

ORDINANCE NO. 16,303

AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, by adding Chapter 30, Article V, Sections 30-97, 30-98, 30-99, 30-100, 30-101, 30-102, 30-103, 30-104, 30-105, 30-106, 30-107, 30-108, 30-109, 30-110, 30-111, 30-112, 30-113, 30-114, 30-115, relating donation bins.

Be It Ordained by the City Council of the City of Des Moines, Iowa:

Section 1. That the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, by Chapter 30, Article V, Sections 30-97, 30-98, 30-99, 30-100, 30-101, 30-102, 30-103, 30-104, 30-105, 30-106, 30-107, 30-108, 30-109, 30-110, 30-111, 30-112, 30-113, 30-114, 30-115, relating donation bins, as follows:

ARTICLE V. DONATION BINS

Sec. 30-97. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Donation Bin. An unattended portable receptacle or container held out to the public as a place for people to donate clothing and textiles for the distribution, resale, or recycling thereof.

Property Owner. The owner and tenant, collectively, of the real estate upon which a Donation Bin is located.

Operator. The person or entity which owns the Donation Bin and is responsible for collecting and processing all donations from the Donation Bin.

Premises. The real estate parcel upon which the Donation Bin is located or proposed to be located.

Sec. 30-98. Permits required.

- (a) Before offering a Donation Bin in the city, the Operator shall obtain an annual permit for each Donation Bin from the city clerk as provided in this article.
- (b) Said annual donation bin permit shall be tied to the Premises and shall allow the operation of the Donation Bin for three hundred and sixty-five consecutive days.
- (c) Failure to obtain the annual permit for each Donation Bin required herein shall result in enforcement action pursuant to this article.

Sec. 30-99. Application for permits—all applicants.

- A. A separate online application shall be required for each Donation Bin.
- B. Every Operator shall apply to the city clerk for a donation bin permit at least thirty business days prior to use by providing the following information upon a form to be provided by the city clerk, and must demonstrate to the satisfaction of the city

clerk and the zoning enforcement officer that the premises meet the following requirements:

- (1) The full name, organization or business name, address, email, and phone number of the Operator of the Donation Bin.
- (2) Written consent of the Property Owner for the Donation Bin to be placed on the Premises.
- (3) Written consent from any other party who has a property interest in the portion of the Premises in which the Donation Bin is proposed to be placed.
- (4) Written consent of the Property Owner authorizing the city to remove the Donation Bin, its contents, and donations surrounding the Donation Bin, if any, from the Premises in the event said Donation Bin has not complied with this Article.
- (5) Site plan drawn to scale on 8.5" x 11" sheet format minimum identifying:
 - i. the Premises,
 - ii. the area size and location within the Premises of the proposed Donation Bin(s),
 - iii. the zoning district of the Premises,
 - iv. the overall property lines, including the distance from all public right-of-way, ingress and egress locations, parking areas, and buildings on the Premises,
 - v. the number of parking spaces that will be removed by the placement of the Donation Bin, if any, and
 - vi. the number of parking spaces that will remain available for parking after installation of the Donation Bin.
- (6) A written statement from the Operator affirming the clothing and textile donations collected in the Donation Bin will be used for distribution, resale, recycling, or a combination thereof.
- (7) A written statement from the Operator instructing how the public will go about receiving a tax deduction for their donation, if applicable.
- (8) A description of the Donation Bin, including but not limited to:
 - the size of the Donation Bin,
 - (a) the material of the Donation Bin, and
 - (b) a brief explanation as to how the public would interface with and operate the Donation Bin to complete their donation.
- (9) An elevation sketch displaying all sides of the Donation Bin, including all design elements, including instructions to the public as to how to use the Donation Bin and how to pursue a tax deduction for their donation, if applicable.

Sec. 30-100. Indemnification.

In addition to any terms and conditions negotiated between the city and the Operator and Property Owner, upon signing the application for a donation bin permit under this article, the Operator and Property shall both be deemed to have agreed to hold the city harmless from and indemnified against all damages arising from the placement, use, maintenance, or repair of the Donation Bin.

Sec. 30-101. Insurance.

Before granting a donation bin permit under this article, the city may require liability insurance in an amount satisfactory to the city and sufficient to hold the city harmless from and indemnified against all damages arising from or growing out of the placement, use, maintenance, or repair of the Donation Bin, when the city has determined that such insurance is required by the public interest.

Sec. 30-102. Cash bond.

- (a) No donation bin permit shall be issued until the applicant has delivered to the city clerk a cash bond as set out in the schedule of fees. The bond shall be held to indemnify and pay the city any penalties or costs incurred in the enforcement of any of the sections of this article.
- (b) The balance of the bond shall be released by the city clerk and returned to the applicant upon request by the applicant at any time more than three months after expiration of the donation bin permit for which the cash bond was provided.

Sec. 30-103. Permit fee.

- (a) The applicant for a donation bin permit shall pay a fee at the time of filing the application in the amount set in the Schedule of Fees adopted by City Council by resolution.
- (b) In the event the application for a donation bin permit is denied or withdrawn by the applicant, either all or a portion of the permit fee in an amount set in the Schedule of Fees adopted by the City Council shall be retained by the city to defray the administrative costs incurred.

