

ORDINANCE

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BURLESON, TEXAS, AMENDING CHAPTER 34, "ENVIRONMENT," BY REPEALING ARTICLE VIII, "UNATTENDED CLOTHING DONATION CONTAINERS," IN ITS ENTIRETY AND ADOPTING A NEW ARTICLE VIII, "DONATION CONTAINERS AND DONATION BOXES," REGULATING DONATION CONTAINERS AND DONATION BOXES, INCLUDING PERMIT AND DECAL REQUIREMENTS, GENERAL, SERVICE, AND MAINTENANCE REQUIREMENTS, ENFORCEMENT METHODS, EXEMPTIONS, AND ADOPTING AN APPEAL PROCESS; AMENDING THE FEE SCHEDULE ORDINANCE CSO #5565-09-2024; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR THE INCORPORATION OF THE RECITALS; PROVIDING FOR A PENALTY FOR VIOLATIONS HEREOF; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of Burleson, Texas is a home rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, the City Council desires to enact comprehensive regulations addressing the placement, operation, and use of donation containers and donation boxes in the City to control negative externalities resulting from the use of said donation containers and boxes; including but not limited to the accumulation of used, broken, or soiled items that constitutes trash, rubbish, or junk; broken, unsightly, or dangerous donation containers or boxes; hazards to pedestrians, motor vehicle users, and others due to the placement of donation containers or boxes; and negative impacts on property values and the health, safety, and welfare of the community; and

WHEREAS, the donation containers and boxes are visual blight, and that blight diminishes the aesthetics of the City while also causing a negative impact on property value in the City; and

WHEREAS, the increase in the number of persons or entities desiring to collect clothing and household products for profit or charitable purposes has led to the proliferation of donation containers and boxes in various areas of the City; and

WHEREAS, the inability of landowners to accurately identify the owners of these donation containers has resulted in decreased accountability on the part of donation container owners; and

WHEREAS, the absence of identifying information makes it difficult or impossible for the City, property owners, or local citizens to contact donation container operators about items placed outside of the container, broken glass, or other concerns; and

WHEREAS, the placement of donation containers or boxes on property without permission from the property owner constitutes a trespass of private property; and

WHEREAS, the failure to properly empty and to clean in and around donation containers or boxes creates an unsightly and littered appearance near said containers; and

WHEREAS, the placement of discarded clothes and other household items outside of the donation containers or boxes leads to rummaging of items, which causes scattering and litter and may defeat the donor's intent; and

WHEREAS, the trash and debris present around unkempt donation containers or boxes invite illegal dumping under the guise of charitable solicitation and recycling; and

WHEREAS, the presence of broken glass and other sharp objects provide a threat to the general public wishing to access donation containers or boxes and other pedestrians walking on or near the property containing donation containers or boxes and provides a threat to the tires of vehicles using parking lots where donation containers or boxes are placed; and

WHEREAS, it is the intent of the City Council that the City recover all reasonable costs incurred in the performance of its governmental functions, including expenses associated with the permitting, inspection, and impounding of donation containers; and

WHEREAS, the City Council desires to amend Article VIII; and

WHEREAS, the City Council passed an ordinance on September 12, 2022, which, among other things, provided a fee schedule that contained a list of all fees charged by the City (save and except water and wastewater impact fees, trash, recycling, and garbage collection rates, and impact fees which are wholly contained in a separate ordinances); and

WHEREAS, City Council finds that regulating the placement, proximity, and use of donation containers and boxes is necessary for the health, safety, and welfare of the general public; the promotion of consistent land use development; and the protection of landowners and residents of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BURLESON, TEXAS, THAT:

SECTION 1. AMENDMENT

Chapter 34, "Environment," of the Code of Ordinances, City of Burleson, Texas, is hereby amended by amending Article VIII "Donation Containers and Donation Boxes," to read as follows:

"ARTICLE VIII DONATION CONTAINERS AND DONATION BOXES

§ 34 - 326 Definitions.

DONATION BOX

Any drop-off box, container, cabinet, or other receptacle that is intended as both a collection point as well as a point to receive or take donations of non-perishable foods, personal hygiene products, books, or other household items of personal property, the container of which has a volume of feet or less.

