



Orange City Development Services Department

205 East Graves Avenue, Orange City, Florida 32763

www.OurOrangeCity.com Phone: 386-775-5415 Fax: 386-775-5420

MEMORANDUM

Public Hearing: February 6, 2019 Planning Commission

Report Date: January 25, 2019

Subject: Second discussion on a Land Development Code text amendment to regulate collection bins.

Applicant: Development Services Department

Staff: Becky Mendez, AICP, Development Services Director

PUPOSE OF DISCUSSION

Collection bins are small containers for the sole purpose of collecting discarded materials for reuse. The City historically does not allow temporary accessory structures and/or uses such as collection bins in commercial areas. However, there are four US District Court cases (years 2011, 2014, 2015 and 2016) that have ruled charitable solicitation via donation bins is protected free speech. At the January 2, 2019 meeting, the Planning Commission agreed that collection bins should be regulated because if left unregulated will cause blight and safety nuisances. The Planning Commission reviewed recently adopted land development regulations from the cities of Ocoee, Sanford, Lake Wales, and Orlando and provided staff direction. No one from the public spoke for or against regulating collection bins. Based on the discussion, staff hereby presents a draft text amendment for Planning Commission consideration.

BACKGROUND

In November 2018, code enforcement contacted the owner of a collection bin that was placed in the parking lot between Regions Bank and Taco Bell located in front of the Crown Center plaza on Enterprise Road, and requested its removal. The Development Services Director also determined that the collection bin was not a permitted use or structure and must be removed. According to their website (atrscorp.com), ATRS is a for profit organization that collects textile donations from off-site collection bins and processes the donations for sale in the second-hand clothing market (45%), upholstery and automotive stuffing (20%), industry wiping rags (30%), and gives away 3% for disaster relief. It was determined that the collection bin did not conform to the zoning code or design standards, and was not customarily accessory to the principle permitted use.

Shortly after the code enforcement notification, a representative from ATRS provided case law information regarding the free speech protection. They are licensed and regulated by the State of Florida as a professional solicitor. Their documents are provided for reference. The City Attorney has confirmed that collection bins are protected, and must either be regulated or allowed by right. The city can regulate size, number, location and

design. Any further code enforcement action is stayed until a decision is made by City Council.

DISCUSSION

The proposed text amendment generally:

- Defines “collection bin”
- One bin per developed parcel in the CG-1, CG-2, I-1, I-2 or MX-2 zoning only
- Requires annual permit and \$50 fee
- Location requirements
- Height and size limitations
- Requires maintenance
- Provides for penalty and enforcement

STAFF RECCOMENDATION

Provide input on draft amendment.

ATTACHMENTS

Draft text amendment

Draft application and owner authorization forms

Ordinance summary table from Ocoee, Sanford, Lake Wales and Orlando

Email and Case law document provided by the collection bin owner

Section 2.1. Specific terms defined.

...

Collection bins. Unattended outdoor receptacles dedicated for the sole purpose of collecting non-trash items for reuse, resale, or recycling and placed in accordance with the regulations of Section 8.7.25, Land Development Code. The City's recycling program and the collection containers used in conjunction with principle permitted uses are exempt from these provisions.

...

8.7.25. *Collection bins.* One collection bin is allowed on each developed nonresidential property located in the CG-1, CG-2, I-1, I-2, or MX-2 zoning districts in compliance with the following regulations:

- A. Permit required. A collection bin operator must obtain a permit from the City prior to placing a collection bin on a developed property within the City.
 1. The permit is valid for a duration not to exceed 12 months and can be renewed on a yearly basis. Each renewal requires a new permit application and fee.
 2. The permit at minimum shall include the operator's contact information, proof of registration with the State of Florida Charitable Solicitation Division, site plan showing the location of the bin and all other structures, driveways, parking areas, and any other existing or proposed improvements on the property, and notarized written consent from property owner.
 3. The assigned permit number, permittee's name, logo, telephone number, email address, and name of the benefitting organization must be prominently displayed on the collection bin so as to provide a means of contact in case the collection bin is at capacity and unable to take any further items, for maintenance concerns, notice or for any other issue that may arise with the collection bin.
 4. Following issuance of the permit, the collection bin is prohibited from being relocated within the property without application and City approval of a new permit.
- B. Development standards.
 1. Location. The following location restrictions apply to all collection bins.
 - a. Not within front yard area.
 - b. Not within 10 feet from side or rear lot lines.
 - c. Not within any required parking space or landscape area.
 - d. Not cause interference with vehicular or pedestrian traffic.
 - e. Not cause safety hazard with regard to designated fire lane or building exit.
 - f. Placed on an improved impervious surface.
 - g. Placed in an area that allows for truck access for unloading and maintenance of the collection bin.
 2. The collection bin shall not exceed 6 feet in height and 25 square feet base.
 3. Each collection bin must be enclosed by utilizing a receiving door or safety chute to prevent vandalism and locked so that the contents of the bin cannot be accessed by anyone other than those responsible for the retrieval of the contents.
- C. Maintenance.

Collection bin draft text amendment for Planning Commission discussion on 2.6.19.

1. The collection bin shall be maintained in good condition and appearance with no structural damage, noticeable odors, holes or visible rust, free of graffiti or faded signs and shall be repaired or repainted in the event it is damaged or vandalized within 5 days of discovery or notice by the city, whichever occurs first.
 2. The area surrounding the donation bin shall be free of donated items, garbage, trash, junk, debris or other materials and shall be maintained by the collection bin operator.
 3. All items or materials left outside of the collection bin shall be removed within 24 hours of discovery or notice by the city, whichever occurs first.
- D. Penalties and enforcement.
1. The owner or operator of the collection bin, the permittee, and/or the owner of the private property upon which a violation of these regulations occur may be held individually and severally responsible and liable for such violation.
 2. The city may consider prior permit revocations, prior notices of violation and fraudulent application information when granting or denying a new permit for a collection bin.
 3. Violations of these provisions may be punished and enforced in accordance with Chapter 2- Administration, Article IV- Code Enforcement.
 4. Any person may appeal a decision of the DSD in the enforcement or interpretation of any of the terms or provisions of this section as provided for by chapter 3, section 3.11 of this code.

Staff Note: Fee schedule resolution needed to add \$50 per collection bin annual fee. This is the same fee charged for special event permit applications, which requires a similar amount of staff time to implement permit program.

COLLECTION BIN PERMIT APPLICATION



CITY OF ORANGE CITY, DEVELOPMENT SERVICES DEPARTMENT

205 E. Graves Avenue
Orange City, FL 32763
(386) 775-5415

ourorangecity.com

This application is for: (Check One)

Initial Registration Renewal Change in Information Other (specify) _____

APPLICANT INFORMATION:

Collection Bin Operator Company Name: _____

Local Contact Name: _____

Company Address: _____

City, State, ZIP: _____

Phone: (____) _____ FAX: (____) _____ EMAIL: _____

Name of benefitting organization(s): _____

Legal form of business (Please check one): Corporation Partnership Sole Proprietor LLC 501.C3

COLLECTION BIN LOCATION:

Street Address: _____

Tax Parcel Number: _____ - _____ - _____

Location where bin will be placed (state as specifically as possible): _____

Existing Zoning : _____ Existing land use: _____

Name of property owner: _____ Property owner phone number: _____

Property owner email: _____

REQUIRED ATTACHMENTS:

- Site plan of proposed bin location
- Proof of registration with the State of Florida Charitable Solicitation Division
- Notarized authorization of ownership form
- \$50 application fee

.....
TO BE COMPLETED BY CITY STAFF:

Date Stamp:		Received by:	
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COLLECTION BIN PERMIT APPLICATION



LIMITATIONS:

Collections bins shall comply with the adopted regulations, Ordinance No. XX, which generally include, but are not limited to, the following requirements (Ordinance No. XX should be thoroughly reviewed prior to application to the City):

1. One collection bin allowed per developed, nonresidential property in the CG-1, CG-2, I-1, I-2 or MX-2 zoning district.
2. Maximum 6- feet in height and 25- square feet in area.
3. Not located within any required yard, parking space or landscape area.
4. Placed on an improved impervious surface.
5. Does not obstruct vehicular or pedestrian traffic, or cause a safety hazard.
6. Maintenance of collection bin and surrounding area is the responsibility of the bin operator and property owner.

