



CITY OF  
LOS ANGELES  
CALIFORNIA



P.O. BOX 4670, WEST HILLS, CA 91308  
WWW.WESTHILLSNC.ORG  
MAIL@WESTHILLSNC.ORG

## WEST HILLS NEIGHBORHOOD COUNCIL

### JOINT BOARD AND BEAUTIFICATION COMMITTEE MEETING AGENDA Tuesday, August 22, 2017 at 6:30 p.m.

Chaminade College Preparatory, Condon Center-2<sup>nd</sup> Floor Conference Room  
23260 Saticoy St. West Hills, CA 91304

This meeting is open to the public. Doors open at 6:20 p.m. Those who wish to speak during the meeting may be asked to complete a Speaker Card. Comments on matters not on the agenda will be heard during the Public Comment period. Those who wish to speak on an agenda item will be heard when the item is considered.

1. Call to Order
2. Approval of Minutes from 7/25/17 Meeting
3. Comments & Announcements from the Chairs
4. Public Comment
5. Discussion about the 8/12/17 Cleanup
6. Discussion & Possible Action on Next Two Months' Community Cleanup Project Dates & Locations
7. Discussion & Possible Action on The Church at Rocky Peak's All Serve Event
8. Discussion & Possible Action on Clothing Donation Collection Bins
9. Discussion & Possible Action on Beautification Strike Teams and MyLA311Walks
10. Discussion & Possible Action on ROW Letter to 23162, 23156, 23152, 23146 Lauren Ln, and 7624 Balasiano
11. Discussion & Possible Action on Distribution of WHNC Parkway Maintenance Brochures
12. Additional Business & Adjournment

This meeting is open to the public. Doors open 10 minutes before the meeting starts. Those who wish to speak during the meeting are asked to fill out a speaker card. Comments on matters not on the agenda will be heard during the Public Comment period. Those who wish to speak on an agenda item will be heard when the item is considered.

**Public Input:** The public is requested to fill out a Speaker Card to address the Board on any agenda item before the Board takes an action on an item. Comments from the public on agenda items will be heard only when the respective item is being considered. Comments from the public on other matters not appearing on the agenda that are within the Board's jurisdiction will be heard during the General Public Comment period. Please note that under the Brown Act, the Board is prevented from acting on a matter that you bring to its attention during the General Public Comment period; however, an issue raised by a member of the public may become the subject of a future committee meeting. Public comment is limited to two minutes per speaker, unless adjusted by the presiding officer of the committee.

**Public Posting Of Agendas:** WHNC agendas are posted for public review at Shadow Ranch Park, 22633 Vanowen St., West Hills, CA 91307 or at our website, [www.westhillsnc.org](http://www.westhillsnc.org). You can also receive our agendas via email by subscribing to the City of Los Angeles Early Notification System at [www.lacity.org/government/Subscriptions/NeighborhoodCouncils/index](http://www.lacity.org/government/Subscriptions/NeighborhoodCouncils/index).

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**Reconsideration and Grievance Process:** For information on the WHNC's process for board action reconsideration, stakeholder grievance policy or any other procedural matters related to this Council, please consult the WHNC Bylaws. The Bylaws are available at our website, [www.WestHillsNC.org](http://www.WestHillsNC.org).

**Servicios De Traducccion:** Si requiere servicios de traducción, favor de avisar al Concejo Vecinal 3 días de trabajo (72 horas) antes del evento. Por favor contacte [Michelle.Ritchie@westhillsnc.org](mailto:Michelle.Ritchie@westhillsnc.org)



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## WEST HILLS NEIGHBORHOOD COUNCIL

### JOINT BEAUTIFICATION COMMITTEE/BOARD MEETING MINUTES

Tuesday July 25, 2017 Chaminade High School, West Hills

Revised July 29, 2017

Those in attendance were: Tony Brosamle, Reeyan Raynes, Faye Barta, Simone Best, Thomas Booth, Dan Brin, Bonnie Klea, Heidi Manning, Janis MacQuoid, Olivia Naturman, Steve Randall, Barry Seybert (arrived 7:03 PM), Ron Sobel, Gil Solomon (arrived 7:32 PM), Joan Trent, and Brad Vanderhoof.

Committee Co-Chair Reeyan Raynes called the meeting to order at 6:35 PM. A quorum was established.

The June 2017 Joint Beautification Committee/Board Meeting Minutes were approved as amended.