DONATION CONTAINER

Any drop-off box, container, trailer or other receptacle that is intended for use as a collection point for accepting donated textiles, clothing, shoes, books, toys, dishes, household items, or other salvageable items of personal property. Notwithstanding the foregoing, the term "Donation Container" does not include donation boxes.

§ 34 – 327 Applicability.

The requirements of this chapter shall apply to all donation containers and donation boxes regardless of whether said containers were placed prior to the effective date of these regulations. No previously placed donation containers or donation boxes shall be granted any legally non-conforming rights under this chapter or any other chapter of this code.

§ 34 -328 Donation container permit and decal required.

- (a)** It shall be unlawful for any person to place or maintain, or allow to be placed or maintained, any donation container within the jurisdiction of the city without having first secured and affixed to the donation container a permit and decal in compliance with the provisions of this chapter. Obtaining the permit shall be a condition precedent to placing or maintaining the donation container.
- (b)** It shall be unlawful for any person that owns, leases, is in control of, or is entitled to possession of real property within the jurisdiction of the city to authorize or allow any donation container to be placed on or remain on such real property without a valid permit and decal in compliance with the provisions of this chapter.
- (c) Permit Fee**
 - (1)** Any person, organization, or entity seeking a permit under this section shall file an application on a form to be furnished by the city containing the following information:
 - a.** Applicant's name, business/organization name, and business/organization address, phone number, website (if applicable), name of responsible party, and email address for responsible party;
 - b.** Description of the donation container, including drawing(s), size, design, and construction material, to be covered by the permit;
 - c.** Copy of a site plan showing the proposed location of the donation container on the lot, including any screening or landscaping proposed;
 - d.** The donation container permit application shall have a detailed maintenance service plan for each donation container. The operator of each donation container shall be responsible for collecting the contents of the donation container to prevent overflow and littering and shall pick up all donated items at least once per week. The service plan shall include information regarding how many times a week donated items will be collected, the time of day the items will be collected, a vehicular circulation plan and a graffiti and litter abatement plan; and

- e. If the applicant is not the owner of the property upon which the donation container is to be placed, a notarized affidavit from the property owner indicating written consent for placement and operation of the donation container on the property, and acknowledgement that the property owner and donation container operator shall be joint and severally liable for any violations of this section.
- (2) Any permit issued pursuant to this section shall be valid for one (1) calendar year from issuance, unless it is suspended or canceled earlier. Applicants must re-apply for any renewal(s) of previously issued permits. A permit is required for each individual donation container.
- (3) Any permit issued pursuant to this section shall automatically expire if the permit holder removes the donation container from its permitted location, or the property owner(s) request that the donation container be removed from the property.
- (4) Any permit issued pursuant to this section is not assignable or transferrable under any circumstances.
- (5) For nonprofit operators, evidence that the nonprofit is recognized by the Internal Revenue Service as such.
- (6) For for-profit operators, proof of an active business tax certificate.
- (7) The fee for the donation container Permit will be .

§ 34 -329 **Donation Container general requirements.** For purposes of this provision, there is a presumption the donation container was placed or maintained at the location by the operator and property owner.

- (a) Donation containers shall not be located within any residential zoning district.
- (b) No donation container shall be permitted to be placed or remain placed within two hundred (200 feet) from a residential dwelling use district. Said distance shall be measured from a donation container to a residential lot line.
- (c) Donation containers shall have four (4) walls, a roof and a floor, and shall not exceed 512 cubic feet the dimensions of 8' width x 8' depth x 8' height.
- (d) Donation containers shall be of adequate weight to withstand typical weather conditions as to not be moved within a parking lot by wind and must be built substantially enough so as to not pose any public threat.
- (e) Donation containers shall be safely designed in a manner that prevents tipping over and prevents adults or children from entering inside the box. The donation collection container(s) shall be of the type that are enclosed by use of a receiving door and locked so that the contents of the container(s) may not be accessed by anyone other than those responsible for the retrieval of the contents.