APPLICANT SIGNATURE:

APPLICANT PRINT:

DATE:

DRAFT



COLLECTION BIN OWNER AUTHORIZATION FORM

Mail or hand-deliver the completed form with associated applications to:
City of Orange City
205 E. Graves Avenue
Orange City, FL 32763
(386) 775-5415 Fax (386) 775-5420

I/We, _____,
(PRINT OWNER'S NAME)

as the sole or joint fee simple title holder(s) of the property described as:

(LEGAL DESCRIPTION AND/OR PARCEL NUMBER)

authorize _____ to place a collection
(PRINT DONATION BIN OPERATOR NAME)

bin on the above property in accordance with City Ordinance No. XX. I understand and acknowledge that, as the property owner, I could be subject to a code enforcement violation and held responsible for any violation of City Ordinance No. XX by the collection bin operator or attributable to the presence of the collection bin on my property.

OWNER'S SIGNATURE

OWNER'S SIGNATURE

DATE

DATE

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20____
(DATE)

by _____, who is personally
(NAME OF PERSON ACKNOWLEDGING)

known to me or who has produced _____ as
(TYPE OF IDENTIFICATION)

identification and who did not take an oath.

NOTARY PUBLIC, STATE OF _____
Type or Print Name:

Commission No.:

My Commission Expires:



Donation Bin ordinances summary. January 2, 2019 Planning Commission discussion.

	Required screening?	Allowed in Zoning Classifications:	Requires owner authorization and/or permitting?	Size limitation	Number limitation	Location standards	Setbacks	Safety hazard	Maintenance required?	Time limitation?	ID/Sign required
Ocoee	Yes, fully screened masonry enclosures	Commercial, industrial and multifamily	No	No	No	No	No	No	No	No	No
Sanford	Yes, 7' tall solid wall or fence	All	Yes, \$50 fee, application, and BTR	6' height 5' width 5' depth	Yes, based on lot size	Not on vacant land, landscape or required parking	100' Res 20' ROW All other setback requirements	Can't block ped, fire, drive aisles or visual obstruction	Yes	12 months renewal- \$50 annual permit fee	Yes
Lake Wales	No	All	Yes	36 sq ft 7' height 6' width 6' depth	No	No	All applicable LDC setbacks	No visual obstruction to vehicular or ped traffic	Yes	No	Yes
Orlando	No	Commercial or industrial	Yes	25 sq ft 7' height	Yes, based on lot size	Not on vacant land, landscape or required parking	25' res 25' ROW 5' property line	No	Yes	No	5 sq ft each side limit

To: Kristin Greene <kristin@capitolgroup.org>

Subject: RE: meeting request

I have forwarded your request to the City Manager who will coordinate the call.

From: Kristin Greene <kristin@capitolgroup.org>

Sent: Friday, November 16, 2018 9:47 AM

To: Chaleak Grier <cgrier@ourorangecity.com>

Subject: meeting request

WARNING This is an EXTERNAL email that originated outside the City of Orange City.
EXERCISE CAUTION! DO NOT open attachments or click links from unknown senders.

Good morning,

I represent ATRS, a charitable fundraiser for a local breast cancer charity. ATRS utilizes donation bins as their fundraising mechanism. They are licensed and regulated by the state of Florida as a professional solicitor. ATRS recently was informed by your code department that the donation bins fall under Sec. 10.6 of the zoning code (Misc. Provisions) yet there is no reference to them. The code officer, in doing his job, has begun to send violation notices to our property owners that are sponsoring the fundraising campaigns.

