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# 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,

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- 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 27<sup>th</sup> 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.

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**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"> <li>• Simplest process</li> <li>• Less staff resources</li> <li>• Soonest to implement</li> <li>• Less Council authority in implementation</li> <li>• Can apply to existing boxes</li> </ul>
2. Interim Controls pursuant to Charter section 213 (effective immediately upon first and only reading with at least 6 votes) plus 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"> <li>• More staff resources than Option #1</li> <li>• More time to completely implement</li> <li>• Could affect other staff priorities</li> <li>• More Council control</li> <li>• Interim controls can apply to existing boxes</li> </ul>
3. Moratorium pursuant to government Code section 65858 (effective immediately upon first and only reading with at least 7 votes) plus 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"> <li>• More staff resources than Option #1</li> <li>• More time to completely implement</li> <li>• Could affect other staff priorities</li> <li>• More Council control</li> <li>• Moratorium could be considered overly-aggressive</li> <li>• Moratorium will <u>not</u> affect existing boxes</li> </ul>

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4. Permanent regulations (only)	Ordinance (standard)	1. Planning Commission  2. City Council	6-9 months	<ul style="list-style-type: none"> <li>• More staff resources than Option #1</li> <li>• More time to implement</li> <li>• Could affect other staff priorities</li> <li>• More Council control</li> <li>• No short-term regulation</li> <li>• New regulations can apply to existing boxes</li> </ul>
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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).

### 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

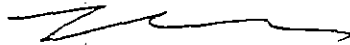
The adoption of regulations for unattended donation boxes is exempt from CEQA review pursuant to CEQA Guidelines Sections 15061.b.3 (General Rule Exemption) and 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning).

CEQA: Exempt.

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

Respectfully submitted,



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Fred Blackwell  
Assistant City Administrator

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