

Ordinances Governing
DONATION BOXES
in the
CITY OF ARLINGTON
TEXAS

Adopted by Ordinance No. 18-044
(August 21, 2018)

(Chapter Designator: DONATION BOXES)

ORDINANCE HISTORY

<u>Number</u>	<u>Date of Adoption</u>	<u>Comments</u>
16-020	04/26/16	Adopt new “Donation Boxes” Chapter of the Code of the City of Arlington, Texas, 1987; providing regulations for donation boxes and establishing requirements for permits allowing the placement of donation boxes on approved open spaces on private property.
18-044	08/21/18	Amend Article II , <u>Definitions</u> , in its entirety, and amend Article III , <u>Registration</u> , in its entirety, revising requirements for permits allowing the placement of donation boxes on approved open spaces on private property.

TABLE OF CONTENTS

ARTICLE I GENERAL PROVISIONS

Section 1.01	Title
Section 1.02	Purpose
Section 1.03	Applicability

ARTICLE II DEFINITIONS

Section 2.01	Definitions
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ARTICLE III REGISTRATION

Section 3.01	Donation Box – General Provisions
Section 3.02	Donation Box Permit and Decal Required
Section 3.03	Permit Requirements
Section 3.04	Applications for Permits
Section 3.05	Transfer of permit prohibited
Section 3.06	Maintenance and Upkeep
Section 3.07	Revocation of permit
Section 3.08	Fees
Section 3.09	Administrative Appeals of Denial or Revocation of Permit
Section 3.10	Appeals of Administrator Decision

ARTICLE IV ENFORCEMENT AND PENALTIES

Section 4.01	Offense/Penalty
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ARTICLE I**GENERAL PROVISIONS****Section 1.01 Title**

This Chapter of the Code of the City of Arlington is hereby designated and shall be known and referred to as the “Donation Boxes” Chapter of the City Code of Ordinances.

Section 1.02 Purpose

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

Section 1.03 Applicability

The requirements of this Chapter shall apply to all donation boxes regardless of whether said boxes were placed prior to the effective date of these regulations. No previously placed donation boxes shall be granted any legally non-conforming rights under this Chapter or the “Unified Development Code” Chapter of the Code of the City of Arlington, Texas, as amended. (Adopt Ord 16-020, 4/26/16)

ARTICLE II

DEFINITIONS

Section 2.01 Definitions

“**Administrator**” means the director of the department designated by the City Manager to enforce and administer this Chapter, including the Director’s designees.

“**City Appeal Officer**” means the authorized person designated by the City Manager to hear appeals from denials or revocations of permits.

“**Donation Box**” means 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.

“**Fluorescent**” means a color that appears very bright, vivid, or glowing to the human eye.

“**Front Side**” means the side of a donation box that contains the opening that allows the depositing of donated items.

“**GPS**” means global positioning system.

“**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.

(Amend Ord 18-044, 8/21/18)

ARTICLE III
REGISTRATION

Section 3.01 Donation Box – General Provisions

- A. It shall be unlawful for any person to place or maintain, or allow to be placed or maintained, a donation box at any location within the City of Arlington, without a valid permit issued in accordance with this Article.
- B. Any donation box located within the jurisdiction of the City of Arlington that does not have a current, valid permit shall be subject to impoundment by the City. Any donation box impounded by the City shall be released to the owner upon payment of all applicable impoundment and storage fees. If a donation box is impounded for longer than ten calendar days, it shall be considered abandoned property subject to disposal or sale at the City’s sole discretion.
- C. Donation boxes shall only be permitted to be placed on real property located within the following zoning use districts in the Unified Development Code: Industrial Manufacturing (IM), Light Industrial (LI), and General Commercial (GC). Donation boxes may also be permitted on real property zoned Planned Development with the above-referenced underlying zoning use districts. Donation boxes shall not be permitted to be placed on real property located within any other zoning use districts.

Section 3.02 Donation Box Permit and Decal Required

It shall be unlawful for any person that owns, leases, is in control of, or is entitled to possession of real property within the City of Arlington, to authorize or allow any donation box to be placed on or remain on such real property without a valid permit decal in compliance with the provisions of this Article.

Section 3.03 Permit Requirements

- A. Permit and decal required. A permit and corresponding decal to allow a donation box to be placed and used at a designated location shall be issued by the Administrator within sixty (60) days of receipt of a completed application after determining that all the requirements of this Section are satisfied.

