

ORDINANCE 2012-006

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN PABLO AMENDING ORDINANCE 2012-003 REGARDING USE PERMIT REQUIREMENTS FOR DONATION AND COLLECTION BOXES

The City Council of the City of San Pablo does ordain as follows:

Section 1. Section 1, Findings, of Ordinance 2012-003 is hereby amended to read as follows:

The City Council finds that donation/collection boxes located throughout the City have had a detrimental effect on the public health and safety. They have attracted litter and graffiti, and are often used as trash receptacles for items such as furniture, gasoline containers and other refuse, contributing to blight. They are often clustered near public rights-of-way, furthering the blight of already depressed areas of the City. They are normally located in areas not designed for permanent obstructions, with a detrimental impact on pedestrian walkways, parking spaces and/or access for the disabled. Many are plastered with signage and have a detrimental effect on aesthetics in the City. It is the intent of the City Council to enact regulations governing the location and maintenance of such boxes, and to prohibit such boxes on vacant lots because it is likely that litter and dumping would increase due to the presence of such boxes on vacant lots. The City Council finds that such boxes should only be allowed on sites where an existing business is located. Locations of such boxes on either vacant sites or sites with abandoned or closed businesses make it more likely that such boxes will become a public eyesore. Requiring that an existing business be located on the site will add a further policing aspect and act to help prevent such boxes from becoming public nuisances. Such donation/collection boxes have proliferated in clusters, contributing to the blight of already depressed areas.

The City Council finds that many of such boxes purport to be owned and operated by non-profit agencies for charitable purposes, and that they have engendered numerous complaints about misleading advertising of such charitable purposes. Because of such public concern and adverse effects on the public health and safety, it is appropriate to require sufficient information on such boxes so as to prevent deception of the public.

The City Council further finds that under the current zoning code an argument could be made that, because the donation/collection boxes were not specifically listed as a permitted use, they could be deemed to be a prohibited use. (City of Claremont v. Kruse, 177 Cal.App.4th 1153, 1165; City of Corona v. Naulls, 166 Cal.App.4th 418, 431-433.) Ultimately planning staff determined that the uses could be regulated as accessory structures, requiring an administrative approval pursuant to Chapter 17.60 of the San Pablo Municipal Code. For commercial premises, such uses would have been regulated as set forth in section 17.12.070. Such applications are reviewed by a planning aide and may be approved or denied without notice or public hearing and without action by the Planning Commission. However, none of the uses regulated by this ordinance had applied for such administrative approvals, and this unutilized prior process is deemed by the City Council as not best suited to protect the interests of the

applicant or the City's best interests and the health, safety and welfare of the community. The City Council finds that, upon becoming aware of complaints and concerns regarding the donation/collection boxes, it is reasonable and consistent with protection of the public health, safety and welfare to require such boxes to obtain a use permit as opposed to an administrative approval. The use permit process is a necessary and appropriate means of regulating the location and design of donation/collection boxes in the City, and it is reasonable that each applicant seeking approval for a donation/collection box should apply for a use permit. The use permit process guarantees that all property owners within 300 feet of the proposed location of the boxes are notified. The City Council finds that many of such donation/collection boxes have been located on private property without the permission of the property owner. The use permit process therefore also ensures that property owners of the location of the boxes are notified and agree to such placement. The City Council finds that each property location is unique, and may be subject to differing approval conditions to be placed on the permit, as circumstances warrant, by the Planning Commission.

The City Council finds that the \$1,768 application fee for each use permit, to be effective July 1, 2012, has been evaluated and does not exceed the cost of providing the service. In July of 2011 the City contracted with Matrix Consulting Group to prepare a Full Cost Allocation Plan (CAP) and a comprehensive Master Fee Study ("Master Fee Study") for all city fees.

California law stipulates that fees charged by local agencies "... may not exceed the estimated reasonable cost of providing the service for which the fee is charged." This effort to review all city fees to insure that they were adequately recovering, but not exceeding, city costs, was deemed necessary in an era where State takeaways of local funds have dramatically impacted the City's ability to maintain a high quality of services. The State controls a significant portion of City revenues, and has taken \$13.4 million of City of San Pablo money over the past 20 years to solve the State's budget problems. Since 1995, the City has given the State \$300,000 annually under the State's ERAF obligations. Additionally, on May 10, 2010, the City was forced to write the State a check for \$5.9 million from local San Pablo redevelopment funds. In May 2011, the City was required to borrow (finance) \$1.2 million from the State Department of Finance to make another required payment even though the San Pablo Redevelopment Agency did not have the funds. Then on June 28, 2011, the State Legislature passed legislation (AB 1x26), which abolished redevelopment in all cities in California. As of July 1, 2012, the State is facing another \$9.2 billion deficit; thus, funding to cities may be further reduced, which will only increase the magnitude of the problem.