Numbers refer to agenda items:

3. Chair Comment: None
4. Public Comment: None
5. Review of July 15<sup>th</sup> Cleanup Project: Ron commented the bags from the cleanup have not been picked up and he has called the city. Simone mentioned that Amy Bennet, head of public relations for West Hills Hospital, was very impressed and would like to help in the future.
6. Cleanup projects – Next Two Months: Brad reported on the status of efforts to plan a joint cleanup of the Platt Library with the Woodland Hills Warner Center Neighborhood Council. Platt Library currently looks very good and no firm plans have been made with the WHWCNC. The chairs decided to change the location of the August cleanup. The following suggested locations were discussed: Ron – south side of Sherman Way between Fallbrook and Shoup, Dan – east side of Fallbrook between Saticoy and Ingomar, Reeyan – north side of Roscoe between Fallbrook and Sale, Dan reported a stakeholder request – the area near Nordhoff and Topanga, Thomas – north side of Saticoy between Sale and Fallbrook, north side of Roscoe between Jason and Hillary, Tony – Sherman Place. By consensus the group selected the south side of Sherman Way between Fallbrook and Shoup on August 12, from 8:00 to 11:00 AM, as the location for the August cleanup event. The September cleanup event was scheduled for September 23<sup>rd</sup>.
7. The Church at Rocky Peak All Serve Event: Tony announced Pastor Moorehead is asking for ideas for the November 4<sup>th</sup> event now and would like more complex projects than simple cleanups. Many ideas were discussed briefly. Tony requested members email ideas to the co-chairs with copy to Brad. Tony will distribute a list of potential projects before the next committee meeting.
8. Strike Teams and MyLA311 Walks: Tony reviewed the concept. Olivia reported on Esperanza Butler's local cleanup effort the previous weekend.
9. ROW letters: Reeyan distributed a sample letter, 'Notice of required Maintenance' on WHNC letterhead. Thomas asked about possible follow-up if the letter has no effect and Reeyan answered the Bureau of Street Services may be contacted to assess the need for citations/fines. Reeyan stated he has done due diligence to ensure the addresses proposed are appropriate. Dan suggested an amendment to the letter removing, "Did you know" and the question mark from the first line and all agreed. Heidi asked if the Beautification Committee Parkway Maintenance brochure had been distributed by door-knockers to these addresses and the answer was 'no.' Olivia and Gil will hand out brochures to the homes. Item tabled to August without a vote.
10. Parkway Maintenance Brochures: Brad mentioned Reeyan's successful efforts with a home at Platt and Archwood. Faye reported she passed out brochures on the Platt hill. Thomas suggested passing out brochures in conjunction with cleanup events.

Committee Co-Chair Reeyan Raynes adjourned the meeting at 7:49 PM.

The next cleanup event is scheduled for Saturday, August 12, 2017 from 8:00 to 11:00 AM, on the south side of Sherman Way between Fallbrook and Shoup. Meeting place is TBD by Tony and Dan.

The next meeting of this committee will be held: Tuesday, July 25, 2017 at 6:30 PM, Chaminade High School Condon Center, second floor conference room.



# Regulation of Donation Bins & Trailers

Thursday, May 5, 2016 General Session; 2:15 – 4:15 p.m.

William R. Seligmann, City Attorney, Campbell

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## Regulation of Donation Bins and Trailers

*William Seligmann, Atchison, Barisone, Condotti & Kovacevich, Of Counsel, City Attorney of Campbell*

### I. Introduction

In recent years, donation bins for used items, such as clothing, shoes and books, have been sprouting like weeds outside commercial establishments in cities everywhere. These bins are typically brightly colored and stand approximately seven feet high. Residents and civic leaders have expressed concerns that the proliferation of these bins creates an eyesore.<sup>1</sup> The bins are often the targets of graffiti, litter and illegal dumping,<sup>2</sup> and are placed without the consent of the property owners in many instances.<sup>3</sup> In fact, some journalists have suggested that at least a few of the businesses behind these bins have had a history of questionable business practices.<sup>4</sup> Yet, according to the Sixth Circuit of the Federal Court of Appeals in the case of *Planet Aid v. City of St. Johns* (6th Cir. 2014) 782 F.3d 318, the donation bins are entitled to First Amendment protection.

### II. The Planet Aid Case

#### A. Background

In response to a problem with people leaving boxes and other refuse around donation bins, the City of St. Johns, Michigan adopted an ordinance that prohibited “donation boxes” in the city. For purposes of the ordinance, a “donation box” was defined as, “[a]n outdoor, unattended receptacle designed with a door, slot, or other opening that is intended to accept donated goods or items.”<sup>5</sup> The ordinance contained the following statement of its purpose:

It is the intent of this section to prohibit donation boxes to protect the health, safety and welfare of the citizens of the city by preventing blight, protecting property values and neighborhood integrity, avoiding the creation and maintenance of nuisances and ensuring the safe and sanitary maintenance of properties. Unattended donation boxes in the city may become an attractive nuisance for minors and/or criminal activity. It is also the intent

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<sup>1</sup> Giwargis, Romona, *San Jose Councilman Wants Crackdown on Unattended Donation Bins*, San Jose Mercury News (Oct. 17, 2015.)

<sup>2</sup> *Ibid*; Harris, Ester, *Community Complaining about Used Clothing Bins*, San Jose Mercury News (Pacifica Edition Aug. 18, 2015;) Contact 17 News: Donation Bins (May 15, 2015 6:20 p.m.), online at [www.kerngoldenempire.com/news/top-stories/contact-17-news-donation-bins](http://www.kerngoldenempire.com/news/top-stories/contact-17-news-donation-bins); *Cities Fighting Donation Boxes Suffer Legal Loss*, Los Angeles Times (Aug. 18, 2015), online at <http://m.sfgate.com/bayarea/article/Cities-fighting-donation-boxes>.

