

Donation Drop Boxes and Associated Case Law

The Rocky Mountain Land Use Institute
Examining The Past
Exploring the Future

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Recent Land Use Decisions in the Rocky Mountain West

Have donation bins become a part of your urban landscape?



The Problem

Trespass & Lack of Authorization

- Drop box owners rarely have authorization from the Property Owner
- Boxes appear in parking lots overnight
- No point of contact for maintenance or removal

The Problem

Misrepresentation of Use

There are three types of drop box users

1. Legitimate non-profit organizations
2. For-profit organizations partnering with charities
- 3. Entirely for-profit organizations posing as charities**

Making Headlines

Group Must Pay \$700K Penalty For Allegedly Profiting From 'Charity' Donation Bins

By Mary Beth Quirk October 29, 2015

Clothing bin donations don't always reach needy

USA Today by Meghan Hoyer and Jayne O'Donnell – Dec 30, 2012

The donation bin debacle

Examiner.Com by Corey Ramirez – May 10, 2010

Is your neighborhood donation bin laundering your clothing to for-profit retailers?

Park Howell Blog - November 9th, 2011

Not all donations end up with non-profits

By Corey Ramirez Special to Ahwatukee Foothills News Posted: Monday, May 10, 2010 12:19 pm

Not all of your clothing donation is going to charity

ABC15.com Posted: 11/26/2008

Nonprofit book-collection groups clash with upstart for-profit rival

http://azstarnet.com/news/local/govt-and-politics/nonprofit-book-collection-groups-clash-with-upstart-for-profit-rival/article_f092f4c6-8667-540a-8821-eba89d8cdd4b.html

Constitutional Issues

Jurisdictions Which Have Banned Donation Drop Boxes

- Corona, CA
 - St. Charles, IL
 - Cicero, IL
 - Palm Beach, FL
 - City of St. Johns, Mi.
- The Sixth Circuit ruled that outright bans on Donation Drop Boxes are a content-based violation of the right to free speech

Case Law

Planet Aid v. City of St. Johns, Mi.

- Dec. 2012- Planet Aid placed two drop boxes on private property **with the consent of the property owners**
- Dec. 2013- City of St. John's enacts an ordinance **entirely prohibiting** charitable donation bins
- Feb. 2014- Planet Aid filed suit against the City claiming a violation of the First Amendment
- Holding
 - Charitable solicitations are protected free speech
 - Banning solicitations violates the First Amendment
 - Ordinance "only peripherally" addressed fraud

State Legislation

SB 1504: Arizona's Proposed Donation Bin Legislation

- If approved during the 2016 legislative session, SB 1504 would be Arizona's first legislation addressing the donation bin problem.
- The legislation is focused on:
 - (1) Requiring notarized written authorization from the property owner, or authorized agent, for each donation bin;
 - (2) Clarifying that all unauthorized bins, and their contents, may be removed by the property owner; and
 - (2) Requiring proper identification for the donation bin operator on each box.
- Unlike the municipal ordinances, the legislation does not regulate blight, parking, landscaping, or right-of-way obstruction issues. General zoning/land use issues are not addressed.

Drafting a Model Ordinance

How to Avoid a Constitutional Challenge

- Goals of the ordinance:
 - Eliminate trespass
 - Eradicate nuisance and blight
 - Prevent fraud
 - Protect property owners and neighbors
- Regulate the use, don't ban the speech
 - Time, place, manner restrictions
 - Require a temporary use permit for each box
 - Require ownership authorization
 - Only permit drop boxes in certain zoning districts
 - Create separation requirements
 - Require maintenance & blight prevention



The Solution

Proper Regulation

- Arizona municipalities have enacted ordinances regulating the use of donation drop boxes in Arizona
 - ☐ Phoenix
 - ☐ Surprise
 - ☐ Peoria
 - ☐ Gilbert
 - ☐ Goodyear
- Municipalities considering similar ordinances
 - ☐ Chandler
 - ☐ Glendale
- No Arizona jurisdictions have proposed outright bans on donation bins.