- (f) Each clothing donation container shall have valid name, phone number, email address and website (if applicable) of the clothing donation container permit holder and/or operator legibly written in two (2) inch letters and numbers so that the general public who wishes may contact said organization at any time.
- (g) Notice to donators. Each donation container shall clearly indicate in writing on the front side of each box that all donations must fit into and be placed within the donation container. The size of lettering for the notice shall be written in at least two (2) inch letters in height.
- (h) Each donation container shall be painted one (1) solid color. Trade dress color schemes or corporate logos will be allowed. No fluorescent colors shall be used for a donation container or its associated signage.
- (i) Donation containers shall be located behind the required building line setbacks.
- (j) Donation containers shall not impede traffic nor visually impair any motor vehicle drivers from a public street and shall not interfere with visibility triangles or on-site vehicle or pedestrian circulation.
- (k) Donation containers shall not be located in any required landscape required area.
- (l) Donation containers shall not be located in any fire lane.
- (m) Donation containers shall not be located in any parking space required to meet the minimum parking requirements for a site.
- (n) Donation containers cannot impede the functioning of exhaust, ventilation, or fire extinguishing systems.
- (o) Donation containers shall not be located in any platted or dedicated access easement.
- (p) No more than one (1) donation container may be located on a single platted lot or unplatted tract of land. In the case of a shopping center or office development that consist of multiple platted lots, the administrator shall treat the center or office development as if it is only one contiguous lot.
- (q) Donation containers shall only be placed on a lot which contains an occupied building.
- (r) Donation containers shall not be located closer than three hundred (300) feet from another container.

§ 34 -330 Donation Box requirements.

- (a) A donation box shall be properly maintained and comply with the following regulations:
 - (1) The property owner of real property with a donation box shall keep the donation box and the real property situated under the donation box clean and free of trash, debris, broken glass, or excess donations.

- a. The real property owner that fails to maintain the cleanliness of the donation box and surrounding real property may receive a notice of violation from the city. If the city elects to send a notice of violation to the address of the property owner as shown on the most recently approved municipal or county tax roll, the property owner shall have twenty-four (24) hours to remedy the complaint. Failure to comply with a notice of violation may result in the issuance of a citation by the city.
- (2) No more than one (1) donation box may be located on a single platted lot or unplatted tract of land. In the case of a shopping center or office development that consist of multiple platted lots, the center or office development shall be considered as if it is only one contiguous lot.
- (3) Donation boxes shall not impede traffic nor visually impair any motor vehicle drivers from a public street and shall not interfere with visibility triangles or on-site vehicle or pedestrian circulation.

§ 34- 331 Donation container service and maintenance requirements.

- (a) Donation container and drop-off collection areas shall be properly maintained and comply with the following regulations:
 - (1) The operator of each donation container shall keep the real property situated within twenty-five (25) feet of the location of a donation container clean and free of trash, debris, broken glass, clothes hangers, clothes, clothing accessories or excess donations.
 - (2) The donation container operator and the real property owner, property owner's designated agent, property manager, or property's lawful occupant listed on the permit application shall be jointly and severally liable and responsible for the maintenance, upkeep, and servicing of the donation container and the cleanup and removal of any donations left on the property outside of the donation container.
 - (3) A donation container operator or the real property owner, property owner's designated agent, property manager, or property's lawful occupant listed on the permit application that fails to maintain the cleanliness of the surrounding real property may receive a notice of violation from the city. If the city elects to send a notice of violation to the email address on file for the operator, the operator shall have twenty-four (24) hours to remedy the complaint. Failure to comply with a notice of violation may result in the issuance of a citation by the city. An operator who is issued more than one (1) citation in a twelve (12) month period for the same offense on the same donation container is subject to revocation of the approval for such donation container.

§ 34-332 Enforcement.

- (a) The city shall have the authority to abate any property in violation of this article that is deemed a public nuisance under the procedures contained in Article II, "Public Nuisances," of Chapter 34, "Environment," of the Code of Ordinances, City of Burleson, Texas, as amended. This provision does not exclude or limit the use of any other provision

in this chapter, the Code of Ordinances, City of Burleson, Texas, or the laws of the State of Texas.