<sup>3</sup> Giwargis, Romona, *San Jose Councilman Wants Crackdown on Unattended Donation Bins*, San Jose Mercury News (Oct. 17, 2015), *supra*; *Cities Fighting Donation Boxes Suffer Legal Loss*, Los Angeles Times (Aug. 18, 2015), *supra*.

<sup>4</sup> *Cities Fighting Donation Boxes Suffer Legal Loss*, Los Angeles Times (Aug. 18, 2015), *supra*; *Behind the Green Box - 'Gaia' & 'Campus California' clothes donation bins in San Francisco*, Channel 5 News, online at <https://www.youtube.com/watch?v=jjmLvYhrstA>.

<sup>5</sup> *Planet Aid v. City of St. Johns* (6th Cir. 2014) 782 F.3d 318, 322.

of this section to preserve the aesthetics and character of the community by prohibiting the placement of donation boxes.<sup>6</sup>

Planet Aid sued the City in Federal Court, alleging that the new ordinance violated its First Amendment rights. Planet Aid is a nonprofit organization that solicits donations of clothing and shoes through its unattended, outdoor donation bins, and purportedly distributes the items collected from the bins to organizations in other countries. Its purported charitable aims are quite broad, including strengthening and organizing communities, reducing poverty and promoting small enterprise development, supporting sustainable local food production, improving access to training and quality education, and increasing health awareness and encouraging healthy lifestyles. As part of the lawsuit, Planet Aid sought a temporary injunction, which the trial court granted. The City then appealed to the Sixth Circuit Court of Appeals.<sup>7</sup>

## **B. The Decision**

The Court of Appeals affirmed the decision of the lower court, finding that the City's ban on donation boxes was a content based infringement on Planet Aid's First Amendment rights, which warranted review under the strict scrutiny standard. In reaching this decision, the court relied on a handful of cases dealing with in-person charitable solicitation (*Village of Schaumburg v. Citizens for a Better Environment*, (1980) 444 U.S. 620; *Secretary of State of Maryland v. Munson*, (1984) 467 U.S. 947; *Riley v. National Federation of the Blind of North Carolina, Inc.*, (1988) 487 U.S. 781; and *Speet v. Schuette* (6th Cir. 2013) 726 F.3d 867), as well as a Fifth Circuit case that earlier had applied these precedents in the context of the regulation of donation bins (*National Federation of the Blind of Texas, Inc. v. Abbott* (5th Cir. 2011) 647 F.3d 202.)<sup>8</sup> Based on these cases, the court found "speech related to charitable solicitation and giving is worthy of strong constitutional protection."<sup>9</sup>

The court refused to limit the above-referenced precedents to just in-person solicitations. Instead, the court, in heavy reliance on the Fifth Circuit case of *National Federation of the Blind of Texas, Inc. v. Abbott*, supra, 647 F.3d at pp. 212 - 213, found that "[a] charitable donation bin can—and does—'speak.'"<sup>10</sup> The court supported this conclusion by noting that the bins may motivate passersby to investigate the operator of the bin and reflect on society's ills:

A passer-by who sees a donation bin may be motivated by it to research the charity to decide if he wants to donate—in so doing, the passer-by will gain new information about the social problem the charity seeks to remedy. Indeed, the donation bin may ultimately motivate citizens to donate clothing or shoes even if they had not previously considered doing so. The speech may not be unidirectional, either—a citizen faced with a choice among several bins from different charities may be inspired to learn more about each

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<sup>6</sup> *Ibid.*

<sup>7</sup> *Id.* at pp. 322 – 323.

<sup>8</sup> *Id.* at pp. 323 – 326.

<sup>9</sup> *Id.* at p. 234.

<sup>10</sup> *Id.* at 325.



charity's mission in deciding which charity is consistent with his values, thus influencing his donation decision.<sup>11</sup>

In other words, the court seems to suggest that if the bins cause someone to think or react, then the bins are engaging in a form of communication deserving of First Amendment protection.

Having found that the bins “speak,” the court turned to the issue of what level of scrutiny to apply. In this regard, the court noted that ordinances that “merely regulates the time, place, and manner of protected speech. . . are subject to an intermediate level of scrutiny;” while content-based regulation are subject to strict scrutiny.<sup>12</sup> Focusing on the fact that the ordinance applied to only bins that accepted “donated” items, the court held that the ordinance was content-based because the ordinance (1) “bans only those unattended, outdoor receptacles with an expressive message on a particular topic—charitable solicitation and giving;” and (2) “bans altogether an entire subclass of physical, outdoor objects—those with an expressive message protected by the First Amendment.”<sup>13</sup> In other words, in the court’s eyes, the ordinance (1) singled out charitable solicitations; and (2) imposed a complete ban on that type of speech. Consequently, the court applied strict scrutiny.