The concern I have, and why I am contacting you and not the planning department, is that this mis-categorization of charitable solicitation by donation bin as pure land use is common. However, this fundraising mechanism is legally considered charitable solicitation and has a free speech component that pure land use regulations don't acknowledge. My client is supportive of safety and maintenance regulations for the bins, as well as other restrictions such as not trespassing, no dumping and nuisance concerns, and would welcome regulations to that effect. However the cited zoning code is problematic for a few reasons I would like to discuss.

May I set up a conference call with your city attorney to discuss this issue? That way I can pass on the legal side of this issue and then move to the practical side of proper donation bin regulation with planning staff.

I appreciate your assistance.

Kristin Greene

KRISTIN GREENE | PARTNER, CHIEF STRATEGY OFFICER

20668 W. Main Street Buckeye, AZ 85396

(623) 256-5743



Capitol Strategy Group

PROVIDING POLITICAL STRATEGY, ADVOCACY AND CONSULTING

Case Law - Donation Bins as Protected Free Speech

There are two types of unattended collection bins – those that are charitable solicitors (referred to as donation bins), and those that are commercial recyclers. Charitable solicitors are contracted with, and raise funds on behalf of registered non-profit organizations, while commercial textile recyclers function much like metal, paper, and plastic recyclers.

To date, four U.S. District Courts have unequivocally stated that bins collecting donated items for resale to fund a charity are engaging in charitable solicitation, and as such are First Amendment protected noncommercial speech.¹

“The public receptacles [for donated items] are not mere collection points for unwanted items, but are rather silent solicitors and advocates for a particular cause” *Nat’l Federation of the Blind of Texas, Inc. v. Abbott*, (5th Cir. 2011)

“...speech regarding charitable giving and solicitation is entitled to strong constitutional protection. and the fact that the speech may take the form of a donation bins does not reduce the level of its protection”. *Planet Aid v. City of St. Johns* (6th Cir. 2015).

“In fact, Linc-Drop [a donation bin operator] is engaged in charitable solicitation”. *Linc-Drop, Inc. v. City of Neb.* (8th Cir. 2014)

“and assuming, as we have, that [donation bin operator’s] charitable unattended donation collection boxes implicate First Amendment protected expression...”, *Recycle for Change v. City of Oakland*, (9th Cir, 2016).

With the four U.S. Circuit Courts extending the First Amendment protection to donation bin solicitation, it can be inferred that with the opportunity, the other courts would agree with their sister Circuits. Given the case law designating donation bins as charitable solicitation, and the protection of charitable solicitation as noncommercial speech, this analysis must turn to how municipalities are able to classify and regulate donation bin solicitation in light of this information.

¹ *Nat’l Federation of the Blind of Texas, Inc. v. Abbott*, 647 F.3d 202 (2011); *Linc-Drop, Inc. v. City of Neb.*, 996 F.Supp.2d 845 (D. Neb. 2014), *Recycle for Change v. City of Oakland*, No. 15-cv-05093-WHO (N.D. Cal., Jan. 28, 2016). *Planet Aid v. City of St. Johns* (6th Cir. 2015)

The Courts in the four cases cited above made the clear distinction between “protected bins” and “non-protected receptacles” (those that are pure for-profit recyclers like those for paper, plastic, metal as well as textiles), and by extension, affirmed the inherent difference in the way they *may* be regulated.

Once free speech is implicated, as is the case with donation bins, municipal regulation cannot ignore that speech component by attempting to regulate just the land use component

The nexus between charitable solicitation and donation bins has been created by the courts so it is important to note that there is extensive Supreme Court case law outlining the “dos and don’ts” in the regulation of charitable solicitation, and that many of the regulations normally applied to a land use are not permissible restrictions on the exercise of free speech.