Sec. 30-104. Permit issuance.

- (a) A donation bin permit shall be denied to any applicant who has been the subject of an enforcement action or whose property has been the subject of an enforcement action for violating any section of this Code within the prior 90 days.
- (b) Following review of the application by the zoning enforcement officer, the city clerk or the city clerk's designee shall, upon satisfaction that the information provided in an application for a donation bin permit is true and correct, and that the requirements of this article for issuance of the permit have been satisfied, and upon payment of the permit fee and posting of a cash bond, if required by this article, issue the permit.
- (c) Said issuance of Donation Bin permit or a denial of such request shall be completed within fifteen calendar days of applicant's completed application.
- (d) The city clerk shall deny any application for the operation of a Donation Bin permit that does not conform with all applicable requirements of this article, this Code, the Iowa Code and the Iowa Administrative Code.

Sec. 30-105. Appeal of denial of application.

- (a) The denial of an application for donation bin permit may be appealed pursuant to the administrative appeal process set forth in chapter 3 of this Code.
- (b) In the event an application for a donation bin permit is denied, the city clerk or the city clerk's designee shall cause notice of such denial to be promptly communicated to the applicant or the applicant's representative by phone at the phone number provided in the application. Written notice shall also be sent by first class mail to the applicant at the business address identified in the application informing the applicant of the denial, the reasons therefore, and the applicant's right to appeal the denial to an administrative hearing officer by filing a written notice of appeal with the city clerk within 10 business days after the date of such notice.

Sec. 30-106. Location and size of Donation Bins.

- (a) The number of Donation Bins should not exceed one bin for sites five acres or less, and the number of Donation Bins should not exceed two bins for sites over five acres.
- (b) All Donation Bins shall be placed on an improved, paved, durable and drainable surface. If placed in a parking area, the Donation Bin shall not reduce the number of available parking spaces below the minimum required for the Premises.
- (c) Donation bins shall only be allowed within the P1 and P2 zoning districts intended for public, civic and institutional principal uses, and shall only be allowed within parcels that have a permitted primary use.
- (d) The Donation Bin may not exceed a total area of twenty-five square feet, which shall be limited to eight feet in height and two hundred cubic feet in volume.
- (e) Donation bins may not be placed within public right-of-way, any drive aisle, required parking or loading spaces, fire lanes, walkways or any other location which would impede vehicular or pedestrian travel, including Americans with Disabilities Act compliance, as determined by the city in the city's sole discretion.
- (f) The Donation Bin may only be placed within a paved area of the Premises.
- (g) The proposed location of the Donation Bin must be setback at least twenty (20) feet from all public right-of-way and must be setback at least ten (10) feet from all adjoining property lines.

Sec. 30-107. Restrictions on operations of Donation Bins.

- (a) All Donation Bins shall be limited to only the collection of clothing and textiles.
- (b) All Donation Bins are strictly prohibited from collecting hazardous materials as regulated by the Department of Natural Resources.
- (c) All Donation Bins shall clearly display a message indicating that no donated items, garage, or other debris are to be left outside of the Donation Bin, which message shall be a minimum of 1' x 1.5' area in size.
- (d) All Donation Bins shall clearly display the name, address, telephone number, and email address for the Operator, which message shall be a minimum of 1' x 1.5' area in size.
- (e) The Operator shall be responsible for the installation, maintenance, emptying of, monitoring of, repair, and compliance of the Donation Bin with all provisions of this Article.

- (f) In the event of removal of a Donation Bin, the Operator shall also be responsible for removing all donations surrounding the Donation Bin.
- (g) Private property owners shall not allow, permit or authorize any person or entity to place or operate a Donation Bin on their Premises without donation bin permit required by this article.
- (h) Private property owners or lessees shall not allow, permit, or authorize the use of any property within the control of the private property owner or lessee in violation of any of the sections of this article.
- (i) Operators shall not operate the Donation Bin in a manner that violates the Noise Control Ordinance of the City of Des Moines set forth in article IV of Chapter 42 of this Code.
- (j) All Donation Bins shall be made of metal, steel or other durable material acceptable to the city in the city's sole discretion.
- (k) All Donation Bins shall be enclosed by the use of a one-way drop off mechanism and lockable, both so the contents may not be accessed by anyone other than the Operator.

Sec. 30-108. Transferability of permit.

Donation bin permits issued under this article are transferable and shall not be assigned by any Operator or Property Owner.

Sec. 30-109. Renewal of permit.

Annual donation bin permits may be renewed for the same period so long as there have been no violations of this article, upon payment of the fee required by section 30-103 of this article and upon posting of the cash bond required by section 30-102 of this article.

Sec. 30-110. Suspension or revocation of permit.

