

ORDINANCE NO. 2016-10

AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS AMENDING ARTICLE VII, DONATION CONTAINERS, OF CHAPTER 22, HEALTH AND SANITATION, BY AMENDING SECTIONS 22-191, LOCATION, 22-192, CONTAINER DESIGN AND MAINTENANCE, AND 22-194, PERMIT REQUIRED TO ALLOW DONATION CONTAINERS ON PUBLIC AND PRIVATE SCHOOL PROPERTIES AND PROVIDING CERTAIN EXEMPTIONS THERETO; PROVIDING A PENALTY NOT TO EXCEED \$2,000.00 FOR ANY VIOLATION HEREOF WITH EACH DAY CONSTITUTING A SEPARATE OFFENSE; PROVIDING FOR SEVERABILITY AND PROVIDING OTHER FINDINGS RELATED HERETO.

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WHEREAS, the City Council of the City of Tomball, Texas finds it to be in the best interest of the health, safety and welfare of the citizens to allow donation containers on public and private school properties, subject to certain exemptions to the provisions of Article VII, Donation Containers, of Chapter 22, Health and Sanitation of the City's Code of Ordinances; now, therefore,

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

Section 1. The facts and matters contained in the preamble to this ordinance are hereby found to be true and correct.

Section 2. The Code of Ordinances of the City of Tomball, Texas is hereby amended by adding to Section 22-191, Location, of Article VII, Donation Containers, of Chapter 22, Health and Sanitation, the language underscored below:

“Sec. 22-191. - Location.

- (a) Donation containers shall be limited to office, retail, and commercial zoning districts and on all public and private school properties and shall be subject to approval by a temporary permit with a maximum duration of one year.
- (b) Donation containers are allowed on all public and private school properties zoned planned development and in all other planned developments when expressly included in the listed uses and allowances.
- (c) Donation containers shall not be within 50 feet of property being used for residential purposes or a public-right-of-way.
- (d) Donation containers shall not be located within any established buffer areas, required landscaped area, sidewalks, access easements, and drainage

easements, drive aisles, utility easements, or fire lanes and shall not be located in such a manner that they block sight lines or impede vehicular or pedestrian traffic.

(e) Donation containers shall be located on a paved surface.

(f) A donation container shall not be located in any parking space required to meet the minimum parking requirements for a site.

(g) The number of donation containers allowed for each lot shall not exceed two and shall not be located less than 300 feet from any other donation container, except as required in subsection (h) of this section.

(h) On lots with more than one donation container, the donation containers on that lot shall be placed adjacent to each other with no more than two feet of separation between containers. These containers shall not be located less than 300 feet from containers on any other lot.”

Section 3. The Code of Ordinances is further amended by amending Section 22-192, Container design and maintenance, of Article VII, Donation Containers, of Chapter 22, Health and Sanitation, to add the language underscored below and delete the language struck through below:

“Sec. 22-192. - Container design and maintenance.

(a) Except when placed on public and private school properties, donation containers shall not exceed 96 cubic feet and shall not be larger than four feet wide by four feet deep by six feet tall. The donation containers shall be fully enclosed.

(b) Except when placed on public and private school properties, donation containers shall be painted or stained with a neutral or earth-tone color scheme. Bright primary, fluorescent, or contrasting colors are prohibited.

(c) Unless required by other provisions, no specific landscaping, screening fences, or walls are required around donation containers, but aesthetically pleasing site design considerations are encouraged.

(d) The donation container shall display a sign, not to exceed two square feet, containing only the following information:

(1) Permit holder's current contact information, including street address and telephone number.

(2) If permit holder is not the operator of the donation container, the operator's contact information including street address and telephone number must also be included.

(3) The city code enforcement division's street address and phone number.

(4) A note indicating allowable items.

(5) A note indicating hazardous materials and illegal dumping prohibited.

(6) The sign may contain the trademark or logo of the nonprofit organization benefitting from the container. The sign shall be in a neutral color with black lettering. No other signage is allowed.

- (e) Donation containers shall be maintained in good condition and appearance with no structural damage, holes, or visible rust.
- (f) Where donations containers located on public or private school properties do not meet the size provisions of Sec. 22-192(a) or color provisions of Sec. 22-192(b), they shall not be visible from any public right-of-way.”

Section 4. The Code of Ordinances is further amended by amending Section 22-194,

Permit required, of Article VII, Donation Containers, of Chapter 22, Health and Sanitation, by adding the language underscored below and deleting the language struck through below:

“Sec. 22-194. - Permit required.

- (a) The owner of a donation container shall apply for a permit from the city and submit a fee for each donation container as currently established or as hereafter adopted from time to time by resolution of the city council.
- (b) The permit applicant must have the written authorization from the property owner on whose property the donation container will be placed.
- (c) The permit holder shall employ a staff of full-time or paid drivers to collect the contents of the donation container.
- (d) The donation container must be owned or operated on behalf of an organization registered and operating in the state as a nonprofit (501(c)(3) corporation.
- (e) The permit holder must maintain general liability insurance for each donation container, at a minimum level of \$1,000,000.00, holding the city and property owner harmless.
- (f) Provided that the conditions in subsections (a) thru (e) of this section are met, each permit shall be valid for a period of 12 months, from the date first issued.
- (g) Each application must include a diagram of the proposed location, including any screening or landscaping proposed.
- (h) The location and specific site design features of the donation container placement must be approved by the city manager or his/her designee.
- (i) The permit holder and the property owner shall be jointly and severally liable for any violations of this article.
- (j) More than three complaints, in a one-year period, regarding a specific donation container, shall result in the permit being revoked. The complaints must be validated as being legitimate by the city code enforcement officer.
- (k) Unless otherwise said within, approval of a permit for said operation shall not exempt the use or permit holder from all applicable city ordinances including, but not limited to nuisance, signage, lighting, etc.
- (l) All existing donation containers must comply with this article within 60 days of the effective date of the ordinance from which this article is derived.”

Section 5. Any person who shall intentionally, knowingly, recklessly, or with criminal negligence, violate any provision of this Ordinance, shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed \$2000. Each day of violation shall constitute a separate offense.

Section 6. It is the intent of the City that this Ordinance shall comply in all respects with the applicable provisions of the United States Constitution, the Texas Constitution, and the Charter of the City of Tomball. In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

Section 7. This Ordinance shall take effect fourteen (14) days from and after its passage and the publication of the caption hereof, as provided by law and the City's Home Rule Charter.

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 20TH DAY OF JUNE 2016.

COUNCILMAN HUDGENS	<u>ABSENT</u>
COUNCILMAN STOLL	<u>AYE</u>
COUNCILMAN DEGGES	<u>AYE</u>
COUNCILMAN TOWNSEND	<u>AYE</u>
COUNCILMAN KLEIN QUINN	<u>AYE</u>

SECOND READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 5TH DAY OF JULY 2016.

COUNCILMAN HUDGENS	<u>AYE</u>
COUNCILMAN STOLL	<u>AYE</u>
COUNCILMAN DEGGES	<u>ABSENT</u>
COUNCILMAN TOWNSEND	<u>AYE</u>
COUNCILMAN KLEIN QUINN	<u>AYE</u>

Gretchen Fagan
Gretchen Fagan, Mayor

ATTEST:

Doris Speer
Doris Speer, City Secretary