



Winning isn't everything, it's the only thing.

(Vince Lombardi)

**1. RECYCLE FOR CHANGE V. CITY OF OAKLAND**

**2. BOONE/STEIN V. ALAMEDA COUNTY WASTE  
MANAGEMENT AUTHORITY**

**3. PREMIER RECYCLING V. CITY OF SUNNYVALE**

- Supreme Court Justice William Brennan:
- “...there exists in modern America the necessity for protecting all of us from arbitrary action by governments more powerful and more pervasive than any in our ancestors' time.”



**ZERO WASTE ADVOCACY COMMITTEE**  
**JMOORE@RECYCLELAW.COM**  
**DOUGRECYCLE@YAHOO.COM'**





**PART 1**  
**RECYCLE FOR CHANGE V.**  
**CITY OF OAKLAND**





**CLOTHES  
RECYCLING**



## CLOTHES & SHOES

Full size please call (800) 451-1010

**DONATE  
YOUR  
CLOTHES**

**FOR A  
BETTER  
WORLD**





# OAKLAND STAFF REPORT PAGE 1-2

- Since approximately 2008, UDCBs have been placed at schools, the right-of-way, grocery stores, gas stations, in parking lots and near businesses by a variety of organizations, including non-profit organizations, that operate locally and non-local organizations that may resell donations for profit. **Because the boxes are unmonitored, they can become a public nuisance by attracting graffiti, scavenging and illegal dumping in the vicinity.** UDCBs are also occasionally placed in required parking spaces or vehicle maneuvering areas, which may affect vehicle and pedestrian circulation and safety. **On the other hand, UDCBs can provide a convenient way to reuse goods rather than placing them in the waste stream;** however, the City sees some benefits to such facilities but permanent regulations are necessary to control their potentially adverse secondary impacts that adversely affect the public health, safety and welfare of the City.

# OAKLAND ORDINANCE

- 5.19.010 - Purpose.
- **The purpose of these regulations is to promote the health, safety, and/or welfare of the public by providing minimum blight-related performance standards** for the operation of unattended donation/collection boxes (UDCBs). This includes establishing criteria to ensure that material is not allowed to accumulate outside of the UDCBs, the UDCBs remain free of graffiti and blight, UDCBs are maintained in sanitary conditions, and residents and/or users are fully informed of those who operate the UDCBs so that they can be contacted if there are any blight-related
- questions or concerns.



# APPLICATION REQUIREMENTS PART 1

- 5.19.070 - **Application requirements.**
- The UDCB permit application shall be made on a form provided by the Bureau of Planning and Zoning. All applications shall be filed with the Bureau of Planning and Zoning and shall include:
- **A signed agreement stating that the parcel owner/agent and operator will abide by all the processes and requirements described in this chapter and an expedited code enforcement process;**
- A non-refundable application fee in an amount set by the master fee schedule;
- For permit applications for existing UDCBs, a signed affidavit, under penalty of perjury, stating that the UDCB existed at the proposed location prior to the adoption of Ordinance No. 13225 C.M.S. on April 22, 2014;
- **A signed authorization from the parcel owner/agent to allow placement of the UDCB;**
- **A signed acknowledgement of responsibility from the parcel owner/agent and the operator for joint and several liability for violations of conditions or regulations, and/or blight relating to the UDCB;**
- **Proof of general liability insurance of at least \$1,000,000.00 covering the applicant's UDCB and naming the City of Oakland as an additional insured;**
- For nonprofit operators, evidence that the nonprofit has been registered as a non-profit



# APPLICATION REQUIREMENTS PART 2

- organization with the City of Oakland, is recognized by the Internal Revenue Service as such, and complies with California Welfare and Institutions Code Section 148 et seq. as it may be amended;
- H. For for-profit operators, proof of an active business tax certificate with the City of Oakland;
- I. **The name, address, email, website (if available) and telephone number of the UDCB operator**
- **and parcel owner, including 24-hour contact information;**
- J. A vicinity map showing 1) the proposed location of the UDCB; and 2) the distance between the
- site and all existing UDCBs within 1,000 feet of the proposed UDCB location;
- K. Photographs of the location and adjacent properties;
- L. A site plan containing:
  - Location and dimensions of all parcel boundaries;
  - Location of all buildings;
  - Proposed UDCB location;
  - Distance between the proposed UDCB and parcel lines buildings; and
  - Location and dimension of all existing and proposed driveways, garages, carports, parking spaces, maneuvering aisles, pavement and striping/markings;
- M. Elevations showing the appearance, materials, and dimensions of the UDCB, including the information required in this chapter to be placed on the UDCB and notice sign;
- N. A description and/or diagram of the proposed locking mechanism of the UDCB;
- O. A maintenance plan (including graffiti removal, pick-up schedule, and litter and trash removal on and around the UDCB) that is sufficient to prevent/eliminate blight-related conditions; and
- P. Any other reasonable information regarding time, place, and manner of UDB operation, placement, and/or maintenance that the Director requires to evaluate the proposal consistent with the requirements of this chapter.



