

ORDINANCE NO. 837

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EVERMAN, TEXAS, AMENDING THE CODE OF ORDINANCES, CITY OF EVERMAN, BY AMENDING CHAPTER 10, "HEALTH, SAFETY AND NUISANCES," BY ADDING A NEW ARTICLE XI, TO BE ENTITLED, "DONATION COLLECTION BINS," TO ADOPT REGULATIONS FOR THE PLACEMENT AND USE OF DONATION COLLECTION BINS IN THE CITY; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF FIVE HUNDRED DOLLARS (\$500.00) FOR EACH OFFENSE AND, IN CASES OF ENDANGERMENT TO PUBLIC HEALTH AND SAFETY, A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000.090) FOR EACH OFFENSE ; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, collection bins for donations of clothing and household items have been proliferating throughout the City; and

WHEREAS, in some instances these collection bins may have been placed on private and public properties without authorization of the respective property owners; and

WHEREAS, many of these donation collection bins are not regularly collected, often resulting in overflow of donated materials onto the area surrounding the collection bin creating visual blight and negatively impacting property values; and

WHEREAS, in many instances the donation collection bins have become depositories for uncollected refuse, creating offensive conditions and public nuisances; and

WHEREAS, the donation collection bins can pose hazards to pedestrians, motor vehicle users, and others due to the placement of collection bins; and

WHEREAS, to address these concerns, the City Council of the City of Everman finds it to serve the health, safety and general welfare of the City to approve this ordinance establishing rules and regulations governing the placement and use of donation collection bins in the City;

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

SECTION 1. That Chapter 10, "Health, Safety and Nuisances," of the Code of Ordinances City of Everman, Texas, be and is hereby amended by reserving sections 10-178 through 10-199 under Article X and by adding a new Article XI, to be entitled, "Donation Collection Bins," without amendment, repeal or change to any other Article, part or provision of Chapter 10, such that Article XI shall read in its entirety as follows:

"ARTICLE X

. . .

Secs. 10-178 through 10-199 Reserved.

ARTICLE XI DONATION COLLECTION BINS

Sec. 10-200. – Purpose.

The purpose of this article is to protect the public health, safety and welfare of residents by requiring the registration and permitting of donation collection bins within the City. This article further serves to protect the aesthetic well-being of the community and promote the clean and orderly appearance of developed property. The provisions included herein are intended to provide efficient legal remedies for unpermitted, improperly used, or poorly maintained collection bins that threaten the health and welfare and the orderly development of the City. These provisions are cumulative of all City ordinances.

Sec 10-201. – Applicability.

The requirements of this article apply to all collection bins regardless of whether the bins were placed prior to the effective date of these regulations. No previously placed collection bin shall be granted any non-conforming status or rights under this article or the City's comprehensive zoning ordinance. Collection bins shall not be deemed an accessory use or structure in any zoning district.

Sec. 10-202. – Definitions.

When used in this article:

“administrator” shall mean the City Manager or authorized representative delegated by the City Manager.

“collection bin” or “donation collection bin” shall mean any bin, box, container, trailer or other receptacle that is intended for use as a collection point for donated clothing or other household items or materials, and not used exclusively for the collection of recyclable material.

“person” includes an individual, sole proprietorship, corporation, association, nonprofit corporation, partnership, joint venture, a limited liability company, estate, trust, public or private organization, or any other legal entity.

Sec. 10-203. – Permit required

- (a) It shall be unlawful for any person to place or maintain, or allow to be placed or maintained, any collection bin within the City without having first secured a permit in compliance with the provisions of this article.
- (b) No permit issued under the provisions of this article shall be transferrable. The authority a permit confers is conferred only to the permit holder named therein.

Sec. 10-204. – Application for permit.