DONATION BOXES

3.03

- B. Authorization for use. A written authorization allowing the donation box on the property shall be required from the real property owner, lessee, or property manager.
- C. Requirement to keep clean. A permit holder shall be responsible for collecting the contents of the donation box to prevent overflow and littering. A permit holder shall keep the real property situated within 25 feet of the location of a donation box clean and free of trash, debris, broken glass, coat hangers, clothes, clothing accessories, or excess donations. A permit holder 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 permit holder, the permit holder shall have 48 hours to remedy the complaint. Failure to comply with a notice of violation may result in the issuance of a citation by the City. A permit holder who is issued a citation within the one-year term of a donation box permit is subject to revocation of the associated donation box permit.
- D. Number of Boxes Allowed. No more than one (1) donation box 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 Administrator shall treat the shopping center or office development as if it is only one contiguous lot. In the case of a shopping center or office development, the Administrator can permit a single additional donation box; provided that neither box is within 50-feet of the other, unless both donation boxes are operated by the same person.
- E. Maximum Size of the Box. No donation box shall exceed 120 cubic feet in size.
- F. Construction Material for the Box. Each donation box shall be constructed from metal material to prevent high winds from toppling and/or moving the donation box and to reduce the potential of arson or graffiti.
- G. Color of the Box. Each donation box shall be painted one solid color. Trade dress color schemes or corporate logos will be allowed. No fluorescent colors shall be used for a donation box or its associated signage.
- H. GPS Coordinates. No donation box shall be permitted without a valid set of GPS coordinates identifying the placement location of the donation box.
- I. Placement on Site. No donation box shall be permitted within the row of parking adjacent to street right-of-way unless an existing landscape setback is present in

good condition. If there is no existing landscape setback, a donation box shall not be placed less than 40 feet from the adjacent street right-of-way.

- J. Notice to donators. Each donation box shall clearly indicate in writing on the front side of each box that all donations must fit into and be placed within the donation box. The size of lettering for the notice shall not be less than one-half inch in height.
- K. Contact information. The permit holder placing or maintaining the donation box shall display current contact information including street address and phone number on the donation box. Said information must be readable and clearly visible to the public from the front side of the box. The size of lettering for the contact information shall not be less than one-half inch in height.

Section 3.04 Applications for Permits

- A. Applicants for permits under this Article shall file a written, sworn application with the Administrator. The application shall include the written authorization of the property owner, lessee, or property manager allowing the donation box on the property. A site plan depicting the exact proposed location (with GPS coordinates indicated) of the donation box shall be submitted with each application.
- B. A separate permit and application 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 and GPS coordinates stated on the permit.
- C. An annual permit fee for each donation box shall be required. All permits shall expire on the one-year anniversary of the date of issuance.
- D. Any person denied a permit shall have the right to appeal such action in accordance with the provisions of Section 3.09.

Section 3.05 Transfer of permit prohibited

No permit issued under the provisions of this Article shall be transferrable. The authority a permit confers is conferred only on the permit holder named therein.

DONATION BOXES

3.06

Section 3.06 Maintenance and Upkeep

- A. The permit holder and the real property owner shall be held jointly and severally liable and responsible for the maintenance, upkeep, and servicing of the donation box and clean up and removal of any donations left on the property outside of the donation box.
- B. 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 the “Nuisance” Chapter of the Code of the City of Arlington, Texas, 1987, as amended. This provision does not exclude or limit the use of any other provision in this Chapter, the Arlington City Code, or the laws of the State of Texas.
- C. The visual and structural integrity of the donation box must be maintained continuously.
- D. The placement of the donation box shall not impede traffic nor visually impair any motor vehicle operation within a parking lot, driveway or street.
- E. The donation box shall not be located in a required landscape or building setback, drainage easement, floodplain, driveway, utility easement or fire lane.
- F. At least one (1) stacking or parking space must be provided for use of persons accessing the donation box.
- G. The donation box must not be located in, or block public access to, any required off-street parking spaces, access easements, or stacking lanes serving a structure on the property, fire lane, or fire hydrant.
- H. The current permit decal for the specific donation box must be affixed and displayed at all times on the outside of the donation box on the front side.
- I. The donation box shall only be used for the solicitation and collection of clothing and household items. All donation materials must fit into and be placed inside the donation box. The collection or storage of any materials outside the container is strictly prohibited.
- J. No donation box shall be permitted to be placed or remain placed within 200 feet from a residential dwelling use district. Said distance shall be measured from a donation box to a residential lot line.

- K. The donation box shall be continuously maintained in compliance with all requirements imposed by Section 3.03, Permit Requirements, as amended.

