

**ORDINANCE 2021-16
COLLECTION BINS**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, AMENDING CITY OF PALM COAST CODE OF ORDINANCES, CHAPTER 16, BUSINESSES AND BUSINESS REGULATIONS, BY DEFINING COLLECTION BIN AND ADDING A NEW ARTICLE AS TO THE REGULATION OF COLLECTION BINS WITHIN THE CITY LIMITS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Palm Coast, Florida (the “City”) is granted the authority, under Section 2(b), Article VII, of the State Constitution, to exercise any power for municipal purposes, except where expressly prohibited by law; and

WHEREAS, within the City, containers have been placed on public and private property that are identified by the State of Florida (“State”) within Chapter 496, Section 496.4121, Florida Statutes (F.S.) as “collection receptacles used for donations” and the State defined collection receptacles used for donations are herein referred to in the City as “collection bins”; and

WHEREAS, while Chapter 496, Section 496.4121, F.S., provides regulations regarding collection bins, that does not preempt the City from the regulation of collection bins, pursuant to the City’s regulations being more stringent than those provided by Chapter 496, F.S.; and

WHEREAS, United States District Courts have stated that bins collecting charitable donations for resale to fund a charity are engaging in charitable solicitation, which is noncommercial speech entitled to First Amendment protection (*Nat’l Federation of the Blind of Texas, Inc. v. Abbott*, 647 F.3d 202 (2011); *Linc-Drop, Inc. v. City of Neb.*, 996 F.Supp.2d 845 (D. Neb. 2014), *Recycle for Change v. City of Oakland*, 856 F. 3d 666 (9th Cir. 2016), *Planet Aid v. City of St. Johns* (6th Cir. 2015); and

WHEREAS, U.S. district courts have ruled that charitable solicitation via collection bins

is protected free speech under the First Amendment and cannot be banned, but can be regulated; and

WHEREAS, the U.S. Supreme Court, in *Reed v. Gilbert (Gilbert)*, 135 S.Ct. 2218, 192 L.Ed.2d 236 (2015), in upholding non-commercial free speech rights, stated that in relation to signage, “government regulation of speech is content-based, if a law applies to particular speech because of the topic discussed or the idea or message expressed,” and found that *Gilbert* was content-based for treating signs differently, based on the content of the signs; and

WHEREAS, First Amendment right protection applies to charitable donation in collection bins, similar to signs, and the City has the right to regulate collection bins for time, place, and manner; and

WHEREAS, there has been a recent proliferation of collection bins located within the City on public and private property; and

WHEREAS, the City’s Code of Ordinances does not have specific standards relating to unattended collection bins concerning site location, number of bins, maintenance, or security of collection bins; and

WHEREAS, the City Code of Ordinances currently does not provide for identification of collection bin ownership and record property ownership, and the process to enforce collection bin maintenance with City code enforcement staff; and

WHEREAS, unattended collection bins can be detrimental to the overall appearance of the City, diminish property values, and without the property owner’s permission, can be illegally placed on real property; and

WHEREAS, poor management and maintenance of collection bins can result in nuisance accumulation through unauthorized and illegal dumping leading to garbage and trash collection in

and around the donation bin; and

WHEREAS, the City Council finds that it is in the best interest of the health, safety and welfare of general public to adopt standard for the location and maintenance of unattended donation bins within the City to address and mitigate the potential negative effects as recited above; and

WHEREAS, the City of Palm Coast finds and determines that these amendments to the City Code are consistent with all applicable policies of the City's adopted Comprehensive Plan and not in conflict with the public interest; and

WHEREAS, the City Council finds significant government interest in implementing these regulations, and finds it necessary to implement these regulations to promote the health, safety, and welfare of the residents and citizens of the City; and

WHEREAS, words with double underlined type shall constitute additions to the original text and strike through shall constitute deletions to the original text, and asterisks (***) indicate that text shall remain unchanged from the language existing prior to adoption of this Ordinance.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE CITY OF PALM COAST, FLORIDA, AS FOLLOWS:

SECTION 1. LEGISLATIVE AND ADMINISTRATIVE FINDINGS. The above recitals (whereas clauses) are hereby adopted as the legislative and administrative findings of the City Council.

SECTION 2. Chapter 16, Businesses and Business Regulation, the Code of Ordinances of the City of Palm Coast, Florida, is hereby amended by adding a new Article XI, to regulate the placement of collection bins within the City limits as follows:

ARTICLE XI. – Collection bins.

