



CITY OF HAYWARD

Hayward City Hall
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Cover Memo

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DATE: September 22, 2015

TO: Mayor and City Council

FROM: Development Services Director

SUBJECT

Establishment of New Regulations for Unattended Collection Boxes: Introduction of Ordinances and Adoption of a Resolution Related to Amendments to Chapter 5, Article 7 (Community Preservation and Improvement), and Chapter 10, Article 1 (Zoning Ordinance), of the Hayward Municipal Code; the proposed project is exempt from the California Environmental Quality Act (CEQA) under CEQA Section 15061(b)(3); City of Hayward (applicant)

RECOMMENDATION

Staff recommends that the that City Council introduce the attached ordinances (Attachments IV through VI) to amend the Hayward Municipal Code (HMC) to establish new regulations related to Unattended Collection Boxes, make minor amendments to recycling collection facility regulations, and to add references related to the regulations in other sections of the HMC; and adopt a resolution (Attachment VII) making findings to support the proposed text amendments.

SUMMARY

Unattended Collection Boxes are not currently regulated in the City of Hayward. Since the City Council conducted a public hearing on March 24 of this year and directed staff to consider revisions to the ordinances presented to Council at that hearing, staff has developed revised recommendations. The proposed ordinances continue to seek to balance the intended environmental benefits of the facilities by reducing the volume of textiles and other salvageable material entering the waste stream, while also addressing documented nuisance issues related to illegal dumping, scavenging and unsightliness that result in undesirable impacts for the community.

The proposed revised regulations identify the same areas where Unattended Collection Boxes may be located; provide a reduction of minimum distance requirements between facilities (1,000 ft.) compared with previous recommendations (2,500 ft.); provide new provisions related to how the regulations will be implemented that recognizes the existence of such facilities, based on an inventory of them (Attachment II); and require Zoning Conformance Permit approval to ensure that the facilities meet minimum development and performance standards. In addition, the proposed text amendments include other minor updates to the existing Recycling Collection Facility regulations as described in further detail below.

BACKGROUND

Over the past five years, the Bay Area has seen a proliferation of Unattended Collection Boxes on public and private properties. The facilities typically measure about twenty-five square feet in size and seven feet in height and accept a variety of textile, book and other salvageable personal property. The facilities are generally placed on commercial properties (strip malls, gas stations, and grocery stores), churches, and apartment complexes along major automobile corridors. In Hayward, the boxes are particularly visible along Tennyson Road, Mission Boulevard (particularly at the southern end of the City), Foothill Boulevard, and A Street.

Some of the unattended boxes result in public nuisances by attracting graffiti, scavenging, and illegal dumping due to the fact that they are unmonitored and maintained by off-site operators that simultaneously service thousands of units across the Bay Area. In 2014, the City of Hayward Code Enforcement staff conducted regular sweeps of high profile areas to document the public nuisance issues related to the facilities, which resulted in violation notices being sent to property owners hosting Unattended Collection Boxes. However, enforcement of these violations was placed on hold pending City adoption of regulations for Unattended Collection Boxes.

Despite documented nuisance activity, there are possible benefits associated with these facilities. The City's franchised service providers, Waste Management and Tri-CED, do not accept textiles for recycling, thus placement of Unattended Collection Boxes in a variety of conveniently accessible locations encourages individuals to recycle textile goods rather than placing those items in the waste stream. In addition to encouraging recycling, Unattended Collection Boxes are a form of charitable solicitation and are afforded First Amendment protection as free speech. Because charitable solicitation and donations are considered free speech, the City cannot outright ban Unattended Collection Boxes. In addition, several of the companies that manage the facilities purport to be associated with non-profit organizations that donate proceeds from donations to national and international charity organizations; however, this information has not been verified by staff.

In December 2014, in response to the proliferation of such facilities, staff received direction from City Council to develop regulations pertaining to Unattended Collection Boxes. Other jurisdictions (Alameda County and the cities of Oakland, Berkeley, Alameda, Sacramento, and Rancho Cordova) are in the process of adopting or have adopted ordinances that establish a process for permitting and regulating the placement of such facilities. Staff referenced these ordinances and permit fees when conducting research to develop the proposed regulations.

