBs. The Council also directed that the ban be brought back at the earliest possible opportunity, separate from the permanent set of regulations affecting existing UDBs.

ANALYSIS

Staff proposes that until permanent UDB regulations are adopted, the City of Oakland declare a moratorium on the Placement of any UDBs except those that are: (i) inside a "principal building" on a lot and not visible from the City's right-of-way; and/or (ii) an "accessory activity" to a Principal Activity that is located on the same parcel as the UDB. The ordinance provides the following definitions for accessory activity and principal building:

"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.

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

For example, installation of a UDB that collects donated books on the same lot as a used bookstore **would not** be subject to this moratorium because the collection of books is "incidental to, and customarily associated with" with the activities performed in a bookstore. The moratorium **would** apply to the UDB on the same site as a grocery store because the receiving of donated books is not "incidental to, and customarily associated with" the activities of a grocery store. However, the moratorium **would not** apply to the installation of the UDB if it were both within the grocery store building and not visible from the public right of way.

Item: _____
City Council
April 22, 2014

Staff proposes the first exception because UDBs located within a main building and not seen from the street will not create visual blight and will be monitored by employees in the building. Staff proposes the second exception because UDBs associated with a principal activity on the same lot will tend to be more closely monitored than a UDB that is unassociated with other tenants on the lot.

Staff is concerned that without the proposed moratorium UDB operators will accelerate the placement of the bins in the City prior to the adoption of additional regulations. Therefore, staff recommends adoption of the proposed moratorium that will be in effect until permanent regulations are adopted by the City Council. Substantial evidence in record, including testimony before the CED Committee and City Council, supports the proposed moratorium and the exceptions.

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, Campus California. Each of these interested stakeholders will be noticed of this hearing.

SUSTAINABLE OPPORTUNITIES

Economic: The proposed moratorium 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.

CEQA

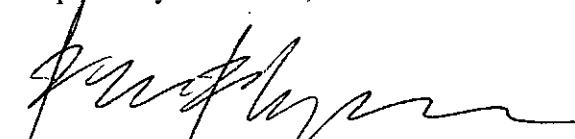
The adoption of the moratorium for the Placement of unattended donation boxes is exempt from CEQA review pursuant to CEQA Guidelines Sections:

- 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:
Robert Merkamp, Acting 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
- C. March 25, 2014 CED Committee Agenda Report

Item: _____
City Council
April 22, 2014

ATTACHMENT A

FILED
OFFICE OF THE CITY CLERK
OAKLAND

12 MAR 15 PM 3:06

To: CED Committee
From: Councilmembers Kernighan and Brunner
Date: March 27, 2012

Re: Report and Action to Direct the City Administrator to Regulate Unattended Donation Boxes on Private Property

Recommendation:

To direct the City Administrator to regulate unattended donation boxes on private property.

The proliferation of unattended donation boxes throughout the City has become a problem because they are attractive locations for blight including graffiti, illegal dumping and scattered debris caused by scavenging. The entities which operate these boxes are often not clear about the intended use of the donations and local non-profits are seeing a decline in donations as a result of the numerous bins that are being placed on private property. These boxes are becoming more prevalent throughout the City, and because the Planning Code does not expressly regulate them, there has been no City review over location and aesthetics of these boxes. Hence, the location and appearance of these boxes can be often times be problematic. Other local jurisdictions have begun regulating the boxes, so the fact that Oakland has not done so, is potentially making it an even more attractive site for placement. Accordingly, we recommend that the City Administrator regulate unattended donation boxes on private property.

Background:

In the past five years, the Bay Area has seen a proliferation of unattended donation boxes appearing on public and private properties.¹ The boxes are operated for a variety of purposes from collection of books to collection of used clothing, shoes and household items. In Oakland, the boxes were for a time eliminated from public property because the owners of the boxes were informed of the need for encroachment permits on public property. However, recently they have again begun to be seen on sidewalks. In most cases, boxes are placed on private property, with agreement from the property owner. The boxes have been placed at schools, grocery stores, gas stations, in parking lots and near businesses by organizations that do not operate locally and are in some cases reselling the items for a profit. See Attachment A for locations. Because the boxes are unmonitored, they can become a public nuisance as they attract graffiti, scavenging and illegal dumping nearby. People stack donations on or near the boxes or fill them to overflowing, if they fail to be emptied in a timely manner. See Attachment B.

In addition to the adverse visual impact and potential for public nuisance created by the debris generated from the boxes, the financial impact is also being felt by local non-profit organizations. Goodwill Industries of the East Bay and St. Vincent de Paul of the East

¹ In the previous year alone the number of boxes operated by Campus California increased from under 20 to more than 70 boxes in Oakland as shown from comparative searches of the organization's website.

Item # _____
CED Comm
March 27, 2012

Bay have reported a drop in donations at their attended donation centers. These local programs circulate donated goods for sale at low cost thrift centers in the community, offering a point of purchase in the community, generating revenue which is used directly in the community for job-training and placement programs which benefit Oakland residents. By contrast, the non-local boxes are primarily re-selling donated goods. In some cases, these entities are donating a portion of their proceeds to charity, sometimes locally, but mostly out of the area. In other cases, the boxes are operated by for-profit companies.

Existing legislation on unattended donation boxes:

In July 2010, the state enacted AB 918 (See Attachment C) in an effort to provide transparency so that community members can make informed decisions about how they would like to donate used goods. The law required, among other disclosures, that unattended donation boxes provide a written display of the organization which benefits from the donation and whether or not it is a non-profit entity. Importantly, the law did not limit the ability of local municipalities from placing further restrictions on the bins.

Many jurisdictions have recently enacted legislation to regulate unattended donation boxes. Locally, Berkeley, San Rafael and Sacramento have required either permits or fees for unattended donation boxes. San Jose is currently contemplating regulation of the boxes.

Jurisdiction	Regulation
Berkeley	Classified as "recycling redemption boxes," requires special zoning approval, either Administrative Use permit or Use Permit and public hearing. Sent notice of violation to all businesses which had allowed boxes on their property and indicated that the property owner's Use permit would be reopened and reviewed. Public Property placement – after notice to remove, then removal by Public Works department. <u>Result:</u> currently no boxes in Berkeley on public or private property.
San Rafael	Zoning determination was made that the unattended boxes required Administrative Use Permit and Administrative Design Review because donations had no relation to the primary commercial use of the property on which the bin was placed. City interpretation was that these were akin to hot dog or coffee carts, which were historically required to obtain Administrative Use permits.
Sacramento	Location Fee: \$30.00 for each location Permit Fee: \$150.00 per applicant, plus annual CPI adjustment.

Item # _____
CED Comm
March 27, 2012

In California, the cities of Rancho Cordova, Folsom and Elk Grove have also taken steps to regulate unattended donation boxes. These cities followed the model used by Sacramento of requiring annual registration and fees for each box. Some cities require that the organization show a notarized statement of consent from the property owner, proof that the organization is qualified to solicit donations under state law and that the organization is in compliance with state disclosure requirements on the box. Nationally, Chicago, Milwaukee, Dade County Florida and other jurisdictions have also chosen to regulate the installation of unattended donation boxes. The League of California Cities (LCC) encourages cities to review and adopt ordinances related to unattended donation boxes. Furthermore, the LCC indicates on its website that unattended donation boxes have become targets for illegal dumping and nuisances in some communities.