Sec. 16-260. Definitions.

Collection bins means unattended outdoor receptacles dedicated for the sole purpose of collecting non-trash items for reuse, resale, or recycling and placed in accordance with the regulations of Section 16-261, Code of Ordinances. The City's recycling program and the collection containers used in conjunction with principal permitted uses are exempt from these provisions.

Sec. 16-261. Collection bins. Two collection bins are allowed on each developed nonresidential property located in the COM-2, COM-3 or MPD zoning districts in compliance with the following regulations:

(a) Permit required. A collection bin operator must obtain a permit from the City prior to placing a collection bin on a developed property within the City.

(1) The permit is valid for a duration not to exceed 12 months and can be renewed on a yearly basis. Each renewal requires a new permit application and fee.

(2) The permit application at minimum shall include the operator's contact information, proof of registration with the State of Florida Charitable Solicitation Division, site plan showing the location of the bin and all other structures, driveways, parking areas, and any other existing or proposed improvements on the property, and notarized written consent from property owner.

(3) The assigned permit number, permittee's name, logo, telephone number, email address, and name of the benefitting organization must be prominently displayed on the collection bin so as to provide a means of contact in case the collection bin is at capacity and unable to take any further items, for maintenance concerns, notice or for any other issue that may arise with the collection bin.

(4) Following issuance of the permit, the collection bin is prohibited from being relocated within the property without application and City approval of a new permit.

(b) Development standards.

(1) Location. The following location restrictions apply to all collection bins.

a. Not within easement areas.

b. Not within 10 feet from side or rear lot lines.

c. Not within any required parking space to the extent that the business would no longer meet the minimum parking requirements.

d. Not within any required landscape area.

e. Not cause interference with vehicular or pedestrian traffic.

f. Not cause a safety hazard with regard to designated fire lane or building exit.

g. Placed and secured on an improved impervious surface.

h. Placed in an area that allows for truck access for unloading and maintenance of the collection bin.

(2) The collection bin shall not exceed 6 feet in height and 25 square feet base.

(3) Each collection bin must be enclosed by utilizing a receiving door or safety chute to prevent vandalism and locked so that the contents of the bin cannot be accessed by anyone other than those responsible for the retrieval of the contents.

(c) Maintenance.

(1) The collection bin shall be maintained in good condition and appearance with no structural damage, noticeable odors, holes or visible rust, free of graffiti or faded

signs, and shall be repaired or repainted in the event it is damaged or vandalized within 5 days of discovery or notice by the city, whichever occurs first.

(2) The area surrounding the donation bin shall be free of donated items, garbage, trash, junk, debris or other materials and shall be maintained by the collection bin operator.

(3) All items or materials left outside of the collection bin shall be removed within 24 hours of discovery or notice by the city, whichever occurs first.

(d) Penalties and enforcement.

(1) The owner or operator of the collection bin, the permittee, and the owner of the private property upon which a violation of these regulations occur may each be held individually and severally responsible and liable for such violation.

(2) The city may consider prior permit revocations, prior notices of violation and fraudulent application information when granting or denying a new permit for a collection bin.

(3) Violations of these provisions may be punished and enforced in accordance with Chapter 2- Administration, Article V. Boards, Commissions and Committees, Division 1. - Code Enforcement.

SECTION 3. SEVERABILITY. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Code are severable, and if any phrase, clause, sentence, paragraph or section of this Code shall be declared unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code.

SECTION 4. CODIFICATION. It is the intention of the City Council of the City of Palm Coast, Florida, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Palm Coast, Florida; that the Sections of this Ordinance may be renumbered or re-lettered to accomplish such intention; that the word, “Ordinance” may be changed to “Section,” “Article,” or other appropriate word.

SECTION 5. CONFLICTS. All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

SECTION 6. EFFECTIVE DATE. This Ordinance shall become effective immediately upon its passage and adoption.

Approved on first reading this 17th day of August 2021.

Adopted on the second reading after due public notice and hearing this 7th day of September 2021.

CITY OF PALM COAST, FLORIDA

ATTEST:



DAVID ALFIN, MAYOR



VIRGINIA A. SMITH, CITY CLERK

APPROVED AS TO FORM AND LEGALITY



WILLIAM E. REISCHMANN, JR.
CITY ATTORNEY

