

March 23, 2015

Via Electronic Mail and U.S. Mail

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City of Hayward
777 B Street
Hayward, California 94541

**Re: Proposed Regulations Pertaining to Unattended Donation Bins
City Council Agenda for March 24, 2015**

Dear Mayor Halliday, Council Members and Counsel:

TENAX Law Group, P.C. represents Recycle for Change (formerly "Campus California"), a 501(c)(3) nonprofit public benefit corporation. As you are aware, Recycle for Change maintains a number of unattended donation bins ("UDBs") on privately-owned parcels in cities throughout California. We previously wrote to you in a letter dated March 9, 2015 wherein we related our concerns regarding proposed changes to the Hayward Municipal Code regarding UDBs.

We have had an opportunity to review the March 24, 2014 City Council Agenda. We are dismayed to see that the concerns raised in our March 9, 2015 letter, and which were supported by legal authority, have apparently been ignored. The current iteration of the proposed ordinance would impose onerous restrictions that would result in Recycle for Change being driven out of business in Hayward. Specifically, those restrictions are the zoning limitations, the 2500 minimum distance between UDBs and the \$600 fee for a first box/\$300 fee for a second box.

We *also* believe that the proposed 200-foot setback between UDBs and residential properties is excessive. The zoning limitations combined with the 200-foot setback will essentially mean that residents who don't have automobiles will be barred from convenient access to UDBs.

We have also identified an entirely separate constitutional defect in the proposed ordinance. At page 127 of the March 24, 2015 City Council Agenda, the City expressly states that the "minimum distance requirement would not apply to schools and faith-based institutions." **It is our belief that this language demonstrates an intent on the part of the City of Hayward to give *preferential treatment* to religious organizations and schools.** We suggest that the City direct this language to the attention of the City Attorney's office for an analysis under First Amendment law pertaining to content-based and viewpoint-based discrimination.

At this point, it appears that the City of Hayward has decided to go forward with what we believe to be unconstitutional restrictions on the free speech rights of Recycle for Change and other organizations that seek donations by way of UDBs.

Federal courts have applied "strict scrutiny" to ordinances that curtail First Amendment rights. **Our client has authorized us to inform the City of Hayward that if the proposed regulations are adopted in their present form, it will file suit in the US District Court for the Northern District of California and seek a preliminary injunction blocking enforcement of the ordinance.** Our client will seek all available remedies.

Very Truly Yours,



John W. Schilt

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JWS/jss
cc: client