Questionable organizations as sponsors of donation boxes

It is sometimes very difficult for members of the public to clearly discern how the owners of the boxes actually utilize the donated goods. The complexity of the corporate and non-profit relationships can be confusing. There have been dozens of investigative news reports done in cities across the U.S. on entities using unattended boxes and whether their intended purposes are as clear as what they seem to indicate to the public. See attachment D for samples.

Recommendation: Development of Administrative Regulations

We have met with community members, members of the non-profit community and City staff to discuss ideas for possible regulation of the donation boxes. We propose that the City Administration develop regulations to deal with both the accelerating proliferation of the boxes and the blight that can result from them. We believe that the most efficient way to regulate these boxes is through the existing Planning Code and administrative design review process.

We recommend requiring conditions such as location/placement restrictions, verification of property owner's consent to the placement, design/aesthetic parameters, submission of a pick-up schedule, adequate maintenance plan and other elements, including an opportunity to revoke approval if maintenance becomes an issue.

We also recommend that the Administration apply the Small Project Design Review (Track One) similar to what is done for signs and fences. This is recommended due to the amount of staff time involved and similarity of criteria to be considered. The fee for this type of review as set in the Master Fee Schedule is \$393.00, plus the additional mandatory technology and records fees. It covers costs associated with staff review of the application and one staff visit to the site after placement of the box is complete.

If a box is not properly maintained and blight becomes an issue, complaints would be received and managed through the code compliance process.

Item # _____
 CED Comm
 March 27, 2012

Sustainable Opportunities:

Economic: Regulation of unattended donation boxes may increase donations to locally serving non-profit organizations, which will re-circulate for sale in their thrift store locations in Oakland.

Environmental: Imposing regulation on this previously unregulated use will reduce blight. Blight associated with the boxes can consist of graffiti or debris that is generated from overflowing boxes, scavenging or attraction of illegal dumping near the box.

Social Equity: Encourages increased access to donated goods for locally serving non-profit organizations which are serving underserved communities. The revenue generated from resale of donated goods in the local non-profit thrift stores provides revenue for job training programs directly serving Oakland residents.

Disability and Senior Citizen Access: Approval of these recommendations will lead to better disabled and senior citizen access to private commercial areas by removing obstacles in pedestrian walkways.

Recommended Action: City Council hereby directs the City Administrator to enforce the requirement of an encroachment permit for each unattended donation box on public property and further, to regulate conditions for the placement of unattended donation boxes on private property and return to the Community and Economic Development Committee with a report on the specific type of regulation and fee structure required for unattended donation boxes within 2 months of the passage of this resolution.

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2012 MAR 16 AM 10:33

APPROVED AS TO FORM AND LEGALITY

DRAFT

Oakland City Attorney's Office

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

Introduced by Councilmembers Brunner and Kernighan

Resolution To Direct the City Administrator To Regulate Unattended Donation Boxes on Private Property

WHEREAS, in the last five to seven years, the Bay Area has seen a proliferation of unattended donation boxes on private property; and

WHEREAS, unmonitored boxes often become a public nuisance as they attract graffiti, scavenging and illegal dumping nearby; and

WHEREAS, local non-profit organizations, such as Goodwill Industries of the East Bay and St. Vincent de Paul of the East Bay are seeing fewer donations at their attended donation centers due to the competition from unattended donation boxes; and

WHEREAS, these local programs circulate donated goods for sale at low cost thrift centers in the community, offering a point of purchase in the community, generating revenue which is used directly in the community for job-training and placement programs which benefit Oakland residents; and

WHEREAS, the non-local boxes are primarily re-selling donated goods, and sending most of their proceeds out of the area;

WHEREAS, there have been dozens of investigative news reports on the international corporate and non-profit entities that place unattended donation boxes and questions raised about the actual use of donated goods;

WHEREAS, in July 2010, the state enacted AB 918 which required that unattended donation boxes provide a written display of the organization which benefits from the donation and whether or not it is a non-profit entity; and

WHEREAS, AB 918 did not limit the ability of local municipalities from placing further restrictions on the bins; and

WHEREAS, many jurisdictions, including the cities of Berkeley, San Rafael and Sacramento are now requiring permits or administrative review for unattended donation boxes; and

WHEREAS, the League of California Cities (LCC) encourages cities to review and adopt ordinances related to unattended donation boxes; and now, therefore be it **RESOLVED**: that the City Council hereby directs the City Administrator to regulate unattended donation boxes on private property ; and be it

FURTHER RESOLVED: that the City Council recomenends the City Administrator consider inclusion of the following conditions for unattended donation boxes, and additional conditions as recommended by staff:

- a) Boxes must be kept clean and free of graffiti
- b) Boxes must be monitored to ensure there are no overflowing donations
- c) Box owners must submit pick-up schedule for review
- d) Contact information for the person to contact regarding any maintenance issues must be posted on all boxes
- e) Boxes must not be placed in landscaping or on required parking spaces or vehicular maneuvering aisles
- f) Boxes must not block Americans with Disabilities Act (ADA) access or any pedestrian or vehicular access
- g) Applicant must submit verification of property owner's consent to have the box placed on his or her property; and be it

FURTHER RESOLVED: that the City Council directs the City Administrator to send notice of the regulations to property owners and box owners at all known properties with unattended donation boxes; and be it

FURTHER RESOLVED: that City staff shall return to the Community and Economic Development Committee with a report on the specific type of regulation and fee structure required for unattended donation boxes within 2 months of the passage of this resolution.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20_____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, DE LA FUENTE , KAPLAN, KERNIGHAN, NADEL, SCHAAF, and PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

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

DATE OF ATTESTATION, _____

**Attachment A
Oakland Box Locations**

Campus California – Warehouse – 1081 Essex Avenue, Richmond, CA
According to its website, Campus California has more than 1,000 boxes in the San Francisco Bay Area. Since the start of the program in 2003 this organization has collected over 10,000 tons of donated clothing.

George V Arth & Son
110 10th St
Lincoln School
225 11th St
1/4 Lb Giant Burger @ Telegraph
2150 Telegraph Ave
Martin Luther King Elementary
960 10th St
Lafayette Elementary School
1700 Market St
West Oakland Middle
991 14th St
7-11 (Lakeshore)
2350 Harrison St
Light House Mission
2336 Market St
Sun Beam Market
1400 Adeline St
Grand Express Market
363 Grand Ave
Hoover Elementary
890 Brockhurst St
Arco Gas Mini Mart
3400 San Pablo Ave
New Hope Baptist Church
892 36th St
Travel Inn
444 W MacArthur Blvd.
West Wind Lodge
336 W MacArthur Blvd
37th St Baptist Church
915 37th St
Classy & Classic Detail
901 W MacArthur Ave
Easy Liquor
900 W MacArthur Blvd
Bella Vista Elementary
1025 E 28th St
Church's Chicken
4155 Telegraph Ave
7-11 (Oakland Broadway)
4100 Broadway