Among other thing, the City argued that the regulation of the bins was no different than the regulation of billboard signs. However, the court dismissed this argument, noting that unlike sign regulation, the bin ordinance did “not merely regulate outdoor structures' height, size, cleanliness, or where they may be located” on a content-neutral basis, but instead completely banned certain bins based on what the court viewed as their advocacy of charitable giving.<sup>14</sup>

Under strict scrutiny, the court noted that the City bears the burden to establish that its ordinance is ““narrowly tailored to promote a compelling Government interest. If a less restrictive alternative would serve the Government's purpose, the [City] must use that alternative.””<sup>15</sup> Applying this standard, the held that the ordinance was not narrowly tailored to promote the City’s interest in aesthetics and preventing blight. In support of its holding, the court pointed to a lack of evidence by the City “that charities would be negligent in failing to conduct timely pickups of donated goods, [or] in maintaining the appearance of the bins,” or that requiring more frequent inspections and pick up of donated good by the operators of the bins would not suffice.<sup>16</sup> Consequently, the Court of Appeals upheld the lower court’s grant of a preliminary injunction against the City’s ordinance.

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<sup>11</sup> *Id.* at p. 325.

<sup>12</sup> *Id.* at p. 326.

<sup>13</sup> *Id.* at pp. 328, 329 – 330.

<sup>14</sup> *Id.* at p. 329 – 330.

<sup>15</sup> *Id.* at p. 330, quoting *United States v. Playboy Entm't Grp., Inc.* (2000) 529 U.S. 803, 813. In contrast, the intermediate level of scrutiny generally applied to content-neutral commercial speech passes Constitutional muster if the regulation directly advances a *substantial* government interest, and is not more restrictive than necessary to serve that interest. (*Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n* (1980) 447 U.S. 557, 566.) This level of scrutiny has also been sometimes applied to content-neutral regulation that impacts non-commercial or political speech. (See *Herson v. City of San Carlos*, (N.D. Cal. 2010) 714 F. Supp. 2d 1018, 1026 (involving application of a height restriction to a political sign.)

<sup>16</sup> *Id.* at p. 330 – 331.

### C. Implication of the Decision

If the rationale of the *Planet Aid* Case, is accepted by the State and Federal courts in California, it could have a significant effect on cities' ability to regulate not only donation bins, but larger donation venues, such as trailers for the collection of used goods that are operated by non-profit entities like Goodwill. In fact, attorneys for one non-profit (Recycle for Change) have argued that distinguishing between donation bins and brick and mortar donation sites is impermissible.<sup>17</sup> Essentially, under the reasoning of the *Planet Aid* Case, any inanimate object that causes an observer to think about social problems or charitable giving could be subject to First Amendment protection. At a minimum, though, the *Planet Aid* Case is likely to embolden both non-profit and for-profit businesses to challenge local ordinances that restrict the placement of donation bins, as well as perhaps trailers.

### D. Critique

Whether or not the California courts or the Federal courts of the Ninth Circuit would agree with the Sixth Circuit's decision in *Planet Aid* is subject to question. The case's fundamental precept that the bins "speak" is certainly not beyond debate. In this regard, cases dealing with sign ordinances often distinguish between rules governing the structural design elements of a sign, and rules based on the message of the sign, recognizing that regulation of these elements is not akin to content regulation.<sup>18</sup> By analogy, a regulation that focuses on the nature of the container, rather than on any messages printed on the container should also be considered content neutral, and not subject to strict scrutiny.

The Sixth Circuit's opinion skirts the distinction between regulating the structure and regulating the message by basically arguing that the structure is the message. In order to support this argument, the court focuses on a postulated subjective reaction to the bin itself, suggesting that the bin would inspire someone to think about charity and social issues. This emphasis on the subjective thought process of someone viewing a donation bin, rather than on any message actually expressed by the bin seems to go well beyond established legal precedent, and appears to be without any reference to actual fact. As such, the Sixth Circuit's opinion could well merit some heightened scrutiny of its own.

To a lesser extent, the *Planet Aid* decision's interpretation of the terms "donation" and "donated" is arguably unduly narrow. The court seizes upon these words to infer that the City of St. Johns' ordinance would not apply equally to bins placed by for-profit recyclers of used clothing and other good. *Webster* does note that the word "donate" is especially applicable to contributions to a public or charitable cause, but it does not limit the term to charitable giving. Instead, any gift could qualify, even to a for-profit entity.<sup>19</sup> Under the broader definition of "donate," the purported distinction between so-called charitable speech and commercial speech evaporates, and with it, the court's argument that the ordinance draws content based distinctions.

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<sup>17</sup> See *Recycle for Change v. City of Oakland*, 2016 U.S. Dist. LEXIS 11057 (2016) at p. 12.

<sup>18</sup> *G.K. Ltd. Travel v. City of Lake Oswego* (9th Cir. 2006) 436 F.3d 1064, 1071-1072; *Rodriguez v. Solis* (1991) 1 Cal.App.4th 495, 509.

<sup>19</sup> <http://www.merriam-webster.com/dictionary/donate> (full definition)

Considering these points, there is reason to believe that the Ninth Circuit and the California State courts would not hold an ordinance similar to the City of St. Johns' ordinance to review under strict scrutiny.

### **III. Regulatory Responses**

#### **A. City of Campbell Experience**

The City of Campbell first learned of the Planet Aid case when attempting to enforce its requirement for a conditional use permit on bins that had been placed in the City by an organization called Recycle for Change. This organization claims that it collects used clothing and other textiles and uses revenue generated from its recycling and reuse activities to provide financial support for other nonprofits that are working to fight poverty around the world.<sup>20</sup> According to Campbell's Code Enforcement Officer, the owners of many of the properties on which the bins are located never consented to their placement.

