



City of Tracy  
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September 2, 2015

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

Re: Grand Jury Report: 2014-2015 Case No. 1410 – Charity Begins at Home:  
Unattended For-Profit Donation Bins Proliferate Across County

Honorable Judge Holland:

This letter responds to the above-referenced Grand Jury Report and is submitted in accordance with California Penal Code Sections 933 and 933.05. The City of Tracy's response relates to the findings and recommendations contained in the Grand Jury Report.

**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.**

The City partially disagrees with this finding.

The City of Tracy's zoning regulations preclude the placement of donation bins. They are not permitted or conditionally permitted in any zone in the City and, therefore, are prohibited. (Tracy Municipal Code section 10.08.1070.) Because donation bins are prohibited, the City does not have specific regulations regarding the placement, maintenance, and monitoring of donation bins.

**FINDING F1.2**

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

The City disagrees with this finding.

The City believes that private property owners already have the authority to remove unauthorized items from their property, under California statutes and case law. (See, for example: Penal Code §602(m) (trespass), Civil Code §820 (rights of owner); Civil Code §§3501-3503 (private nuisance and abatement).) The City questions its legal

authority to impose a regulation regarding private property rights that is within the state's purview to regulate.

**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.**

The City agrees with this finding.

**FINDING F1.4**

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

The City has no independent information to agree or disagree with this finding. In any case, the City's zoning and other regulations do not generally distinguish in-state, out-of-state, for-profit and not-for-profit uses, but instead attempt to be neutral in their effect on all property owners and users.

**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 owners 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.**

This recommendation has not yet been implemented, but the City will enact an ordinance regulating unattended donation bins by December 1, 2015. However, the contents of such an ordinance is yet to be determined.

Sincerely,



Michael Maciel, Mayor  
On Behalf of the Tracy City Council

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cc: Members of the Tracy City Council  
Troy Brown, City Manager  
Daniel G. Sodergren, City Attorney  
Via email to Ms. Trisa Martinez, Staff Secretary to the Grand Jury at  
grandjury@sjcourts.org