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SAN JOAQUIN COUNTY CIVIL GRAND JURY FINDS UNATTENDED FOR-PROFIT DONATION BINS PROLIFERATE ACROSS COUNTY

The number of unattended donation bins operated by out-of-state for-profit companies has increased dramatically in the county. They are unregulated, unmaintained, and often placed on private property without the owner's permission, an investigation by the San Joaquin County Civil Grand Jury found.

In a report released today, the Grand Jury's recommendation that San Joaquin County and its cities enact ordinances requiring owners of the bins received written permission before placing the collection bins, that they maintain the bins, and that property owners be held harmless for removing such bins placed without permission. Further, the Jury recommends that owners of the bins will be required to post signage making it clear the bins are operated by for-profit companies and not charities.

The Grand Jury's findings and recommendations are based on a months-long investigation that included interviews, tours of various sites where the for-profit bins have been placed, as well as a survey of the county and cities to determine what, if any, regulations exist to control the placement and maintenance of the unattended bins.

Only the Grand Jury foreman is allowed to comment publicly about Grand Jury investigations.

San Joaquin County and the cities of Stockton, Lodi, Tracy, Manteca, Lathrop, Ripon and Escalon are required to submit a response to each finding and recommendation in the report. Those responses must be sent to the Presiding Judge of the San Joaquin County Superior Court within 90 days.

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San Joaquin County Grand Jury



Charity Begins at Home Unattended For-Profit Donation Bins Proliferate Across County 2014-2015 Case No. 1410

Summary

San Joaquin County residents give cash and donated goods each year valued in the millions of dollars. The United Way of San Joaquin County alone collects nearly \$4 million in cash donations annually. County residents also give to area charities that operate retail outlets where donated goods are sold to support the agencies' local charitable programs. Often residents drop off their donations at collection points located in area parking lots.

In recent years, unattended donation bins placed by for-profit companies have been appearing in cities and unincorporated areas of San Joaquin County. These unattended donation bins are having a significant negative impact on donations to non-profit charities. There are no ordinances in San Joaquin County and its cities to enable authorities to regulate these for-profit unattended donation bins that are often simply dropped on private property without the owner's consent. In addition, there are safety



Photo of an unattended donation bin in San Joaquin County.

and liability issues that are not addressed.

The 2014-2015 Grand Jury decided to investigate the proliferation of these for-profit unattended donation bins.

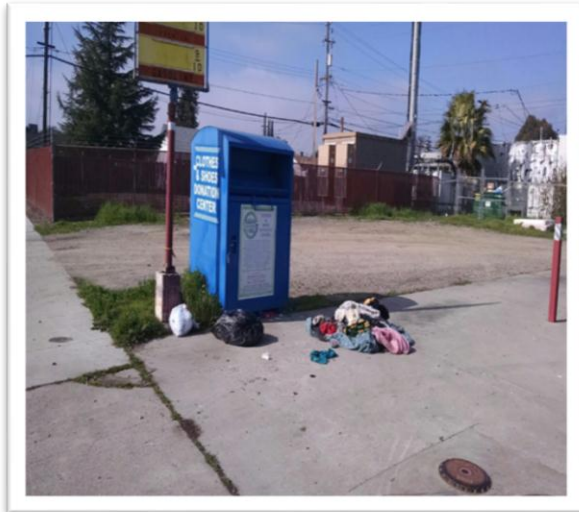
Among the most important findings are:

- San Joaquin County and its cities do not have ordinances that specifically address the placement and monitoring of for-profit unattended donation bins
- These unattended donation bins are operated by for-profit companies that make millions of dollars nationwide, exporting textiles for sale at a profit in Africa and South America
- The profits go to out-of-state corporations that pay no local or state taxes and provide no benefit locally

Among the most important recommendations are:

- San Joaquin County and its seven cities should enact ordinances to regulate for-profit unattended donation bins
- Ordinances should require operators to obtain written consent from property owners before placement of any unattended donation bins, and limit the liability of property owners and their agents who remove unwanted bins from their property

Background



Unattended bin, Roselawn Avenue, east of Mission Road, Stockton

Several non-profit charities, such as Goodwill Industries of San Joaquin Valley, operate parking lot collection sites. Their sites are operated with an attendant present and with the permission of the property owner. There is little chance someone making a donation at one of these sites can be confused about who they are donating to or if that agency is a non-profit or for-profit entity.