Section 3.07 Revocation of permit

- A. Grounds. Any permit issued hereunder may be revoked by the Administrator if the permit holder has (1) received a citation for a violation of this Chapter or any other provision of this Code of Ordinances within the preceding 12-month time period or (2) has knowingly made a false material statement in the application or (3) has otherwise become disqualified for the issuance of a permit under the terms of this Article.
- B. Notice. Notice of the revocation shall be given to the permit holder in writing, with the reasons for the revocation specified in the notice, served either by personal service or by certified United States mail to their last known address. The revocation shall become effective the day following personal service or if mailed, three (3) days from the date of mailing.
- C. Appeal; hearing. The permit holder shall have ten (10) days from the date of such revocation in which to file notice with the Administrator of their appeal from the order revoking said permit. The Administrator shall provide for a hearing on the appeal in accordance with the provisions of Section 3.09 herein.
- D. Removal of Box; Impoundment. Upon finalization of any revocation, the permit holder shall remove said donation box no later than ten (10) days after said final decision. Upon expiration of this 10-day grace period, the donation box shall acquire noncompliant status and be subject to immediate impoundment without further notice. Any donation box impounded by the City shall be released to the owner upon payment of all applicable impoundment and storage fees. If a donation box is impounded for longer than ten calendar days, it shall be considered abandoned property subject to disposal or sale at the City's sole discretion.
- E. One-Year Waiting Period. In the event the permit of any permit holder is revoked by the Administrator, no second or additional permit shall be issued to such person within one year of the date such permit was revoked.

DONATION BOXES

3.08

Section 3.08 Fees

All fees established by this Chapter shall be in an amount set by resolution of the City Council.

Section 3.09 Administrative Appeals of Denial or Revocation of Permit

- A. Upon denial or revocation of a permit for a donation box, the Administrator, or his designee, shall notify the applicant or permit holder, in writing, of the reason for which the permit is subject to denial or revocation. The applicant or permit holder shall file a written request for a hearing with the Administrator within ten (10) days following service of such notice. If no written request for hearing is filed within ten (10) days, the denial or revocation is sustained.
- B. The appeal shall be conducted within twenty (20) days of the date on which the notice of appeal was filed with the Administrator.
- C. The hearings provided for in this Section shall be conducted by the Administrator or a designated hearing officer at a time and place designated by the Administrator or the hearing officer. Based upon the recorded evidence of such hearing, the Administrator or the designated hearing officer shall sustain, modify or rescind any notice or order considered at the hearing. A written report of the hearing decision shall be furnished to the applicant or permit holder requesting the hearing.
- D. After such hearing, an applicant that has had a permit denied or revoked by the Administrator may appeal to the City Appeal Officer designated by the City Manager to hear such appeals.
- E. An appeal shall not stay the denial or suspension of the permit unless otherwise directed by the Administrator.

Section 3.10 Appeals of Administrator Decision

- A. All appeals to the City Appeal Officer must be made in writing and received no less than ten (10) days after any final decision made by the Administrator or the designated hearing officer in accordance with Section 3.09 above.

- B. The City Appeal Officer shall schedule the appeal hearing for no less than twenty (20) days from receipt of the appellant's appeal.
- C. If the City Appeal Officer finds by preponderance of the evidence that the denial or revocation of the donation box permit was necessary to protect the health, safety, or welfare of the general public, the City Appeal Officer shall affirm the denial or revocation of appellant's donation box application or permit.
- D. The City Appeal Officer may consider any or all of the following factors when reaching a decision on the merits of the appeal:
1. The number of violations, convictions, or liability findings;
 2. The number of previous revocations;
 3. The number of repeat violations at the same location;
 4. The degree to which previous violations endangered the public health, safety or welfare; or
 5. Any pending action or investigation by another agency.
- E. After the hearing, the City Appeal Officer shall issue a written order. The order shall be provided to the appellant by personal service or by certified mail, return receipt requested.
- F. The City Appeal Officer may affirm or reverse the denial or revocation of the donation box permit. If affirmed, the order issued must state that the appellant is not eligible to receive a new donation box permit sooner than one year after the date of the order. If reversed, the donation box permit shall be reinstated immediately (in the case of a revocation) or within three (3) business days (in the case of a denial).
- G. The determination of the City Appeal Officer shall be final on the date the order is signed.
- H. An appeal to the City Appeal Officer does not stay the effect of a denial or revocation or the use of any enforcement measure unless specifically ordered by the Administrator or the City Appeal Officer.