When the City commenced efforts to obtain compliance with its use permit requirements, the City received a letter from the Tenax Law Group, referring to the City of the Planet Aid case, and seeking a reprieve from enforcement efforts. In response, Campbell has undertaken to prepare an ordinance to address the issues raised by the Planet Aid case. A number of other cities throughout the State are currently in a similar position.

#### **B. Recycle for Change v. Oakland**

At the present time, the City of Oakland is defending its bin regulations against a challenge by Recycle for Change in the Ninth Circuit Court of Appeals. While we await the Ninth Circuit's decision, the trial court's opinion in that case provides some guidance for those cities looking to draft a defensible ordinance.

In *Recycle for Change v. City of Oakland*,<sup>21</sup> the trial court denied a motion by Recycle for Change for a preliminary injunction against Oakland's ordinance, which can be found at Chapter 5.19 of the Oakland Municipal Code.<sup>22</sup> The provisions of Oakland's ordinance require a permit for unattended donation/collection boxes ("UDCB"). UDCBs are defined as "unstaffed drop-off boxes, containers, receptacles, or similar facility that accept textiles, shoes, books and/or other salvageable personal property items to be used by the operator for distribution, resale, or recycling."<sup>23</sup> The ordinance exempts UDCBs belonging to the owner of the parcel on which they are located. Oakland charges a fee of \$535 for the initial application, and \$245 for annual renewal of the permit. The regulations limit the UDCBs to certain locations in the City, impose maintenance requirements, and require the UDCBs to be placed at least 1,000 feet apart. The stated purpose of the ordinance is "to promote the health, safety, and/or welfare of the public by

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<sup>20</sup> *Recycle for Change v. City of Oakland*, 2016 U.S. Dist. LEXIS 11057 (2016) at p. 2

<sup>21</sup> U.S. District Court for the Northern Dist. Of Cal., Case No.

<sup>22</sup> [www.municode.com/library/ca/oakland/codes/code\\_of\\_ordinances](http://www.municode.com/library/ca/oakland/codes/code_of_ordinances)

<sup>23</sup> *Recycle for Change v. City of Oakland*, 2016 U.S. Dist. LEXIS 11057 (2016) at p. 4; Oakland Municipal Code §§ 5.19.050, 5.19.060.

providing minimum blight-related performance standards for the operation of unattended donation/collection boxes (UDCBs).”<sup>24</sup>

In denying Recycle for Change’s request for a preliminary injunction, the trial court drew a few key distinctions between Oakland’s ordinance and that of the City of St. Johns. Firstly, the court noted that unlike St. Johns’ ordinance, the Oakland ordinance did not completely ban UDCBs, but instead “regulates the placement, maintenance, and physical characteristics of UDCBs irrespective of their message or affiliated organization.”<sup>25</sup> In this regard, the court concluded that Oakland’s ordinance did not favor “non-expressive bins” over UDCBs.<sup>26</sup>

Secondly, along similar lines, the court found that Oakland’s ordinance did not distinguish between bins operated by charitable nonprofits and for-profit businesses. Consequently, in court’s view, Oakland’s ordinance was viewpoint neutral. The court also rejected Recycle for Change’s argument that the ordinance improperly distinguished between brick and mortar charity operations and those that rely on bins. In this regard, the court found that the distinction was based on “geographic properties, not on viewpoint.”<sup>27</sup>

Based on the foregoing distinctions, the District Court for Northern California concluded that Oakland’s ordinance was not content based. Therefore, the court applied intermediate scrutiny, not strict scrutiny. Under intermediate scrutiny, the court recognized that an ordinance meets the standard “so long as the regulation promotes a substantial government interest that would be achieved less effectively absent the regulation.”<sup>28</sup>

Applying intermediate scrutiny, the court referenced that the reports prepared by Oakland’s staff concerning its ordinance supported Oakland’s contention that the ordinance was warranted to address the “particularized secondary effects” of UDCBs; and concluded that the ordinance satisfied Constitutional muster under the First Amendment.<sup>29</sup>

The court also rejected Recycle for Change’s argument that the permit fees imposed an undue burden. The court gave this argument rather short shrift, holding that as long as the fees merely defray the City’s administrative costs, the fees do not raise any serious concerns.<sup>30</sup>

### **C. Ordinance Drafting Considerations**

Taking into consideration the lessons learned from the *Planet Aid* and *Recycle for Change* cases, as well as general principles drawn from other First Amendment cases, there are a few important considerations of which anyone drafting an ordinance to regulate collection bins should be mindful. These considerations include:

#### **1. Document the Problem:**

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<sup>24</sup> *Recycle for Change v. City of Oakland*, 2016 U.S. Dist. LEXIS 11057 (2016) at p. 4 - 5; Oakland Municipal Code §§5.19.010; 5.19.060.B; 5.19.120.

<sup>25</sup> *Recycle for Change v. City of Oakland*, 2016 U.S. Dist. LEXIS 11057 (2016) at p. 10.