Faith Presbyterian
430 49th St
Garfield Elementary
1640 22nd Ave
Santa Fe School
915 54th St
Image Beauty Supply
5412 San Pablo Ave
23rd Laundry
2272 E 23rd St
Foothill Point Laundrymat
2301 Foothill Blvd
1080 LOFTS
1125 Miller Ave
Marketa Liquor
1615 MacArthur Blvd
A & A Corner
2520 Foothill Blvd
Super Laundry/ Wash America
2609 Foothill Blvd
Oak Tree Market
1601 28th Ave
(Dive Shop) Steele's
5987 Telegraph Ave
Fruitvale Collision Center
3009 Foothill Blvd
76 Gas - Fruitvale/School
3070 Fruitvale Ave
Pro Lube
6301 San Pablo Ave,
Sankofa Academy
581 61st St
Claremont Middle School
5750 College Ave
76 Gas Station
6215 Telegraph Ave
Guadalajara Mexican Restaurant
1001 Fruitvale Ave
Fruitvale School
3200 Boston Ave
United For Success Academy
2101 35th Ave

Montclair Mart
 6773 Broadway Terrace
The Foodmill Inc
 3033 MacArthur Blvd
All Green Produce
 4095 Foothill Blvd
Allendale Elementary
 3610 Penniman Ave
Las Adelita's
 4149 Foothill Blvd,
Energy Gas & Mart
 3201 35th Ave
Eagle Gas
 4301 San Leandro St,
Eagle Gas Mini-Mart
 4301 San Leandro St
 7-11 (Montclair)
 5741 Thornhill Dr
Las Lupitas
 4509 Foothill Blvd
Joaquin Miller School
 5525 Ascot Ave
1/4 Giant Burger
 4215 MacArthur Blvd
Willie's Unique Auto Body
 5525 Foothill Blvd
Clean Scene
 5815 Bancroft Ave
Valero
 5910 MacArthur Blvd

Frick Middle School
 2845 64th Ave
EnCompass Academy
 1025 81st Ave
Elmhurst & Dolphin Pharmacy
 7400 MacArthur Blvd
 874 85th Ave
Burckhalter Elementary School
 3994 Burckhalter Ave
Royal Supermarket)
 7615 MacArthur Blvd
RPM Lenders
 8407 Edgewater Dr
Yoshino Sushi
 296 Hegenberger Rd,
Jim's Liquor
 8137 MacArthur Blvd
Brookfield Elementary
 401 Jones Ave
Elmhurst Community Prep
 1800 98th Ave
Esperanza Elementary
 10315 E St
Travis Lodge 16
 9610 MacArthur Blvd
Madison Middle School
 400 Capistrano Ave,
Sobrante Park Elementary
 470 El Paseo Dr,

USAgain -Warehouse - 1948 Sabre St., Hayward, CA

According to its website, USAgain operates over 10,000 collection bins in 15 states. Starting in September 2010, the San Francisco division office collected approximately 275,000 pounds of clothing and shoes per month. A portion of the proceeds generated by each bin benefits the host or a charity of the host's choice.

Food Garden (dba: La Placita)	4130 Foothill Blvd Oakland, CA 94601
A & R Market	3625 Foothill Blvd Oakland, CA 94620
Church's Chicken	1455 High Street Oakland, CA 94601
Chevron	3811 San Leandro St Oakland, CA 94601
Botanica Guadalupe	1530 Fruitvale Ave Oakland, CA 94601
Mi Ranchito	3326 Foothill Blvd Oakland, CA 94601

Los Hermanos	1723 Fruitvale Oakland, CA 94601
S & S Market	2235 35th Ave. Oakland, CA 94601
Penny Saver Market	4800 Foothill Blvd Oakland, CA 94601
Save On Gas (mit Mann)	4849 E. 12th Street Oakland, CA 94601
Castro Tires & Auto Service	6101 San Pablo Ave Oakland, CA 94608
A Market	5650 Market St Oakland, CA 94608
King's Market	5442 Martin Luther King Jr. Way Oakland, CA 94609
Lectric Wash House	5900 Telegraph Ave Oakland, CA 94609
Marshall Cleaners	5425 Telegraph Ave Oakland, CA 94609
Blue Bird Market	3431 San Pablo Ave Oakland, CA 94608
Coast Gasoline	3420 San Pablo Ave Oakland, CA 94608

The Reading Tree is listed as 501(c)(3) on their website. However, donation boxes are owned and serviced by Thrift Recycling Management (TRM), a for-profit company, received 31 million pounds of books in 2010 and has revenues of about \$26 million a year. The Reading Tree website indicates that "about 1/4 of the books we receive are sold by a professional fundraiser, Thrift Recycling Management, Inc., to defray the substantial, operational costs of our programs. We have a contract with Thrift Recycling Management, Inc., to provide operational and logistical support for our programs." Website does not accurately reflect all Oakland locations.

Brookfield Elementary, 401 Jones Ave.
7-Eleven, 2350 Harrison St.
Nikkos Café, 346 23rd Avenue

- Often placed at convenient and grocery store locations

Attachment B



Arco Station, 34th and San Pablo



Connie's Clothing, 1852 International Blvd.



Faith Presbyterian Church, 430 49th St



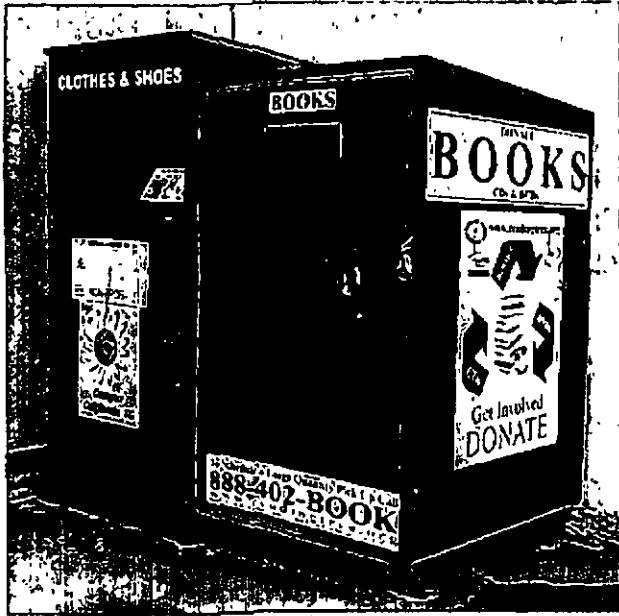
Giant Burger, 2150 Telegraph



Marshall Steel Cleaners, 5425 Telegraph



Pro Lube, 63rd and San Pablo



7-Eleven, 2350 Harrison – multiple boxes on one site

INTRODUCED BY Assembly Member Adams (Coauthors: Assembly Members Carter, Davis, and Jones)

FEBRUARY 26, 2009

An act to add Chapter 2 (commencing with Section 150) to Division 1 of the Welfare and Institutions Code, relating to charitable donations.

LEGISLATIVE COUNSEL'S DIGEST

AB 918, Adams. Salvageable personal property: collection boxes.

Existing law makes it unlawful for any association of persons to engage, directly or indirectly, in the soliciting of donations or in selling salvageable personal property obtained by soliciting, except qualified charitable organizations, as described, that meet specified requirements.

Existing law authorizes counties and cities to impose additional requirements for the privilege of soliciting and selling salvageable personal property within their jurisdictions.