The City has recently eliminated a \$3.3 million budget deficit without cutting city services, through a combination of layoffs, labor concessions in retirement and health benefits, and more. A depressed economy combined with State takeaways of local funds has created a fiscal crisis for the City, which is having a dramatic impact on the City's ability to maintain high quality services for San Pablo residents. The City Council recently placed a sales tax measure on the ballot, as an emergency measure to raise more funds to protect important city services. The revised Master Fee Study is part and parcel of this effort to identify funding sources (and lost revenue) to protect city

services. Accordingly, it is even more critical in these challenging economic times that the City recoups the full cost of providing its services.

The Master Fee Study found that for the City to recover 100% costs of a use permit application, a fee of \$1,768 would have to be applied. The former \$1,000 use permit fee recoups only 56% of the cost to issue a use permit. The City Council held a public hearing on April 16, 2012 and approved a new master fee schedule. The new cost applies across the board for all use permit applications, and as of July 1, 2012, will be equal to the cost of processing the use permits at issue here.

The City Council finds that the use permit at issue here for donation and collection boxes is sufficiently similar to the applications considered in the Master Fee Study and that this fee is reasonable and appropriate. Each application requires intake and processing, review time by both the Planning Aide and the City Planner, site visits, preparation of reports to the Planning Commission, preparation of public notice, attendance at the Planning Commission hearing, preparation of letters and correspondence, follow-up actions, as well as publication and mailing costs. The Council finds that each and every application will involve a different parcel of property with different operative issues and accordingly a separate fee is needed for each application within the City.

Section 2. Section 17.30.155 of the San Pablo Municipal Code is hereby amended to read as follows:

“17.30.155 Donation/Collection boxes

A. Application. Each use classified as a “Recycling Services-Donation/Collection Box” in Section 17.08.040 is subject to the provisions of this section and requires an individual use permit. Each property owner who desires to locate such use on his or her property shall apply for or explicitly authorize an application for a use permit under this section. The application shall include the following information:

1. Name(s), address(es), and telephone number(s) of the organization or person requesting placement of the donation/collection box, and any affiliated organization(s) that will receive donated materials. If an individual, the full, true name, any other names used, date of birth, California driver’s license number or California identification number, social security number, present residence address, and telephone number. If the license applicant is a corporation, the corporation shall provide its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of the state of California, the names and capacities of all officers and directors, the name of the registered corporate agent, and the address of the registered office for service of process. If a partnership, the application shall set forth the name and address of each of the partners, including limited partners. If the applicant is a limited partnership, it shall furnish a copy of its certificate of limited partnership as filed with the county clerk. If one or more of the partners is a corporation, the provisions of this subsection pertaining to corporate applicants shall apply;

2. Location of the proposed site for the donation/collection box and a written, signed statement from the owner of the property that he or she has agreed to placement of the donation/collection box at such location.

3. A detailed description and site plan of the donation/collection box, including but not limited to location, size, weight, material, security features, detailed description of all signage, and the dates and times for regularly scheduled maintenance of each box, pickups of donated material, and removal of material deposited near each box.

4. The dates and time period that the donation/collection box will be on the property.

5. The name and contact information of the person designated by the donation/collection box owner to act as its responsible managing officer and;

6. If the donation/collection box is owned or operated for charitable purposes by a non-profit entity under Section 501(c)(3) of the Internal Revenue Code, the application shall include a determination letter from the IRS and a Tax Identification Number that legitimizes the business as a non-profit/charitable organization to the satisfaction of the City's Finance Director.

B. Findings. Notwithstanding anything to the contrary in this code, the Planning Commission shall approve a use permit for a Donation/Collection Box where it makes all the following findings:

1. The Donation/Collection Box will be located only on a parcel wholly within a Commercial, Industrial, Public or Semi-Public district; and

2. The Donation/Collection Box will be located on a parcel where a primary use is in existence (i.e. that the lot is not vacant, and there is an existing structure on the parcel with a currently operational business or other such use); and

3. The Donation/Collection Box will not be located within 20 feet of the public right of way or other public property; the precise location for the intended use is adequate in size and shape to accommodate said use and to allow for adequate foot traffic and access by the disabled; and the use will not impede adequate vehicular traffic and will allow for sufficient parking; and

4. The Donation/Collection box is not located within 1,000 feet of another donation or collection box. The distance set forth above shall be measured as a radius from the box that is located or is to be located, to the corresponding donation/collection box without regard to intervening structures; and

