

City of Houston Ordinance No. 2021-\_\_\_\_\_

**AN ORDINANCE AMENDING CHAPTER 28 OF THE CODE OF ORDINANCES, HOUSTON, TEXAS, BY ADDING NEW ARTICLE XIX, RELATING TO THE REGULATION OF DONATION BOXES; DECLARING CERTAIN CONDUCT TO BE UNLAWFUL AND PROVIDING PENALTIES THEREFOR; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.**

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**WHEREAS**, donation boxes have proliferated and been placed in various places throughout the City, including vacant lots and rights-of-way, oftentimes without the consent of the landowner; and

**WHEREAS**, the failure to properly empty and clean donation boxes has resulted in an unsightly and littered appearance near said donation boxes; and

**WHEREAS**, donation boxes attract dumping and the disposal of household furniture, appliances, trash, and other items not suitable for reuse, which can pose an immediate adverse effect upon the public health and safety; and

**WHEREAS**, the City Council desires to enact regulations addressing the placement, maintenance, operation, and use of donation boxes in the City of Houston (the "City") to prevent nuisance, blight, and unsanitary and dangerous conditions resulting from the use of donation boxes; and

**WHEREAS**, the City Council finds it necessary to adopt this Ordinance for the health, safety and welfare of the general public and for the protection of landowners and residents of the City; **NOW, THEREFORE**,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:**

**Section 1.** That the findings contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as a part of this Ordinance.

**Section 2.** That Chapter 28 of the Code of Ordinances, Houston, Texas, is hereby amended by adding a new article that reads as follows:

## **“ARTICLE XIX. DONATION BOXES**

### **DIVISION 1. GENERAL**

#### **Sec. 28-631. Definitions.**

As used in this article, the following words and terms shall have the meanings ascribed to them in this section, unless the context of their usage clearly indicates another meaning:

*Administrator* means the director of administration and regulatory affairs or the director’s designee.

*Applicant* means the individual or entity filing an application under this article.

*Donation box* means any unattended donation receptacle intended for use as a drop off and collection point for accepting donated textiles, clothing, shoes, books, toys, dishes, and other salvageable items of personal property.

*Landowner* means any person or entity who owns, leases, is in control of, or possesses real property on which a donation box has been placed or maintained.

*Operator* means the individual or entity who owns, leases or otherwise manages and controls the personal property constituting a donation box, and if a separate individual or entity carries on the maintenance, collection, and upkeep of the donation box, that separate individual or entity as well.

*Permit holder* means any person, partnership, corporation, firm, joint venture, limited liability company, association, organization, or any other entity holding a permit issued pursuant to this article.

*Right-of-way* shall have the same meaning as *public way* as defined in section 40-121 of this Code.

#### **Sec. 28-632. Unlawful placement or maintenance of donation box.**

It shall be unlawful for any person to place or maintain a donation box at any location within the city unless done in accordance with a valid permit as provided in this article.

**Sec. 28-633. Unlawful to allow unpermitted donation box on real property.**

It shall be unlawful for any person who owns, leases, is in control of, or possesses real property within the city to authorize or allow any donation box to be placed on, or remain on, that real property unless done in accordance with a valid permit as provided in this article.

**Sec. 28-634. Penalty.**

- (a) Except as provided in section 28-657 of this Code, a person who violates any provision of this article, including committing an unlawful act under this article, is guilty of a misdemeanor punishable by a fine of not less than \$100 nor more than \$500. Each day any violation continues shall constitute and be punishable as a separate violation of this article.
- (b) A landowner or an operator may be liable for criminal penalties and also subject to revocation of a permit issued under this article.
- (c) All landowners and operators shall be jointly and severally liable for any penalties, fees, or costs arising under this article.
- (d) Nothing in this article shall limit the remedies available to the city in seeking to enforce the provisions of this article.

