

**CITY OF LAVON, TEXAS**

**ORDINANCE NO. 2023-02-03**

Regulating Unattended Donation/Collection Boxes

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAVON, TEXAS AMENDING CHAPTER 4 "BUILDING REGULATIONS" OF THE CODE OF ORDINANCES BY ADDING ARTICLE 4.10 "UNATTENDED DONATION/COLLECTION BOXES"; PROVIDING A PENALTY CLAUSE FOR EACH OFFENSE; PROVIDING SAVINGS, REPEALING AND SEVERABILITY CLAUSES; PROVING FOR PUBLICATION; PROVIDING FOR AN EFFECTIVE DATE AND DELAYED ENFORCEMENT FOR EXISTING OPERATORS AND OWNERS; AND FINDING AND DETERMINING THE MEETING AT WHICH THIS ORDINANCE IS ADOPTED TO BE OPEN TO THE PUBLIC AS REQUIRED BY LAW.**

**WHEREAS**, the City of Lavon (hereinafter referred to as "City") is a Home Rule municipality organized under the Constitution and laws of the state of Texas; and

**WHEREAS**, the City Council of the of the City (the "City Council") desires to adopt regulations regarding unattended donation or collection boxes ("UDBs") located within the City, including regulations for the placement, operation, and use of UDBs to control negative externalities resulting from the use of said boxes, including the accumulation of used, broken, or soiled items that constitute trash, rubbish, or junk; broken, unsightly, or dangerous boxes; hazards to pedestrians, motor vehicle users, and others due to the placement of such boxes; and negative impacts on property values and the health, safety, and welfare of the community; and

**WHEREAS**, the City Council finds that the orderly and uniform regulation of UDBs is a substantial factor in guiding the attractive and aesthetic development of properties in accordance with the comprehensive plan, thereby avoiding detrimental impacts of UDBs on the appearance of the City; and

**WHEREAS**, the City has minimum parking requirements to ensure adequate parking for uses in the various zoning districts, and the City has a legitimate governmental interest in maintaining sufficient parking spaces; and

**WHEREAS**, the City Council desires to ensure that parking lots within the City, and other areas where UDBs may be located, are safe for donors, with sufficient visibility, separation from traffic, and standard maintenance procedures to reduce dangers for donors; and

**WHEREAS**, this Ordinance regulates the time, place, and manner of the placement of UDBs in the City, does not regulate the content, topic, subject matter, or viewpoint of any UDBs or donations to such UDBs, and does not have a content-based purpose or justification; and

**WHEREAS**, these regulations are narrowly tailored to serve a significant government interest to promote the health, safety, and welfare of individuals making donations in these UDBs,

and to reduce crime in the City, and such interest would be achieved less effectively without these regulations; and

**WHEREAS**, the regulations for where these UDBs may be placed under this Ordinance are narrowly tailored to serve the significant governmental interest described in the preceding recital; and

**WHEREAS**, this Ordinance shall not be interpreted in a manner inconsistent with the First Amendment of the United States Constitution; and

**WHEREAS**, these regulations ensure the protection of property values, the preservation of the character of the various neighborhoods, the creation of an attractive and harmonious community, and protection against interference with the historic character of designated areas; and

**WHEREAS**, these regulations do not entirely eliminate all of the harms that may be created by the installation of UDBs, but strike an appropriate balance that preserves ample channels of communication for UDB operators, while still reducing and mitigating the extent of the harms caused by the UDBs; and

**WHEREAS**, having considered the proposed amendments and the appropriateness of the amendments, the City Council does hereby find that the amendments described herein are for the benefit of the health, safety, and welfare of the citizens of the City.

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

**SECTION 1. INCORPORATION OF PREMISES.** The above and foregoing premises are (i) true and correct and are incorporated herein and made a part hereof for all purposes, and (ii) legislative findings of the City Council.

**SECTION 2. FINDINGS.** After due deliberations and consideration, the City Council has concluded that the adoption of this Ordinance is in the best interests of the City and of the public health, safety, and welfare.