- (a) Applicants for permits under this article shall file a written, sworn application with the Administrator. The application shall include (1) the written authorization of the property owner, lessee, or property manager allowing the collection bin on the property, (2) a site plan depicting the exact proposed location of the collection bin, (3) proof of registration to operate in the State of Texas as a non-profit corporation or proof of a written agreement to solicit on behalf of a Texas non-profit corporation, and (4) proof

of compliance with the provisions of Subchapter K, Chapter 17, Texas Business and Commerce Code for each individual or for-profit entity.

- (b) A separate permit and application shall be required for each collection bin regardless of the ownership thereof. Permits issued under the provisions of this article shall be valid only at the address or location stated on the permit.
- (c) The person receiving a permit to place a collection bin shall be registered to operate in the State of Texas as a non-profit corporation or has proof of a written agreement to solicit on behalf of a Texas non-profit corporation. Proof of compliance with the provisions of Subchapter K, Chapter 17, Texas Business and Commerce Code must be submitted by an individual or for-profit entity.
- (d) The real property owner must provide written authorization allowing the collection bin on the property. The applicant must agree to be responsible for collecting the contents of the collection bin on a schedule and in a manner to prevent overflow and littering.
- (e) An annual permit fee for each collection bin shall be required. All permits shall expire on the one-year anniversary of the date of issuance.
- (f) Any person denied a permit shall be provided written notice thereof delivered by certified United States mail to the address specified on the application and shall have the right to appeal such action in accordance with the provisions of section 22-317.

Sec. 10-205. – Permit Requirements.

- (a) Collection bins shall not be placed or permitted to be placed on real property located in any agricultural, single-family or two-family residential, or mobile home park zoning district.
- (b) The collection bin shall only be used for the collection and short-term storage of clothing and household items and materials. All materials must fit into and be placed entirely inside the bin. The collection or storage of any materials outside the bin is strictly prohibited. The collection bin and the area surrounding the bin shall be continuously maintained by the operator and the owner of the property on which the collection bin is located such that there shall be no accumulation of clothing or other materials outside the bin and the collection bin and surrounding area are kept clean and free of trash, debris, broken glass, coat hangers, clothes, clothing, accessories, or excess donations. The visual and structural integrity of the collection bin must be maintained continuously.
- (c) No more than one (1) collection bin may be permitted for placement on any one lot. In the case of a shopping center or office development that consists of multiple platted lots, the shopping center or office development shall be regarded as if it is only one contiguous lot.
- (d) No collection bin shall be permitted to be placed or remain placed within 50 feet of any entrance or exit to any building on the property or within 200 feet of a zoning district in which a collection bin is otherwise prohibited by this article.

- (e) The placement of the collection bin shall not impede vehicular or pedestrian traffic nor visually impair any motor vehicle operation within a fire lane, parking lot, driveway, alley, street or other thoroughfare. A collection bin shall be placed such that there will be no interference with vehicular or pedestrian traffic or circulation.
- (f) The collection bin shall not be located in a required building setback, landscape buffer area, access easement, drainage easement, floodplain, fire lane, driveway, right-of-way, sidewalk, or utility easement.
- (g) At least one (1) stacking or parking space shall be required for use of persons accessing the collection bin. The collection bin may not block or occupy any number of parking spaces required by the primary use structure.
- (h) No collection bin may be placed in any location that may constitute a fire safety hazard, as determined by the City fire marshal. No collection bin may be placed on any property on which gasoline, fuel, or other flammable liquids or gases are sold or stored.
- (i) The permit holder and the property owner shall both be jointly responsible for the maintenance, upkeep, and servicing of the collection bin and the clean-up and removal of any materials left on the property outside of the collection bin.
- (j) The City shall have the authority to abate any property in violation of this article that is deemed a public nuisance by removal and impoundment of the collection bin or under the procedures contained in Article III of this Chapter (sections 22-126 – 22-130).
- (k) No collection bin shall exceed 175 cubic feet in size.
- (l) Each collection bin shall clearly indicate in writing on the front side of the collection bin that all donations must fit into and be placed within the collection bin.
- (m) The permit holder placing or maintaining the collection bin shall display current contact information including street address and phone number on the collection bin. Said information must be readable and clearly visible to the public.
- (n) Collection bins shall be enclosed on three sides with six-foot masonry walls constructed of the same materials and finishes as the buildings. The opening shall not face, or shall be screened from, a public street or access easement. All screening shall be constructed to prevent the storage or placement of donations outside the collection bin, with the screening wall itself being no more than two feet (2') from the screened collection bin. Screening shall be maintained in vertical and good condition.
- (o) Each collection bin shall be painted one solid color. No high-intensity or fluorescent colors shall be used for the collection bin or associated signage.
- (p) Each collection bin shall be maintained in a clean and sanitary condition in compliance with this article.
- (q) Collection bins and the owner(s) thereof shall comply at all times with the requirements of subchapter K of Chapter 17, Texas Business and Commerce Code, as amended.

