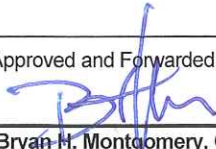




## STAFF REPORT

**Date:** May 9, 2017  
**To:** Bryan Montgomery, City Manager  
**From:** Kenneth W. Strelow, Senior Planner  
**Subject:** **Donation Bin Regulations – Adoption of Section 9.1.1232 of Chapter 1 of Title 9 of the Oakley Municipal Code Related to Regulations on Unattended Donation Bins (RZ 02-16)**

Approved and Forwarded to City Council:  
  
Bryan H. Montgomery, City Manager

### Summary

This is a public hearing to consider adopting zoning ordinance text amendments adding Section 9.1.1232 to Article 12 of Chapter 1 of Title 9 of the Oakley Municipal Code related to regulations on unattended donation bins.

Staff recommends the City Council waive the first reading and introduce the ordinance approving zoning ordinance text amendment, related to regulations on unattended donation bins, to Section 9.1.1232 of Chapter 1 of Title 9 of the Oakley Municipal Code (RZ 02-16).

[It is noted that the public hearing notice for this project referenced adding the text to section 9.1.1220. In light of other text amendments that have occurred in the last year plus, the section number has been updated to the available Section 9.1.1232.]

### Background and Project Description

On May 10, 2016 the City Council held a work session on "Donation Bins". The City Council provided discussion and direction for Staff to further look into text amendments and additions to address regulations surrounding the topic. During the July 12, 2016 City Council public hearing, it was announced that proceeding with a new ordinance for donation bins would require additional research and Staff time since it would require City Attorney involvement and an entirely new ordinance. Over the next several months, Staff and the City Attorney awaited publishing on a court case with the Ninth Circuit Court of Appeals involving the City of Oakland and their ordinance regulation donation boxes. The case was originally scheduled to be heard on September 23, 2016. After continuous delays and several months, it was decided to move forward with an ordinance. Per the City Attorney's request, Staff has used an existing ordinance by the City of Sacramento.

### Narrative Summary of Ordinance

The proposed ordinance is very straight forward in regulating the placement and use of unattended donation bins. It requires a permit by the property owner, which is valid for one year and may be renewed an indefinite number of times, a maximum size of the bin (82" high, 56" wide, and 49" deep), and prohibited placement of bins within required parking spaces, drive aisles, or landscape areas, or on undeveloped or vacant properties. The

proposed ordinance also prohibits unattended donation bins from being placed any property within a residential zoning district. Permits for placement of unattended donation bins may be revoked, and failure to comply with the requirements of a permit may be deemed a public nuisance and enforced as such. All bins shall also be operated by a qualified person pursuant to California Welfare and Institutions Code Section 148.3, as amended, which currently states: "It shall be unlawful for any association of persons to engage, directly or indirectly, in soliciting donations of salvageable personal property, or in selling salvageable personal property obtained by soliciting, except an association which is exempt under Section 23701d or 23701f of the Revenue and Taxation Code from any tax imposed by the Bank and Corporations Tax Law." The above code section, as well as Sections 23701(d) and (f) of the Revenue and Taxation Code are attached, as reference.

### **Analysis**

Adopting standards for donation bins within the City of Oakley will ensure, through registration and enforcement, that donation bins are located and managed in manner not detrimental to the public health, safety, and general welfare of the City and its residents by not creating nuisances. The goal of this ordinance is to welcome donation bins, which are inherently a passive use, such that they are integrated into existing commercial or public businesses to ensure businesses that agree to allow them onsite will also have an interest in keeping them well-managed. This ordinance will prohibit donation bins from being located in parking lots, within landscaped areas, or on vacant lots where location may play a role in illicit dumping. Another goal of this ordinance is to minimize the amount of enforcement required by City Staff. Inherently, this code will require donation bins to be located near existing commercial and public business entrances and building frontages, the idea is that any business willing to accept a bin on their grounds will realize the negative impacts if the bin receives illicit dumping and want to remedy the issue for the betterment of their business.