(Amend Ord 18-044, 8/21/18)

ARTICLE IV

ENFORCEMENT AND PENALTIES

Section 4.01 Offense/Penalty

- A. A person who violates any provision of this Chapter by performing an act prohibited or by failing to perform an act required is guilty of a misdemeanor punishable by a fine not to exceed Five Hundred Dollars and No Cents (\$500.00). Each day the violation continues shall be a separate offense.
- B. A culpable mental state is not required for the commission of an offense under this Chapter.
- C. Nothing in this Chapter shall limit the remedies available to the City in seeking to enforce the provisions of this Chapter.
- D. All other legal remedies are reserved by the City if necessary to enforce the provisions of this Chapter. This shall be in addition to, and not in lieu of, the criminal penalties provided for in this Chapter. (Adopt Ord 16-020, 4/26/16)

Ordinance No. 16-020

An ordinance creating the “Donation Boxes” Chapter of the Code of the City of Arlington, Texas, 1987; providing regulations for donation boxes and establishing requirements for permits allowing the placement of donation boxes on approved open spaces on private property; providing for a fine of up to \$500 for each violation; providing this ordinance be cumulative; and providing for severability, governmental immunity, injunctions, publication, and an effective date

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

WHEREAS, the inability of landowners to accurately identify the owners of said donation boxes has resulted in decreased accountability on the part of donation box owners; 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, City Council finds that regulating the placement and use of donation boxes is necessary for the health, safety and welfare of the general public, the promotion of consistent land uses and development, and the protection of landowners and residents of the City of Arlington; NOW THEREFORE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the “**Donation Boxes**” Chapter of the Code of the City of Arlington, Texas, 1987, is hereby established and shall read as follows:

ARTICLE I

GENERAL PROVISIONS

Section 1.01 Title

This Chapter of the Code of the City of Arlington is hereby designated and shall be known and referred to as the “Donation Boxes” Chapter of the City Code of Ordinances.

Section 1.02 Purpose

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

Section 1.03 Applicability

The requirements of this Chapter shall apply to all donation boxes regardless of whether said boxes were placed prior to the effective date of these regulations. No previously placed donation boxes shall be granted any legally non-conforming rights under this Chapter or the “Unified Development Code” Chapter of the Code of the City of Arlington, Texas, as amended.

ARTICLE II

DEFINITIONS

Section 2.01 Definitions

“**Administrator**” means the director of the department designated by the City Manager to enforce and administer this Chapter, and includes the Director’s designees.

“**Donation box**” means any box, container, building, trailer or other receptacle that is intended for use as a collection point for donated clothing or other household materials.

“**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.

ARTICLE III

REGISTRATION

Section 3.01 Donation Box – General Provisions

- A. It shall be unlawful for any person to place or maintain, or allow to be placed or maintained, any donation box within the City of Arlington, without having first secured a permit and decal in compliance with the provisions of this Article.

- B. Any donation box located within the jurisdiction of the City of Arlington that does not have a current, valid permit (or any permitted donation box that has received more than two (2) notices of violation from the City in the past 12 months) shall be subject to impoundment by the City. Any donation box impounded by the City shall be released to the owner upon payment of all applicable impoundment and storage fees.
- C. Donation boxes shall only be permitted to be placed on real property located within the following zoning use districts in the Unified Development Code: Industrial Manufacturing (IM), Light Industrial (LI), and General Commercial (GC). Donation boxes shall not be permitted to be placed on real property located within any other zoning use districts.

Section 3.02 Donation Box Permit and Decal Required

It shall be unlawful for any person that owns, leases, is in control of, or is entitled to possession of real property within the City of Arlington, to authorize or allow any donation box to be placed on or remain on such real property without a valid permit decal in compliance with the provisions of this Article.

Section 3.03 Permit Requirements

A permit and decal to allow a donation box to be placed and used on designated real property shall be issued by the Administrator after inspection and verification that the following conditions are satisfied:

1. The person receiving a permit to place or maintain a donation box is 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 such a non-profit corporation.
2. The real property owner provides written authorization allowing the donation box on the property.
3. The permit holder agrees to be responsible for collecting the contents of the donation box in order to prevent overflow and littering.
4. No more than one (1) donation box 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 Administrator shall treat the shopping center or office development as if it is only one contiguous lot.
5. No donation box shall exceed 50 square feet in size.
6. Each donation box shall clearly indicate in writing on the side of each box that all donations must fit into and be placed within the donation box.

7. The permit holder placing or maintaining the donation box shall display current contact information including street address and phone number on the donation box. Said information must be readable and clearly visible to the public.
8. Each donation box shall be screened from the nearest public street or right-of-way for which it is adjacent. If a donation box is located on a corner of a lot, then the box shall be screened on a minimum of two sides. Minimum screening shall consist of a six foot (6') solid wood fence. Comparable materials may be substituted for screening upon prior approval of the Administrator. All screening shall be constructed to prevent the storage or placement of donations outside the donation box, with the screening fence itself being no more than two feet (2') from the screened donation box.
9. Each donation box shall be constructed from metal material.
10. Each donation box shall be painted one solid color. No high-intensity or fluorescent colors shall be used for the donation box or associated signage.

