

CITY OF JOSHUA, TEXAS

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF JOSHUA, TEXAS, AMENDING CHAPTER 4, "BUSINESS REGULATIONS," OF THE CODE OF ORDINANCES OF THE CITY OF JOSHUA, TEXAS, BY ADDING THERETO A NEW ARTICLE 4.09, "DONATION BOXES"; MAKING FINDINGS; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Joshua, Texas ("City"), is a Home Rule municipality acting under its Charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

WHEREAS, the City is authorized and empowered to amend ordinances from time to time in order to protect the welfare of its inhabitants; and

WHEREAS, donation boxes have proliferated and have been placed in various locations throughout the City and the vicinity, including vacant lots and rights-of-way, occasionally 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, safety and welfare; and

WHEREAS, the City Council desires to enact regulations addressing the placement, maintenance, operation and use of donation boxes in the City to prevent nuisances, blight, and unsanitary and dangerous conditions resulting from the use of donation boxes.

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

SECTION 1

All of the above premises are hereby found to be true and correct and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

SECTION 2

From and after the effective date of this Ordinance, Chapter 4, "Business Regulations," of the Code of Ordinances of the City of Joshua, Texas, is hereby amended by adding thereto a new Article 4.09, "Donation Bins," to read as follows:

"ARTICLE 4.09

DONATION BINS

Division 1

Generally

§ 4.09.01. 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:

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

Donation box means any unattended donation receptacle with a door, slot, or other opening that is 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.

§ 4.09.002. 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.

§ 4.09.003. 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.

§ 4.09.004. Penalty.

(a) Except as provided in section 4.09.031 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 \$1.00 nor more than \$500.00. 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.

§§ 4.09.005-4.09.009. Reserved.

Division 2

Permits

§ 4.09.010. Permit application requirements.

(a) To obtain a permit to operate a donation box, an applicant must file an application with the city. A single application may cover multiple donation boxes that are owned and operated by the applicant. 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 service plan for each donation box. The service plan shall include information regarding which days and the time of day the items will be collected, and other requirements described under section 4.09.020(16) of this Code;

(5) A description of the size, color, and design of the donation box, and the type of material from which the box is constructed;

(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) Proof of required insurance;

(8) A declaration of compliance with other laws; and

(9) Any other information that may be reasonably requested by the city.

(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 city within ten days after the change. Failure to supplement the permit application as required by the city invalidates the permit issued under the original application. The city may require a permit holder to reapply for a permit if information provided in the original application changes. The city 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 of \$200.00 for each donation box shall be required. Each permit shall expire on the one-year anniversary of the date of issuance unless revoked under this article.

§ 4.09.011. Issuance or denial of a permit application.

(a) The city 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 city shall deny the permit application. The city shall issue notice of the denial to the applicant within a reasonable time.

(b) After issuance of a permit, the city 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 4.09.012 of this Code.

§ 4.09.012. Transfer, revocation, and appeal.

(a) Permits and decals are nontransferable.

(b) The city 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 city determines pursuant to this article that a permit holder is no longer eligible for a permit, or the city otherwise revokes the same, the permit holder shall be given notice in writing of the reasons for the revocation by the city. A permit holder may appeal the decision of the city regarding the revocation by filing a written request for a hearing with the city manager 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 city manager's decision on the revocation shall be final.

(e) If a permit is revoked by the city for violation of this article, it shall not be reissued within the one-year period following the date that the permit was revoked.

§ 4.09.013. Indemnification of city.

The applicant must agree, as a condition of any permit issued under this article, 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.

§§ 4.09.014—4.09.019. Reserved.

Division 3.

Donation Box Requirements

§ 4.09.020. 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 as described in the city's zoning or subdivision regulations.
- (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 500 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 as part of the service plan required under this article. 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 \$1,000,000.00. 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.

§ 4.09.021. 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.

§§ 4.09.022—4.09.029. Reserved.

Division 4.

Abatement

§ 4.09.030. Abatement.

(a) Whenever the city is made aware of the existence of a donation box that is in violation of this article, the city shall issue a notice of the violation and a written order to remove or abate the violation within five 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, provided that notice shall not be required prior to an abatement of an emergency nuisance described in section 4.09.031 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 five business days of the city'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; 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 city 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.

§ 4.09.031. Emergency abatement of nuisance.

(a) If an city determines that a donation box is maintained in a manner or condition prescribed in this section, the city may, without providing the notice required under this article, 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 city shall give notice thereof to the landowner and operator in the manner provided for notice under this article. 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 city. The hearing shall be scheduled not later than 30 calendar days after receipt of the request for a hearing and shall be conducted by the city manager for the purpose of determining whether the conditions

qualified for abatement under the terms of this section. The city manager'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 4.09.030(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

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

SECTION 4

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 or decree 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

All rights and remedies of the City of Joshua are expressly saved as to any and all violations of the provisions of existing ordinances 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 6

Any person, firm or corporation who violates any provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by fine of not less than less than One Dollar (\$1.00) and not more than Five Hundred Dollars (\$500.00) for each offense, and each and every day such violation shall continue shall constitute a separate offense, except for a violation of section 4.09.031, for which the fine amount is up to Two Thousand Dollars (\$2,000.00) for each offense, and each and every day such violation shall constitute a separate offense.

SECTION 7

This Ordinance shall become effective from and after its adoption and publication as required by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF JOSHUA, TEXAS, ON THIS THE ____ DAY OF _____, 2024.

Scott Kimble, Mayor

ATTEST:

Alice Holloway, City Secretary

APPROVED AS TO FORM:

Terrence S. Welch, City Attorney