Current Regulations - HMC Section 10-1-2735(i), *Recycling Facilities for Redemption or Donation of Reusable Materials*, specifically relates to redemption and recycling of reusable materials in accordance with the California Beverage Container Recycling and Litter Reduction Act of 1986. The applicable section contains definitions, standards, and processes for small collection facilities and reverse vending machines. Current regulations do not apply to Unattended Collection Boxes that receive textile and other salvageable materials.

State Legislation Related to Unattended Collection Boxes - In July 2010, the state enacted Assembly Bill (AB) 918, in an effort to regulate Unattended Collection Boxes, and to provide consumers with information regarding how donations would be used. The law required that the Unattended Collection Boxes provide a written display of the organization benefitting from the donation and whether it is a non-profit entity. The law also explicitly stated that existing law authorizes local jurisdictions to impose additional requirements for the privilege of soliciting and selling salvageable personal property within their jurisdictions.

Planning Commission Public Hearing and Recommendation - On February 19, 2015, the [Planning Commission](http://www.hayward-ca.gov/CITY-GOVERNMENT/BOARDS-COMMISSIONS-COMMITTEES/PLANNING-COMMISSION/2015/PCA15PDF/pca021915full.pdf) held a public hearing to consider the proposed regulations. The Commission voted 5:0:2 to recommend that Council adopt the proposed

regulations as recommended by staff, and to also allow Unattended Collection Boxes to be placed on a temporary basis at schools and faith-based organizations, regardless of zoning district; and recommended that the Council consider adopting a reduced permit fee for non-profit organizations. The Commission's recommendation as it relates to allowing boxes on the sites of schools and faith-based organizations is described further in the Discussion section below.

City Council Public Hearing and Recommendation - On March 24, 2015, the [City Council](http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2015/CCA15PDF/cca032415full.pdf) <<http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2015/CCA15PDF/cca032415full.pdf>> held a public hearing to consider the proposed regulations as recommended by the Planning Commission (Attachment III contains the City Council meeting minutes). The City Council took public testimony, provided feedback and directed staff to return with amended regulations. The City Council directed staff to re-evaluate the permit process and fee which was deemed burdensome and expensive for the use under consideration; compile an inventory of existing boxes throughout the City; consider a reduction in minimum distance requirement between boxes; clarify the definition of "responsible party" in the event of code enforcement/abatement; and, examine the pros and cons of allowing such facilities in residential districts on the site of multi-family residential complexes.

Unattended Collection Box Inventory: In April and May, 2015, staff sent written requests for existing Unattended Collection Box locations to eight known box providers, and received responses including box location information, from four of those providers. The self-reported results were compiled into the City's Inventory of Unattended Collection Boxes ("Inventory"). The Inventory is included as Attachment II to this staff report and is referred to throughout this staff report and in the proposed Ordinance.

According to the Inventory, there are a total of 61 Unattended Collection Boxes in Hayward with the vast majority (58 boxes) owned by three providers (*Recycle for Change*, *USAgain* and *Reuse Clothes and Books*). Of the boxes, 32 are located within the recommended allowable zoning districts. The remaining 29 are located outside the recommended allowable zoning district and/or on the site of a solely multi-family residential complex. Staff does not recommend permitting Unattended Collection Boxes on multi-family residential complexes under proposed regulations. Of the existing boxes located within the recommended allowable zoning districts, approximately seven would be non-compliant with the recommended minimum distance requirement of 1,000 feet between facilities (Attachment 1). Please see further discussion below regarding zoning and placement restrictions, including proposed minimum distance requirements.