5. No more than one Donation/Collection Box is located on a single parcel; and

6. If the Donation/Collection box is owned and operated for charitable purposes by a non-profit entity registered under section 501(c)(3), evidence has been provided in the form of a determination letter from the IRS and a Tax Identification Number that legitimizes the business as a non-profit/charitable organization to the satisfaction of the City's Finance Director; and

7. The owner of the property has provided written permission for each such donation/collection box;

C. Each Use Permit issued under this section is subject to the following conditions. The City may institute non-exclusive administrative fine proceedings, use permit revocation or modification proceedings, or any other available remedy upon notice of non-compliance with these conditions or of any public nuisance conditions which can be attributed to the presence of the donation/collection box upon the property:

1. Litter and Graffiti. The donation/collection box, including all signs, accessories and structures, shall be maintained free of litter and graffiti at all times. The property owner and/or operator shall remove all trash, litter and debris within twenty feet of the box on a daily basis. Graffiti shall be removed within forty-eight hours of written notice from the city.

2. Box Identification Signage. Each donation/collection box shall be clearly identified with the following:

a. The name of the entity or organization that is maintaining the box, a telephone number, addresses, and, if available, the Internet Web address for such entity.

b. A statement, in at least two-inch typeface, that either reads, "this collection box is owned and operated by a for-profit organization" or "this collection box is owned and operated by a nonprofit organization."

(1) If the collection box is owned by a nonprofit organization, the front of the collection box shall conspicuously display a statement describing the charitable cause that will benefit from the donations.

(2) If the collection box is owned by a for-profit entity, the front of the collection box shall conspicuously display a statement that reads: "This donation is NOT tax deductible."

c. The contact information for the City of San Pablo's Police Department and Code Enforcement Division.

d. If a non-profit entity owning a donation/collection box loses its non-profit status, the signage on the box shall be immediately corrected to accurately reflect its revised status.

3. Other Box Signage.

Other than the identification information listed above, no donation/collection box shall have signage on more than three sides of the box. Signage may be permanently painted, drawn, embedded or affixed with a film adhesive on the box. No box shall have any signage attached or affixed in any other manner. No signage shall be larger than one-half of the surface area of the side in which it is painted, drawn, embedded or affixed with a film adhesive.

4. Security. Based on testimony or reports from the Police Department, the planning commission may require the donation/collection box owner to provide specified and adequate security personnel and/or devices, where the Police Department can demonstrate that complaints or crime statistics in the general area show a reasonable basis that preventive security measures are needed to preserve the public health, safety and welfare.

Section 3. CEQA Determination. A Negative Declaration was prepared and circulated for public review. The City Council reviewed the negative declaration and based on its independent judgment finds that there is no substantial evidence supporting a fair argument that the project will have a significant adverse effect on the environment. The City Planner shall file a notice of determination with the County Clerk upon adoption of this ordinance. The lead agency has determined that there is no evidence that the proposed project would have any potential for adverse effect on wildlife resources.

Section 4. Severability. If any sections, subsections, sentences, clauses, phrases or portions of this ordinance are for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause of this ordinance whether or not any one or more sections, subsections, phrases or clauses may be declared invalid or unconstitutional on their face or as applied.

Section 5. Publication and Effective Date. This ordinance shall become effective thirty (30) days following its adoption and shall be published once within fifteen (15) days after adoption in the West County Times, a newspaper of general circulation in the City of San Pablo, together with the names of those council members voting for or against; or, in the alternative, a summary prepared by the City Attorney's Office shall be published and a certified copy of the full text of the proposed ordinance or proposed amendment shall be posted in the office of the city clerk at least five days prior to the city council meeting at which the ordinance is to be adopted. Within 15 days after adoption of the ordinance, the city clerk shall publish a summary of the ordinance with the names of those city council members voting for and against the ordinance or amendment and the city clerk shall post in the office of the city clerk a certified copy of the full text of the adopted ordinance or amendment along with the names of those city council members voting for and against the ordinance or amendment.

If the city clerk determines that it is not feasible to prepare a fair and adequate summary of the ordinance, a display advertisement of at least one-quarter of a page in a newspaper of general circulation in the city shall be published at least five days prior to the city council meeting at which the ordinance is to be adopted. Within 15 days after adoption of the ordinance or amendment, a display advertisement of at least one-quarter of a page shall be published. The advertisement shall indicate the general nature of, and provide information about, the ordinance, including information sufficient to enable the public to obtain copies of the complete text of the ordinance or amendment, and the names of those city council members voting for and against the ordinance or amendment.

First read at a regular meeting of the City Council of the City of San Pablo on, 2012 and finally passed and adopted at a second meeting of the City Council held on 2012, by the following vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:
ABSTAIN: COUNCILMEMBERS:

ATTEST:

APPROVED:

Ted J. Denney, City Clerk

Cecilia Valdez, Mayor