# **RECYCLE FOR CHANGE V. CITY OF OAKLAND (9<sup>TH</sup> CIR. 2017) 853 F.3D 666, 673**

- We recognize, as RFC argues, that the Ordinance burdens RFC's ability to erect UDCBs by, for example, limiting the locations in which it can operate UDCBs and imposing additional costs.
- RFC TONNAGE RECOVERED PRE-ORDINANCE: 300 TONS/YEAR
- RFC TONNAGE RECOVERED POST-ORDINANCE: 69,000 POUNDS/YEAR

**WHAT HAPPENED TO 299.6 TONS OF  
SOURCE- SEPARATED TEXTILES???**



# **PART 2**

## **BOONE/STEIN V. ACWMA**





## 0030



# ACWMA STAFF REPORT AR 87

- **The main difference between this set of organics facilities and the recently adopted CoIWMP amendment for the Altamont Compost facility, is that these facilities will be focused on separating and composting organics (and recyclables) that are commingled with refuse and not source separated (although some amount of source separated organics may also be composted).**

The Altamont Compost Facility is dedicated to composting source separated organics. Both types of efforts could help the County achieve its organics diversion goals more quickly, and may result in higher diversion levels than would be possible without segregating organics from refuse. As this is a relatively new technology, the Agency will be interested in monitoring the effectiveness of this type of innovative process.



# ACWMA STAFF REPORT AR 91

- Authority staff has reviewed the City of San Leandro's documents for the IS/ND. Authority staff finds that, based on the whole record before it, the facility underwent the review required under CEQA and that the CoIWMP amendment is within the scope of activities addressed by the City of San Leandro's IS/ND.

**Since preparation and adoption of the IS/ND, there have been no changes to the project. In addition, the conditions at the project site have not changed since preparation of the IS/ND, nor are there any other changed circumstances, or new information that has become available that would result in any new significant impacts or a substantial increase in impacts considered in the IS/ND.**



# COMPOST QUALITY??

The March/April issue of *MSW Management: The Journal for Municipal Solid Waste Professionals*, article (p. 15) c“Mechanical Biological Treatment of Residual Waste — Lessons from Europe.”

**“Compost quality is poor — the “compost like output,” or CLO, produced by European MBT facilities is of poor quality due to high levels of physical and chemical contaminants. As a result, several countries including Germany, Austria, and the United Kingdom do not allow ... CLO’s... use on agricultural lands.”** (my emphasis).

“Diversion rates are likely to be on the order of 20% without energy recovery — The primary means of achieving high diversion rates in European MBT facilities involve either the recovery of a solid recovered fuel or the utilization of the compost-like output.

**If neither of these occurs, the diversion rates are likely to be on the order of 20% of the input waste on a net waste basis.”**



# PART 3 PREMIER V. CITY OF SUNNYVALE





# PUBLIC RESOURCES CODE SECTION 40059(A)(2)

- Whether the services are to be provided by means of nonexclusive franchise, contract, license, permit, or otherwise, either with or without competitive bidding, or if, **in the opinion of its governing body, the public health, safety, and well-being so require**, by partially exclusive or wholly exclusive franchise, contract, license, permit, or otherwise, either with or without competitive bidding. The authority to provide solid waste handling services may be granted under terms and conditions prescribed by the governing body of the local governmental agency by resolution or ordinance.