Section 3.04 Applications for Permits

- A. Applicants for permits under this Article shall file a written, sworn application with the Administrator. The application shall include the written authorization of the property owner allowing the donation box on the property.
- B. A separate permit and application 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.
- C. An annual permit fee for each donation box shall be required. All permits shall expire on December 31st of each calendar year regardless of the date of issuance; provided, however, that the fee for each permit shall be prorated for each month or portion of a month for which the permit is issued.
- D. Any person denied a permit shall have the right to appeal such action. In such case the procedure shall be the same as in revocation.

Section 3.05 Transfer of permit prohibited

No permit issued under the provisions of this Article shall be transferrable and the authority a permit confers shall be conferred only on the permit holder named therein.

Section 3.06 Maintenance and Upkeep

- A. The permit holder and the property owner shall be held jointly and severally liable and responsible for the maintenance, upkeep, and servicing of the donation box

and clean up and removal of any donations left on the property outside of the donation box.

- B. 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 the “Nuisance” Chapter of the Code of the City of Arlington, Texas, 1987, as amended.
- C. The visual and structural integrity of the donation box must be maintained continuously.
- D. The placement of the donation box shall not impede traffic nor visually impair any motor vehicle operation within a parking lot, driveway or street.
- E. The donation box shall not be located in a required building setback, buffer yard, access easement, drainage easement, floodplain, driveway, utility easement or fire lane.
- F. At least one (1) stacking or parking space shall be required for use of persons accessing the donation box.
- G. The donation box may not block or occupy any number of parking spaces required by the primary use structure.
- H. The current permit decal for the specific donation box must be affixed and displayed at all times on the outside of the donation box.
- I. The donation box shall only be used for the solicitation and collection of clothing and household materials. All donation materials must fit into and be placed inside the donation box. The collection or storage of any materials outside the container is strictly prohibited.
- J. No donation box shall be permitted to be placed or remain placed within 200 feet from a residential dwelling use district. Said distance shall be measured from lot line to lot line.
- K. The donation box shall be continuously maintained in compliance with all requirements imposed by Section 3.03, Permit Requirements, as amended.

Section 3.07 Revocation of permit

- A. Grounds. Any permit issued hereunder may be revoked by the Administrator if the permit holder has received two (2) notices of violation for violations of this Chapter or any other provision of this Code of Ordinances within a 12 month time period or has knowingly made a false material statement in the application or otherwise becomes disqualified for the issuance of a permit under the terms of this Article.

- B. Notice. Notice of the revocation shall be given to the permit holder in writing, with the reasons for the revocation specified in the notice, served either by personal service or by certified United States mail to their last known address. The revocation shall become effective the day following personal service or if mailed, three (3) days from the date of mailing.
- C. Appeal; hearing. The permit holder shall have ten (10) days from the date of such revocation in which to file notice with the Administrator of their appeal from the order revoking said permit. The Administrator shall provide for a hearing on the appeal not later than 15 days after the notice of the appeal is filed.
- D. Stay. Any appeal of revocation pursuant to this section shall stay the revocation until said revocation is finalized.
- E. Removal of Box; Impoundment. Upon finalization of any revocation, the permit holder shall remove said donation box no later than ten (10) days after said final decision. Upon expiration of this 10-day grace period, the donation box shall acquire noncompliant status and be subject to immediate impoundment without further notice.
- F. One-Year Waiting Period. In the event the permit of any permit holder is revoked by the Administrator, no second or additional permit shall be issued to such person within one year of the date such permit was revoked.

Section 3.08 Fees

All fees established by this Chapter shall be in an amount set by resolution of the City Council.

ARTICLE IV

ENFORCEMENT AND PENALTIES

Section 4.01 Offense/Penalty

- A. A person who violates any provision of this Chapter by performing an act prohibited or by failing to perform an act required is guilty of a misdemeanor punishable by a fine not to exceed Five Hundred Dollars and No Cents (\$500.00). Each day the violation continues shall be a separate offense.
- B. A culpable mental state is not required for the commission of an offense under this Chapter.
- C. Nothing in this Chapter shall limit the remedies available to the City in seeking to enforce the provisions of this Chapter.

- D. All other legal remedies are reserved by the City if necessary to enforce the provisions of this Chapter. This shall be in addition to, and not in lieu of, the criminal penalties provided for in this Chapter.

2.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed Five Hundred Dollars and No Cents (\$500.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

3.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington; and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

4.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

5.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

6.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

7.

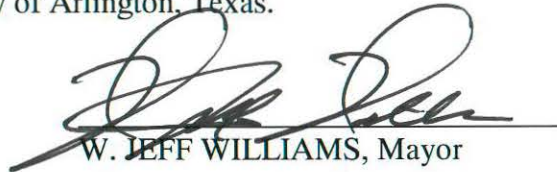
The caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, Texas, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be

published in pamphlet form and shall be admissible in such form in any court, as provided by law.