DISCUSSION

Overview of Proposed Recycling Regulations Amendments to Include Unattended Collection Boxes - Staff recommends that HMC Section 10-1-2735.i be amended to include a subsection related to Unattended Collection Boxes with a separate purpose, definitions, standards and implementation. The proposed amendments are included in a draft ordinance, Attachment IV, with deletions shown in ~~striketrough text~~ and new text shown in underlined red text. Broadly, the purpose of the proposed regulations is to promote community health, safety, and welfare by regulating the placement of boxes on sites that are highly visible to the general public; to ensure that the boxes do not pose a hazard to pedestrians or vehicular traffic; and to ensure that the materials are contained within an secure bin and do not become unsightly and a public nuisance.

It is important to note that the proposed regulations would not pertain to any collection box that is kept inside of a building due to the reduced potential for public nuisance associated with such facilities.

The proposed regulations attempt to strike a balance between the City's goals to increase recycling efforts and reduce the volume of material entering the waste stream by providing convenient public access to such facilities, while avoiding oversaturation and potential nuisances related to the boxes such as dumping, scavenging and unsightliness. Prior to updating the proposed regulations in accordance with Council direction, staff met with representatives of *Recycle for Change* and *USAgain* to discuss their respective organizations' comments and concerns about the previously proposed regulations. Basically, the organizations' concerns included what they felt were overly restrictive zoning limitations and minimum distance requirements and a burdensome and expensive application process. To address Council's and the box providers' issues, staff recommended and Council approved in June a new Zoning Conformance Permit and fee for minor uses and property improvements; developed an inventory of existing boxes and process to allow priority permitting and an extended amortization period for existing Unattended Collection Boxes; and, amended zoning and placement restrictions as well as the proposed minimum distance requirements between boxes, all of which are detailed below.

Zoning and Placement Restrictions: Regulation of uses by zoning district is generally accepted zoning practice and ensures orderly development of the City with a mix of uses appropriate to the district where those uses are permitted or conditionally permitted. To ensure that the Unattended Collection Boxes are visible and conveniently accessible to the general public, thereby maximizing their usefulness in diverting salvageable goods from the waste stream, staff continues to recommend that they be permitted along commercial roadways in the CG (General Commercial), CN (Neighborhood Commercial), Mission Boulevard Form-Based Code (MB-T4 and MB-T5), and South Hayward BART Form-Based Code (S-T4 and S-T5) districts. There is a total of 546 acres within these districts scattered along major commercial corridors, thus providing ample space and opportunities for placement of boxes throughout the City in highly convenient locations. Staff recommends that the boxes be located in these heavily traveled and highly visible commercial corridors because their visibility to the general public would discourage illegal dumping and scavenging.

Pursuant to the proposed regulations, the facilities would be prohibited in industrial and residential zoning districts because there is less traffic and visibility of boxes in those districts as compared to heavily traveled commercial districts and corridors. The boxes would also be prohibited in the Central City (CC) District due to the fact that downtown commercial development standards (build to street edge, higher density/intensity development), would result in placement of boxes behind buildings where visibility is low. Staff's recommendation is intended to reduce potential for boxes in zoning districts and or locations where nuisances such as dumping and scavenging might go unnoticed or unreported due to the infrequency of traffic or lack of eyes on the street (box) and that offer relatively little benefit to the community at large due to low visibility.

In addition to limitations related to zoning districts, staff also recommends that the Council prohibit placement of Unattended Collection Boxes on the sites of single family residences and multi-family residential complexes regardless of zoning district. According to the Inventory, 16 boxes are located at multi-family residential complexes in a residential district and one box is located at a multi-family residential complex within an allowable commercial zoning district. The purpose of such a prohibition is related to the fact that those sites are constrained spatially.

The majority of complexes included in the Inventory were built in the 1960s, which is reflective of the City's multi-family housing stock as a whole. Older rental complexes are considered spatially constrained in that they generally do not meet current parking or landscaping standards and do not have adequately sized trash enclosures to accommodate the waste and recycling bins that are required by state law. Staff believes that accommodating Unattended Collection Boxes for collection of textile materials on an already crowded and non-conforming site would not be beneficial to the rental complex community or the City at large, particularly

since residents of the complexes may access textile recycling bins at more visible commercial centers located throughout the City along major corridors.