Ordinance Case Study: Peoria



Objectives:

- Establish reasonable regulations
- Tax Status *not relevant*
- Have a local contact and means to quickly address issues

Primary Areas of Focus:

- Site Placement & Aesthetics
- Accountability
- Regulatory Process
- Enforcement



Case Study: Peoria



Locations Permitted:

- Commercial Zones
- Non-Residential *Uses* within Residential Zoning Districts
 - e.g. Church, School etc.

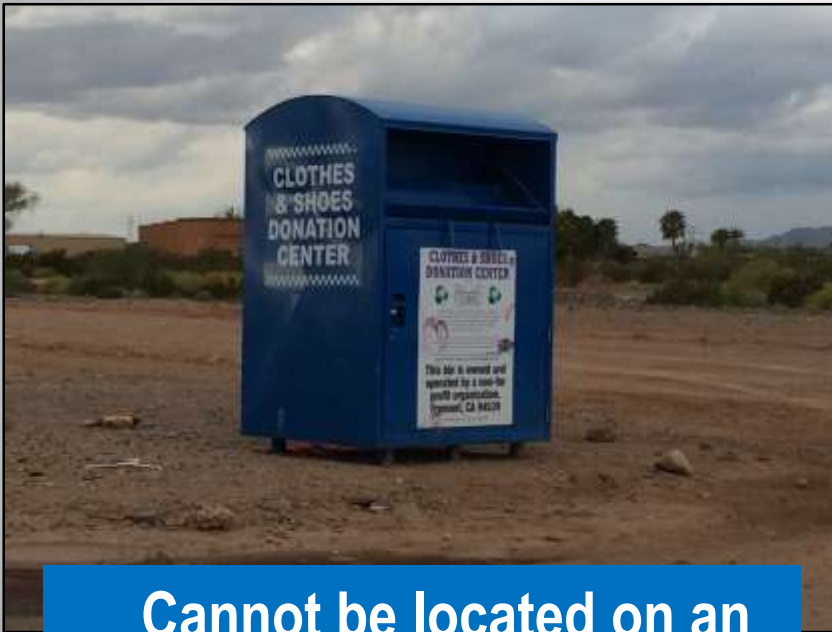
Maximum Number of Bins:

0-1 acres = 1 bin
1-3 acres = 2 bins
3+ acres = 4 bins



- No more than two (2) clustered together

Case Study: Peoria



Cannot be located on an unpaved surface



Cannot be located within landscaped areas

Case Study: Peoria



Keep Street Frontages Clear

- Cannot displace parking spaces
- Must be located outside of setbacks

Case Study: Peoria



Public Safety/Means of Access

- Cannot obstruct fire lanes, loading zones, drive aisles
- Cannot be within Right-of-Way or obstruct pedestrians

Case Study: Peoria



Bin Identification:

- Temporary Use Permit Number affixed to the bin – no exceptions
- Contents clearly identified
- Responsible party affixed to bin
 - Entity name
 - Local contact information
 - Will verify at TUP review



Case Study: Peoria



Pickup & Maintenance:

- Contents collected at least weekly



Performance Standards:

- If Bin is vandalized or damaged:
 - Repaired within 5 business days
- Graffiti or items left outside of Bin:
 - Removed within 24 hours



Case Study: Peoria



Temporary Use Permit (TUP):

- Each bin requires TUP
- Administrative Review Process
 - Planning Department
 - Nominal fee
 - Maintain GIS layer
- TUP must be renewed annually



Case Study: Peoria



- Work with local bin contact and property owner first
- Bins not maintained in compliance may be subject to *revocation* of TUP
- Bins deemed a 'public nuisance' may be removed per nuisance abatement code



Case Study: Peoria



Goals/Expectations

- Responsible operators will comply
- “Bad Actors” will move elsewhere
- Overall decline of bins in “wrong areas”
- Adjustments to the Ordinance may be necessary



The Solution

Model Ordinance

Suggested Provisions

- Regulate Rather than Ban
- Require a temporary permit
- Charge a per box fee to recover enforcement costs
- Annual renewal required per box
- Require notarized owner authorization
- Limit the size of each drop box
- Limit the number of drop boxes permitted per acre/site
- Require regular pickup of donated items
- Require ID of for-profit or non-profit organization
- Prohibition in setbacks/landscape areas
- Authorize City/Property Owner to Remove

