

ORDINANCE NO. 2025-005

AN ORDINANCE REGULATING DONATION BINS WITHIN THE CITY LIMITS OF EAST BERNARD, TEXAS; PROVIDING FOR DEFINITIONS, PERMITTING REQUIREMENTS, LOCATION STANDARDS, MAINTENANCE, ENFORCEMENT, AND PENALTIES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of East Bernard, Texas, finds that unregulated donation bins may become public nuisances, contribute to illegal dumping, and affect community aesthetics and safety; and

WHEREAS, the City seeks to ensure that all donation bins are maintained in a safe, clean, and orderly manner and operated by responsible parties;

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF EAST BERNARD, TEXAS:

DIVISION 1. – GENERAL

Sec. 1-100. - Definitions.

As used in this ordinance, 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 ordinance.

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 ordinance.

Right-of-way shall have the same meaning as public way.

Sec. 1-101. - 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 ordinance.

Sec. 1-102. - 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 ordinance.

Sec. 1-103. - Penalty.

(a) Except as provided in section 1-113 of this ordinance, a person who violates any provision of this ordinance, including committing an unlawful act under this ordinance, is guilty of a misdemeanor punishable by a fine of not less than \$100.00 nor more than \$500.00. Each day any violation continues shall constitute and be punishable as a separate violation of this ordinance.

(b) A landowner or an operator may be liable for criminal penalties and also subject to revocation of a permit issued under this ordinance.

(c) All landowners and operators shall be jointly and severally liable for any penalties, fees, or costs arising under this ordinance.

(d) Nothing in this ordinance shall limit the remedies available to the city in seeking to enforce the provisions of this ordinance.

DIVISION 2. - PERMITS

Sec. 1-106. - Permit application requirements.

(a) To obtain a permit to operate a donation box, an applicant must file an application with the city secretary. A single application may cover multiple donation boxes that are owned and operated by the applicant. The city secretary 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 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 1-110(16) of this ordinance;

- (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 secretary.
- (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 secretary within ten days after the change. Failure to supplement the permit application as required by the city secretary invalidates the permit issued under the original application. The city secretary may require a permit holder to reapply for a permit if information provided in the original application changes. The city secretary 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 ordinance shall be valid only at the address stated on the permit.
- (d) A non-refundable annual permit fee of \$100 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 ordinance. The annual donation box permit administrative fee of \$25 will be required. The total per donation box is \$125 annually.

Sec. 1-107. - Issuance or denial of a permit application.

- (a) The city secretary 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 secretary shall deny the permit application. The city secretary shall issue notice of the denial to the applicant within a reasonable time.
- (b) After issuance of a permit, the city secretary 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 ordinance, to remove a decal from a donation box.
- (c) An applicant may appeal a decision to deny a permit application of a permit under section 1-108 of this ordinance.

Sec. 1-108. - Transfer, revocation, and appeal.

- (a) Permits and decals are nontransferable.

- (b) The city secretary 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 ordinance; 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 secretary determines pursuant to this ordinance that a permit holder is no longer eligible for a permit, or the city secretary otherwise revokes the same, the permit holder shall be given notice in writing of the reasons for the revocation by the city secretary. A permit holder may appeal the decision of the city secretary regarding the revocation by filing a written request for a hearing with the city secretary within 20 calendar days after the permit holder 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 secretary's decision on the revocation shall be final unless the permit holder has timely filed such an appeal. An appeal shall not stay the city secretary's decision on the revocation. The hearing shall be conducted by a hearing officer appointed by the city secretary 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 city secretary 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 city secretary for violation of this ordinance, it shall not be reissued within the one-year period following the date that the permit was revoked.
- (f) A permit issued under this ordinance shall automatically expire if the permit holder removes the donation box from its permitted location or should the property owner request that the donation box be removed from the property.
- (g) A permit issued under this ordinance vests no property right in the permit holder except to place and maintain a donation box in accordance with this ordinance.

Sec. 1-109. - Indemnification of city.

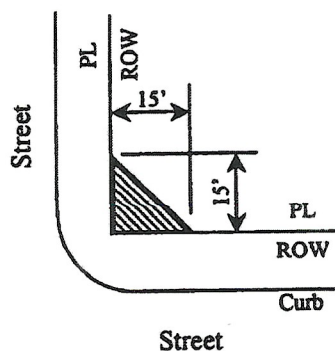
The applicant must agree, as a condition of his permit, to indemnify and hold harmless the city, its officers, agents, contractors, and employees against any loss, liability or damage, including expenses and costs for bodily injury and for property damage sustained by any person, organization or entity 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 ordinance.

DIVISION 3. - DONATION BOX REQUIREMENTS

Sec. 1-110. - 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 ordinance 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 placed the triangular area adjacent to the intersection of any street established by measuring a distance of 15 feet from the point of intersection of two streets along the right-of-way of each of the intersecting streets and connecting the ends of each measured distance, to assure adequate visibility sight lines for vehicular traffic approaching the intersection. The maximum height of the visibility triangle shall be 20 feet as measured vertically from the ground. For lots and sites located on collector or local streets that qualify for a reduced building line of 5 feet, an encroachment into the visibility triangle is allowed above 10 feet as measured vertically from the ground.



- (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 as part of the service plan required under this ordinance. Each landowner and operator shall keep the real property within a radius of 10 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.

Sec. 1-111. - 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.

DIVISION 4. - ABATEMENT

• **Sec. 1-112. - Abatement.**

(a) Whenever the city secretary is made aware of the existence of a donation box that is in violation of this ordinance, the city secretary 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 in the manner provided for notice of this ordinance, provided that notice shall not be required prior to an abatement of an emergency nuisance described in section 1-113 of this ordinance. 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 ordinance within five business days of the city secretary'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 1-108 of this ordinance; 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 secretary 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. 1-113. - Emergency abatement of nuisance.

(a) If the city secretary determines that a donation box is maintained in a manner or condition prescribed in this section, the city secretary may, without providing the notice required under section 1-112(a) of this ordinance, 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 secretary shall give notice thereof to the landowner and operator in the manner provided for notice under this ordinance. 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 secretary. 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 city secretary 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 ordinance.

(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 1-112(d) of this ordinance.

(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.

PASSED AND APPROVED this 28 day of April, 2025.



LANCE REJSEK, Mayor

ATTEST:



RENEE NORTON, City Secretary