- (r) Any collection bin located within the City that does not have a current, valid permit ,or any permitted collection bin that has received more than two (2) notices of violation from the City in the preceding 12-month period, shall be subject to impoundment by the City. Any collection bin impounded by the City shall only be released to the owner upon payment of all applicable impoundment and storage fees. An owner's failure to remit fees and retrieve the collection bin within thirty (30) days of its impoundment shall be deemed a forfeiture to the City of any and all ownership of and interest in the collection bin and the city may thereafter dispose of the collection bin in any manner it deems appropriate.

Sec. 10-206. – Revocation of permit.

- (a) Any permit issued hereunder may be suspended or revoked by the Administrator if (1) the permit holder or property owner has received a citation for violation of this Chapter or any other provision of this Code of Ordinances within the preceding 12-month period or (2) has knowingly made a false, material statement in the application or (3) as otherwise become disqualified for the issuance of a permit under the terms of this Article.
- (b) Notice of suspension or revocation of a permit shall be given to the permit holder or property owner in writing, with the reasons specified in the notice, served either by personal delivery or by first class United States mail to their last known address, and shall become effective on the date set forth in the notice, the day of personal delivery, or three days following deposit in the mail, whichever is later.
- (c) The notice of suspension or revocation of a permit shall notify the permit holder, in writing, of the reason for which the permit is subject to suspension or revocation.
- (d) A collection box will have a noncompliant status and will be subject to immediate impoundment by the City without further notice at any time commencing 24 hours after finalization of any revocation or suspension. Finalization may result from Board of Adjustment decision or from appeal time having passed without the filing of an appeal.
- (e) If a permit is revoked by the city, it shall not be reissued within the one-year period following the date of revocation.
- (f) In the event that any two or more collection bin permits of the same holder have been revoked within a 12-month period, then all permits issued to the person shall be revoked and all donation collection boxes operated by the person may be removed by the City without further notice at any time commencing 24 hours after finalization of the second revocation.

Sec. 10-207. – Appeal of Denial, Suspension or Revocation of Permit.

- (a) The denial, suspension, or revocation of a permit may be appealed to the Board of Adjustment only on written notice of appeal transmitted to the Administrator within ten (10) days of suspension or revocation. The Board's decision shall be final and binding. If not written request for hearing is received within ten days, the denial, suspension, or revocation becomes final.

- (b) The appeal hearing shall be conducted reasonably promptly by the Board of Adjustment and in no event later than sixty (60) days after the date the written request for hearing is received by the administrator.
- (c) An appeal shall not stay the denial, suspension, or termination of the permit while the appeal is pending unless otherwise directed by the Administrator.

Sec. 10-208. – Nuisance and emergency abatement.