8.

This ordinance shall become effective ten (10) days after first publication.

PRESENTED AND GIVEN FIRST READING on the 12th day of April, 2016, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the 26th day of April, 2016, by a vote of 9 ayes and 0 nays at a regular meeting of the City Council of the City of Arlington, Texas.


W. JEFF WILLIAMS, Mayor

ATTEST:


MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:
TERIS SOLIS, City Attorney

BY 

Ordinance No. 18-044

An ordinance amending the “Donation Boxes” Chapter of the Code of the City of Arlington, Texas, 1987, through the amendment of Article II, Definitions, and Article III, Registration; revising requirements for permits allowing the placement of donation boxes on approved open spaces on private property; providing for a fine of up to \$500.00 for each violation; providing this ordinance be cumulative; and providing for severability, governmental immunity, injunctions, publication, and an effective date

- 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 boxes in various areas of the City; and
- WHEREAS, the inability of landowners to accurately identify the owners of said donation boxes has resulted in decreased accountability on the part of donation box owners; and
- WHEREAS, the absence of identifying information makes it difficult or impossible for the City, property owners, or local citizens to contact donation box operators about items placed outside of the box, broken glass, or other concerns; and
- WHEREAS, the placement of donation 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 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 boxes leads to rummaging of items, which causes scattering and litter and may defeat the donor’s intent; and
- WHEREAS, the documented trash and debris present around unkempt donation 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 boxes and other pedestrians walking on or near the property containing donation boxes and provides a threat to the tires of vehicles using parking lots where donation boxes are placed; and

WHEREAS, wooden donation boxes have been observed with deteriorated conditions, and are more easily toppled by storm conditions, and have been subject to arson; and

WHEREAS, City Council finds that regulating the placement, proximity and use of donation 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 of Arlington; NOW THEREFORE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the “**Donation Boxes**” Chapter of the Code of the City of Arlington, Texas, 1987, as amended, **Article II, Definitions**, is hereby repealed and replaced in its entirety and shall hereafter read as follows:

ARTICLE II

DEFINITIONS

Section 2.01 Definitions

“**Administrator**” means the director of the department designated by the City Manager to enforce and administer this Chapter, including the Director’s designees.

“**City Appeal Officer**” means the authorized person designated by the City Manager to hear appeals from denials or revocations of permits.

“**Donation Box**” means 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.

“**Fluorescent**” means a color that appears very bright, vivid, or glowing to the human eye.

“**Front Side**” means the side of a donation box that contains the opening that allows the depositing of donated items.

“**GPS**” means global positioning system.

“**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.

Further, **Article III, Registration**, is hereby repealed and replaced in its entirety and shall hereafter read as follows:

ARTICLE III
REGISTRATION

Section 3.01 Donation Box – General Provisions

- A. It shall be unlawful for any person to place or maintain, or allow to be placed or maintained, a donation box at any location within the City of Arlington, without a valid permit issued in accordance with this Article.
- B. Any donation box located within the jurisdiction of the City of Arlington that does not have a current, valid permit shall be subject to impoundment by the City. Any donation box impounded by the City shall be released to the owner upon payment of all applicable impoundment and storage fees. If a donation box is impounded for longer than ten calendar days, it shall be considered abandoned property subject to disposal or sale at the City’s sole discretion.
- C. Donation boxes shall only be permitted to be placed on real property located within the following zoning use districts in the Unified Development Code: Industrial Manufacturing (IM), Light Industrial (LI), and General Commercial (GC). Donation boxes may also be permitted on real property zoned Planned Development with the above-referenced underlying zoning use districts. Donation boxes shall not be permitted to be placed on real property located within any other zoning use districts.

Section 3.02 Donation Box Permit and Decal Required

It shall be unlawful for any person that owns, leases, is in control of, or is entitled to possession of real property within the City of Arlington, to authorize or allow any donation box to be placed on or remain on such real property without a valid permit decal in compliance with the provisions of this Article.

Section 3.03 Permit Requirements

- A. Permit and decal required. A permit and corresponding decal to allow a donation box to be placed and used at a designated location shall be issued by the Administrator within sixty (60) days of receipt of a completed application after determining that all the requirements of this Section are satisfied.