<sup>26</sup> *Ibid.*

<sup>27</sup> *Id.* at pp. 11 – 12.

<sup>28</sup> *Id.* at 14, quoting *Ward v. Rock Against Racism*, (1989) 491 U.S. 781, 791.

<sup>29</sup> *Id.* at p. 11, 14 - 15.

<sup>30</sup> *Id.* at p. 15 – 16.

Regardless of the standard of review applied, the ordinance needs to further a legitimate government interest. Under strict scrutiny, these legitimate interests include matters related to public safety,<sup>31</sup> while under intermediate scrutiny, these interests are broad enough to include things like aesthetics.<sup>32</sup> In any event, a good record demonstrating actual problems as was present in *Recycle for Change v. Oakland* will be helpful. Some of the news reports referenced in the introduction to this paper may provide some useful background.

## **2. Avoid a Complete Ban:**

One of the key distinctions between the Planet Aid case and the Recycle for Change case is that in *Planet Aid*, the City of St. Johns imposed a complete ban on donation bins, while in *Recycle for Change*, the City of Oakland imposed only limitations of the location, design and maintenance of the bins. The courts will generally support content neutral place and manner regulations, as long as ample alternative channels of communication exist.<sup>33</sup>

## **3. Avoid Distinctions Based on Nature of the Operator:**

The ordinance should not favor commercial businesses over nonprofits. In this regard, the use of the words “donate” or “donation” should be avoided. The more the application of the ordinance can be defined by the physical characteristics of the receptacle, the better.

## **4. Limit Discretion:**

If the ordinance will require a permit, the ordinance should contain narrow, objective standards.<sup>34</sup> If some discretion is granted to the decision maker, it should be done in a manner that is independent of the message communicated by the container.<sup>35</sup> The ordinance should also set forth specific and reasonable time frames for the decision maker to act.<sup>36</sup>

## **5. Document Alternative Channels of Communication:**

Place and manner restrictions that could impinge on First Amendment rights are valid only as long as they leave open ample avenues of communication.<sup>37</sup> Document the number of containers that will still be allowed after adoptions of your ordinance, as well as any other available avenues of communication, such as the Internet or other media.

For reference purposes, I have attached a draft ordinance that I am preparing for the City of Campbell.

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<sup>31</sup> *Reed v. Town of Gilbert* (2015) \_\_\_ U.S. \_\_\_, 135 S. Ct. 2218, 2232.

<sup>32</sup> *Members of the City Council of City of Los Angeles v. Taxpayers for Vincent* (1984) 466 U.S. 789, 805.

<sup>33</sup> *Get Outdoors II, LLC v. City of San Diego* (9th Cir. 2007) 506 F.3d 886, 893.

<sup>34</sup> *Desert Outdoor Advertising v. City of Moreno Valley* (9th Cir. 1996) 103 F.3d 814, 818.

<sup>35</sup> See *Rodriguez v. Solis* (1991) 1 Cal.App.4th 495, 509.

<sup>36</sup> See generally *FW/PBS, Inc. v. City of Dallas* (1990) 493 U.S. 215, 228.

<sup>37</sup> See *Get Outdoors II, LLC v. City of San Diego*, *supra*, 506 F.3d at 893.

Additionally, a proposed model ordinance that was prepared by the Secondary Materials and Recycled Textiles Association can be found at <http://www.smartasn.org/localgovt/SMARTDraftOrdinance.pdf>.

I would also commend to your reading Chapter 5.19 of the Oakland Municipal Code, which can be found at [www.municode.com/library/ca/oakland/codes/code\\_of\\_ordinances](http://www.municode.com/library/ca/oakland/codes/code_of_ordinances).

I would stress that these materials should be used only as a starting point in drafting an ordinance to meet the needs of any particular city; and as of the time of this paper, the Ninth Circuit Court of Appeals decision in *Recycle for Change v. Oakland* awaits in the future.

Ordinance No. \_\_\_\_\_

**BEING AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CAMPBELL  
AMENDING CERTAIN SECTIONS OF TITLE 21 OF THE CAMPBELL MUNICIPAL  
CODE RELATED TO THE REGULATION OF COLLECTION CONTAINERS**

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

**SECTION 1.** Addition to the Provisions Applying to Special Uses Section: Section 21.36.245 is added to Chapter 21.36 of the Campbell Municipal Code is added to read as follows, with underlining indicating new text:

21.36.245 Collection Containers.

A. Purpose. The City has experienced a proliferation of Collection Containers and their placement in required parking spaces, required landscaped areas, and residential zoning districts of the City, often without the property owner's permission. The proliferation of these containers contribute to visual clutter; and in areas throughout the State, collection containers have contributed to blight due to graffiti and poor maintenance, and the accumulation of debris and excess items outside of the collection containers. They can also interfere with the proper collection of data concerning the diversion of waste within the City from landfills. The purpose of these regulations is to promote the health, safety, and/or welfare of the public, and protect the property rights of the owners of the parcels on which the collection containers are located, by providing minimum blight-related performance standards for the operation of collection containers, including establishing criteria to ensure that (1) material is not allowed to accumulate outside of the collection containers, (2) the collection containers remain free of graffiti and blight, (3) the collection containers are maintained in sanitary conditions, (4) the collection containers are not placed without the approval of property owners, (5) contact information is readily available so that the operators can be contacted if there are any blight-related questions or concerns, and that operators properly report information concerning the diversion of materials from landfills. This section regulates the size, number, placement, installation and maintenance of collection containers, as is necessary to accomplish the foregoing purposes.

