

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF MANSFIELD, TEXAS, AMENDING TITLE XI OF THE MANSFIELD CODE OF ORDINANCES PERTAINING TO DONATION BOX PERMITS; CREATING A NEW CHAPTER 116 TO ESTABLISH A DONATION BOX PERMIT; ESTABLISHING MAINTENANCE REGULATIONS FOR DONATION BOXES; PROVIDING FOR THE REVOCATION OF SUCH PERMITS; PROVIDING FOR FEES RELATED TO CHAPTER 116; PROVIDING FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF FIVE HUNDRED DOLLARS (\$500.00) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Mansfield, Texas is a home-rule municipality located in Tarrant County, created in accordance with the provisions of Chapter 9 of the Local Government Code and operating pursuant to its Charter; and

WHEREAS, the City Council finds that it will be advantageous, beneficial and in the best interest of the citizens of Mansfield to amend Title XI of the Code of Ordinances of the City of Mansfield to regulate donation boxes as provided herein;

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

SECTION 1.

That Title XI, "Business Regulations," of the Code of Ordinance of the City of Mansfield is hereby amended by creating a new Chapter 116, "Donation Box Permits and Enforcement" to read as follows:

"CHAPTER 116: DONATION BOX PERMITS AND ENFORCEMENT

GENERAL PROVISIONS

§ 116.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ADMINISTRATOR. The director of the department designated by the City Manager to enforce and administer this Chapter, including the Director's designees.

CITY APPEAL OFFICER. The authorized person designated by the City Manager to hear appeals from denials or revocations of permits.

DONATION BOX. The definition of this term set forth in Section 155.012 of the Mansfield Code of Ordinances is incorporated into this chapter.

DONATION BOX PERMITS

§ 116.02 PERMITS.

(A) A Donation Box Permit must be obtained from the Department of Regulatory Compliance for all donation boxes to be located in the City of Mansfield, subject to the following requirements:

(1) Prior to the issuance of a Donation Box permit, the operator of a donation box shall obtain a Specific Use Permit in accordance with Section 155.080 of the Code of Ordinances of the City of Mansfield if required by Subsection 155.054(B), "Permitted Use Table," Table D. **All Donation Boxes allowed under Chapter 155, whether allowed by right, permitted under a Specific Use Permit, or permitted as an accessory use, require issuance of a permit under this Chapter.**

(2) A separate permit is required for each donation box located in the City.

(3) The property owner shall sign and notarize the Donation Box Permit application authorizing the placement of a donation box on the property.

(4) A decal to allow a donation box to be placed and used at a designated location shall be issued by Regulatory Compliance at the time of the approval of the Donation Box Permit. The decal shall be placed on the donation box in a visible location to identify the donation box as an allowed use on the property.

(5) The operator of the donation box shall be the applicant on a Donation Box Permit application. If the donation box operator changes, the new operator must obtain a new Donation Box Permit prior to the change in operation.

(6) The Donation Box Permit application shall detail a service plan for each Donation Box. The operator of each donation box shall be responsible for collecting the contents of the donation box to prevent overflow and littering and shall pick up all donated items at least once per week. The service plan shall include information regarding how many times a week donated items will be collected, the time of day the items will be collected, a vehicular circulation plan and a graffiti and litter abatement plan.

§ 116.03 MAINTENANCE.

(A) Donation boxes and drop-off collection areas shall be properly maintained and comply with the following regulations:

(1) The operator of each donation box shall keep the real property situated within twenty-five (25) feet of the location of a donation box clean and free of trash, debris, broken glass, clothes hangers, clothes, clothing accessories or excess donations.

(2) The donation box operator and the real property owner shall be jointly and severally liable and responsible for the maintenance, upkeep and servicing of the donation box and the cleanup and removal of any donations left on the property outside of the donation box.

(3) A violation of this Subsection shall constitute a public nuisance, and the City shall have the authority to abate any such violation as such. This provision does not exclude or limit the use of any other remedy available to the City under this Subsection, the Code of Ordinances or the laws of the State of Texas.

(4) 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.

(5) A donation box operator or real property owner 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 operator, the operator shall have forty-eight (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. An operator who is issued more than one (1) citation in a twelve (12) month period for the same offense on the same donation box is subject to revocation of the approval for such donation box.

(B) It shall be unlawful for any person who owns, leases, is in control of or is entitled to possession of real property within the City of Mansfield to authorize or allow any donation box to be placed on or remain on such real property without a valid Donation Box Permit in compliance with the provisions of this Subsection.

§ 116.03 REVOCATION OF PERMIT.

(A) Any permit issued hereunder may be revoked by the Administrator if the permit holder has (1) received **more than one** 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 Chapter.

(B) 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) 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 this Section herein.

(D) 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) 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 (1) year of the date such permit was revoked.

(F) Donation boxes that have placed without a permit are subject to the same impoundment regulations set forth in Section 116.03 (D), after a notice of violation has been issued and the 10-day compliance period has expired.

§ 116.04 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 hearing shall be conducted within twenty (20) days of the date on which the request for a hearing 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 or permit holder 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. The applicant or permit holder shall file a notice of appeal with the Administrator within ten (10) days following service of the written report of the hearing decision under Subsection (C). The City Appeal Officer may, based on the recorded evidence of the hearing below, reverse, affirm, or modify the decision of the Administrator or hearing officer. The City Appeal Officer must serve a written decision on the applicant or permit holder within twenty (20) days of the filing of the notice of appeal.

(E) An appeal shall not stay the denial or suspension of the permit unless otherwise directed by the Administrator.

§ 116.05 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 116.04 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."

SECTION 2.

All fees established by this Chapter shall be set forth in the Regulatory Compliance Department Fee Schedule.

SECTION 3.

That all ordinances of the City in conflict with the provisions of this ordinance be, and the same are hereby, repealed and all other ordinances of the City not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 4.

Should any paragraph, sentence, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole or any part or provision thereof, other than the part so declared to be invalid, illegal or unconstitutional, and shall not affect the validity of the Zoning Ordinance as a whole.

SECTION 5.

Any person, firm or corporation violating any of the provisions of this ordinance or the Zoning Ordinance, as amended hereby, shall be deemed guilty of a misdemeanor and, upon conviction in the Municipal Court of the City of Mansfield, Texas, shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000.00) for each offense, and each and every day any such violation shall continue shall be deemed to constitute a separate offense. The requirements of this Ordinance shall apply to all Donation Boxes regardless of whether the boxes were placed prior to the approval date of this Ordinance, except that any donation box existing on the approval date of this Ordinance shall come into compliance with the requirements of Chapter 116 not later than ten (10) days from the approval date of this Ordinance. For existing donation boxes which require a permit under Chapter 116, enforcement of Chapter 116 will be stayed so long as application for a permit under that chapter is submitted within ten (10) days of the approval date of this Ordinance. This stay on enforcement will continue for a donation box while the permit application is pending, but no later than one-hundred twenty (120) days from the approval date of this Ordinance.

SECTION 6.

This ordinance shall take effect immediately from and after its passage on first and final reading and the publication of the caption, as the law and charter in such cases provide.

DULY PASSED on the first and final reading by the City Council of the City of Mansfield, Texas, this _____ day of _____, 2022.

Michael Evans, Mayor

ATTEST:

Susana Marin, City Secretary

APPROVED AS TO FORM AND LEGALITY

Drew Larkin, City Attorney