



MIMI DUZENSKI  
Clerk of the Board

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August 25, 2015

Honorable Lesley D. Holland, Presiding Judge  
San Joaquin County Superior Court  
P.O. Box 201022  
Stockton, CA 95201

Dear Judge Holland:

### Responses to 2014-2015 Grand Jury Report

Pursuant to Sections 933 and 933.05 of the California Penal Code, following are responses to the 2014-2015 Grand Jury Report entitled "Charity begins at Home, Unattended For-Profit Donation Bins Proliferate Across County" (Case No. 1410):

***Finding F1.1:*** *San Joaquin County and its cities do not have regulations that specifically address the placement, maintenance, and monitoring of unattended donation bins.*

#### **Response to F1.1:**

Agree.

The County does not have regulations that specifically address placement, maintenance, and monitoring of unattended donation bins. In addition, the County does not have regulations which address these same issues for donation bins which are attended.

***Finding F1.2:*** *City and county ordinances can effectively clarify who is responsible for removing unwanted donation bins and protect property owners from liability.*

#### **Response to F1.2:**

Partially disagree.

While a city or county may enact a land use ordinance to clarify the types of donation bins which are allowed on a specific parcel, and in some cases, declare a box to be a public nuisance as specified in Section 152 of the Welfare and Institutions Code, the owner of the parcel would

ultimately be responsible for maintaining the property in compliance with State Law, the San Joaquin County Ordinance Code, and any conditions related to the installation of the donation bins. In addition, an ordinance could not protect property owners from all liability.

***Finding F1.3:*** *Local ordinances can provide cities and the county with stronger control over unattended donation bin placement and assist to enforce them efficiently.*

**Response to F1.3:**

Partially Agree.

A local ordinance could provide a city or county with more control over the allowed placement of an unattended donation bin. However, the overall enforcement process would most likely not change. The County has received very few complaints regarding donation bin placement. Most complaints are in response to abandoned articles left on the site. These are processed through existing land use ordinances which prohibit the accumulation of junk and trash. The owner of the real property is ultimately responsible for compliance. Any subrogation of responsibility between a property owner and a lease holder, or other party the owner claims is responsible for the condition, becomes a civil matter between the parties involved.

***Finding F1.4:*** *Donations to out-of-state for profit operators divert donations from local not-for-profit operators, which diminishes their ability to benefit local communities.*

**Response to F1.4:**

Partially Agree.

Although, this finding seems to be a logical assumption, we do not have information to factually support it. Further, it may not be an issue that could be addressed with a County land use ordinance because such ordinances only provide regulatory language regarding what type of activity is allowed on a specific site. They do not regulate where any donated goods could be shipped or if the goods are only to be used by or to benefit local communities.

***Recommendation R1:*** *By December 1, 2015, San Joaquin County and its incorporated cities should enact ordinances that regulate unattended donation bins, including:*

- *Shall require written consent from property owners before placement of any donation bin on private property*
- *Shall obligate the bin owner to maintain it*
- *Shall obligate the bin owner to hold property owners and their agents harmless from liability who remove unwanted bins from their property*
- *Shall require donation bins meet or exceed the requirements found in the California Welfare and Institutions Code, §§150 to 153*
- *Shall adopt sanctions for any violations of the ordinance provisions*

- *Shall require owners of donation bins that do not have IRS Code 501(c)(3) status to pay a permit fee to generate income to help off-set ordinance enforcement efforts*

**Response to Recommendation R.1:**

The recommendation will not be implemented.

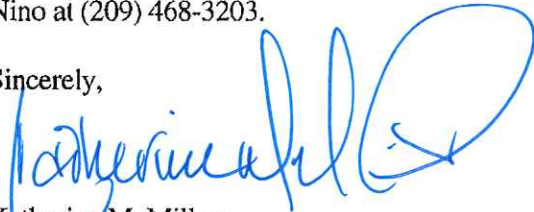
If the County enacted a land use ordinance to regulate for-profit donation bins, it could certainly include a component to require consent or acknowledgment from the property owner. However, maintenance of real property or any appurtenances on the property is the responsibility of the property owner. In addition, restriction of liability between a property owner and an affected party is a legal concern and not addressed through land use ordinances.

The current County ordinance code does provide for resolution of land use violations through referral to the District Attorney. Included in the legal proceeding is the ability to recover enforcement costs. The County could collect a fee through a discretionary application to place a donation bin on an approved site and in turn use those revenues to subsidize enforcement activities on other parcels, however, such a fee is unlikely to cover the costs of enforcement.

Ultimately, the County does not have authority, through land use regulation, to enact or implement many of the recommendations contained in the report and, therefore, will not be moving forward with an ordinance to regulate unattended donation bins.

If you have any questions regarding these responses, please contact County Administrator Monica Nino at (209) 468-3203.

Sincerely,



Katherine M. Miller  
Chair, Board of Supervisors

c: Board of Supervisors  
Clerk of the Board  
County Administrator  
County Counsel  
Director of Community Development