This bill would impose requirements for the placement of statements specifying prescribed information on collection boxes, as defined. The bill specifies that its provisions shall not be deemed to supersede the authority of the Department of Justice or to limit a city, county, or city and county from regulating, monitoring, or prohibiting collection boxes. The bill would also allow the city, county, or city and county to declare a collection box that is in violation of these provisions to be a public nuisance and to impose additional requirements on the solicitation and sale of salvageable personal property within its jurisdiction.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Chapter 2 (commencing with Section 150) is added to Division 1 of the Welfare and Institutions Code, to read:

CHAPTER 2. UNATTENDED COLLECTION BOXES

150. For purposes of this chapter, the following definitions shall apply:

(a) "Collection box" means an unattended canister, box, receptacle, or similar device, used for soliciting and collecting donations of salvageable personal property.

(b) "Commercial fundraiser" shall have the same meaning as in subdivision (a) of Section 12599 of the Government Code.

(c) "Nonprofit organization" means an organization that is exempt from taxation pursuant to Section 501(c)(3) or 501(c)(4) of the United States Internal Revenue Code.

(d) "Salvageable personal property" has the same meaning as in subdivision (b) of Section 148.

151. (a) The front of every collection box shall conspicuously display both of the following:

(1) The name, address, telephone number, and, if available, the Internet Web address of the owner and operator of the collection box.

(2) A statement, in at least two-inch typeface, that either reads, "this collection box is owned and operated by a for-profit organization" or "this collection box is owned and operated by a nonprofit

organization." For purposes of this chapter, a commercial fundraiser shall be classified as a for-profit organization.

(b) If the collection box is owned by a nonprofit organization, the front of the collection box shall also conspicuously display a statement describing the charitable cause that will benefit from the donations.

(c) If the collection box is owned by a for-profit entity, the front of the collection box shall also conspicuously display a statement that reads "this donation is not tax deductible." If the collection box is owned and operated by a commercial fundraiser, the commercial fundraiser may post notice of donations to a charitable cause only on the sides of the box. This notice shall always be smaller in size than the for-profit entity's name and address and shall constitute only 25 percent of the notice space of the box.

152. A city, county, or city and county shall have the authority to declare a box that is in violation of this chapter to be a public nuisance and to abate that nuisance accordingly.

153. Nothing in this chapter shall be construed to do either of the following:

(a) Supersede or in any way limit existing authority of the Department of Justice over fundraising for charitable purposes.

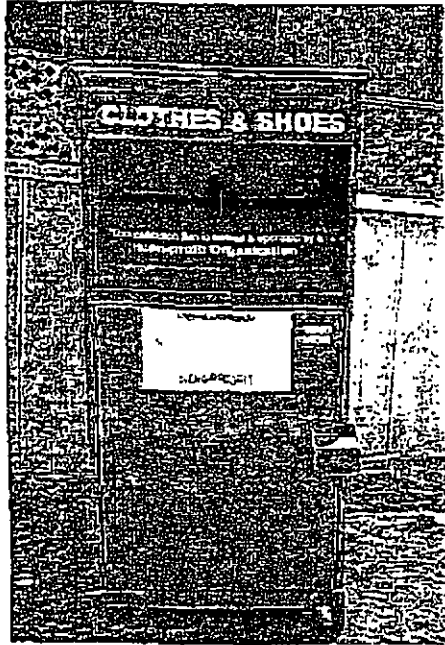
(b) Limit or infringe upon the powers of a city, county, or city and county to impose additional requirements upon the solicitation and sale of salvageable personal property within its jurisdiction.

Attachment D

Your Rags to Their Riches: Donated Clothes May Fund International Fugitive

By Matt Smith
published June 08, 2011

Janine Sosa



Textiles collected in Campus California's Bay Area dropoff boxes

Matt Smith



As expansion manager of Campus California, Jau Sako has helped grow a 406-box Bay Area clothing donation operation

Matt Smith



Cover design by Andrew J. Nilsen.

Jan Sako gives a tour of the warehouse headquarters of Campus California, a Richmond charity responsible for the more than 1,000 used clothing collection boxes that have sprouted in the Bay Area.

A worker operates a two-story clothing compacting machine. Another uses a forklift to hoist settee-sized bales of shirts, pants, jackets, and blankets onto growing edifices of clothes. A trucker pokes his head in the door to pick up bales bound for McAllen, Texas. Later comes another truck intended for Los Angeles. The bales will travel overseas from both destinations.

Sako tells me we're witnessing the new face of clothes recycling. San Franciscans clearing closet space no longer need to schlep to a Goodwill or St. Vincent de Paul. Instead, they can visit 6-foot-high steel dropoff boxes, the increasingly common 24-hour ATMs of clothing donation. "In the future, we'd like to make it so everybody lives within five minutes of a box," he says.

That may sound ambitious. But Campus California is already expanding at an extraordinary pace.

When Sako came to the Bay Area five years ago after a postcollege stint volunteering in Africa, the Slovakia native's employer was a clothes recycling operation run merely as an offshoot of a private

school in remote Siskiyou County. Now Campus California has closed the school, relocated to Richmond, and shifted its focus to collecting, sorting, and shipping overseas some seven million pounds of used clothing per year. The organization also recently launched a branch with 200 boxes in Phoenix. "That was just the beginning of the action," Campus California's expansion and information manager says. Next, "we'll see if we can expand to some more cities."

In San Francisco, where Campus California began placing boxes in 2008, there are currently 35, and Sako is constantly hunting for new spots. Every American annually discards 68 pounds of clothes, he says. Multiply that by the city's 800,000 residents, "and that would bring you around 56 million pounds," he says.

His goal is to make Campus California a top player in this region's league of "green" corporations to further a charitable mission of working "toward the humanization of mankind and for the care of the planet and all its species and plants."

There's nothing, it would seem, to stand in Campus California's way.

Weh, actually, there is one thing: credible evidence that this organization is part of a global web of front groups led by a fugitive wanted for money laundering and fraud.

He's Mogens Amdi Petersen, a charismatic outlaw who in Europe enjoys the notoriety of a modern Jesse James.

Does Sako's feel-good business-pages tale hide a far more complicated one about a secretive European organization that thrives by selling San Franciscans' castoff garments into a supply chain with customers in Africa and Latin America? Campus California may be linked to firms such as AC Properties Ltd., Faelleseje, and Humana. Revenue from used clothes flows through nonprofits, wholesale brokers, real-estate holding firms, lenders, and developing-world charitable projects.

But nobody seems to know where the money truly ends up. A 2001 dossier prepared by Danish financial crimes prosecutors quotes him as saying the idea was to "lay down a twisted access path with only ourselves as compass holders."

And that path seems to intersect with Campus California.

Sako is aware of this potential image problem. And he works hard to fix it. Sako and other people defending Campus California have told neighborhood groups, community newspapers, PTA members, and state and local officials that there is no connection between Campus California's clothing-collection operation and an international network of companies known popularly in Denmark as Tvind. "Campus California is an independent nonprofit organization," he emphasizes during our interview.

"Any allegations about a supposed 'umbrella' organization having control over [Campus California] are completely unfounded," Sako wrote in a letter responding to criticisms from Oakland neighborhood activists.

Some tell a different version. Corky Gussman is an Etna, Calif., real estate agent who handled the purchase of Campus California's Etna headquarters, brokered its sale last year, and helped the organization handle the property during intervening years. "They're connected to a larger entity, sure," he says.

There's evidence backing this observation. And it's worth reviewing, because Campus California threatens nonprofits whose activities are transparent and charitable.