In an effort to expand the discussion to rental property owners, staff requested that the Executive Officer of the Rental Association of Hayward circulate a questionnaire related to Unattended Collection Boxes among member to gauge interest in keeping, allowing or disallowing such boxes. Of the 20 respondents, two members found the boxes to be useful and 18 felt that the boxes were a nuisance. In the absence of a strong desire from the Hayward rental property owner community to allow the boxes, and considering the site constraints detailed above, staff reiterates the recommendation that they be prohibited in residential districts and on multi-family residential development sites.

As noted above, the Planning Commission recommended that the proposed regulations be expanded to allow placement of boxes on the sites of faith-based and educational establishments based on the rationale that including community-based organizations as potential sites would increase the overall number of potential box sites. Staff carried that recommendation forward to the City Council in the March 24, 2015 draft regulations. In light of the updated regulation language lowering the site distance requirement to 1,000 feet, Staff recommends elimination of the language concerning faith-based and educational establishments, which could be construed as giving preferential treatment to faith-based establishments and schools over other land uses. The lowered site distance requirement increases access to the total number of sites available to box operators. It should be noted that donation/collection boxes placed inside buildings, including those of faith-based establishments and schools, would not be affected to the recommended provisions.

Minimum Distance Requirements: Establishment of minimum distances between uses is a commonly accepted zoning practice intended to avoid oversaturation of certain uses that can attract more nuisance activity if clustered than if the activities are separated. The HMC contains separation requirements for several sensitive uses, including food vendors (900 feet), drive-through fast food establishments (half mile: 2,640 feet), alcohol sales (between 100 and 500 feet depending on location), tobacco retailers (500 feet) and adult businesses (500 feet).

The City Council and box providers felt that the previously recommended distance of 2,500 or approximately one-half mile between boxes was too large; however, staff believes that the box providers' recommendation of 500 feet between boxes is too little in that it could result in one to two boxes per block for smaller blocks and up to three or more boxes per block for longer blocks, such as those along the southern end of Mission Boulevard. Staff recommends implementing a minimum distance of 1,000 feet, which is less than one-quarter mile and a reasonable walking distance. Such separation could result in potential placement of a box every other block or so along a typical commercial corridor, such as Mission Boulevard (toward the northern end of the roadway and about every one block towards the southern end of the roadway). The proposed separation is significantly lower than staff's previous recommendation and maintains a reasonable, yet walkable, separation between facilities.

Attachment 1 is a map displaying the proposed allowable zoning districts with acreage, existing box locations according to the Inventory (61 boxes), and potential box locations if accounting for the proposed 1,000 foot minimum distance requirements (potentially 36 locations). As noted in the discussion about the proposed Implementation process above, 32 of the existing boxes on the Inventory would be allowed to remain in place regardless of minimum distance requirements, and 29 existing boxes located outside of allowable zoning districts would be permitted to remain in place for 12 months.

The map shows an additional 36 potential locations for future boxes that would comply with the recommended

1,000 foot buffer. Following amortization of the boxes located outside of allowable zoning districts, a total of approximately 68 Unattended Collection Boxes would be allowed under the proposed regulations, which would result in one box per approximately 2,270 residents. These additional locations do not include brick and mortar donation locations such as Salvation Army, Goodwill and Unattended Collection Boxes located outside of the City limits, nor boxes located within buildings.

Zoning Conformance Permit. On June 16, 2015, the City Council adopted an ordinance amending the HMC to establish a new Zoning Conformance Permit (ZCP). The ZCP is a simplified over-the-counter planning application providing streamlined planning review of minor, ancillary uses and improvements to ensure compliance with specified regulations and standards. A ZCP would be required for each Unattended Collection Box and ensure that the proposed box is consistent with the proposed applicable placement regulations and standards required for such facilities, and would provide a record of each box location. A ZCP for an Unattended Collection Box would not require annual renewal; however, the box provider and property owner must comply with ongoing maintenance regulations to maintain the ZCP in good standing or risk revocation of the permit. The fee established for a ZCP is \$210, which is significantly less than the previously recommended Administrative Use Permit (AUP) fee of \$1,300. Such reduction is due primarily to the elimination of the requirement to provide notice to surrounding property owners/residents and staff developing required findings to approve such facilities.