(a) Upon complaint or reasonable suspicion that a permit holder or the permit holder's employees or agents furnished any false information required under this article or has violated or failed to comply with any of the requirements of this article or any other chapter of this Code, the city clerk or the city clerk's designee may cause the matter to be investigated. If the city clerk or the city clerk's designee finds that the permit holder or the permit holder's employees or agents furnished any false information required under this article or has violated or failed to comply with any of the requirements of this article or any other chapter of this Code, the city clerk or the city clerk's designee may give notice to the permit holder of the city's intent to suspend or revoke the permit, or to deny its renewal.

(b) Notice of the city's intent to suspend, revoke, or deny the renewal of a permit and a brief summary of the factual basis for such remedial action shall be served upon the permit holder. Such notice shall inform the permit holder of the time, date and place of a meeting where the permit holder may meet with the city clerk or the city clerk's designee for the purpose of presenting additional information regarding the intended remedial action and the factual basis therefore, and that a final decision on appropriate remedial action will be made after the scheduled time for such meeting. Such notice shall be served upon the permit holder by personal service or by service upon a cashier, 18 years of age or older, for the

business where business is conducted, or by regular mail addressed to the permit holder at the permit holder's business address as shown on the application a minimum of five business days prior to the date set for the meeting.

- (c) If, after the scheduled meeting and after consideration of all the available information including any information provided at the meeting by the permit holder, the city clerk or the city clerk's designee makes a finding based on substantial evidence that a violation of this article or another chapter of this Code did in fact take place as alleged, the city clerk or the city clerk's designee may suspend or revoke the permit or deny its renewal; the determination of whether to so suspend or revoke the permit or deny its renewal shall be in the discretion of the city clerk or the city clerk's designee and shall be dependent upon the circumstances surrounding the violation and its severity. The decision to suspend, revoke or deny renewal of a permit shall be in writing and shall identify the basis for such action. The decision shall be promptly served in the same manner as required for the service of the notice required under subsection (b), and shall not be effective until ten days after so served. The decision shall also give notice that it may be appealed to an administrative hearing officer by filing a notice of appeal with the city clerk within ten business days of the date of the decision.
- (d) The decision of the city clerk or the city clerk's designee to suspend, revoke or deny renewal of a permit pursuant to this section may be appealed pursuant to the administrative appeal process set forth in chapter 3 of this Code.
- (e) A permit holder whose permit has been revoked or denied for renewal shall not be eligible for a permit under this article for a period of 180 days after such revocation or denial of renewal.

Sec. 30-111. Duty for the operation, maintenance, and repair.

- (a) Donation Bins shall be repaired and maintained to the appearance consistent with what was approved by the city in the application for the donation bin permit.
- (b) The Operator shall be responsible for emptying their Donation Bins in a timely manner to avoid the accumulation donations surrounding the Donation Bins.
- (c) The Operator shall be responsible for maintaining and repairing the Donation Bins, including but not limited to any damage caused by third parties.
- (d) The city shall not be required to incur any cost associated with the Donation Bins.

Sec. 30-112. Failure to secure or renew donation bin permit.

- (a) Any person failing to secure a permit required under this article shall cause the subject Donation Bins to be removed within 15 calendar days of the City's mailing of written notice.
- (b) Any donation bin permit not renewed on or before its date of expiration shall automatically expire, and the Donation Bin(s) used or maintained thereunder shall immediately be removed by the Operator without further notice from the city within 15 calendar days of the City's mailing of written notice.
- (c) Any donation bin permit issued pursuant to this article which has expired may be reinstated by payment of the required fee plus an administrative charge of ten percent for each month

or part thereof for which the fee is overdue, up to a maximum of 100 percent of the original fee.

Sec. 30-113. Removal of Donation Bins.

- (a) Whenever the city has revoked a donation bin permit required under this article or the donation bin permit has expired, the Operator or Property Owner shall cause the Donation Bin(s) to be removed immediately as well as any donations and debris accumulated and surrounding the Donation Bins, if any.

Sec. 30-114. Municipal infractions and penalties.

- (a) Any person who violates this article shall be guilty of a municipal infraction punishable pursuant to Municipal Code section 1-15. Any person who violates a section of this article after having previously been found guilty of violating the same section of this article shall be guilty of a repeat offense.
- (b) Relief under this section shall be in addition to the remedies set forth in section 30-110.

Sec. 30-115. Violation constitutes a public nuisance.

- (a) Every violation of this article, for which removal of the Donation Bin is required shall also constitute a public nuisance subject to abatement and enforcement pursuant to the procedures set forth in article VI of chapter 42 of this Code.
- (b) The processes set forth in this article are not exclusive remedies for the city and alternate relief may be sought pursuant to any other sections of this Code or Iowa law that may be applicable.

Secs. 30-116—30-125. Reserved.

Section 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

FORM APPROVED: Lisa A. Wieland, Assistant City Attorney

T.M. Franklin Cownie, Mayor

Attest: I, Laura Baumgartner, City Clerk of the City of Des Moines, Iowa, hereby certify that the above and foregoing is a true copy of an Ordinance (Roll Call No. 23-1658), passed by the City Council of said City at the meeting held on November 20, 2023 and signed by the Mayor on November 20, 2023 and published and provided by law in the Business Record on December 8, 2023. Authorized by Publication Order No. 12528.

Laura Baumgartner, City Clerk