

ORDINANCE NO. 2021-22

AN ORDINANCE OF THE CITY OF LOCKHART AMENDING CHAPTER 26 “HEALTH AND SANITATION” BY ADDING ARTICLE IV “DONATION BOXES” TO CHAPTER 26 OF THE CODE OF ORDINANCES OF THE CITY OF LOCKHART, TEXAS; PROVIDING FOR REGISTRATION, APPEALS, A PENALTY CLAUSE, A SAVINGS CLAUSE AND A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE UPON PASSAGE AND PUBLICATION

WHEREAS, the placement of donation boxes to receive clothing and household items is creating health, safety, and welfare issues in the City of Lockhart; and

WHEREAS, the failure of owners of such donation boxes to properly empty and to clean in and around the 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; and

WHEREAS, the documented trash and debris present around unkempt donation boxes invites illegal dumping under the guise of charitable solicitation and recycling; 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, 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 Lockhart;

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

SECTION 1. Chapter 26, “Health and Sanitation”, of the Code of Ordinances of the City of Lockhart, Texas, is hereby amended by adding Article IV “Donation Boxes” which shall read as follows:

ARTICLE IV DONATION BOXES

Section 26-190 - Purpose and Applicability

- (a) The purpose of this Article is to further the City’s interest by protecting the public health, safety, welfare, and comfort of Lockhart residents by preserving the cleanliness and orderliness of the City. It is the intent of the City that this aim be furthered by requiring the registration of donation boxes on public or private property within the City limits of the City of Lockhart. This Article 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 unregistered or poorly maintained donation boxes that threaten public health, public safety, and the orderly development of the City. These provisions are cumulative of all City ordinances.

- (b) The requirements of this Article 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 inherent legal or “grandfathered” status under the Lockhart Code of Ordinances, as amended. Boxes that are not registered within 45 days of the passage of this Article must be removed.

Section 26-191 - Definitions

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

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

“Landscaped Area” means the medians, islands, or area within a defined boundary containing trees, shrubbery, or other landscaping.

“Operator” means the Registrant or any other person who places, manages, empties, or is otherwise responsible for the operation or placement of a donation box. A person whose logo or contact information is written on the donation box is presumed to be an operator of that donation box.

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

“Property Owner” means the person holding legal title to the real property, the property manager, or other person who has been delegated the responsibility to manage, maintain, or control the real property by the person holding legal title to the property.

“Recycling Bin” means a container used to hold recyclables before they are taken to recycling centers. Recycling bins are not considered donation boxes for the purposes of this Article

“Registrant” means the person who obtains a valid registration of a donation box.

Section 26-192 - Registration Required

- (a) It is an offense for any person to place, maintain, or allow to be placed or maintained, a donation box at any location within the City of Lockhart, without having first registered said donation box with the City.
- (b) It is an offense for any person to place, maintain, or allow to be placed or maintained, a donation box at any location within the City of Lockhart, without it having been registered with the City.

Section 26-193 - Registration Application, Issuance, Denial, and Revocation

- (a) A donation box registration application shall be submitted on the form prescribed by the Director and, at a minimum, shall include:
 - 1. the Applicant's name, date of birth, mailing address, and email address;
 - 2. a copy of the Applicant's current government issued identification card or driver's license;
 - 3. the name of the company, if any, responsible for the operation of the box;
 - 4. contact information which can be used to contact the operator twenty-four hours a day, seven days a week if the premises surrounding the donation box are unkempt or another issue related to the donation box needs immediate attention;
 - 5. an address where official notices can be sent;
 - 6. the size and construction material of the donation box;
 - 7. a diagram of the property on which the donation box will be placed depicting the precise location where the box will be placed; and
 - 8. a signed affidavit from the property owner which authorizes placement of the donation box on the property, states the property owner has been provided a method to contact the applicant's representative twenty-four hours a day/seven days a week, and affirms the property owner is authorized to grant authorization for the placement of the box. Proof the person signing the affidavit is the property owner may be required.

- (b) The Director shall issue a registration to the applicant within three (3) business days of receipt of a properly completed donation box registration application unless issuance of the registration is prohibited by this section.

- (c) Individuals submitting incomplete applications shall be notified, in writing, that the application is incomplete and cannot be considered.

- (d) Donation box registrations are issued to a particular person for a particular location and cannot be transferred. All donation box registrations shall be valid for a period of not to exceed two years but all registrations shall expire and be subject to renewal on December 31 of the odd-numbered year following initial registration.