In general, the proposed ordinance will include language that requires operation of unattended donation bins to receive a permit by the City of Oakley and meet a set of standards as written in the Code. The entirety of the language is included in the proposed ordinance.

### **Environmental**

This project is exempt from further analysis under the California Environmental Quality Act ("CEQA") Guidelines Section 15061(b)(3) in that adoption of the ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment.

### **Recommendation**

Staff recommends the City Council waive the first reading and introduce the ordinance approving a zoning ordinance text amendment, related to regulations on donation bins, to Section 9.1.1232 of Chapter 1 of Title 9 of the Oakley Municipal Code (RZ 02-16).

### **Attachments**

1. Proposed Ordinance
2. Referenced Regulations

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OAKLEY ADOPTING ZONING TEXT AMENDMENTS ADDING SECTION 9.1.1232 TO ARTICLE 12 OF CHAPTER 1 OF TITLE 9 OF THE OAKLEY MUNICIPAL CODE RELATED TO REGULATIONS ON UNATTENDED DONATION BINS (RZ 02-16).**

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The City Council of the City of Oakley does ordain as follows:

SECTION 1. Section 9.1.1232 is hereby added to Article 12 of Chapter 1 of Title 9 of the Oakley Municipal Code to read as follows:

"9.1.1232. Donation Bins

a. Definitions.

- 1) "City Manager" means the City Manager of the City of Oakley or designee.
- 2) "Operator" means a person who utilizes or maintains unattended donation bin(s) to solicit donations of salvageable personal property.
- 3) "Permittee" means the property owner who is issued a permit authorizing placement of unattended donation bin(s).
- 4) "Property owner" means the person who owns the real property where the unattended donation bin(s) are or are proposed to be located.
- 5) "Residential district" means R-6, R-7, R-10, R-12, R-15, R-20, R-40, AL, M-9, M-12, M-17, and P-1 (for residential use) Districts pursuant to Chapter 1 of Title 9 of this code.
- 6) "Unattended donation bin" means any unattended container, receptacle, or similar device that is located on any lot within the City and that is used for soliciting and collecting donations of clothing or other salvageable personal property. This term does not include recycle bins for the collection of recyclable material governed or regulated by the zoning code or any unattended donation bin located within a building.

b. Permits.

- 1) It is unlawful and a public nuisance for any property owner or other person to place, operate, maintain or allow unattended donation bins on real property unless the property owner first obtains a permit pursuant to this chapter and the donation bin is placed, operated and maintained in accordance with all provisions in this chapter.
- 2) The permit application shall be made on a form provided by the City Manager and shall include the following information:

- i. The name, address, email, website (if available) and telephone number of the applicant;
  - ii. Written proof sufficient to establish that the operator who will utilize the unattended donation bin is qualified to solicit donations of salvageable personal property pursuant to California Welfare and Institutions Code section 148.3, as amended;
  - iii. The text of the disclosures that will be made on the unattended donation bin as required by Section 9.1.1232(d)1(iii); and
  - iv. The physical address of the property owner's real property and a drawing sufficient to indicate the proposed location of the unattended donation bin on the property owner's real property and the size of the proposed unattended donation bin.
- 3) Each application shall be accompanied by a nonrefundable fee in the amount established by resolution of the City Council. This fee shall be in addition to any fee or tax imposed by the City pursuant to any other provision of this code.
- 4) Applications shall be filed with the City Manager.
- 5) Within sixty (60) days of receiving a completed application, the City Manager shall issue a permit or deny the issuance of a permit.
- 6) The City Manager shall not issue a permit unless:
  - i. The applicant has submitted a complete and accurate application accompanied by the applicable fee;
  - ii. The operator who will utilize the unattended donation bin is qualified to solicit donations of salvageable personal property pursuant to California Welfare and Institutions Code Section 148.3, as amended;
  - iii. The proposed location of the unattended donation bin on the property owner's real property is in compliance with all applicable laws.
- 7) If the City Manager denies an application the City Manager shall state, in writing, the specific reasons for denial.
- 8) The term of the permit shall expire one year from the date of issuance.
- 9) No person to whom a permit has been issued shall transfer, assign, or convey such permit to another person.