In fact, Goodwill Industries, which spends 93 percent of revenue on jobs programs, has lobbied the legislatures of California, New York, New Jersey, and Connecticut as well as city councils in California and across the country to pass legislation and ordinances regulating the placement of these unmanned clothing bins.

"It's interesting to note that many of these bins, with a label on them saying Campus California, are being operated by some of the people who have been connected with Humana or Gaia, and there are a couple of other names that they go by," Goodwill Industries of the Greater East Bay CEO John Latchford says in reference to reputed Tvind fronts. "For us, the question became, who are these people and organizations? And what are they doing?"

Though Petersen and the activities of his inner circle are shrouded in mystery, much of his reputed business empire operates in plain sight. He is so well-known in Denmark that some journalists specialize in writing about him and his organization. His name never seems to appear on an official document (as long as it's not an arrest warrant), but he reportedly controls assets worth hundreds of millions of dollars. He holds extraordinary sway over his core followers, who call themselves the Teachers Group. They've been investigated in Europe as a cult.

Whether or not that label fits, there's something untoward about the way Petersen's organization shifts money and key personnel around the globe.

The group owns ships, U.S. real estate, schools in Europe and the United States, agriculture and used clothing interests, and other operations in Latin America and Africa, as well as clothing recycling companies in a growing number of U.S. cities and counties. Through all these entities twists a consistent line of control, exerted by core Petersen followers, who seem to pop up time and again leading supposedly unconnected Tvind groups worldwide.

European prosecutors have shown that some Tvind front groups obtain revenue through ventures such as collecting used clothing and then redirect that money to places (and offshore accounts) unknown. This appears to be done via exorbitant rents and outsized service fees, goods sold at inflated or deflated prices, and the deployment of idealistic volunteers in what turn out to be private moneymaking operations. Money is moved from one account to another in the form of donations, loans, fees, and the sale and resale of used clothes.

It's unclear whether clothing left in a box on Divisadero Street ultimately feeds the opulent lifestyle of fugitive cult members — though Danish investigative journalists have documented links between Teachers Group members' lavish lifestyle and cash flows from the international Tvind business network.

But Campus California's business practices and choice of management fit a general pattern laid out by Danish prosecutors, as well as by journalists in Europe and the United States. Campus California has paid rent, brokerage, and financing fees to reputed Tvind-linked groups. It has shared key management personnel with such groups.

In April, Danish financial filings showed an annual transfer of around \$50,000 to Campus California from Faelleseje, which is "the most central foundation in the whole Tvind empire," Danish journalist Frede Jakobsen says in an interview. He explains that Faelleseje has been used as a sort of banker for Tvind-linked entities.

I asked Sako about the transfers and sent him copies of the Danish documents. He said the money consisted of loans that helped fund expansion drives into San Francisco and Phoenix. But after asking to "take a break" from a follow-up interview, he later sent me an e-mail disavowing his prior statement,

D-4

saying loans from Faeheseje had instead been fully paid back in 2009. That assertion seems to be belied by detailed Danish financial filings.

Also in April, Campus California filed documents with the Arizona Corporation Commission as part of the group's expansion into that state. The documents revealed that Campus California had reincorporated in Richmond on Oct. 25, 2010, with a new board of directors chaired by a woman named Marianne Thomsen.

Thomsen, it so happens, is reputed to be Mogens Amdi Petersen's personal physician. This was a significant relationship, because Petersen is a reputed hypochondriac.

"He wouldn't rely on other doctors," says Steen Thomsen, a former Teachers Group member who ran a Tvind school in Britain. He quit in 1998 because, he says, he was being required to help Tvind skim money.

"Petersen was in charge, trying to pump out money from the school," says Steen Thomsen, who is now headmaster at a non-Tvind-linked primary school in Denmark, and who is not related to Marianne Thomsen. "We had to pay rents that were exorbitant."

During this time, Steen Thomsen periodically received visits from Marianne Thomsen with the stated purpose of giving Teachers Group members medical checkups. He came to believe this was a form of monitoring. "We knew from the way she was speaking that she would confer with Mr. Petersen," he says.

I asked Sako several times if I could interview Keld Duus, Campus California's executive director. I left a phone message for him and e-mailed a list of questions. I hoped he might have answers about Campus California's Tvind links: According to the 2003 annual report of Planet Aid, which has been described as a Tvind front in an investigation by the *Chicago Tribune*, Duus was previously manager for Planet Aid Mid-West, and clothes collection manager for the reputed Tvind front Humana in France and Belgium.

I didn't hear back from Duus. But Sako later e-mailed me. "Marianne Thomsen has stepped down as the chairwoman of Campus California's Board of Directors earlier this year and she is no longer associated with Campus California in any capacity," he wrote. Calls to phone numbers linked to her in the East Bay and at a Michigan Tvind school, produced no answers.

As for my question about whether Marianne Thomsen was Petersen's physician, Sako suggested it was inappropriate that I asked about his board chair's alleged ties to an international fugitive: "Did you really asked me if two people are in a patient-doctor relationship???" he wrote in an e-mail.

As for an opportunity to speak to her replacement, Sako said he would "forward my request." In a follow up e-mail, he wrote: "It is our belief that Campus California have already provided you with full information about our work."

So who is that secretive man? During the 1970s, Mogens Amdi Petersen gathered a group of idealistic, leftist-minded educators to establish folk high schools, a uniquely Danish tradition of learning centers where adults can extend their education. The group expanded with more schools, overseas development projects, and used-clothing collection operations.

"It's very difficult to describe a truly charismatic person," Steen Thomsen says. "He's very bright. He's able to talk to anybody, wherever he might be. And the only person I can say I've ever heard give a speech at the level of Mr. Petersen is Barack Obama."

D-5

Accusations that the various enterprises weren't honest with their accounts surfaced during the late 1970s. Things got so bad that in 1979 Petersen went underground, seemingly for good.

But in 2002, FBI agents acting on a tip arrested him for extradition to Denmark to stand trial on charges of embezzlement and tax fraud in connection with an \$8 million scheme to launder money. Danish prosecutors compiled a dossier that describes how, while a fugitive, Petersen personally oversaw the creation and management of a global network of for-profit and nonprofit front groups, offshore companies, and byzantine money transfers with the aim of moving and hiding assets generated by the collection and reselling of — of all things — used clothes. A court convicted one of his associates of embezzlement but acquitted Petersen and six others. Danish prosecutors announced they would appeal the decision in 2006, and Petersen went into hiding.

Eleven years ago, a northern European named Ebbe Larsen visited Etna, Calif., population 781. That's according to Corky Gussman, who recalls that Larsen was in a hurry to consummate an unusual real estate transaction. Events that followed seemed extraordinary to residents of this sleepy mountain town.

Larsen may have been a Petersen underling. Steen Thomsen reported in his 1998 complaint to Danish authorities that Amdi Petersen removed a man named Ebbe Larsen from a post as a schoolmaster in Denmark after Larsen had failed to persuade enough students to join the Teachers Group.

Gussman says of Larsen's involvement, "He's still with them. He travels around and does different things for them."

Larsen had come to Etna to buy an old Forest Service building where a mysterious European group planned to establish a boarding school training volunteers for work in Africa. The school was to be called Campus California TG, the initials standing for Teachers Group.

According to a school brochure, the school was staffed by "members of the Teachers Group (TG). The TG started in Denmark in the 1970s and has grown to almost 2,000 members worldwide."