- B. Authorization for use. A written authorization allowing the donation box on the property shall be required from the real property owner, lessee, or property manager.
- C. Requirement to keep clean. A permit holder shall be responsible for collecting the contents of the donation box to prevent overflow and littering. A permit holder shall keep the real property situated within 25 feet of the location of a donation box clean and free of trash, debris, broken glass, coat hangers, clothes, clothing accessories, or excess donations. A permit holder 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 permit holder, the permit holder shall have 48 hours to remedy the complaint. Failure to comply with a notice of violation may result in the issuance of a citation by the City. A permit holder who is issued a citation within the one-year term of a donation box permit is subject to revocation of the associated donation box permit.
- D. Number of Boxes Allowed. No more than one (1) donation box 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 Administrator shall treat the shopping center or office development as if it is only one contiguous lot. In the case of a shopping center or office development, the Administrator can permit a single additional donation box; provided that neither box is within 50-feet of the other, unless both donation boxes are operated by the same person.
- E. Maximum Size of the Box. No donation box shall exceed 120 cubic feet in size.
- F. Construction Material for the Box. Each donation box shall be constructed from metal material to prevent high winds from toppling and/or moving the donation box and to reduce the potential of arson or graffiti.
- G. Color of the Box. Each donation box shall be painted one solid color. Trade dress color schemes or corporate logos will be allowed. No fluorescent colors shall be used for a donation box or its associated signage.
- H. GPS Coordinates. No donation box shall be permitted without a valid set of GPS coordinates identifying the placement location of the donation box.
- I. Placement on Site. No donation box shall be permitted within the row of parking adjacent to street right-of-way unless an existing landscape setback is present in good condition. If there is no existing landscape setback, a donation box shall not be placed less than 40 feet from the adjacent street right-of-way.
- J. Notice to donators. Each donation box shall clearly indicate in writing on the front side of each box that all donations must fit into and be placed within the donation box. The size of lettering for the notice shall not be less than one-half inch in height.

- K. Contact information. The permit holder placing or maintaining the donation box shall display current contact information including street address and phone number on the donation box. Said information must be readable and clearly visible to the public from the front side of the box. The size of lettering for the contact information shall not be less than one-half inch in height.

Section 3.04 Applications for Permits

- A. Applicants for permits under this Article shall file a written, sworn application with the Administrator. The application shall include the written authorization of the property owner, lessee, or property manager allowing the donation box on the property. A site plan depicting the exact proposed location (with GPS coordinates indicated) of the donation box shall be submitted with each application.
- B. A separate permit and application 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 and GPS coordinates stated on the permit.
- C. An annual permit fee for each donation box shall be required. All permits shall expire on the one-year anniversary of the date of issuance.
- D. Any person denied a permit shall have the right to appeal such action in accordance with the provisions of Section 3.09.

Section 3.05 Transfer of permit prohibited

No permit issued under the provisions of this Article shall be transferrable. The authority a permit confers is conferred only on the permit holder named therein.

Section 3.06 Maintenance and Upkeep

- A. The permit holder and the real property owner shall be held jointly and severally liable and responsible for the maintenance, upkeep, and servicing of the donation box and clean up and removal of any donations left on the property outside of the donation box.
- B. 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 the "Nuisance" Chapter of the Code of the City of Arlington, Texas, 1987, as amended. This provision does not exclude or limit the use of any other provision in this Chapter, the Arlington City Code, or the laws of the State of Texas.

- C. The visual and structural integrity of the donation box must be maintained continuously.
- D. The placement of the donation box shall not impede traffic nor visually impair any motor vehicle operation within a parking lot, driveway or street.
- E. The donation box shall not be located in a required landscape or building setback, drainage easement, floodplain, driveway, utility easement or fire lane.
- F. At least one (1) stacking or parking space must be provided for use of persons accessing the donation box.
- G. The donation box must not be located in, or block public access to, any required off-street parking spaces, access easements, or stacking lanes serving a structure on the property, fire lane, or fire hydrant.
- H. The current permit decal for the specific donation box must be affixed and displayed at all times on the outside of the donation box on the front side.
- I. The donation box shall only be used for the solicitation and collection of clothing and household items. All donation materials must fit into and be placed inside the donation box. The collection or storage of any materials outside the container is strictly prohibited.
- J. No donation box shall be permitted to be placed or remain placed within 200 feet from a residential dwelling use district. Said distance shall be measured from a donation box to a residential lot line.
- K. The donation box shall be continuously maintained in compliance with all requirements imposed by Section 3.03, Permit Requirements, as amended.

Section 3.07 Revocation of permit

- A. Grounds. Any permit issued hereunder may be revoked by the Administrator if the permit holder has (1) received a citation for a violation of this Chapter or any other provision of this Code of Ordinances within the preceding 12-month time period or (2) has knowingly made a false material statement in the application or (3) has otherwise become disqualified for the issuance of a permit under the terms of this Article.
- B. Notice. Notice of the revocation shall be given to the permit holder in writing, with the reasons for the revocation specified in the notice, served either by personal service or by certified United States mail to their last known address. The revocation shall become effective the day following personal service or if mailed, three (3) days from the date of mailing.