“Although a municipality may enact regulations in the interest of public safety, health and welfare or convenience, these may not abridge the individual liberties secured by the Constitution to those who wish to speak, write, print or circulate information or opinion.”²

A. Charitable Solicitation with a Land Use Component vs. Pure Land Use

The Legal Distinction

Most municipal ordinances regulate donation bins in one of three ways: 1) specifically define them in the zoning code, 2) mislabel *charitable* donation bins as a recycle/outdoor storage container or as an accessory structure, or 3) do not mention them at all and therefore do not allow them. In these circumstances, charitable donation bins are treated as pure land use. *Pure land use* defined here are traditional land uses subject to municipal zoning permits and restrictions such as accessory structures buildings, temporary Christmas tree lots, etc. *Charitable solicitation with a land use component* as defined here is noncommercial free speech exercised on a public or private property. Other examples of noncommercial free speech with a land use component include the placement of political and religious signs, street proselytizing, public protests, a high school booster club car wash in a commercial plaza, and political signature gathering. Municipalities readily understand that they cannot deem these activities as pure land use simply because they are exercised on “land” and acknowledge that the free speech right

² *New Jersey Citizen Action v Edison Township*, 797 F.2d. 1250, 1256 (3rd Cir.1986)

trumps (most of) the zoning code. In the eyes of the courts, charitable solicitation by donation bin is entitled to no less protection from government intrusion than the examples above.

However, simply because charitable solicitation has a First Amendment protection does not mean that it is immune from any form of government regulation. The constitutional protection on charitable solicitation by donation bin does not mean that a municipality cannot impose restrictions on this solicitation method, include zoning restrictions aimed at safety and maintenance. It is undeniable that solicitation by donation bin is unique from other methods such as door to door or telephonic solicitation and can be subject to some provisions aimed at its land use component. A municipality may impose different “how, where and when” restrictions upon charitable solicitation if those restrictions are constitutionally permissible *time, place, and manner* regulations.

Bin Structures as Expressive Activity

Although the donation bin does look, feel and act like a “structure”, the structure is the facilitation method for the speech (just as a telephone is the facilitation method for phone bank fundraising). As quoted above, the courts have said that the bins are “silent solicitors” because the signage on the bin is what does the soliciting. The bin is what facilitates the exercise of the Therefore, the donation bin as a whole is afforded the speech protection in the regulation thereof, and a municipality must distinguish the “speech with a land use component” from “pure land use”.

The donation bin is akin to the portable table as it is what facilitates the expressive activity – the charitable solicitation. One cannot separate the facilitation mode from the expression, and therefore cannot separate out the bin as a land use while ignoring the First Amendment protection afforded the entire structure.

Case law furthers the idea that modes of communicating protected speech, such as that which facilitates the exercise of the activity, is also protected by the First Amendment. For example, the Eleventh Circuit held that the policy of banning the use of tables to distribute protected literature was an invalid regulation of expressive activity because “***tables used to distribute protected literature come within the protection of the First Amendment,*”³**

³ Int'l Caucus of Labor Comms. v. City of Montgomery, 111 F.3d 1548 (11th Cir.1997) (per curiam), also One World One Family Now v. City of Miami Beach, 175 F.3d 1282, 1286 (11th Cir.1999)) The district court held

A Ninth Circuit case also referenced the case above when it ruled invalid a provision that regulated expressive activity. A Las Vegas ordinance regulated the use of tables to facilitate protected speech, in this case petition gathering. The Court held:

” We agree [with the district court] that use of portable tables is analogous to access to news racks-similarly temporary structures used to disseminate speech-related materials-which is protected by the First Amendment” and “We hold that the erection of tables is expressive activity protected by our Constitution to the extent that the tables facilitate the dissemination of First Amendment speech.”⁴

“that use of portable tables as a means of disseminating message-bearing T-shirts is entitled to First Amendment protection.” Id. at 1462

⁴ *ACLU v. City of Las Vegas*, 1999 WL 65130 (9th Cir.1999).