- (b) The registrant, owner, agent, lessee or any other person in control of the property where the donation collection container is located and the person or entity which owns, maintains, or operates the donation collection container shall be jointly liable.
- (c) Any person who violates any provision of this article is guilty of a misdemeanor which, upon conviction, shall be punishable by a fine not to exceed five hundred dollars (\$500.00). However, a fine for the violation of a provision of this chapter that governs fire safety, zoning, or public health and sanitation, including dumping or refuse, may not exceed two thousand dollars (\$2,000.00). Each day that an unmitigated violation of this article is committed, continued, or permitted shall constitute a separate, punishable offense. A violation of this article includes, but is not limited to:
 - (1) Unpermitted placement of a donation container;
 - (2) Failure to service a donation container or donation box as required under this article; or
 - (3) Placing a donation container or donation box on the premises of another person without that person's consent.
- (d) Any donation container located within the city that does not have a current, valid permit or any permitted donation container that has received more than two notices of violation from the city in the past twelve (12) months shall be subject to impoundment by the city. Any donation container impounded by the city will be released to the owner upon payment of all actual costs incurred by the city for the impoundment and storage fees of twenty dollars (\$20.00) per calendar day of storage. If a donation container is impounded for longer than fifteen (15) calendar days, it shall be considered abandoned property subject to disposal or sale at the City's sole discretion.

§ 34-333 Revocation of donation container permit.

- (a) The _____ shall revoke a donation container permit if the _____ determines that the permit holder has:
 - (1) Given false or inaccurate information on the application for a donation container permit or in a hearing concerning the donation container permit; or
 - (2) Violated the provisions of this article.

§ 34-334 Appeal.

Appeal from denial or revocation of donation container permit.

If the _____ denies or revokes a donation container permit, the city shall give notice by personal service or by certified mail, return receipt requested, to the applicant or permit holder. The applicant or permit holder may appeal the decision to deny or revoke by filing written notice with the _____, within five (5) days after receipt of notice. The _____ shall mail, or cause to be personally delivered, written notice of the time and place of the hearing to the person appealing. The notice shall be mailed to the address specified in the notice of appeal form. The _____ shall conduct a hearing and shall decide on the basis of a preponderance of the evidence presented at the hearing. The decision of the _____ be final.

§ 34-335 Exemptions to Donation Container Permit Requirement.

- (a) Donation containers that are entirely enclosed within a principal building or are accessory to a principal activity on a property owned or leased by the operator of the donation container shall not require a permit, but must still comply with the remainder of the requirements in this chapter.”

SECTION 2.

The Fee Schedule previously passed in Ordinance CSO #5565-09-2024, as amended, is amended to include the permit fees established in Section 1 of this Ordinance.

**SECTION 3.
CUMULATIVE CLAUSE**

This Ordinance shall be cumulative of all provisions and ordinances of the Code of Ordinances, City of Burleson, Texas, as amended, except where the provisions of this Ordinance are in direct conflict with the provisions of such ordinances and such Code, in which event the conflicting provisions of such ordinances and such Code are hereby repealed.

**SECTION 4.
SEVERABILITY CLAUSE**

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this Ordinance shall be declared unconstitutional by the valid judgment of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation in this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph, or section.

**SECTION 5.
RECITALS INCORPORATED**

The findings and recitals set forth above in the preamble of this Ordinance are incorporated into the body of this Ordinance as if fully set forth herein.

**SECTION 6.
PENALTY CLAUSE**

Any person, firm, association of persons, corporation, or other organization who violates any provision of this Ordinance is guilty of a misdemeanor which, upon conviction, shall be punishable by a fine not to exceed five hundred dollars (\$500.00). However, a fine for the violation of a provision of this Ordinance that governs fire safety, zoning, or public health and sanitation, including dumping or refuse, may not exceed two thousand dollars (\$2,000.00). Each day that a violation is permitted to exist shall constitute a separate offense.

SECTION 7.

SAVINGS CLAUSE

All rights and remedies of the City of are expressly saved as to any and all violations of the provisions of the Code of Ordinances, City of Burleson, Texas as amended, or any other ordinances affecting the matters regulated herein which have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

SECTION 8. PUBLICATION

The City Secretary of the City is hereby directed to publish at least twice in the official newspaper of the City of Burleson, the caption and the penalty clause of this Ordinance in accordance with Section 52.013(b) of the Local Government Code.

SECTION 9. EFFECTIVE DATE

This Ordinance shall be in full force and effect from and after its passage and publication as required by law, and it is so ordained.

AND IT IS SO ORDAINED.

PASSED AND APPROVED the _____ day of _____, 20____.

First Reading: the _____ day of _____, 20____.

Final Reading: the _____ day of _____, 20____.

Chris Fletcher, Mayor
City of Burleson, Texas

ATTEST:

APPROVED AS TO FORM:

Amanda Campos, City Secretary

E. Allen Taylor, Jr., City Attorney