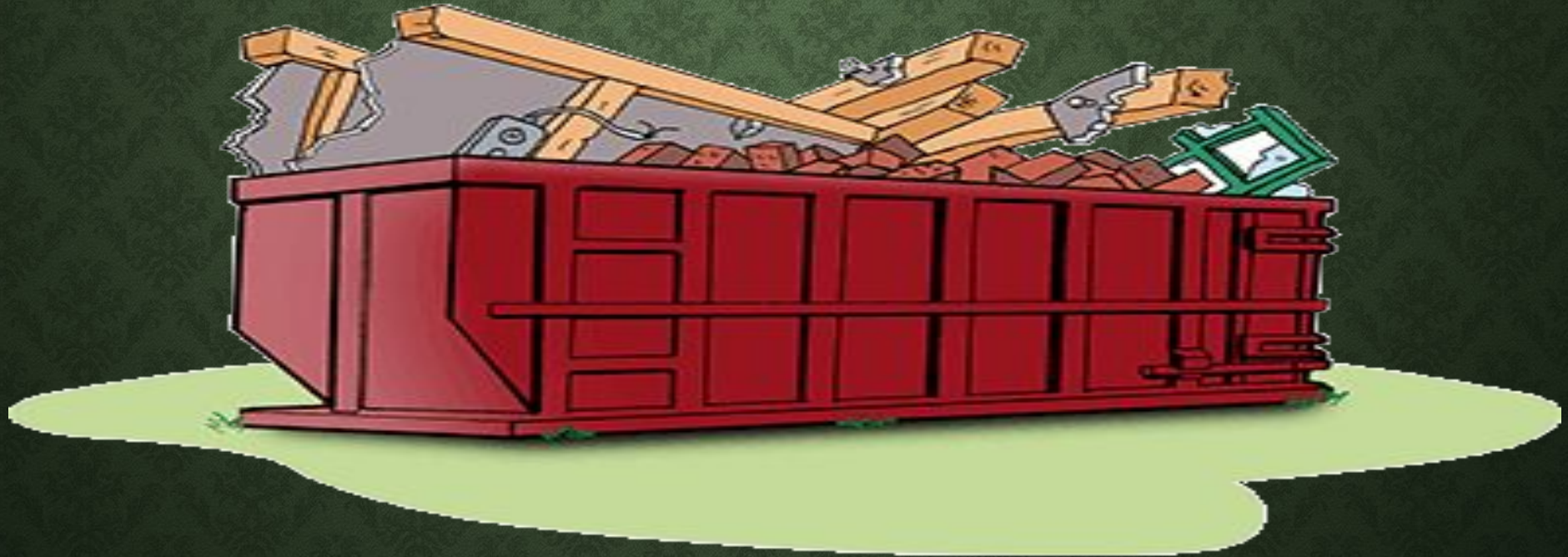


# GARBAGE CIRCA 1900





# C&D BOX 2018





# C&D BOX INSIDE





***STOP THE BEACH RENOURISHMENT, INC. V. FLA.  
DEP'T OF ENVTL. PROT.  
(2010) 560 US 702***

- Though the classic taking is a transfer of property by eminent domain, the Clause applies to other state actions that achieve the same thing, including those that recharacterize as public property what was previously private property. The Clause is not addressed to the action of a specific branch or branches. It is concerned simply with the act, not with the governmental actor. This Court's precedents provide no support for the proposition that takings effected by the judicial branch are entitled to special treatment, and in fact suggest the contrary.



***WASTE MANAGEMENT OF THE DESERT V. PALM  
SPRINGS RECYCLING CENTER (1992)  
20 CAL.APP.4<sup>TH</sup> 586 REVD. 7 CAL. 4<sup>TH</sup> 478***

Court of Appeal held

Here, City's entry into the Agreement, its interpretation of the Act. Agreement and Ordinance and its enforcement of the Ordinance as so interpreted infringes on distinct constitutional property rights: the right of individuals and entities to labor in or earn a livelihood from any legitimate field of industry without unreasonable interference



# **WASTE MANAGEMENT OF THE DESERT V. PALM SPRINGS RECYCLING CENTER (1994) 7 CAL.4<sup>TH</sup> 478**

State Supreme Court says:

In light of our conclusion that the Act does not support the exclusive franchise in this case, whether the state constitutionally could have framed the Act to allow the franchise is beside the point.



- In the fell clutch of circumstance
  - I have not winced nor cried aloud
  - Under the bludgeonings of chance
  - My head is bloody but unbowed-
- William Ernest Henley





# JMOORE@RECYCLELAW.COM

Law Office of John Douglas Moore

- 1970 Broadway Ste 950
- Oakland, CA 94612
- Telephone: 510 893-6300
- Fax: 510 433-1298
- Linked-In Page: <https://www.linkedin.com/in/recyclelaw/>