**Secs. 28-635—28-640. Reserved.**

**DIVISION 2. PERMITS**

**Sec. 28-641. Permit application requirements.**

- (a) To obtain a permit to operate a donation box, an applicant must file an application with the administrator. A single application may cover multiple donation boxes that are owned and operated by the applicant. The administrator may promulgate such application provided that an application must include the following information:
  - (1) The applicant's name, telephone number, mailing address, electronic mail address, and street address, if different from the mailing address, and the same information for each landowner and operator, if different from the applicant. For applicants who are individuals, a government-issued identification document or similar proof of legal right to work in the state of Texas shall be required. Applicants transacting

business in Texas must provide proof of such right to transact business in Texas;

- (2) Proof that the applicant owns the real property upon which the operator will place the donation box. Or, if the applicant does not own the real property upon which the donation box will be placed, written permission by the landowner or an authorized agent of the landowner to place the donation box as proposed in the application;
  - (3) A site plan or map drawn to scale showing the exact placement of the donation box on the proposed site;
  - (4) A description of the size, color, and design of the donation box, and the type of material from which the box is constructed;
  - (5) A list of any other donation boxes located on the same property as the donation box that is the subject of the application;
  - (6) Proof of required insurance;
  - (7) A declaration of compliance with other laws; and
  - (8) Any other information that may be reasonably requested by the administrator.
- (b) Any change in the information listed in subsection (a) of this section shall require a supplement to the application, and must be reported by the permit holder to the administrator within 10 days after the change. Failure to supplement the permit application as required by the administrator invalidates the permit issued under the original application. The administrator may require a permit holder to reapply for a permit if information provided in the original application changes. The administrator may promulgate procedures and regulations regarding the requirement to supplement any change in the information listed under subsection (a) of this section.
- (c) A separate permit shall be required for each donation box regardless of the ownership thereof. Permits issued under the provisions of this article shall be valid only at the address stated on the permit.
- (d) A nonrefundable annual permit fee for each donation box, as stated in the city fee schedule, shall be required. Each permit shall expire

on the one-year anniversary of the date of issuance unless revoked under this article.

**Sec. 28-642. Issuance or denial of a permit application.**

- (a) The administrator shall issue a permit after receipt of a completed application if all requirements have been met. If not all requirements for issuance of a permit have been met, the administrator shall deny the permit application. The administrator shall issue notice of the denial to the applicant within a reasonable time.
- (b) After issuance of a permit, the administrator shall issue a decal to the applicant to place on the donation box. This decal shall remain affixed to the donation box and visible on the outside of the donation box for the entire duration of the permit. Failure to maintain a visible decal on a donation box may constitute a violation and invalidation of a permit issued under this section. It shall be unlawful for a person, other than an employee of the city authorized to administer this article, to remove a decal from a donation box.
- (c) An applicant may appeal a decision to deny a permit application in the same manner as for revocation of a permit under section 28-643 of this Code.

**Sec. 28-643. Transfer, revocation, and appeal.**

- (a) Permits and decals are nontransferable.
- (b) The administrator may revoke a permit for any of the following reasons without refund of any portion of the required fee:
  - (1) The information provided in the application is materially false, incorrect, or incomplete;
  - (2) The permit was issued through error;
  - (3) The permit holder has failed to comply with any applicable provision of this article; or
  - (4) The use of the donation box or permit has been discontinued for a continuous period of 180 days.
- (c) Revocation of a permit for a single donation box does not affect the validity of permits granted for other donation boxes with the same landowner or operator.

- (d) In the event that the administrator determines pursuant to this article that a permit holder is no longer eligible for a permit, or the administrator otherwise revokes the same, the permit holder shall be given notice in writing of the reasons for the revocation by the administrator. A permit holder may appeal the decision of the administrator regarding the revocation by filing a written request for a hearing with the administrator within 20 calendar days after he is given notice of the revocation. The permit holder's written request for a hearing shall set out the grounds on which the revocation is challenged. The administrator's decision on the revocation shall be final unless the permit holder has timely filed such an appeal. An appeal shall not stay the administrator's decision on the revocation. The hearing shall be conducted by a hearing officer appointed by the administrator within 30 calendar days after receipt of a request. At the hearing, the permit holder may present any evidence relevant to the proceedings, in accordance with reasonable rules adopted by the administrator and approved by the city attorney. The hearing officer shall give written notice to the permit holder of his findings as to whether or not the permit should be revoked and the reasons therefor. The notice shall be sent by certified mail, return receipt requested, as soon after the conclusion of the hearing as practicable but in no event more than 30 calendar days thereafter. The decision of the hearing officer shall be final.
- (e) If a permit is revoked by the administrator for violation of this article, it shall not be reissued within the one-year period following the date that the permit was revoked.

**Sec. 28-644. Indemnification of city.**

The applicant must agree, as a condition of his permit, to indemnify and hold harmless the city, its officers, agents, contractors, and employees against any loss, liability or damage, including expenses and costs for bodily injury and for property damage sustained by any person, organization or entity resulting from the applicant's operation of a donation box or resulting from the city's abatement of a violation or emergency nuisance under this article.