- (e) The Director is prohibited from issuing a registration and shall deny the application if one or more of the following conditions exist:
 - 1. the application contains a false or misleading statement;
 - 2. the proposed donation box does not comply with the construction provisions of Section 26-195.
 - 3. the proposed location of the donation box would be in violation of or is not allowed by Section 26-196.
 - 4. the applicant or company operating the donation box has been convicted on two (2) or more occasions, in the preceding twelve months of placing or maintaining a donation box in violation of Section 26-195 or 26-196; or
 - 5. the applicant has had a donation box registration revoked or denied within the last six months and, in the case of a denial, the denial was not based upon the proposed construction or proposed placement being in violation of 26-195 or 26-196

- (f) A donation box registration may be revoked if:
 - 1. Registration of the donation box was issued in violation of this section;
 - 2. the donation box's construction does not comply with Section 26-195;

3. the actual location of the donation box violates or is not allowed by Section 26-196;
4. the donation box is located at a place other than the location for which it was registered; or
5. the donation box is being operated by a person other than the person to whom the registration was issued.

Section 26-194 - Denial, Revocation, and Appeal Process

- (a) To deny or revoke registration of a donation box, the Director shall send a written notice of denial or revocation to the Applicant or Registrant to the postal mail address provided in the application or updated in accordance with this Article. A courtesy notice may also be set via email. The notice shall include the reason for the denial or revocation and information on the how the decision can be appealed, including the deadline to appeal provided by this Section. Notices sent via postal mail, shall be sent certified mail, return receipt requested. If postal mail notice is sent in compliance with this Section and the United States Postal Service returns the notice as "refused" or "unclaimed," the validity of the notice is not affected, and the notice is considered delivered. A revocation is effective, and the donation box shall be removed within fifteen (15) days of the notice being sent unless the determination of the Director is appealed in accordance with this Section.
- (b) The Applicant or Registrant may appeal the Director's decision to revoke or not issue a donation box registration by filing a request for appeal with the Director in person or by postal mail no later than ten (10) business days after the date the notice is sent via postal mail. The request for appeal shall include the decision being appealed and the grounds for the appeal. Appeals submitted by postal mail shall be considered submitted as of the date of the postmark.
- (c) Upon receipt of a written request for appeal, the Director shall schedule the appeal hearing for the next regularly scheduled meeting of the Construction Board of Appeals. The next regularly scheduled meeting of the Board is the next meeting scheduled to occur which has not yet been posted in accordance with the Open Meetings Act.
- (d) The Construction Board of Appeals members shall have the authority to question any witness who testifies at the hearing. At the conclusion of the hearing, the Chairperson of the hearing shall sign an order upholding or overturning the Director's determination. The order shall include relevant findings. If the order upholds the Director's determination, the box shall be removed within seventy-two (72) hours of the order being signed.
- (e) During the pendency of an appeal of a revocation of a donation box registration the Registrant may continue to operate the donation box at issue in the appeal. If, at the time the denied application which is the subject of the appeal was submitted, the donation box at issue was being operated with a valid registration, then the registrant may continue to operate the donation box at the location approved by that registration during the pendency of the appeal.
- (f) At any time prior to the presentation of the appeal to the Construction Board of Appeals, the Director may withdraw the revocation or denial and cancel the appeal hearing. If a denial is withdrawn, the Director shall issue a registration. In the event the application was a renewal application and the Applicant was operating during the pendency

of the appeal, the registration shall be effective retroactively to the date after the preceding registration expired.

- (g) At any time prior to the presentation of the appeal to the Construction Board of Appeals, the Applicant may withdraw the application or appeal. If the application or appeal is withdrawn, the appeal hearing shall be cancelled.

Section 26-195 - Donation Box Construction

- (a) The donation box shall not exceed a capacity of 90 cubic feet.
- (b) The donation box shall be constructed of material, such as metal, which protects against deterioration due to weather and is not easily displaced by wind.
- (c) Donation boxes shall be safely designed in a manner that prevents tipping over and prevents children from entering inside the box.
- (d) A person commits an offense if the person places or maintains a donation box which does not comply with this section.