Miscellaneous Regulations Related to Unattended Collection Boxes: In addition to the proposed zoning and placement standards and implementation procedures described in detail above, the proposed ordinance contains general performance standards and regulations for boxes, including general maintenance requirements for the facility and surrounding area; orientation and placement requirements to ensure that facilities are safe and visible but do not obstruct pedestrian or vehicular traffic; and provision of a maximum box size and height.

Staff does recommend that an exception from ZCP approval and minimum distance requirements be extended to Unattended Collection Boxes owned, operated and maintained by a currently operating primary or permitted use on the same site (i.e. a Goodwill box on the site of a Goodwill establishment). However, the box would be required to comply with siting and maintenance standards set forth in the section to ensure visibility. This exception is recommended because the on-site boxes would not be truly “unattended” in that the businesses and organizations operating such boxes on the site of their primary businesses would be able to closely monitor the box and remove unwanted items quickly to ensure that their business site is clean and well-maintained.

Ordinance Implementation: Staff recommends the Council adopt a three-tiered implementation process for the proposed regulations based on the following categories of Unattended Collection Boxes: (1) existing boxes within the recommended allowed districts and location, (2) existing boxes outside of the recommended allowed districts or locations, and (3) new boxes in allowed districts and locations.

The first tier in the implementation process would cover Unattended Collection Boxes included in the Inventory and that are located within allowable districts with adequate site area to meet the proposed regulations (i.e. placement outside of a setback, parking and required landscaping area; visible from right-of-way and within ten feet of a light source, etc.). The first tier providers would be given 30 days following adoption of the Ordinance to submit ZCP applications to make the existing boxes legal. As noted above, there are about seven instances where boxes within allowable districts are located within the recommended 1,000 foot buffer distance. To avoid conflicts with priority and fairness in permitting, staff recommends that the City Council allow those seven boxes to remain in place despite the minimum distance violation provided that the boxes meet all other site placement and maintenance regulations.

The second tier in the recommended implementation process would cover boxes included in the Inventory but located on sites that would not be allowed by the proposed regulations. According to the Inventory, there are 29 boxes that meet this criteria, most of which are owned by *USAgain* and are located on the sites of multi-family residential developments. Staff recommends allowing these second tier boxes to remain in place for a period not to exceed 12 months after the effective date of the ordinances to allow box providers time to adjust to the new regulations. Following adoption of the proposed Ordinance, staff would send a letter to box providers and property owners describing the new regulations and the timeframe of amortization for the existing boxes.

Finally, the third tier in the recommended implementation process would apply to proposed new boxes at locations within the allowed zoning districts. Per the proposed regulations, the City would begin accepting ZCP applications 60 days after Ordinance adoption and all new boxes would be fully subject to zoning and placement requirements set forth in the proposed regulations.

Other Proposed Amendments to General Recycling Regulations: The proposed project also includes updates and provisions that relate to general recycling facility regulations, including an ordinance title change to make reference to recycling collection facilities in general; removal of signage regulations since those were addressed in the comprehensive amendment of Title 7, Sign Regulations adopted by Council earlier this year; update of State Law references; and an increase in allowable distance between small collection facilities and residential uses from ten feet to 200 feet. Although this is a significant increase in minimum distance between uses, staff believes that it is warranted due to resident complaints related to noise from consolidation of glass, aluminum, and plastic beverage containers at existing small collection facilities. The proposed regulations would provide flexibility by allowing a reduction in the 200-foot separation with submittal of a noise study or installation of documented noise reducing equipment, upon establishment of a new facility or expansion of an existing facility.

Proposed Revisions Related to Public Nuisance - As shown in the attached draft ordinance (Attachment VI), staff also recommends that a reference to the new Unattended Collection Box regulations be added to HMC Section 5-7.20, Public Nuisance, to classify a violation of the proposed regulations as a public nuisance. If deemed a public nuisance, Code Enforcement staff could rely on adopted Administrative Citation and Abatement Notice procedures to abate the nuisance. Code Enforcement Fees and Penalties for violations of Community Preservation and Zoning Ordinance violations are adopted by resolution and set forth in the Fee Schedule. The proposed regulations would result in the fee/penalty being assessed on the responsible party that is identified in Attachment IV as the owner and/or operator of the Unattended Collection Box.