**SECTION 3. AMENDMENT.** Chapter 4 "Building Regulations" of the City's Code of Ordinances is hereby amended to add Article 4.10 "Unattended Donation/Collection Boxes" to read entirely as follows:

**Article 4.10 – UNATTENDED DONATION/COLLECTION BOXES**

4.10.001. Purpose. The purpose of these regulations is to promote the health, safety, and welfare of the public by providing minimum standards for the operation of unattended donation/collection boxes (UDB). A UDB shall be considered an accessory use of the property on which the UDB is located.

4.10.002. Definitions.

1. "Director" means the City Manager and his or her designee.

2. "Donated Material" means salvageable personal property, such as clothing, books, textiles, shoes, and other salvageable household items that are collected for periodic transport off-site for processing and redistribution.
3. "Principal Building" means the main building on the Property where the UDB is or is proposed to be placed, constituting the main use for zoning of the Property.
4. "Property" means the real property on which a UDB is or is proposed to be placed.
5. "Property Owner" means the owner of the Property, or its authorized agent or representative.
6. "Unattended Donation/Collection Box" or "UDB" means any donation and/or collection box located on a Property outside of the Principal Building that accepts Donated Material that is unstaffed and has no employee or representative of the UDB Operator present to accept donations.
7. "UDB Operator" means a person or entity that utilizes and/or maintains a UDB to solicit donations or collections of Donated Material in compliance with a UDB Permit.
8. "UDB Permit" means the city's permit required for placement, operation, or maintenance of a UDB as described in this article.

#### 4.10.003. Permit required.

1. It shall be unlawful to place, operate, maintain, or allow a UDB on any real property unless the UDB Operator first obtains an annually renewable UDB Permit from the city. A separate application and UDB Permit shall be required for each UDB.
2. The UDB Permit applicant shall be the UDB Operator, and the UDB Permit may not be transferred, conveyed, or otherwise assigned to another person or entity.
3. Decisions regarding UDB Permit applications shall be made by the Director, who shall be considered the investigating official acting for the city.
4. All permitted UDBs will be issued a permit sticker that must be displayed on the UDB at all times.

#### 4.10.004. Application Requirements.

Applicants for a UDB Permit shall file a written, sworn application with the city on a form provided by the city. All applications shall include:

1. A signed agreement stating that the Property Owner and UDB Operator will abide by the processes and requirements of this article;
2. A non-refundable application fee established in the City's Fee Schedule;
3. A signed authorization from the Property Owner to allow placement of the UDB;
4. A signed acknowledgement of responsibility by the Property Owner and the UDB Operator;
5. Proof of general liability insurance in a form acceptable to the city of at least \$1,000,000 covering the applicant's UDB and naming the city as an additional insured, and such other additional insurance as the city may require;

6. For nonprofit UDB Operators, evidence that the nonprofit is recognized by the Internal Revenue Service as such, or for for-profit UDB Operators, proof of an active business tax certificate;
7. Proof of an active business tax certificate for the primary business on the Property;
8. The name, address, email, website (if available), and telephone number of the UDB Operator and Property Owner, including 24-hour contact information;
9. Photographs of the Property and adjacent properties;
10. A site plan containing:
  - a. Location and dimensions of the Property boundaries;
  - b. Location of all buildings on the Property;
  - c. Proposed UDB location;
  - d. Distance between the proposed UDB, Property lines, and buildings, including the Principal Building;
  - e. Location and dimensions of all existing and proposed driveways, garages, carports, parking spaces, maneuvering aisles, pavement, and striping/markings; and
  - f. And other site information as may be requested by the Director.
11. Elevations showing the appearance, materials, and dimensions of the UDB, including the information required in this Section to be placed on the UDB Permit sticker.
12. A description and/or diagram of the proposed locking mechanism of the UDB.
13. A maintenance plan (including graffiti removal, pick-up schedule, and plans for litter and trash removal on and around the UDB) that is sufficient to prevent/eliminate concerns related to public health, safety, and welfare.
14. Any other reasonable information regarding time, place, and manner of the UDB operation, placement, and/or maintenance that the Director requires to evaluate the proposal consistent with the requirements of this Section.