- 10) Prior to expiration of the permit, the permittee may voluntarily cancel the permit by notifying the City Manager in writing of the intent to cancel the permit. The permit shall become void upon the City Manager's receipt of a written notice of intent to cancel the permit.

c. Renewal of permits.

- 1) A permittee may apply for permit renewal by submitting to the City Manager before the expiration of the permit, a renewal application and a non-refundable renewal fee in an amount set by resolution of the City Council.
- 2) The City Manager shall either approve or deny the renewal of a permit within sixty (60) days of receipt of the complete renewal application and payment of the renewal fee. The failure of the City Manager to timely act shall constitute approval of the renewal of the permit.
- 3) The City Manager shall approve the renewal of a permit if he or she finds that no circumstances existed during the term of the permit, existed at the time of submission of an application for renewal, or existed at any time during the review of the application for renewal that are inconsistent with any finding required for approval of a new permit as specified in Section 9.1.1232(b) or that would justify the revocation of the permit as specified in Section 9.1.1232(e).

d. Requirements and Maintenance.

- 1) A permittee shall operate and maintain or cause to be operated and maintained all unattended donation bins located in the City as follows:
  - i. Unattended donation bins shall be maintained in good condition and appearance with no structural damage, holes, or visible rust, and shall be free of graffiti;
  - ii. Unattended donation bins shall be locked or otherwise secured;
  - iii. Unattended donation bins shall contain the following contact information in two inch type visible from the front of each unattended donation bin: the name, address, email, and phone number of both the permittee and operator;
  - iv. Unattended donation bins shall be serviced and emptied as needed, but at least every thirty (30) days.
- 2) Unattended donation bins shall be no more than 82" high, 56" wide and 49" deep.

- 3) The permittee shall maintain or cause to be maintained the area surrounding the unattended donation bin(s) free of any junk, debris or other material and shall be responsible to the extent provided by law for the cost to abate any violation.
- 4) Notwithstanding any other provision of this code, it is unlawful for any person to place an unattended donation bin in any residential district.
- 5) Notwithstanding any other provision of this code, it is unlawful to locate any unattended donation bin less than 400 feet from any other unattended donation bin.
- 6) Notwithstanding any other provision of this code, it is unlawful to locate more than one unattended donation bin on each parcel of real property.
- 7) Notwithstanding any other provision of this code, it is unlawful to locate any unattended donation bin on required parking spaces, within drive aisles, or within landscaped areas, or on any undeveloped or vacant property.

e. Revocation of Permit, Removal of Unattended Donation Bins and Liability.

The City Manager shall have the right for cause to revoke any permit issued hereunder. Any of the grounds upon which he or she may refuse to issue an initial permit shall also constitute grounds for such revocation. In addition, the failure of the permittee to comply with the provisions of this chapter or other provisions of this code or other law shall also constitute grounds for revocation of the permit. The City Manager shall provide a written notification to the permittee stating the specific grounds for revocation. Upon revocation, the unattended donation bin shall be removed from the permittee's real property within thirty (30) days and if not removed within this time period, the City may remove, store and dispose of the unattended donation bin at the expense of the permittee. Upon revocation, a permittee shall be prohibited from applying for a permit for a period of one year. Any violation of the provisions of this section is a public nuisance subject to abatement pursuant to Chapters 5 and 6 of Title 1 of this code.

f. Violation-Penalty.

Any person violating any provision of this section is guilty of an infraction.

g. Appeals to City Council.

Any person aggrieved by the decision rendered by the City Manager in granting or denying an application for a permit under this section or in revoking a permit issued under this section may appeal the decision to the City Council in accordance with Section 2.4.020 of this code. The appeal shall be made by filing a written notice thereof with the City Clerk not later than ten (10) calendar days after receiving notice of the decision of the City Manager. The City Council shall hold a hearing on the appeal and its decision

thereon shall be final. Instead of hearing the appeal, the City Council may refer the matter to a hearing officer to recommendation a decision, pursuant to Section 2.4.020 of this code.”