However, the school itself wasn't going to buy the building. Instead, "there was a Delaware corporation, and I think they had an office in Florida," Gussman recalls. It was called AS Properties Ltd., and seems to focus on buying real estate and renting it to various Tvind entities. In 2004, the *Chicago Tribune* published an investigation of the Tvind-linked companies with names such as Gaia, Planet Aid, USAgain, Garson & Shaw, and AS Properties.

Tvind's U.S. schools train volunteers to work in Tvind-linked programs in Africa operating under the name Humana-People to People. And, according to the *Chicago Tribune* investigation, the institutes funneled money to Tvind by paying "hundreds of thousands of dollars in rent to a for-profit Tvind company called AS Properties Ltd."

Something similar seemed to have been going on with Campus California. On its most recently available public financial filings in 2009, Campus California TG reported "occupancy" expenses of \$158,000, plus another \$40,000 for "boarding" when the Etna school was operating on AS Properties-owned land.

The *Chicago Tribune* reported that A.S. Properties vice president Kirsten Fuglsbjerg had been indicted in Denmark. According to the Danish dossier, Fuglsbjerg also used the alias Christie Pippis.

That wasn't the only unusual thing about the Etna school. It was set up along the same lines as other Tvind-linked schools in Massachusetts and Michigan, which operate under the name Institute for

D-6

International Cooperation and Development. Those schools charge \$13,000 annual tuition with the promise of delivering training for development work in Africa and Latin America.

In the case of the Etna School, "training" included traveling to the Bay Area and spending days visiting merchants to ask if they'd be willing to allow Campus California TG to put clothing donation boxes on their properties. Students were even encouraged to solicit donations in public, the rationale being that they needed to pay down their tuition. The idea of the clothing bins seemed to be raising money for a tiny rural school that was already collecting a fortune in tuition.

It wasn't long before the local *Pioneer Press* had produced the March 2001 headline "Has a Cult Come to Etna?"

That didn't rattle residents. "I don't know. They seemed like nice people to me," Etna Motel proprietor Bart Jenkins tells me, articulating a common viewpoint. Georgia Wright, president of the Friends of the Etna Library, adds, "They brought some new thoughts to the valley."

Campus California raised eyebrows again in the winter of 2009 when the school manager went away for a few days without shutting off the water main, which froze and burst. "It ended up emptying the whole Etna water system," Gussman recalls. "There were 300,000 to 500,000 gallons of water that emptied inside the building."

Sako says the massive damage wasn't worth repairing. And besides, Campus California was refocusing its mission to just clothes recycling.

The group shut down the school, and reincorporated in October 2010 with its headquarters in Richmond. Sako says the group removed "TG" from the name, though as of last month it was still on his business card.

After the flooding, Gussman received another out-of-town visit, this time to sell the Etna building. "It was A.S. Properties, which is an affiliate of the huge corporation," he recalls. He explains that his clients were a sort of franchise. Campus California "borrowed money from A.S. Properties, which is part of the whole entity; part of the Humana People to People organization. It's out of Denmark."

Now that the school has closed, Campus California doesn't have to pay rent to AS Properties. And Sako says that to maintain its charitable purpose, Campus California now sends \$220,000 per year to the Michigan and Massachusetts schools that also have Tvind links. But Campus California's connection with A.S. Properties has not broken completely. County deed records say those school facilities are owned by AS Properties Ltd.

That's not the only Tvind company connected to Campus California.

In the Bay Area, Sako says, Campus California pays a commission of 3 percent of gross receipts to Garson and Shaw, a used-textiles broker based in Atlanta that also arranges clothing sales for Gaia, Tvind's collection operation. Garson and Shaw is owned by Tvind company Fairbank, Cooper and Lyle.

In 2009, Campus California grossed \$1.8 million. If the nonprofit generated a similar amount of money this year, and if it all came from clothing sales, the annual brokerage fee would presumably be in the \$50,000 range.

Annette Floystrup is a retired Oakland computer technician who lives in a smallish house marked by Danish design themes. She's a Danish immigrant who happens to be uniquely poised to battle Campus California. She's vice chair of the Rockridge Community Planning Council, a NIMBY group known for

p-7

opposing expansion plans of companies such as Safeway.

During annual vacations to Denmark, Floystrup read periodic newspaper updates about the underworld empire of Mogens Amdi Petersen. And when she saw mysterious clothes collection boxes sprouting up not far from her home, it seemed as if her once separate worlds had cohered. She translated a Danish article about Petersen and his group for fellow neighborhood activists Valerie Winemiller and Ken Katz, who complained to local officials. Some of the boxes disappeared. But others popped up at more than half a dozen Oakland schools, one of which is just a block from Floystrup's house.

"The idea that Campus California disassociated itself from the Teachers Group is ludicrous," she says. "We got all the boxes out" of Piedmont and College avenues. "We got them removed from Rockridge, and a friend of mine is chair of the Piedmont Avenue area neighborhood group, and we got them removed there."

Oddly, though San Francisco is home to some of America's most muscular NIMBYs, there seems to have been no reaction to the recent incursion of boxes. Instead, the anti-Campus California vanguard is in Oakland.

Floystrup would like to put an end to the battle once and for all with city legislation imposing a fee for each box placed in the city.

Sako says that Campus California's business model does not allow for a significant fee, and that the group will pull out of any city that imposes one.

Thanks to lobbying help from Goodwill Industries, such a fee might not be far off.

Last year, the state Legislature passed a Goodwill Industries-backed measure allowing local jurisdictions to regulate used-clothing boxes. In Oakland, a representative with Councilwoman Patricia Kernighan's office said she is studying the possibility of legislation.

Latchford, the East Bay Goodwill executive, says his office has been informing officials in cities and towns where Goodwill operates of the new state law. (Again, oddly in NIMBY-mad San Francisco, Goodwill Industries of San Francisco, San Mateo and Marin Counties has not been involved in any such efforts, a spokeswoman says.) "Once they have the cover of state legislation, local officials often feel more comfortable enacting ordinances and procedures," Latchford says.

Goodwill's Sacramento lobbyist, Otto DeLeon, says the group might seek tougher legislation next year. "Our next steps are trying to regroup and find out what our strategies would be," he says.

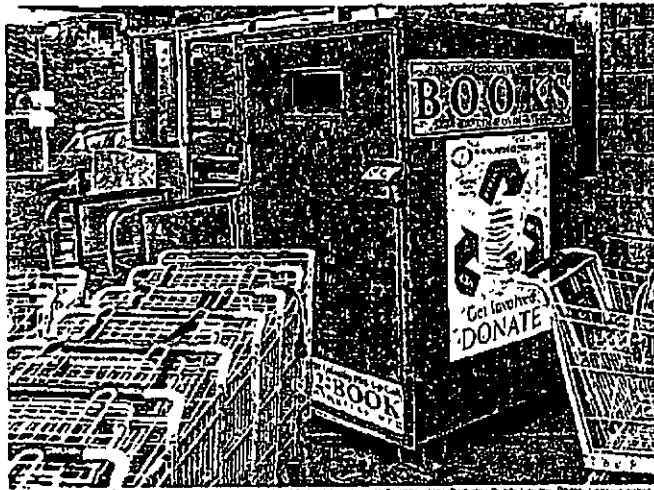
Back at Campus California's Richmond headquarters, Sako doesn't seem to feel there's much to fear. Last fall's legislation "became a very useful bill," he says, because it required boxes to have stickers declaring they belong to a nonprofit, which has served as a sort of advertisement attracting donors. As far as he can tell, the future portends nothing but growth.