- (a) Each of the following is hereby declared an emergency requiring immediate action to protect the public health and safety, is declared a nuisance subject to abatement, and is hereby prohibited and made unlawful under this section:
 - (1) A donation collection bin or any area within 25 feet of a donation collection bin that is a breeding place for flies because of the unsafe or unsanitary condition of the donation collection bin or its contents;
 - (2) The presence of ectoparasites, including bedbugs, lice, and mites, suspected to be disease carriers in a donation collection bin or within 25 feet of a donation collection bin because of the unsafe or unsanitary condition of the donation bin or its contents;
 - (3) A donation collection bin which may become a breeding place for mosquitoes, rodents or other vermin;
 - (4) A donation collection bin that is defective and allows leakage or spilling of contents;
 - (5) A condition of a donation collection bin, including any structural defect of the donation collection bin, that is unsafe and may cause injury;
 - (6) The deposit or accumulation of any foul, decaying, or putrescent substance or other offensive matter in a donation collection bin or within 25 feet of a donation bin.
 - (7) The detectible presence of urine or the presence of feces, vomit or other bodily fluids in a donation collection bin or within 25 feet of a donation bin;
- (b) A donation collection box found in violation of this section will be issued a notice of violation to remove or abate the violation within five business days. The notice may be sent by mail, personal delivery or by posting on site.
- (c) If a landowner or permit holder (or the collection bin operator) fails to remove or abate a violation of this article within five business days of the 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) Issuance of citations each day the violation remains, and each day is a separate offense;
 - (2) Suspension, revocation or denial of any permit issued for the donation collection box; or
 - (3) Removal and impoundment of the donation collection bin.
- (d) If the city has abated the nuisance for any one or more of the foregoing violations by its removal and impoundment of the collection bin, the city shall notify the property owner and permit holder (or collection bin operator) by certified mail no later than the

tenth business day after the date of the abatement. The property owner or permit holder (or collection bin operator) may submit a written request for a hearing within twenty (20) days of the City's delivery of the foregoing notice. The Board of Adjustment will promptly conduct a hearing solely for the purpose of determining whether the collection bin was in violation of one or more of the foregoing prohibitions. The Board's decision shall be final and binding.

- (e) For any abatement 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 collection bin was placed. No notice shall be required prior to an emergency nuisance abatement, but the city shall give notice to the property owner and permit holder (or collection bin operator) as soon thereafter as is practical.
- (f) If the city has removed and impounded a donation collection bin under this section and the landowner or permit holder (or collection bin operator) or their designee has not retrieved the collection bin and paid the city's expenses within 30 days after removal, the city may dispose of the donation bin without providing further notice. An owner's failure to remit fees and retrieve the collection bin within 30 days of its impoundment shall be deemed a forfeiture to the City of any and all ownership of and interest in the collection bin and the city may thereafter dispose of the collection bin in any manner it deems appropriate.
- (g) Notices under this section shall be given to the permit holder or property owner in writing, with the reasons specified in the notice, served either by personal delivery or by first class United States mail to their last known address, and shall become effective on the date set forth in the notice, the day of personal delivery, or three days following deposit in the mail, whichever is later.
- (h) A property owner, permit holder, or collection bin 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.

Sec. 10-209. – Enforcement; remedies; penalties.

- (a) This article may be enforced against, and the requirements of this article must be met by, the owner or operator of the collection bin as well as any person in control of or responsible for management or control of the property including but not limited to landlords, operators, managing agents, property managers and permit holders of the donation collection boxes. Enforcement against one shall not preclude enforcement of the same violation against another.
- (b) Any person violating any provision of this article relating to the placement, operation, and permitting of donation collection bins shall be punished by a fine not exceeding \$500.00. A violation of any provision under section 22-318(a) relating to public health and sanitation shall be punished by a fine not exceeding \$2,000.00. It is the intent of the city in adopting this article that the provisions of said section govern public health and sanitation.

- (c) Violations of the provisions of this article are deemed strict liability offenses. No culpable mental state or intent need be pleaded or proven in the prosecution of any offense or violation of any provision of this article.
- (d) Each day in which a violation of any provision of this article occurs shall be deemed to be a separate offense.
- (e) The remedies provided for in this article are nonexclusive. The city may, at its option, pursue the remedies provided for in this article as well as any and all other remedies available to the city at law or in equity. This shall be expressly in addition to, and not in lieu of, available criminal penalties.