Section 26-196 - Donation Box Placement

- (a) A person commits an offense if the person places or maintains a donation box on real property located within the City of Lockhart without written permission from the property owner. For purposes of this provision, it is presumed the donation box was placed or maintained by the operator at the location where the donation box is found.
- (b) A person commits an offense if the person places or maintains a donation box within a required setback, a landscaping setback, a landscaped area, the 100-year flood plain, a floodway, a drainage easement, a utility easement, a driveway, an unimproved surface; a fire lane, or within a public right of way. For purposes of this provision, there is a presumption the donation box was placed or maintained at the location by the operator and property owner.
- (c) A person commits an offense if the person places or maintains a donation box on an unpaved surface.
- (d) Parking spaces containing donation boxes shall not be considered parking spaces for the purposes of determining compliance with parking space standards provided by the City of Lockhart Unified Development Code or Code of Ordinances.
- (e) A person commits an offense if the person places or maintains more than one donation box at a single location for which registration has been issued.

Section 26-197 - Impoundment

- (a) A donation box located within the City of Lockhart is subject to impoundment by the City of Lockhart if a valid registration has not been issued for the donation box to be placed at the location where it is found.

- (b) Notice of the impoundment, including the date, time location, and reason for the impoundment, shall be provided to the operator via certified mail, return receipt requested or via email with delivery confirmation if the operator can be identified by the decal or writings on the exterior of the donation box. If the operator of the donation box cannot be determined, notice of the impoundment including a description of the donation box shall be placed on the City website and notice board located at Lockhart City Hall.
- (c) A donation box that is not retrieved within ten (10) business days of the date the notice of impoundment is sent or posted in accordance with this section shall be deemed abandoned and may be sold, destroyed, or otherwise disposed of at the discretion of the City and in accordance with applicable law.
- (d) Any donation box impounded by the City shall be released to the owner only after payment has been made of all applicable impoundment and storage fees.
- (e) Impoundment of the donation box does not prohibit other enforcement action from being taken.

Section 26-198 - Registrant Responsibility

- (a) If the contact information where the Registrant can be reached twenty-four hours a day, seven days a week changes, the Registrant shall provide updated contact information to the Director and the property owner of the property where the box is located within twenty-four (24) hours.
- (b) If the official notice information for the Registrant changes, the Registrant shall provide updated notice information to the Director within twenty-four (24) hours.

Section 26-199 Property Owner Responsibility

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 Lockhart, to authorize or allow any donation box to be placed on or remain on such real property without a valid registration. It is an affirmative defense to prosecution under this provision that the person did not authorize the box to be placed on the property and requested it be removed within twenty-four (24) hours of becoming aware of the box's placement.

Section 26-200 Responsibility to Keep Clean

- (a) A Registrant shall be responsible for collecting the contents of the donation box regularly to prevent overflow and littering. Registrants and property owners shall jointly 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, outside storage, or excess donations. Failure to comply with this section is an offense. It is specifically provided that a contractual agreement between the Registrant and property owner does not relieve either party of the duty imposed by this section.
- (b) This section does not prohibit the condition on the premises from being declared a nuisance and abated in accordance with the Lockhart Code of Ordinances or other applicable law.

Sections 26-201 through 26-225 Reserved

SECTION 2. A violation of any provision of this Ordinance shall be a misdemeanor punishable in accordance with Section 1-8 of the Code of Ordinances of the City of Lockhart, Texas.

SECTION 3. Chapter 26, "Health and Sanitation," of the Code of Ordinances of the City of Lockhart, Texas, as amended, shall be and remain in full force and effect save and except as amended by this Ordinance.

SECTION 4. The sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable, and if any phrase, clause, sentence, or section of this Ordinance shall be declared unconstitutional or invalid by any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any other remaining phrase, clause, sentence, paragraph, or section of this Ordinance.

SECTION 5. All ordinances or parts of ordinances not consistent or conflicting with the provisions of this Ordinance are hereby repealed. Provided that such repeal shall be only to the extent of such inconsistency and in all other respects this Ordinance shall be cumulative of other ordinances regulating and governing the subject matter covered in this Ordinance.

SECTION 6. This Ordinance shall be and become effective immediately upon and after its passage and publication.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF LOCKHART, TEXAS,
ON THIS THE 20th DAY OF JULY 2021.**

CITY OF LOCKHART

Lew White, Mayor

ATTEST:

APPROVED AS TO FORM:

Connie Constancio, TRMC, City Secretary

Monte Akers, City Attorney