- C. Appeal; hearing. The permit holder shall have ten (10) days from the date of such revocation in which to file notice with the Administrator of their appeal from the order revoking said permit. The Administrator shall provide for a hearing on the appeal in accordance with the provisions of Section 3.09 herein.
- D. Removal of Box; Impoundment. Upon finalization of any revocation, the permit holder shall remove said donation box no later than ten (10) days after said final decision. Upon expiration of this 10-day grace period, the donation box shall acquire noncompliant status and be subject to immediate impoundment without further notice. Any donation box impounded by the City shall be released to the owner upon payment of all applicable impoundment and storage fees. If a donation box is impounded for longer than ten calendar days, it shall be considered abandoned property subject to disposal or sale at the City's sole discretion.
- E. One-Year Waiting Period. In the event the permit of any permit holder is revoked by the Administrator, no second or additional permit shall be issued to such person within one year of the date such permit was revoked.

Section 3.08 Fees

All fees established by this Chapter shall be in an amount set by resolution of the City Council.

Section 3.09 Administrative Appeals of Denial or Revocation of Permit

- A. Upon denial or revocation of a permit for a donation box, the Administrator, or his designee, shall notify the applicant or permit holder, in writing, of the reason for which the permit is subject to denial or revocation. The applicant or permit holder shall file a written request for a hearing with the Administrator within ten (10) days following service of such notice. If no written request for hearing is filed within ten (10) days, the denial or revocation is sustained.
- B. The appeal shall be conducted within twenty (20) days of the date on which the notice of appeal was filed with the Administrator.
- C. The hearings provided for in this Section shall be conducted by the Administrator or a designated hearing officer at a time and place designated by the Administrator or the hearing officer. Based upon the recorded evidence of such hearing, the Administrator or the designated hearing officer shall sustain, modify or rescind any notice or order considered at the hearing. A written report of the hearing decision shall be furnished to the applicant or permit holder requesting the hearing.

- D. After such hearing, an applicant that has had a permit denied or revoked by the Administrator may appeal to the City Appeal Officer designated by the City Manager to hear such appeals.
- E. An appeal shall not stay the denial or suspension of the permit unless otherwise directed by the Administrator.

Section 3.10 Appeals of Administrator Decision

- A. All appeals to the City Appeal Officer must be made in writing and received no less than ten (10) days after any final decision made by the Administrator or the designated hearing officer in accordance with Section 3.09 above.
- B. The City Appeal Officer shall schedule the appeal hearing for no less than twenty (20) days from receipt of the appellant's appeal.
- C. If the City Appeal Officer finds by preponderance of the evidence that the denial or revocation of the donation box permit was necessary to protect the health, safety, or welfare of the general public, the City Appeal Officer shall affirm the denial or revocation of appellant's donation box application or permit.
- D. The City Appeal Officer may consider any or all of the following factors when reaching a decision on the merits of the appeal:
 - 1. The number of violations, convictions, or liability findings;
 - 2. The number of previous revocations;
 - 3. The number of repeat violations at the same location;
 - 4. The degree to which previous violations endangered the public health, safety or welfare; or
 - 5. Any pending action or investigation by another agency.
- E. After the hearing, the City Appeal Officer shall issue a written order. The order shall be provided to the appellant by personal service or by certified mail, return receipt requested.
- F. The City Appeal Officer may affirm or reverse the denial or revocation of the donation box permit. If affirmed, the order issued must state that the appellant is not eligible to receive a new donation box permit sooner than one year after the date of the order. If reversed, the donation box permit shall be reinstated immediately (in the case of a revocation) or within three (3) business days (in the case of a denial).
- G. The determination of the City Appeal Officer shall be final on the date the order is signed.

H. An appeal to the City Appeal Officer does not stay the effect of a denial or revocation or the use of any enforcement measure unless specifically ordered by the Administrator or the City Appeal Officer.

2.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed Five Hundred Dollars and No Cents (\$500.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

3.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington; and except as otherwise stated herein, this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

4.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

5.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

6.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

7.

The caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, Texas, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

8.

This ordinance shall become effective ten days after first publication.

PRESENTED AND GIVEN FIRST READING on the 7th day of August, 2018, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the 21st day of August, 2018, by a vote of 9 ayes and 0 nays at a regular meeting of the City Council of the City of Arlington, Texas.



W. JEFF WILLIAMS, Mayor

ATTEST:



ALEX BUSKEN, City Secretary

APPROVED AS TO FORM:
TERIS SOLIS, City Attorney

BY 