"When I came here from Africa in 2006, our challenge was that this was a new thing, and the general public had to ask, 'What are these boxes?'" Sako says. "Now the boxes are accepted. And the people understand it. And they know there is no better way to deal with used textiles."

Perhaps it's time for the public to begin asking questions again.

"Charity" book bins run by for-profit company

June 30, 2011 9:00 am by Lance Anderson



A photo on the back of the Tempepest Associates. It's not a good photo of the bin. Photo: Lance Anderson

Berkeleyans tend to be generous, civic-minded people, so the bright blue bins in supermarket parking lots marked "Donate Books" could inspire thoughts about clearing clutter from some shelves. Think again. The bins are run by for-profit Thrift Recycling Management, based in Lakewood, Washington. In Berkeley, the bins are now at Andronico's and Safeway locations. Nationally only about 25% of the books are given to non-profits (locally, Safeway has a different arrangement with no books being sold).

According to a recent investigation by D. K. Row for The Oregonian, Thrift Recycling Management (TRM) has revenues of about \$26 million a year and 200 employees. The books collected in the bins are sorted into three groups: about one-quarter are sold through online sites like Amazon; about half are pulped, and the final one-quarter is given to non-profits. Most of these go to Reading Tree, a non-profit registered in Utah. Row's investigation revealed unusually close links between TRM and Reading Tree. TRM President Jeff Mullin is also president of Reading Tree. (Reading Tree's 2009 990 form can be seen here. The organization had gross receipts of over \$10 million in 2009.)

"They're not being straightforward," said Diane Davenport, president of Friends of the Berkeley Public Library. "TRM made \$26 million last year from books that they'd gotten out of these blue bins."

According to Davenport, the Friends have not yet seen any impact from the bins, which have been in Berkeley for less than a month. She said, however, that the friends group in Lafayette, where the bins have been in place a bit longer, has noticed an impact. Davenport said the Friends gave \$128,000 to the Berkeley Public Library last year through its sales of books. About 60% of donated books are unsuitable for sale and are either given away free or collected by the non-profit DR3 recycling program run by St. Vincent de Paul.

"We depend on donations of salable books," said Sayre Van Young, a volunteer with the Friends. "If people want to stick their 1983 encyclopedia in those damn blue bins, that's okay."

The book bins at Safeway stores are handled differently to others. According to Susan Houghton, Director of Governmental and Public Affairs for Safeway in Northern California, "No books will be sold." Safeway has Reading Tree collect the books and sort them to go to either schools or to qualified charities. Unsuitable books — those that are tattered, soiled or unsellable — will be pulped. Safeway is working with the Oakland-based Reading Partners, which has been distributing books to schools for the last 10 years.

"We've already seen thousands of books going to students that didn't have them otherwise," said Matt Aguilar, chief operating officer of Reading Partners. He said the organization distributed to 40 schools in the Bay Area and another 20 schools nationally.

The books that don't meet Reading Partners' criteria, according to Safeway's Houghton, are held for other charities. Reading Partners will be the conduit to other charities, such as library friends' organizations.

A call to Andronico's seeking comment on the bins on their sites was not returned.

ATTACHMENT B



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OFFICE OF THE CITY CLERK
OAKLAND

2012 APR 26 PM 4:45

AGENDA REPORT

TO: DEANNA J. SANTANA
CITY ADMINISTRATOR

FROM: Fred Blackwell, Assistant
City Administrator

SUBJECT: Unattended Donation Boxes

DATE: April 12, 2012

City Administrator
Approval

Date

4/26/12

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

Staff recommends that the City Council Direct the City Administrator to Develop and Implement Regulations Regarding Unattended Donation Boxes

Staff recommends that the Council direct that the issue be immediately addressed through administrative options currently available without further legislative action. This option and other regulatory options are described in greater detail on page 3 of this report.

REASON FOR SUPPLEMENTAL

At its meeting of March 27, 2011, the Community and Economic Development Committee meeting directed staff to return in six weeks with a range of options available to regulate unattended donation boxes, which have proliferated on private property in Oakland in recent months. Concerns have been expressed about aesthetic impacts, potentially blighting influences, and the fact that while the vast majority of these boxes are not benefiting locally-serving charitable organizations, many persons who donate to them believe they are making a charitable donation.

This supplemental report presents options for possible regulation of these clothing donation boxes, as developed by staff with the Planning Division of the City's Department of Planning, Building, and Neighborhood Preservation. As further described in the Analysis Section below, options for the Council to consider include.

1. A recommendation for staff to utilize an existing administrative process to begin regulating unattended donation boxes, such as through a Zoning Code Bulletin and enforcement thereof, or
2. Direct staff to return with an Ordinance providing Interim Controls on unattended donation boxes, such as requiring a Conditional Use Permit for placement of such boxes,

Item: 3
CED Committee,
May 8, 2012

- and direct staff to develop permanent regulations that would be brought back to Council as an Ordinance (after receiving a recommendation from the Planning Commission), or
- 3 Direct staff to return with an Ordinance instituting a Moratorium on the placement of unattended donation boxes, and direct staff to develop permanent regulations that would be brought back to Council as an Ordinance (after receiving a recommendation from the Planning Commission), or
 - 4 Direct staff to develop permanent regulations (without initiating Interim Controls or a Moratorium), returning to Council with an Ordinance (after receiving a recommendation from the Planning Commission).

A regulatory comparison of each of these options, including anticipated timelines to implement regulations, is provided below in the Analysis Section.

OUTCOME

The outcome of this action will be direction to staff to provide regulatory action for unattended donation boxes, through either an administrative process, or through the future adoption of an Ordinance or Ordinances providing regulation of such boxes.

BACKGROUND/LEGISLATIVE HISTORY

As discussed at the March 27th Community and Economic Development Committee meeting, the number of unattended donation boxes has increased significantly in the past few years, and especially within the past year. These boxes are currently unregulated by the City of Oakland. They have been placed, presumably with the property owner's permission, at schools, grocery stores, gas stations, in parking lots and near businesses by organizations that do not operate locally, and that in some cases are reselling the items for a profit. Because the boxes are unmonitored, they can become a public nuisance as they attract graffiti, scavenging and illegal dumping nearby. People will stack donations on or near the boxes or fill them to overflowing if they are not emptied in a timely manner. Sometimes they are placed in required parking spaces or vehicle maneuvering areas which can effect vehicle circulation and safety, including pedestrian safety. Local non-profit organizations have reported a drop in donations at their attended donation centers since the proliferation of unattended donation boxes. These local non-profit organizations circulate donated goods for sale at low-cost thrift centers in the community, offering a point of purchase in the community, and generating revenue which is used directly in the community for job training and placement programs which benefit Oakland residents. While some of these boxes are maintained by local non-profit organizations, most of them are not. The non-local boxes collect items which are in many cases subsequently re-sold for profit. While the entities operating the unattended donation boxes represent that a portion of the proceeds of these donations go towards a charitable purpose, but in most cases those proceeds are not put to use within the City of Oakland.