In recent years, for-profit companies have moved into San Joaquin County. Although it is unclear exactly how many companies are involved, bins owned by two for-profit operators, USAgain and Discover Books, can be found throughout the County. Collection bins operated by the companies are unattended, often include only small signs to indicate donations are not tax deductible, and do not spell out that donations are being exported to foreign countries.

In 2011, USAgain, according to the company's website, collected 60 million pounds of clothing from more than 10,000 donation sites in 17 states, including California. Much of the donated material was sold for a profit in Africa and Latin America.

Despite the proliferation of the for-profit unattended collection bins, the Grand Jury found no uniform city or county ordinances to regulate the placement and maintenance of for-profit bins.



Unattended bin, Country Club Boulevard, Stockton

Neither are there ordinances protecting property owners nor removal companies hired in cases where bins are placed on private property without permission and the property owner elects to have the bin removed. Unattended donation bins can attract graffiti, vandalism, and become a public nuisance. They can also be safety hazards when people crawl inside to keep warm or to remove items from the bins.

In February 2012, then-Assemblywoman and now Sen. Cathleen Galgiani, D-Stockton, introduced Assembly Bill 1978 in the California Legislature. It would have required the written consent of a property owner before a collection bin could be placed on his or her property. It also provided a mechanism for the removal of the unapproved bin without liability to the property owner.

The bill had bipartisan support. In August 2012, the bill passed the Assembly on a 70-8 vote and the Senate on a 21-13 vote, but the next month it was vetoed by Gov. Jerry Brown. "I support the author's goal of giving property owners more tools to enforce their property rights," the governor said in his veto message.

"However, I believe the language can be more narrowly crafted to avoid unintended consequences to local charities and nonprofits." Gov. Brown did not spell out what "unintended consequences" concerned him. Some non-profits, such as D.A.R.E America and Planet Aid, had voiced opposition, arguing that the bill would have unfairly restricted their fundraising efforts.

Reasons for Investigation

The Grand Jury chose this issue because of concerns about the proliferation of unattended, for-profit collection bins in San Joaquin County and its cities. It was discovered that non-profit charities, such as Goodwill Industries and The Salvation Army, do not operate unattended donation bins. Further, they place their collection bins only with the written consent of property owners.

Witnesses testified that donations to some non-profit charities have decreased in the last few years, a change partially blamed on the proliferation of for-profit bins. The Grand Jury was told some donors believe that their donations are being made to non-profit charities. No local jobs

are created by these for-profit companies, although USAgain has many employees at its Hayward warehouse.

Donations placed in unattended bins create profits for out-of-state organizations and create problems when they are placed on private property without written consent from property owners. Many property owners want them removed, but are unable to contact the operator. They are hesitant to pay the cost of removal in case they are held liable for the bin. Other property owners choose to ignore the bin rather than pay for its removal.

Method of Investigation

Materials Reviewed

- Grand Jury surveys of code enforcement officials in San Joaquin County, Stockton, Lodi, Manteca, Lathrop, Escalon, Ripon, and Tracy
- Grand Jury survey of 12 property owners who have for-profit unattended donation bins located on their premises
- State Assembly Bill 918 (2010), now identified as Welfare and Institutions Code, §150-153 (www.leginfo.ca.gov/cgi-bin/displaycode?section=wic&group=00001-01000&file=150-153)
- State Assembly Bill 1978 (2012), vetoed by the governor
- Stockton, Lodi, and Tracy building codes
- Informational handouts from Goodwill Industries
- Elk Grove and Ceres ordinances governing the placement of unattended collection bins

Interviews Conducted

- San Joaquin County code enforcement staff
- Lathrop code enforcement staff
- Stockton Police Department code enforcement staff
- Goodwill Industries of San Joaquin Valley, Inc., and Shelter Thrift and Donation Center management staff
- Security staff at Lowe's on Hammer Lane in Stockton
- Property owners who have had for-profit donation bins on their property

Sites Visited

- Central Valley headquarters of Goodwill Industries of San Joaquin Valley, Inc.
- Shelter Thrift and Donation Center retail outlet in Stockton
- Fourteen for-profit unattended donation bin sites including locations in Tracy, Manteca, Lodi, Lathrop, Stockton, and the unincorporated county

Facts, Findings, and Recommendations

The 2014-2015 Grand Jury reviewed responses from San Joaquin County and all of its cities to a Grand Jury survey sent in October 2014. These responses show that cities and the county government have reduced staffing in their code enforcement and local police departments.