B. Definition in Municipal Code. As used herein, the terms and phrases shall have the same meaning as defined in Chapter 21.72.020 of the Municipal Code.

C. Conflicting Provisions. Where a conflict exists between the regulations or requirements in this section and applicable regulations or requirements contained in other sections of the Campbell Municipal Code, the applicable regulations or requirements of this section shall prevail.

#### D. Permit Requirements.

1. Except as provided in paragraph 2 below, it is unlawful to place, operate, maintain or allow a collection container on any real property unless the property owner and operator of the collection container first obtain an annually renewable permit from the City.

2. Collection containers that satisfy the following standards are exempt from the permit requirements of this section:

- a. Collection containers that are located within an entirely enclosed and lawfully constructed and permitted building, or otherwise cannot be seen from outside of the boundaries of the property on which the containers are located, provided that such collection containers satisfy the operational requirements set forth in subsections J through L;
- b. Cargo storage containers that are in compliance with section 21.26.050 of this Code;
- c. Refuse or recycling containers that comply with the provisions of Chapter 6.04 of this Code.

3. Approval of collection containers on more than one parcel may be sought in a single application.

4. An application for a collection container shall be processed as ministerial action in accordance with this section. The Community Development Director shall be the decision maker.

#### E. Application Requirements.

The permit application shall be made on a form provided by the Community Development Department, and shall include:

1. The signatures of the property owner and the operator of the collection container, acknowledging that they will be equally responsible for compliance with all applicable laws and conditions related to the collection containers for which they are seeking approval;
2. A non-refundable application fee in an amount set by resolution of the City Council;
3. The name, address, email, website (if available) and telephone number of the operator of the collection container and property owner on which the collection container is to be located, including 24-hour contact information;



4. A vicinity map showing 1) the proposed location of the collection containers; and 2) the distance between the site and all existing collection containers within \_\_\_\_\_ feet of the proposed location for the collection containers;
5. Photographs of the location and adjacent properties;
6. A site plan containing:
  - a. Location and dimensions of all parcel boundaries;
  - b. Location of all buildings;
  - c. Proposed collection container location;
  - d. Distance between the proposed collection container and parcel lines and buildings; and
  - e. Location and dimensions of all existing and proposed driveways, garages, carports, parking spaces, maneuvering aisles, pavement and striping/markings;
7. Elevations showing the appearance, materials, and dimensions of the collection container, including the information required in this section to be placed on the collection container and notice sign;
8. A description and/or diagram of the proposed locking mechanism of the collection container;
9. A maintenance plan (including graffiti removal, pick-up schedule, and litter and trash removal on and around the collection container); and
10. Any other information regarding time, place, and manner of the collection container's operation, placement, and maintenance that is reasonably necessary to evaluate the proposal's consistency with the requirements of this section.

F. Permit Expiration and Renewal. A permit issued under this section shall expire and become null and void annually on the anniversary of its date of issuance, unless renewed prior to its expiration. An application for renewal must be submitted prior to the expiration of the permit on a form provided by the Community Development Department, and shall include:

1. The signatures of the property owner and the operator of the collection container, acknowledging that they will be equally responsible for compliance with all applicable laws and conditions related to the collection containers for which they are seeking approval;
2. A non-refundable application fee in an amount set by resolution of the City Council;
3. Photographs of the location and adjacent properties taken within ten days of the submittal of the renewal application;
4. A detailed description of any information that is different from the information submitted on the previous application; and
5. Any other information regarding time, place, and manner of the collection container's operation, placement, and maintenance that is reasonably necessary to evaluate the proposal's consistency with the requirements of this section.

#### G. Decision on Application.

1. The Community Development Director shall approve or deny an application within sixty days of the receipt of a completed application. If the Community Development Director fails to take action on the application within the required sixty days, the application shall be deemed approved.
2. The Community Development Director shall approve the application if all of the following are true, otherwise the Director may deny the application:
  - a. The applicant has submitted a complete, fully executed and accurate application accompanied by the applicable fee;
  - b. The property on which the collection container is to be located has been free of graffiti (as defined in subsection (e) of California Government Code section 53069.3 or any successor statute) for at least six months prior to the submission of the application;
  - c. The property on which the collection container is to be located has been free of any conditions constituting a public nuisance (as defined in section 6.10.020 of this Code) for at least six months prior to submission of the application;
  - d. The applicant is neither currently in violation of, nor has not been found in violation of this section or Chapter 6.10 of this Code within one year prior to submission of the application; and

e. The application will be in compliance with all of the applicable provisions of this section.