Item: _____
CED Committee
May 8, 2012

ANALYSIS

The following table summarizes the options that are available to Council to implement regulations on unattended donation boxes. Staff recommends that the Council direct the implementation of the administrative steps in Option 1, with a return to Council after a period of time to gauge whether other more involved solutions are required, such as those described in Options 2, 3, and 4. Following the table staff has provided additional information to assist the Council in determining its preferred option to implement regulations for these boxes.

Regulatory Option	Regulatory Mechanism	Authority to Implement	Approx. Time to Implement	Comments
1. Administrative Process (only)	Zoning Code Bulletin	Staff	30-60 days (90-120 days for enforcement of existing)	<ul style="list-style-type: none"> • Simplest process • Less staff resources • Soonest to implement • Less Council authority in implementation • Can apply to existing boxes
2. Interim Controls pursuant to Charter section 213 (effective immediately upon first and only reading with at least 6 votes) <u>plus</u> permanent regulations	A. Emergency Ordinance for Interim Controls B. Ordinance for permanent regulations	A. City Council B. 1. Planning Commission 2. City Council	A. 45-60 days to appear on City Council agenda B. 6-9 months	<ul style="list-style-type: none"> • More staff resources than Option #1 • More time to completely implement • Could affect other staff priorities • More Council control • Interim controls can apply to existing boxes
3. Moratorium pursuant to government Code section 65858 (effective immediately upon first and only reading with at least 7 votes) <u>plus</u> permanent regulations	A. Urgency Moratorium (must extend no later than 45 days after adoption) B. Ordinance for permanent regulations	A. City Council B. 1. Planning Commission 2. City Council	A. 45-60 days to appear on City Council agenda B. 6-9 months	<ul style="list-style-type: none"> • More staff resources than Option #1 • More time to completely implement • Could affect other staff priorities • More Council control • Moratorium could be considered overly-aggressive • Moratorium will <u>not</u> affect existing boxes

Item: ~~_____~~
 CED Committee
 May 8, 2012

4. Permanent regulations (only)	Ordinance (standard)	1. Planning Commission 2. City Council	6-9 months	<ul style="list-style-type: none"> • More staff resources than Option #1 • More time to implement • Could affect other staff priorities • More Council control • No short-term regulation • New regulations can apply to existing boxes
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As summarized in the table above, each option carries with it pros and cons, especially with regard to timing to implement and degree of Council control. Pursuant to the City Charter, the Council has legislative authority to create Zoning regulations through adoption of an Ordinance, but the Council's authority to influence how existing regulation is interpreted and administered is very limited (Oakland Planning Code section 17.132 020 provides the Planning Director with authority to make administrative determinations and Planning Code interpretations, subject to appeal to the City Planning Commission, whose decision is final). Staff recommends that Council direct implementation of Option 1, because: 1) It utilizes an existing process available to staff, which is similar to that used for other accessory facilities including fences and signs; and 2) It would be less demanding on staff time resources. Staff believes it has a good understanding of the Council's concerns on unattended donation boxes, and believes that an existing administrative process could facilitate sufficient control over the continued proliferation of these boxes, and provide a mechanism for significantly reducing the number (and/or location and appearance) of existing boxes. Implementation of an administrative process can apply to existing boxes. If so directed, after implementation staff could return to Council to gauge the efficacy of this administrative solution and whether other options should then be considered.

Options 2, 3, and 4 involve the adoption of one or more Ordinances, which will increase the time it takes to completely implement the regulations, although Options 2 and 3 include a short-term approach coupled with the longer-term adoption of permanent regulations. The permanent regulations summarized in Options 2, 3 and 4 would all also require recommendations from the Planning Commission prior to permanent adoption by the City Council. As summarized in the table, above, the adoption of interim controls and permanent regulations can apply to existing boxes, while adoption of a moratorium can not apply to existing boxes.

The Council could also choose to direct staff to implement the administrative Option 1 first, and then re-evaluate that solution's effectiveness in a few months to determine if a permanent legislative solution is necessary (Option 4).

Item: ~~_____~~
 CED Committee
 May 8, 2012

PUBLIC OUTREACH/INTEREST

This item did not require any additional public outreach other than the required posting on the City's website. Several meetings have occurred with various staff members (Council staff and Planning staff) and interested stakeholders on this issue (representatives from Goodwill, Salvation Army, St. Vincent DePaul). Any permanent legislative solution would involve a more formal public noticing and outreach process per City Planning protocols.

COORDINATION

Council staff and the City Attorney's Office have been consulted and contributed to this report.

COST SUMMARY/IMPLICATIONS

The cost to implement regulations will generally be cost-recovered by application fees submitted to process a permit. The cost that will be charged for each application will be determined once the regulatory process (i.e. administrative or Ordinance adopting new legislation) is finalized. Application fees could range from approximately \$450 to \$1000 for utilization of an existing administrative process to approximately \$2,800 for a minor Conditional Use Permit

SUSTAINABLE OPPORTUNITIES

Economic: The regulation of unattended donation boxes may increase donations to locally-serving non-profit organizations, which will re-circulate for sale in their thrift store locations in Oakland.

Environmental: The imposition of regulations on this previously unregulated use will reduce blight. Blight often associated with these boxes includes graffiti or debris that is generated from overflowing boxes, scavenging or attraction of illegal dumping nearby.

Social Equity: The regulation of these boxes encourages increased access to donated goods for locally serving non-profit organizations which are serving under-served communities. The revenue generated from the resale of donated goods in the local non-profit thrift stores provides for job-training programs for Oakland residents

CEQA

The adoption of regulations for unattended donation boxes is exempt from CEQA review pursuant to CEQA Guidelines Sections 15061.b.3 (General Rule Exemption) and 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning).

CEQA: Exempt.

Item: ~~_____~~
CED Committee
May 8, 2012

For questions regarding this report, please contact Scott Miller, Interim Planning & Zoning Director, at (510) 238-2235.

Respectfully submitted,



Fred Blackwell
Assistant City Administrator

Prepared by:
Scott Miller, Interim Planning & Zoning Director
Department of Planning, Building, and Neighborhood
Preservation



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OAKLAND
2014 MAR 13 PM 12:07

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.

Item: _____
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.

Item: _____
CED Committee
March 25, 2014

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:

LOCATION OPTION			
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)

Item: _____
 CED Committee
 March 25, 2014

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.

Item: _____
 CED Committee
 March 25, 2014

- 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.

Item: _____
CED Committee
March 25, 2014

- *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:

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 sunseting 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.

Item: _____
 CED Committee
 March 25, 2014

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.

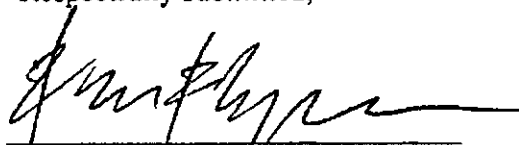
Social Equity: The regulations of these boxes could possibly encourage increased access to donated goods for locally serving non-profit organizations that provide affordable goods to Oakland residents.

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

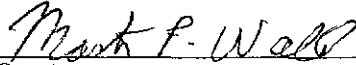
Item: _____
CED Committee
March 25, 2014

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2014 APR 10 PM 1:01

7 VOTES REQUIRED FOR PASSAGE

Approved as to form and legality


CITY ATTORNEY

Ordinance No. _____ 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, _____, 2014,

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 _____

mpw

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2014 APR 10 PM 1:01

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.