Text Amendment Findings for Approval - In order for the Text Amendment to be approved, the following findings must be made. Staff provides reasons, including as recommended by the Planning Commission, why the findings can be made in the attached resolution (Attachment VII).

- A. Substantial proof exists that the proposed change will promote the public health, safety, convenience, and general welfare of the residents of Hayward.***
- B. The proposed change is in conformance with all applicable, officially adopted policies and plans.***
- C. Streets and public facilities existing or proposed are adequate to serve all uses permitted when the property is reclassified.***
- D. All uses permitted when property is reclassified will be compatible with present and potential future***

uses, and, further, a beneficial effect will be achieved which is not obtainable under existing regulations.

Environmental Impact Analysis. The proposed project is exempt from the California Environmental Quality Act (CEQA) under Section 15061(b)(3), as an activity that is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The proposed project includes text amendments to regulate the placement and to establish standards for small, Unattended Collection Boxes on previously developed sites. Thus, it can be seen with certainty that there is no possibility that the proposed project would have a significant effect on the environment.

ECONOMIC IMPACT

The proposed regulations will have a beneficial economic impact in that the proposed regulations will reduce the potential for persistent nuisance activities around those boxes because box owners/operators will be invested in the site and the City through the ZCP process. Further, regulating Unattended Collection Boxes will improve the streetscape and perceived economic vitality of the City by ensuring that the boxes are placed in an orderly, safe and consistent manner on a site.

FISCAL IMPACT

The ZCP permit fee is set at \$210, or one hour of planning staff time, and would be assessed on a “per box” basis. The fee is set to ensure cost recovery of staff time during the initial in-take, consistency review, issuance of permit and post-permit issuance records management. Subjecting these facilities to the simplified and lower-cost ZCP process addresses the Council’s and providers’ comments related to the previously proposed AUP process and fee. Also, box operators will maintain the site and box in order to protect their ZCP permit, thereby reducing the amount of Code Enforcement staff time and resources spent on responding to complaints associated with such facilities.

PUBLIC CONTACT

On August 18, 2015 and August 21, 2015, City staff contacted representatives of *USAgain* and *Recycle for Change*, respectively, to discuss and answer questions about the proposed standards.

On and about September 11, 2015, notice of the public hearing related to the proposed zoning text amendments was published in *The Daily Review*, posted at City Hall and the Hayward Public Library. Also, notices were mailed to owners/vendors of existing recycling facilities and Unattended Collection Boxes, and all property owners and residents/occupants of property identified in the Inventory.


NEXT STEPS

Should the Council adopt the attached resolutions and introduce the attached ordinances, staff will bring back the ordinances for adoption at the next City Council meeting. Once Council adopts the ordinances, staff will send out notices to all known Unattended Collection Box operators informing them of the new regulations and licensing requirements, as well as the various timeframes included in the ordinance to comply with the regulations.

Prepared by: Leigha Schmidt, AICP, Senior Planner

Recommended by: David Rizk, AICP, Development Services Director

Approved by:



Fran David, City Manager

Attachments:

- Attachment I Existing and Potential Box Locations with 1,000 Foot Buffers
- Attachment II Inventory of Unattended Collection Boxes (June 2015)
- Attachment III March 24, 2015 City Council Meeting Minutes
- Attachment IV Proposed Ordinance - Revisions to HMC Section 10-1.2735.i, Recycling Facilities for Redemption or Donation of Reusable Materials
- Attachment V Proposed Ordinance - Revisions to HMC Section 10-1.3510, Uses and Activities Defined
- Attachment VI Proposed Ordinance - Revisions to HMC Section 5-7.20, Public Nuisance
- Attachment VII Proposed Resolution - CEQA and Zoning Text Amendment Findings