

CITY COUNCIL COMMITTEE

SPECIAL MEETING

POLICY DEVELOPMENT AND INTERNAL OPERATIONS

Mayor Tim Grayson, Chair
Laura Hoffmeister, Committee Member

5:30 p.m.
Monday, October 26, 2015

Wing A, City Manager Conference Room
1950 Parkside Drive, Concord

ROLL CALL

PUBLIC COMMENT PERIOD

1. Discussion – Proposed Adoption of Ordinance Amending the Development Code to Regulate Unattended Charitable Donation Boxes. Report by Lance Bayer, City Attorney.

2. ADJOURNMENT

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**REPORT TO COUNCIL COMMITTEE ON
POLICY DEVELOPMENT & INTERNAL OPERATIONS**

TO HONORABLE COUNCIL COMMITTEE MEMBERS:

DATE: October 26, 2015

SUBJECT: PROPOSED ADOPTION OF ORDINANCE AMENDING THE DEVELOPMENT CODE TO REGULATE UNATTENDED CHARITABLE DONATION BOXES

Report in Brief

During the past several years, various non-profit organizations have placed unattended charitable donation boxes in locations on private property in the City. Under the current provisions of the Development Code, these donation boxes are regulated as Temporary Used Goods Collection Centers, which require an administrative permit. A permitted Temporary Used Goods Collection Center must comply with conditions including a requirement that the center must be staffed at all times the center is in use. Recently, at least one non-profit organization has asserted that unattended charitable donation boxes on private property are protected as First Amendment free speech.

Because the current Development Code provisions for Temporary Used Goods Collection Centers function as a ban on unattended charitable donation boxes on private property, staff is recommending that this Council Committee consider the scope of an ordinance amending the Development Code to regulate unattended charitable donation boxes. This ordinance would provide a standardized First Amendment compliant process governing the application for and issuance of administrative permits for unattended charitable donation boxes on private property.

Discussion

Under the current Development Code, Temporary Used Goods Collection Centers are considered Major Temporary Uses which are allowed subject to approval of an administrative permit for up to 12 months unless otherwise specified or conditioned in the permit approval. All administrative permit approvals must be based on compliance with findings listed in the Code. Because Temporary Used Goods Collection Centers must be staffed at all times the center is in use, none of the unattended boxes meet the requirements for Temporary Used Goods Collection Centers. In essence, the requirement that the centers must be staffed functions as a ban on the boxes. In addition, the procedure to obtain administrative permit approval requires the payment of a City fee.

In addition to the requirement that Temporary Used Goods Collection Centers must be staffed, the Development Code also requires that:

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- The location of collection centers (trailers or containers) shall not obstruct any required parking spaces or disrupt either automobile or pedestrian traffic to or within the site;
- Collection centers shall be located so they are not visible from the public right-of-way;
- The location of collection centers shall not create a public or private nuisance;
- Only one trailer or container shall be permitted per parcel;
- Collection centers shall be operated by nonprofit organizations;
- Collection centers shall be kept clean, well maintained, neatly painted, and in good operating condition;
- Each collection center shall be clearly marked with the name of the nonprofit organization doing the collection and the local telephone number of the organization;
- Any litter or spillage shall be immediately removed and cleaned;
- The written consent of the property owner shall be provided at the time permission is requested to use a collection center; and
- Upon termination of a collection campaign or program, collection facilities shall be removed and the site restored to its original condition within 48 hours.

Because of the proliferation of unattended charitable donation boxes on private property in Concord, City code enforcement officers have responded to neighborhood complaints and have located numerous unattended donation bins on private property. None of the boxes identified by City staff had administrative permit approval. The existence of unpermitted, unattended charitable donation boxes on private property exposes the residents of Concord to nuisance activity. The unregulated physical placement of the boxes obstructs parking or landscaping. Failure to maintain the boxes exposes them to graffiti and to overflowing personal property, as well as the loose placement of oversize or unrequested property. Multiple boxes on the same parcel can cause the same kind of blight that caused some cities to regulate the proliferation of newsracks.

When code enforcement officers observe these unpermitted and unattended boxes on private property, they contact the property owners of the locations where the boxes have been placed. In some cases, the property owners have told code enforcement officers that the boxes had been placed without their knowledge or permission and in other cases, the entities placing the boxes refused to remove them. These boxes were removed by City staff at the request of the property owners and notice was provided to the owners of the boxes to contact the City to retrieve their property.

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First Amendment Speech Issues

Beginning in 2014, the City Attorney's Office received communication from a law office representing the owner of some donation boxes in Concord regarding the City's enforcement of its ordinance. In their communication, the attorney's office asserted that the unattended donation boxes were constitutionally protected. The correspondence cited federal court case law ruling that solicitation of charitable donations by the use of unattended charitable donation bins is protected speech under the First Amendment.

The City Attorney's Office has reviewed the federal court case law from Nebraska, Texas, and Michigan, in which courts have concluded that unattended charitable donation boxes are protected First Amendment speech and have overturned city bans on charitable donation boxes. While this case law is not binding on California courts, it can be cited to California courts in efforts to persuade the courts to reach the same conclusion. Although the case law primarily addresses outright bans on the boxes, the same arguments can be made for regulations that functionally ban the use of these boxes, such as Concord's current ordinance.

Recommendations

While most of the existing requirements for Temporary Used Goods Collection Centers are also applicable to unattended charitable donation boxes, the staffing requirement operates as a functional ban of this type of collection that does not apply to those facilities that have the ability to staff their donation centers. The City Attorney's Office recommends amendment of the existing provisions of the Development Code to allow for a new category of Major Temporary Use: unattended charitable donation boxes. This temporary use would require an administrative permit approved at staff level and payment of a fee that is reasonably related to the processing of the application. The approval process, including objective requirements and a direct appeal, should be consistent with the strict scrutiny that courts will apply in reviewing regulations of conduct that includes speech that is protected by the First Amendment. Failure of a property owner or owner of a donation box to comply with these new provisions of the Development Code will result in code enforcement action, which includes all of the administrative, civil, and criminal penalties provided under the Concord Municipal Code.

Many cities throughout California have been addressing the proliferation of unattended charitable donation boxes and the assertions that the boxes are protected speech under the First Amendment. The Committee may wish to consider recommending scheduling a study session of the Council regarding policy alternatives prior to placing a proposed ordinance on the agenda for Council consideration.

Fiscal Impact

Enforcement of this ordinance should not require additional resources. Existing code enforcement staff are already responding to the placement of unattended donation boxes and any minimal additional costs would be offset by administrative citations and other forms of cost recovery.

Public Contact

Posting of the Council Committee agenda.

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Recommendation for Action

Staff recommends that the PD&IO Committee provide input concerning the scope of a proposed ordinance regulating unattended charitable donation boxes, and that the Committee endorses bringing an ordinance before the full Council for approval.

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