Sec. 10-210. – Special Exception

- (a) A permit applicant or permit holder may request a Special Exception of the requirements set forth in section 22-315(k) regarding maximum size of a collection bin by submitting the request in writing to the administrator.
- (b) The request for Special Exception shall include:
 - a. The name, permanent address, telephone number and email address of the applicant;
 - b. If a permit exists for the collection bin at issue, the date of issue;
 - c. The location address of the collection bin for which the Special Exception is requested;
 - d. The size and dimensions being requested for the collection bin;
 - e. A specific site plan drawn to scale showing the specific dimensions and size of the collection bin and location of the collection bin on the property; and
 - f. The written support of the property owner for the application.
- (c) No Special Exception shall allow a collection bin size exceeding 200 cubic feet, 8 feet in height, or 6 feet in width or length.
- (d) If granted, the Special Exception shall expire upon expiration of the permit and shall be considered renewed for a permit timely renewed without lapse or expiration.
- (e) The administrator may consider any or all of the following factors when reaching a decision on a request for Special Exception:
 - a. The number and substance of violations incurred by the applicant for any collection bin operated by the applicant or situated at the proposed location within the last twenty-four months;
 - b. The number and substance of suspensions or revocations of a permit held by the applicant or for a collection bin situated at the proposed location within the last twenty-four months;
 - c. The number and substance of complaints, calls for service, notices of violation, and written or verbal warnings issued within the last twenty-four months issued to the applicant or issued regarding any collection bin permitted to or operated by the applicant or situated at the proposed location;
 - d. The impact on public health, safety, and/or sanitation of granting the application;

- e. The reasons put forward by the applicant to justify the application and staff input as to those matters; and
 - f. Any pending action or investigation regarding the applicant, the collection bin, or the property.
- (f) The administrator shall issue a determination on the application within fifteen (15) business days of receipt of a complete application.
- (g) An applicant may appeal a denial of an application for a Special Exception to the Board of Adjustment by filing a written appeal with the City Secretary within five (5) days of notice of the administrator's final determination. The written appeal must attach a copy of the notice of administrator's final determination and state the factual and legal bases for the appeal. The Board of Adjustment will hear the appeal within sixty (60) days of filing of the written appeal. The Board of Adjustment's decision shall be final, binding, and unappealable."

SECTION 2. That all ordinances of the City of Everman, Texas, in conflict with the provisions of this ordinance be and the same are hereby repealed and all other ordinances of the City not in conflict with the provisions of the ordinance shall remain in full force and effect.

SECTION 3. That should any section, paragraph, sentence, subdivision, clause, phrase, or provision of this ordinance be adjudged or held to be unconstitutional, illegal, or invalid, the same shall not affect the validity of this ordinance as a whole or any part or provision hereof other than the part so decided to be unconstitutional, illegal, or invalid and shall not affect the validity of the remainder of this ordinance or any other provision of the Code of Ordinances of the City.

SECTION 4. That any person, firm or corporation violating any of the provisions or terms of this ordinance shall be deemed guilty of a misdemeanor and subject to a penalty as provided for in this ordinance, and upon conviction shall be punished by fine not to exceed the sum of Two Thousand Dollars (\$2,000.00) if the violation relates to public health and sanitation; otherwise, the fine shall be in an amount not exceeding Five Hundred Dollars (\$500.00) for each violation. Each day any violation continues shall constitute a separate offense. Unless otherwise expressly provided for herein, no intent need be pleaded or proven in the prosecution of an offense under this article, and a person in violation shall be strictly liable, regardless of intent.

SECTION 5. That this ordinance shall take effect immediately upon its passage and adoption and the publication of the caption as the law and charter in such cases provide.

DULY PASSED by the City Council of the City of Everman, Texas, on this the _____ day of _____ 2025.

APPROVED:

Ray Richardson, Mayor

ATTEST:

Mindi Parks, City Secretary

APPROVED AS TO FORM:

Victoria W. Thomas, City Attorney