Although code enforcement officers are generally responsible for code violations, limited staff means that they only investigate when there are complaints. Some California cities, including Elk Grove, Rancho Cordova, and Ceres, have comprehensive ordinances that regulate unattended donation bins. Stockton and Lodi have ordinances directed at recycling collection sites, but not for unattended donation bins.

Different codes and policies in San Joaquin County and its cities have contributed to confusion about unattended donation bins in parking lots and on street corners. Survey responses from San Joaquin County and its cities revealed a lack of ordinances that specifically address unattended donation bins, or simply classifies them as recycling centers (see appendix). In its response to the Grand Jury survey, San Joaquin County officials, for example, said that "a donation box, whether or not for profit, placed on the site of an existing retail establishment would be considered an accessory use to the business operation." However, more than half of the property owners questioned in an informal survey found they had not given permission for the placement of unattended donation bins on their premises.

Different approaches to for-profit collection bins give a flavor of the various methods some cities have used, for example:

- Lodi ordinances refer to "recycling facilities", but do not specifically mention items often given as charitable donations such as books, shoes, household goods, and, clothing.
- Tracy cites Welfare and Institutions Code, §§150 to 153, which sets forth definition of donation bins as well as disclosure requirements that must be printed on each donation bin to provide information to consumers. That information must include the name of the organization benefiting from the donation, contact information, and how their donations would be used. Each bin also is required to have clear information on whether the donation bin is owned by a charitable or commercial (for-profit) entity.

Findings

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

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

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

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.

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

Conclusion

Unattended donation bins operated by for-profit organizations are unsightly and can become safety hazards. They deprive local charities of donations that benefit our community, providing services and jobs. They generally do not make clear that the bins are placed by for-profit companies, which confuses donors making charitable donations. Understaffed code enforcement offices and confusion about whose responsibility it is to remove unwanted bins has led to lack of action. Implementation of local ordinances is an important tool in preventing this problem and will generate additional income to the county and its cities that could go toward code enforcement efforts.

Disclaimers

Grand Jury reports are based on documentary evidence and the testimony of sworn or admonished witnesses, not on conjecture or opinion. However, the Grand Jury is precluded by law from disclosing such evidence except upon the specific approval of the Presiding Judge of the Superior Court, or another judge appointed by the Presiding Judge (Penal Code Sections 911, 924.1 (a) and 929). Similarly, the Grand Jury is precluded by law from disclosing the identity of witnesses except upon an order of the court for narrowly defined purposes (Penal Code Sections 924.2 and 929).

Response Requirements

California Penal Code Sections 933 and 933.05 require that specific responses to all findings and recommendations contained in this report be submitted to the Presiding Judge of the San Joaquin County Superior Court within 90 days of receipt of the report.

The San Joaquin County Board of Supervisors as well as the city councils of Stockton, Manteca, Tracy, Lodi, Lathrop, Ripon, and Escalon shall respond to each Finding and Recommendation contained in this Report.

Mail or hand-deliver a hard copy of the response to:

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

Also, please email the response to Ms. Trisa Martinez, Staff Secretary to the Grand Jury at grandjury@sjcourts.org

Appendix

	CODE ENFORCEMENT STAFFING	ORDINANCES FOR DONATION BINS	PERMITS REQUIRED	COMPLAINT DRIVEN
SAN JOAQUIN COUNTY	2 full-time, 1 part-time	None	Yes	Yes
ESCALON	2 full-time	None	Yes	Yes
LATHROP	1 part-time	None	No	Yes
LODI	2 full-time	Yes - SEC 17.36	May require deposit	Yes
MANTECA	2 full-time, 1 part-time	None	Yes	Yes
RIPON	1 part-time	None	No	Yes
STOCKTON	26 full-time, 2 part-time	No - SMC 16.20.020, Table 2-2	Yes, on private property	Yes
TRACY	4 full-time, 1 part-time	AB918, Sec. 10.08,1070, W&I Code §150-153	Yes, on private property	Yes.