**Secs. 28-645—28-650. Reserved.**

**DIVISION 3. DONATION BOX REQUIREMENTS**

**Sec. 28-651. General requirements.**

Each donation box in the city shall comply with the following requirements:

- (1) Current contact information for the operator of the donation box shall always be displayed on a donation box.
- (2) A valid decal shall be posted on the donation box and visible from the right-of-way at all times.
- (3) Each donation box shall indicate, in clearly legible writing, the types of items accepted for donation, and that all donations must fit into and be placed within the donation box.
- (4) No donation box shall be placed in the city's right-of-way.
- (5) At least one parking space shall be provided for use of persons accessing the proposed donation box. The donation box shall not block any parking space required under this Code or any other law.
- (6) A donation box shall only be located on a paved surface.
- (7) A donation box shall not be placed less than 25 feet from the adjacent right-of-way.
- (8) No donation box shall be permitted in a required landscape buffer or building setback, drainage easement, floodplain, driveway, utility easement or fire lane.
- (9) No donation box shall be permitted in a visibility triangle described in section 42-161 of this Code.
- (10) No donation box shall exceed 125 cubic feet in volume or have a footprint that exceeds 50 square feet, about the size of an average business waste receptacle.
- (11) No more than one donation box shall be placed on a single property except that one additional donation box may be permitted on a property with more than 300 feet of road frontage. Where two donation boxes are placed on the same property, they shall be arranged side-by-side with no more than 12 inches of separation. For the purposes of this paragraph a shopping center, strip center, office park, or other similar commercial property operated with common access and shared parking or interconnected parking areas is considered a single property.
- (12) No donation box shall constitute a hazard for drivers on nearby roadways.

- (13) A donation box shall not impede traffic or pedestrian travel, nor materially impair any motor vehicle operation within a parking lot, driveway, or street.
- (14) A donation box shall be made of metal or other material that will reduce the possibility of arson, degradation resulting from exposure to the elements, and vandalism.
- (15) All donated materials shall fit into and be placed inside the donation box. The collection or storage of any materials outside the container is strictly prohibited.
- (16) Each landowner and operator of a donation box shall be responsible for collecting the contents of the donation box to prevent overflow and littering. Each landowner and operator shall keep the real property within 25 feet of the donation box free of trash, debris, donations, clothes, furniture, and any other materials related to or resulting from operation of the donation box.
- (17) Each operator shall at all times maintain commercial general liability insurance with coverage of not less than \$1,000,000. The city shall be listed as an additional insured on any such policy.
- (18) Each donation box shall comply with all applicable state and federal laws, including but not limited to section 17.922 of the Texas Business and Commerce Code.

**Sec. 28-652. Other maintenance and operation requirements.**

- (a) The structural and visual integrity of a donation box must be maintained at all times.
- (b) The permit conditions must be met at all times during the term of the permit.
- (c) A donation box shall not be used for solicitation or collection of anything other than clothing and household items.
- (d) Compliance with the requirements of this division must be continuously maintained.

**Secs. 28-653—28-655. Reserved.**



## DIVISION 4. ABATEMENT

### **Sec. 28-656. Abatement.**

- (a) Whenever the administrator is made aware of the existence of a donation box that is in violation of this article, the administrator shall issue a notice of the violation and a written order to remove or abate the violation within seven business days of the mailing or personal delivery or publication or posting. The notice shall be sent to the landowner and operator of the donation box in the manner provided for notice under section 10-452 of this Code, provided that notice shall not be required prior to an abatement of an emergency nuisance described in section 28-657 of this Code. Any required notice under this subsection shall also be given in compliance with the applicable provisions of section 342.006 of the Texas Health and Safety Code, as amended.
- (b) If a landowner or operator fails to remove or abate a violation of this article within seven business days of the administrator's mailing or personal delivery or publication or posting of notice of the violation, then the city shall be authorized to carry out any and all abatement, which includes, but is not limited to, the following actions:
  - (1) Taking reasonable measure to remedy the violation;
  - (2) Revoking any permit issued for that donation box as prescribed under section 28-643 of this Code; or
  - (3) Ordering the removal and impoundment of the donation box.
- (c) Any donation box placed or maintained on real property without consent of the landowner or any donation box that blocks the right of way shall be subject to removal and impoundment by the city, provided that notice under subsection (a) of this section shall not be required prior to removal or impoundment.
- (d) For any abatement that is carried out by the city under this section, the city may assess its expenses related to such abatement, including applicable overhead expenses, and place a lien on any real property on which the donation box was placed. After determining the amount of expenses and charging the same against the applicable landowner or operator, the administrator shall certify a statement of such expenses and shall file the same with the county clerk of the county in which the premises or real property is located. Upon filing such lien with the county clerk, the city shall have a

privileged lien, inferior only to tax liens and liens for street improvements, to secure the expenditure so made.

