



**AGENDA ITEM
PLANNING COMMISSION
OCTOBER 11, 2018
BUSINESS ITEMS**

TO : Planning Commission

SUBJECT : **AMENDMENTS TO TITLE 17 (ZONING) OF THE BENICIA MUNICIPAL CODE TO ESTABLISH REGULATIONS FOR DONATION AND COLLECTION BINS, AFTER A DETERMINATION THAT THE PROJECT IS EXEMPT FROM CEQA**

EXECUTIVE SUMMARY:

The proposed zoning amendment establishes regulations for donation and collection bins. Donation and collection bins are typically used to accept non-perishable items such as clothing, shoes, glasses and books for charitable or recycling/resale purposes. The amendments would add a new Section to BMC 17.70 (General regulations) and modify BMC Section 17.16.080 (Accessory use classifications), and 17.28.020 (CC, CO, CG, and CW Districts – Land use regulations), Section 17.24.020 (RS, RM, RH Districts – Land use regulations), Section 17.28.020 (CC, CO, CG, and CW Districts – Land use regulations) and Section 17.36.020 (OS Open Space District – Land Use Regulations) to establish a ministerial zoning permit process that regulates the location, appearance and design, and maintenance of donation and collection bins.

RECOMMENDATION:

Discuss the proposed draft text amendments, accept public comments, and adopt a resolution recommending that the City Council approve amendments to Benicia Municipal Code Title 17 pertaining to donation and collection bins, after recommending that the project is exempt from CEQA.

BACKGROUND:

On December 19, 2017 the City Council conducted a public hearing and adopted Interim Urgency Ordinance No. 17-15 creating a temporary moratorium prohibiting the construction or placement of unattended donation bins for charity or profit within the City. On January 16, 2018 the City Council extended the interim urgency ordinance for a period of 10 months.

The City Council's actions in December 2017 and January 2018 followed an increasing number of donation and collection bins placed on property in Benicia. The donation and collection bins, which were sometimes placed without the consent of the property owner and sometimes placed on public right-of-way, have been associated with increased dumping and refuse accumulation.

Donation and collection bins can also present vehicular sight distance issues and parking conflicts.

Ability to Regulate

The key factor in regulating collection and donation bins is focusing on content neutrality, which is similar to sign regulations. Local jurisdictions have the ability to regulate nuisance activity that may result from the collection of personal items for distribution, reuse, and recycling, without regard to the charitable or business purpose for doing so.

In the past year, cities have successfully withstood legal challenges of ordinances regulating collection and donation bins. The draft ordinance is modeled after the City of Oakland's ordinance that was upheld by the Ninth District Court of Appeals after a challenge relating to the question of freedom of speech for the purposes of accepting donations.

Need for Ordinance

Many California cities and counties have reported negative impacts from the proliferation of too many donation and collection bins near homes and businesses because they tend to invite nuisance activity such as littering, illegal dumping, graffiti, scavenging and theft.

The Zoning Regulations, Title 17 of the Benicia Municipal Code, do not currently address donation and collection bins. As a result, the City has been unable to regulate these bins to ensure compliance with the General Plan goals and Zoning regulations that heavily emphasize the unique characteristics of Benicia.

SUMMARY OF PROPOSED AMENDMENTS

The proposed ordinance would require that any donation and collection bin placed in the City of Benicia apply for and receive a ministerial zoning permit. A donation and collection bin, which must be accessory to a primary use on the property (BMC Section 17.16.080 Accessory Use Classifications), is defined as follows:

Donation and collection bin. A bin or container used to accept donated clothing or other salvageable personal property, including but not limited to books, shoes, canned goods, and small household items and placed on the exterior of building or on a vacant property.

A summary and analysis of key standards follows:

- Donation and collection bins would only be permitted subject to a ministerial zoning permit on properties zoned for commercial use, as well as properties with an approved use permit for assembly uses (i.e., club, religious assembly or school) except that they would not be permitted in the downtown area.

Residential, industrial and downtown areas do not typically possess the appropriate circulation/parking characteristics to accommodate this use. Furthermore, drop off activity in these areas could be intrusive or detrimental to the character of the district.

The zoning permit allows the city to approve a donation and collection bin that meets the standards for location, appearance and design, and maintenance. Since the permit

requires written permission from the property owner, it also allows property owners to decide whether or not to allow donation and collection bins to remain on their property.

- Only one bin would be permitted per lot or shopping center, and there must be a separation of at least 1,000 feet between any two bins unless one is located entirely within a building.

The intent of this provision is to avoid clustering of bins, which can create an unsightly condition and potentially result in circulation and maintenance issues. This standard is consistent with a review of peer communities' ordinances.

- Donation and collection bins would not be permitted on a required parking space, within a required driveway, within a required front setback or within twenty feet of a major street.

This is consistent with a review of peer communities' ordinances. The Zoning Ordinance specifies minimum dimensions for parking and vehicle circulation that cannot be reduced by the placement of other obstructions. The placement of donation and collection bins outside of the front setback and away from public roads helps to avoid vehicle sight distance obstructions and limit the potential for dumping.

- Donation and collection bins would be required to include 24-hour contact information for the permittee and operator and state the for-profit or non-profit status of the operator. *Easily accessible contact information for permittees and operators will assist the city in addressing any maintenance or other issues. Specifying whether the donations support a not-for-profit cause enhances transparency and public information regarding the beneficiaries of the donations.*

The proposed ordinance would also require that all donation and collection bins be maintained in good condition including removal of graffiti and provide regular pick-ups to prevent accumulation of donations or debris.

NEXT STEPS

Following the Planning Commission hearing, the proposed amendments will be presented to the City Council for a public hearing on adoption.

GENERAL PLAN:

General Plan	<i>Ch. 2 Community Development and Sustainability</i>
	Goal 2.1 Preserve Benicia as a small-sized city. <ul style="list-style-type: none">➤ Policy 2.1.1: Ensure that new development is compatible with adjacent existing development and does not detract from Benicia's small town qualities and historic heritage.
	Goal 2.5 Facilitate and encourage new uses and development which provide substantial and sustainable fiscal and economic benefits to the City and the community while maintaining health, safety, and quality of life.
	Goal 2.14 Enhance Benicia's small-town atmosphere of pedestrian-friendly streets and neighborhoods.

	<p>➤ Policy 2.14.1: Give priority to pedestrian safety, access, and transit over automobile speed and volume.</p>
	<p><i>Ch. 3 Community Identity</i></p>
	<p>Goal 3.7: Maintain and reinforce Benicia's small-town visual characteristics.</p>
	<p>➤ Policy 3.7.1: Ensure that new development is compatible with the surrounding architectural and neighborhood character.</p>
	<p>Goal 3.8: Preserve First Street as the community focal point of Benicia.</p>
	<p><i>Ch. 4 Community Health and Safety</i></p>
	<p>Goal 4.1: Make community health and safety a high priority for Benicia.</p>
	<p>Goal 4.6: Prevent and reduce crime in the community</p>

CEQA:

<p>CEQA Analysis</p>	<p>The proposed amendments are exempt from environmental review under California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3), the "General Rule" and Section 15305 (Class 5) Minor Alterations in Land Use Limitations. The project modifies land use regulations but does not result in any change in land use or density; further, it can be seen with certainty that there is no possibility that the project would have a significant effect on the environment. The proposed amendments would establish a ministerial review process intended to reduce blight and public health or safety hazards.</p>
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CONCLUSION:

The Planning Commission's action will be a recommendation to the City Council.

Attachments:

1. Draft Resolution
2. Draft Ordinance
3. Interim Urgency Ordinance No. X

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