SECTION 2. California Environmental Quality Act (CEQA).

This project is exempt from environmental analysis under the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15061(b)(3), because it can be seen with certainty that the proposed amendments will not have a significant effect on the environment.

SECTION 3. Effective Date and Posting.

This ordinance shall take effect and be in force thirty (30) days from and after the date of its passage. The City Clerk shall cause the ordinance to be published within fifteen (15) days after its passage in a newspaper of general circulation, or by publishing a summary of the proposed ordinance, posting a certified copy of the proposed ordinance in the City Clerk’s Office at least five (5) days prior to the City Council meeting at which the ordinance is to be adopted, and within fifteen (15) days after its adoption, publishing a summary of the ordinance with the names of the Council Members voting for and against the ordinance.

The foregoing ordinance was adopted with the reading waived at a regular meeting of the Oakley City Council on \_\_\_\_\_, 2017 by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

APPROVED:

\_\_\_\_\_  
Sue Higgins, Mayor

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Libby Vreonis, City Clerk

\_\_\_\_\_  
Date

**State of California**

**WELFARE AND INSTITUTIONS CODE**

**Section 148.3**

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148.3. It shall be unlawful for any association of persons to engage, directly or indirectly, in soliciting donations of salvageable personal property, or in selling salvageable personal property obtained by soliciting, except an association which is exempt under Section 23701d or 23701f of the Revenue and Taxation Code from any tax imposed by the Bank and Corporations Tax Law.

(Amended by Stats. 1976, Ch. 500.)



## REVENUE AND TAXATION CODE Section 23701

### **23701d.**

(a) A corporation, community chest or trust, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involved the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation (except as otherwise provided in Section 23704.5), and which does not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office. An organization is not organized exclusively for exempt purposes listed above unless its assets are irrevocably dedicated to one or more purposes listed in this section. Dedication of assets requires that in the event of dissolution of an organization or the impossibility of performing the specific organizational purposes the assets would continue to be devoted to exempt purposes. Assets shall be deemed irrevocably dedicated to exempt purposes if the articles of organization provide that upon dissolution the assets will be distributed to an organization which is exempt under this section or Section 501(c)(3) of the Internal Revenue Code or to the federal government, or to a state or local government for public purposes; or by a provision in the articles of organization, satisfactory to the Franchise Tax Board; that the property will be distributed in trust for exempt purposes; or by establishing that the assets are irrevocably dedicated to exempt purposes by operation of law. The irrevocable dedication requirement shall not be a sole basis for revocation of an exempt determination made by the Franchise Tax Board prior to the effective date of this amendment.

(b) (1) In the case of a qualified amateur sports organization—

(A) The requirement of subdivision (a) that no part of its activities involves the provision of athletic facilities or equipment shall not apply.

(B) That organization shall not fail to meet the requirements of subdivision (a) merely because its membership is local or regional in nature.

(2) For purposes of this subdivision, “qualified amateur sports organization” means any organization organized and operated exclusively to foster national or international amateur sports competition if that organization is also organized and operated primarily to conduct national or international competition in sports or to support and develop amateur athletes for national or international competition in sports.

*(Amended by Stats. 2013, Ch. 536, Sec. 5. Effective January 1, 2014.)*

### **23701f.**

(a) A civic league, social welfare organization, or local organization of employees described in Section 501(c)(4) of the Internal Revenue Code, except as otherwise provided.

(b) An organization is not organized exclusively for exempt purposes under Section 501(c)(4) of the Internal Revenue Code unless its assets are irrevocably dedicated to one or more purposes listed in Section 501(c)(4) of the Internal Revenue Code.

*(Repealed and added by Stats. 2000, Ch. 252, Sec. 8. Effective January 1, 2001.)*