

**Donation Box Chapter 28 Code Amendment
Council Committee Draft – 2021.03.16**

**This Draft for Discussion Purposes Only
Not yet reviewed by the City Attorney or adopted by City Council**

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 donations receptacle intended for use as a drop off and collection point for clothing or household goods donated by the public.

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 as well.

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

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.

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- (a) 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) Nothing in this article shall limit the remedies available to the city in seeking to enforce the provisions of this article. 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 for operation of a donation box.

Sec. 28-635. Nuisance declared.

A donation box that is placed or maintained in violation of this article is declared a public nuisance. Whenever the existence of such a donation box within the jurisdiction of the city comes to the knowledge of the administrator, the administrator shall cause a written notice identifying the violation and directing the removal of the donation box to be sent to the landowner and operator of the donation box. The notice shall be sent in the manner provided for notice under section 10-452 of this Code, provided that notice shall not be required prior to abatement of violations described in section 28-636(b) of this Code. Any required notice shall also be given in compliance with the applicable provisions of section 342.006 of the Texas Health and Safety Code, as amended.

Sec. 28-636. Abatement.

- (a) If a landowner or operator fails to abate a violation of this article within 10 business days of the administrator's posting or delivery of notice of the violation, then the city shall be authorized to carry out the abatement thereof and to assess its expenses, including applicable overhead related to such abatement, and place a lien on the donation box or any real property on which the donation box was unlawfully 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.
- (b) If it is determined by an administrator that any violation of this article is likely to have an immediate adverse effect upon the public health or safety, then the administrator may order such violation to be summarily abated by the city in a reasonably prudent manner, and a lien for the city's expenses related to such abatement shall be assessed in the manner described in section 28-636(a) of this Code. Notice and the opportunity for a hearing shall be provided in the same manner as for revocation of a permit, as provided by section 28-643(d) of this Code. Abatement under this section includes, but is not limited to, removal by the city. If

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the City has removed a donation box under this subsection, and the landowner or operator or their designee has not retrieved the donation box and paid the city's abatement expenses within 30 days after removal, the city may dispose of the donation box.

- (c) Any donation box placed or maintained on real property without consent of the landowner shall be subject to impoundment and disposal by the city under the provisions of subsection (b) above. Impoundment or disposal under this subsection does not require a determination by the administrator of an immediate adverse effect upon the public health and safety.
- (d) Any donation box that blocks the right of way shall be subject to impoundment and disposal by the city under the provisions of subsection (b) above. Impoundment or disposal under this subsection does not require a determination by the administrator of an immediate adverse effect upon the public health and safety.

Secs. 28-637—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 a sworn application with the administrator. 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) Site plan or map drawn to scale showing the exact placement of the donation box on the proposed site;
 - (4) Site plan detailing a service plan for each donation box. The operator of each donation box shall be responsible for collecting the contents of the donation box to prevent overflow and littering and shall pick up all donated

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items at least once per week. The service plan shall include information regarding which days and the time of day the items will be collected.

- (5) The size of the donation box;
 - (6) A list of any other donation boxes located on the same property as the donation box that is the subject of the application;
 - (7) Color and design of the donation box;
 - (8) Construction material for the proposed donation box;
 - (9) Proof of required insurance;
 - (10) A declaration of compliance with other laws; and
 - (11) Any other information that may be reasonably requested by the administrator.
- (b) Any material change in the information listed in subsection (a) of this section shall require an amendment and must be reported to the administrator within 10 days after the change. Failure to supplement as required by this section invalidates any permit provided under the original application. The administrator may require a permittee to reapply for a permit if information provided in the original application changes.
- (c) After obtaining a permit an operator that wishes to operate an additional donation box must obtain a separate permit for the additional donation box.
- (d) The applicant must pay the non-refundable fee stated in the city fee schedule for a permit, amendment issued under this article.
- (e) Permits issued under this section shall have a term of one year 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 for 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 shall 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

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decal from a donation box. To place or maintain an additional donation box, a permit holder must obtain an additional decal as provided in subsection 28-641(c).

- (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 and revocation.

- (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 fees:
- (1) The requisite application was materially false 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 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 according to this ordinance that a permit holder is no longer eligible for a permit, or otherwise revokes the same, the permit holder shall be given notice in writing of the reasons for the revocation by the administrator. An applicant 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 administrator's decision on the application 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 permit holder's written request for a hearing shall set out the grounds on which the revocation is challenged. The hearing shall be conducted by a hearing officer appointed by the director of administration and regulatory affairs or his designee within 30 calendar days after receipt of a request. At the hearing, the permit holder may be represented by an attorney, present evidence, and cross-examine witnesses. 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.

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- (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.

Secs. 28-644—28-650. Reserved.

DIVISION 3. DONATION BOX REQUIREMENTS.

Sec. 28-651. General requirements.

- (a) Each donation box in the city must comply with the following requirements:
- (1) Current contact information for the operator of the donation box must always be displayed on a donation box.
 - (2) A valid decal must be posted on the donation box and visible from the right-of-way at all times.
 - (3) No donation box may be placed in the city's right-of-way.
 - (4) At least one parking space must be provided for use of persons accessing the proposed donation box. The donation box must not block any parking space required under this Code or any other law.
 - (5) A donation box may only be located on a paved surface.
 - (6) A donation box shall not be placed less than 25 feet from the adjacent right-of-way.
 - (7) No donation box shall be permitted in a required landscape buffer or building setback, drainage easement, floodplain, driveway, utility easement or fire lane.
 - (8) No donation box shall be permitted in a visibility triangle described in section 42-161 of this Code.
 - (9) No donation box may exceed 120 cubic feet in volume or have a footprint that exceeds 50 square feet, about the size of an average business waste receptacle.
 - (10) No more than one donation box may be placed on a single property except that one additional donation box may be permitted on a property with more than three hundred (300) feet of road frontage. Where two donation boxes are placed on the same property, they must be arranged side-by-side with no more than twelve (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.

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- (11) No donation box may constitute a hazard for drivers on nearby roadways.
- (12) A donation box shall not impede traffic or pedestrian travel, nor materially impair any motor vehicle operation within a parking lot, driveway, or street.
- (13) A donation box must be made of metal or other material that will reduce the possibility of arson, degradation resulting from exposure to the elements, and vandalism.
- (14) Each operator must at all times maintain commercial general liability insurance with coverage of not less than \$1,000,000. The City must be listed as an additional insured on any such policy.
- (15) 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. Requirement to keep clean.

- (a) All donated materials must fit into and be placed inside the donation box. The collection or storage of any materials outside the container is strictly prohibited.
- (b) Each landowner and operator shall be responsible for preventing overflow of the donation box 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. Failure to do so shall constitute grounds for revocation of a permit issued under this article and abatement in accordance with Section 28-636(b).
- (c) Each donation box shall clearly 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. Failure to provide such indication shall constitute grounds for revocation of a permit issued under this article.

Sec. 28-653. 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.

Sec. 28-654. Violation of this division.

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Failure to comply with any provision of this division shall constitute grounds for revocation of a permit issued under this article and penalties under section 28-634 of this Code. Nothing in this article shall limit the remedies available to the city in seeking to enforce the provisions of this article.

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