- (e) If the city has removed a donation box under this section, and the landowner or operator or their designee has not retrieved the donation box and paid the city's expenses described in subsection (d) of this section within 30 days after removal, the city may dispose of the donation box without providing further notice.

**Sec. 28-657. Emergency abatement of nuisance.**

- (a) If an administrator determines that a donation box is maintained in a manner or condition prescribed in this section, the administrator may, without providing the notice required under section 28-656(a) of this Code, take immediate action to abate the nuisance, including removal of the donation box.

Each of the following is an emergency requiring immediate action to protect the public health or safety, is declared a nuisance subject to abatement, and is hereby prohibited and made unlawful under this section:

- (1) A donation box or any area within 25 feet of a donation box that is a breeding place for flies because of the unsafe/unsanitary condition of the donation box or its contents;
- (2) The presence of ectoparasites, including bedbugs, lice, and mites, suspected to be disease carriers in a donation box or within 25 feet of a donation box because of the unsafe/unsanitary condition of the donation box or its contents;
- (3) The accumulation or collection of any water, stagnant, flowing, or otherwise, in a donation box or within 25 feet of a donation box, in which the mosquito breeds or which may become a breeding place for mosquitoes;
- (4) The presence of well grown mosquito larvae, or of pupae, in a donation box or within 25 feet of a donation box, because of the donation box;
- (5) A donation box that is defective and allows leakage or spilling of contents;

- (6) A condition of a donation box, including any structural defect of the donation box, that may injuriously affect the public health;
  - (7) The deposit or accumulation of any foul, decaying, or putrescent substance or other offensive matter in a donation box or within 25 feet of a donation box;
  - (8) A donation box harboring rats or other vermin; and
  - (9) The detectible presence of urine or the presence of feces, vomit or other bodily fluids in a donation box or within 25 feet of a donation box.
- (b) Not later than the tenth business day after the date of abatement under this section, the administrator shall give notice thereof to the landowner and operator in the manner provided for notice under section 10-452 of this Code. The landowner or operator may request a hearing within 20 calendar days after he is given notice of the abatement under this section by filing a written request for a hearing with the administrator. The hearing shall be scheduled not later than 30 calendar days after receipt of the request for a hearing and shall be conducted by a hearing officer appointed by the administrator for the purpose of determining whether the conditions qualified for abatement under the terms of this section. The hearing officer's decision shall be final.
- (c) A landowner or operator who violates this section is guilty of a misdemeanor punishable by a fine up to \$2,000.00. Each day any violation continues shall constitute and be punishable as a separate violation of this article.
- (d) For any abatement that is carried out by the city under this section, the city may assess its expenses for such abatement and place a lien on any real property on which the donation box was placed in the same manner as under section 28-656(d) of this Code.
- (e) If the city has removed a donation box under this section, and the landowner or operator or their designee has not retrieved the donation box and paid the city's expenses described in subsection (d) of this section within 30 days after removal, the city may dispose of the donation box without further notice."

**Section 3.** That the City Attorney is hereby authorized to direct the publisher of the Code of Ordinances, Houston, Texas, (the "Code") to make such nonsubstantive

changes to the Code as are necessary to conform to the provisions adopted in this Ordinance, and also to make such changes to the provisions adopted in this Ordinance to conform them to the provisions and conventions of the published Code.

**Section 4.** That the City Council hereby approves the new annual donation box permit fee established in Section 28-641(d) of the Code of Ordinances, Houston, Texas, in the initial amount of \$191.00. The Director of Administration and Regulatory Affairs shall ensure that a copy of this Ordinance is provided to the Director of Finance for incorporation of the new fee into the City Fee Schedule as soon as possible.

**Section 5.** That, if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

**Section 6.** That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect at 12:01 a.m. on the 120<sup>th</sup> day next following the date of its passage and approval by the Mayor.

**PASSED AND APPROVED** this \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Mayor of the City of Houston

Prepared by Legal Dept. \_\_\_\_\_  
TKL 04/21/2021                      Assistant City Attorney  
Requested by Tina Paez, Director, Department of Administration and Regulatory Affairs  
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