3. The Community Development Director shall mail written notice to the applicant of the Director's decision by First Class United States mail, addressed to the applicant at the address provided on the application. If the application is denied, or approved subject to conditions, the notice shall set forth the reasons for the denial or conditions, as well as the facts supporting the Director's reasons.

4. The decision of the Community Development Director shall be final, and not subject to administrative appeal.

H. Revocation. Any permit issued under this section may be revoked or modified as provided in Chapter 21.68 of this Code.

I. Location of containers.

1. No collection container shall be located within \_\_\_\_\_ feet from any other collection container, except those described in paragraph 2 of subsection D of this section.

2. Collection containers are to be located only in the \_\_\_\_\_ zoning districts, except for those described in paragraph 2 of subsection D of this section.

3. No collection container shall be located within three-hundred feet of a residentially zoned parcel.

4. No collection container shall be located on or within:

a. The public right-of-way (including sidewalks);

b. Area designated for landscaping;

5. No collection container shall be located in or block or impede access to any:

a. Required parking or driveway areas;

b. Pedestrian routes;

c. Emergency vehicle routes;

d. Building ingress and egress;

e. Required disabled access routes;

f. Required easements; or

g. Trash enclosure areas or access to trash bins or trash enclosures.

h. Any place that would impede the functioning of exhaust, ventilation, or fire extinguishing systems.

6. No more than one collection container shall be located on any parcel, except for those described in paragraph 2 of subsection D of this section.

7. No large collection container shall be located within the designated setback space of any parcel.

#### J. Physical Attributes.

1. All collection containers, other than those described in paragraph 2 of subsection D of this section, shall:

- a. Be fabricated of durable and waterproof materials;
- b. Be placed on ground that is paved with durable cement;
- c. Have a tamper-resistant locking mechanism for all collection openings;
- d. Not be electrically or hydraulically powered or otherwise mechanized;
- e. Not be considered a fixture of the site or an improvement to real property.

2. A small collection container shall be no taller than seven feet above the finished grade of the parcel on which it is located.

3. Small collection containers shall have the following information conspicuously displayed in at least two-inch type visible from the front on the collection container:

- a. The name, address, 24-hour telephone number, and, if available, the Internet Web address, and email address of the operator of the collection container and the agent for the property owner;
- b. The type of material that may be deposited; and
- c. A notice stating that no material shall be left outside the collection container.

4. Large collection containers shall have the following information conspicuously displayed in at least four-inch type visible on all sides of the collection container:

- a. The name, address, 24-hour telephone number, and, if available, the Internet Web address, and email address of the operator of the collection container and the agent for the property owner;
- b. The type of material that may be deposited;
- c. A notice stating that no material shall be left outside the collection container; and

d. A statement that no items may be left for collection unless an attendant is on duty.

K. Maintenance and Operation.

1. No overflow collection items, litter, debris or dumped materials shall be allowed to accumulate within twenty feet of any collection container.

2. Collection containers shall be maintained and in good working order, and free from graffiti, removed or damaged signs and notifications, peeling paint, rust, and broken collection operating mechanisms.

3. Collection containers shall be serviced not less than weekly between 7:00 a.m. and 7:00 p.m. on weekdays and 10:00 a.m. and 6:00 p.m. on weekends. This servicing includes maintenance of the container, the removal of collected material and abatement of any graffiti, litter, or nuisance condition as defined in section 6.10.020 of this Code.

4. The operator shall maintain an active email address and a 24-hour telephone service with recording capability for the public to register complaints.

5. Any conditions that are in violation of this section must be remedied or abated within forty-eight hours of being reported to the operator or property owner.

5. Collection containers cannot be used for the collection of solid waste and/or any hazardous materials except as authorized by Chapter 6.04 of this Code or other applicable law.

6. The operators of the collection containers shall report all tonnage collected within city limits on an annual basis by June 1<sup>st</sup> of the following year to the public works department (pursuant to the requirements of Integrated Waste Management Act, (AB 939, Chapter 1095, Statutes of 1989) and the Per Capita Disposal Measurement Act of 2008 (Chapter 343, Statutes of 2008 [Wiggins, SB 1016] and SB 1016, the Per Capita Disposal Measurement System i) and any related successor laws or regulations in order to properly account for the City of Campbell waste diversion and recycling efforts.

7. Large collection containers shall have an attendant present at the container at all times that items are being received.

**SECTION 2: Definitions:** The following definitions are added to subsection C of Campbell Municipal Code section 21.72.020 between the definitions of “child day care facilities” and “clothing products manufacturing” to read as follows, with underlining indicating new text:

“Collection container” means a drop-off box, container, receptacle, trailer or similar facility that accepts textiles, shoes, books and/or other salvageable items of personal property.

“Collection container, small” means a collection container that occupies no more than eighty-four cubic feet.

“Collection container, large” means a collection container that occupies more than eighty-four cubic feet.

**SECTION 3:** This Ordinance shall become effective (30) days following its passage and adoption and shall be published once within fifteen (15) days upon passage and adoption in the Campbell Express, a newspaper of general circulation in the City of Campbell, County of Santa Clara.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2015 by the following roll call vote:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

APPROVED:

\_\_\_\_\_  
, Mayor

ATTEST:

\_\_\_\_\_  
, City Clerk