#### 4.10.005. Permit expiration and renewal

1. Unless renewed as described herein, each UDB Permit shall expire and become null and void annually on the anniversary of its date of issuance.
2. A UDB Operator may apply for UDB Permit renewal by submitting an application to the city at least one (1) month prior to the expiration of the active UDB Permit on a form provided by the city. Except as otherwise provided below, all application information, agreements, consents, authorizations, certifications, and acknowledgements required for the original application shall be in effect for the renewal term, unless otherwise revoked by the Property Owner or UDB Operator, replaced with updated documentation, required below, or new application materials are otherwise required by the city. All renewal applications shall be filed with the city and shall include:
  - a. Photographs of the existing UDB;

- b. A non-refundable application renewal fee established in the City's Fee Schedule; and
- c. Proof of continued general liability insurance in a form acceptable to the city of at least \$1,000,000 covering the applicant's UDB and naming the city as an additional insured, and such other additional insurance as the city may require.

#### 4.10.006. Permit approval.

The Director shall either approve or deny an application for a new UDB Permit, or renewal of a UDB Permit, within thirty (30) days of receipt of a complete application and payment of the applicable fee, however, failure of city staff to approve in such time does not grant automatic approval. The Director shall not issue a UDB Permit or renewal unless, in addition to other requirements of the city, each of the following is true:

- 1. The applicant has submitted a complete and accurate application accompanied by the applicable fee;
- 2. There are no pending citations, unpaid fines, or unresolved violations or complaints related to any UDB managed by the proposed UDB Operator;
- 3. All existing unpermitted UDBs that are managed by the proposed UDB Operator have been removed;
- 4. Any verified nuisance on the Property has been abated, and any case of a complaint to the city regarding nuisances on the Property has been closed; and
- 5. The application is consistent with all requirements of this article.

Any person denied a permit shall have the right to appeal such action. In such case, the procedure shall be the same as in revocation.

#### 4.10.007. Location.

- 1. No UDB shall be located within 1,000 feet of any other UDB or on any Property where another UDB is located. The Property must be platted. In the case of a shopping center or office development that consists of multiple platted lots, the Director shall treat the shopping center or office development as if it is one contiguous lot.
- 2. A UDB is only permitted on a Property that also contains a Principal Building that is occupied and/or contains at least one operating business.
- 3. UDBs are prohibited within any required building setback, landscaping, buffer yard, city easements, rights-of-way or within thirty (30) feet of a right-of-way, floodplain, driveway, parking spaces, fire lanes, or within ten (10) feet of any property line.
- 4. UDBs shall not block or impede access to:
  - a. Required parking or driveways;
  - b. Pedestrian routes;
  - c. Emergency vehicle routes;
  - d. Building ingress and egress;
  - e. Required handicapped accessibility routes;
  - f. Required easements;
  - g. Trash enclosure areas or access to trash bins/trash enclosures;
  - h. Traffic (including traffic flow) nor visually impair any motor vehicle operation within a parking lot, driveway, or street; or
  - i. Functioning exhaust, ventilation, or fire extinguishing systems.
- 5. The UDB must be visible from inside the Principal Building and be no more than ten (10) feet from a continually operating light source of at least one (1) foot candle.

6. The UDB must be placed on an improved surface.
7. At least one (1) stacking or parking space shall be required for use of persons accessing the UDB.

#### 4.10.008. Physical Attributes.

UDBs shall:

1. Be fabricated of durable and waterproof materials;
2. Be placed on a durable pad site with a metal tray capable of catching any leaked or seeping materials;
3. Not exceed 175 cubic feet in size or six feet, six inches in height.
4. Not be electrically or hydraulically powered or otherwise mechanized;
5. Not be a fixture of the Property or considered an improvement to real property;
6. Have one color that is not high-intensity or fluorescent, including associated signage;
7. Be screened according to the following requirements:
  - a. Each UDB shall be screened from the view of the public on three (3) sides, or if located on a corner of a lot, on a minimum of two (2) sides whereby the screening blocks the view from the adjacent streets;
  - b. Minimum screening shall consist of a six-foot (6) wood fence, or comparable materials upon prior approval of the Director;
  - c. All screening should be conducted to prevent the storage or placement of donations outside the UDB, with the screening fence itself being no more than two (2) feet from the screened UDB; and
  - d. Screening shall be maintained in vertical and good condition, with no rotted or missing slats or boards.
8. Have the following information conspicuously displayed on at least two-inch type visible from the front of the UDB:
  - a. The name, address, 24-hour telephone number, and, if applicable, the internet web address and email address of the Property Owner and UDB Operator;
  - b. Address and parcel number of the Property;
  - c. Instructions on the process to register a complaint regarding the UDB to the city code enforcement division;
  - d. The type of material that may be deposited;
  - e. A notice stating that no material shall be left outside the UDB;
  - f. The pickup schedule for the UDB; and
  - g. The UDB Permit medallion sticker from the city.
9. All signage shall comply with any and all applicable sign regulations in the City's Code of Ordinances.
10. Comply with any required disclosures under State law in accordance with such laws.

#### 4.10.009. Maintenance.

1. The UDB area, outside of the UDB, shall be free of any Donated Material, litter, debris, or other materials within thirty (30) feet of the UDB.
2. UDBs shall be maintained and in good working order. Items to be repaired, removed, and/or abated include, but are not limited to, graffiti, removed or damaged signs and notifications, peeling paint, rust, and broken collection operating mechanisms.
3. UDBs cannot be used for the collection of solid waste or any hazardous materials.

4. The Property Owner and UDB Operator shall be responsible for abating and removing all litter, debris, or other materials in violation of this article in the area surrounding the UDB within twenty-four (24) hours of written or verbal notice from the Director. If the materials in violation are not removed, the City may remove all items found outside the UDB.

#### 4.10.010. Enforcement and Compliance.

1. Whenever the Director determines that a UDB with a valid UDB Permit does not conform to any requirement in this article, the Director shall promptly notify the Property Owner and UDB Operator through electronic mail of the violation. The violation must be abated, and proof of abatement must be submitted to the city within ten (10) days after receipt of such notification. If the UDB remains in violation after such ten (10) day period, the UDB shall be removed, and the UDB Permit revoked.
2. If a UDB does not have a current, valid UDB Permit, then the UDB shall be removed and impounded by the City within 24 hours after the Property Owner or UDB Operator is notified of the violation.
3. The Property Owner shall have the right to rescind consent for a UDB on the Property, provided written notice of the rescission is provided to the UDB Operator and the city, and the UDB shall be removed from the Property within 24 hours of such rescission.
4. Each day that a violation of a requirement of this article is not abated constitutes a new and separate offense.
5. Any UDB impounded by the city shall be released to the Property Owner upon payment of all applicable impoundment and storage fees. Storage fees will be established in the City's Fee Schedule. If an impounded UDB is not claimed within thirty (30) days of impoundment by the City, the City may dispose of the UDB.
6. The Property Owner and UDB Operator are jointly and severally liable and responsible for all fees, citations, and compliance with these regulations.
7. All notices for unpermitted UDBs shall be in writing and personally delivered to the Property Owner and UDB Operator or sent by United States mail, postage paid, and addressed to the Property Owner at their last known address as it appears on the UDB itself. If the city cannot reasonably determine the name and/or address of the unpermitted UDB Operator, placing the written notice on the UDB itself constitutes sufficient notice.

#### 4.10.011. Revocation of permit.

1. Any UDB Permit issued hereunder may be revoked by the Director if the UDB Permit holder has received three (3) notices of violation for violations of this article within a twelve (12) month time period, has knowingly made a false material statement in the application, or otherwise becomes disqualified for the issuance of a UDB Permit under the terms of this article. The UDB shall be immediately removed upon permit denial, suspension, or revocation.
2. Notices for revoking a UDB Permit under this Section shall be given to the UDB 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.
3. The UDB Operator shall have ten (10) days from the date of a notice of revocation in which to file a written notice with the Director of their appeal from the revocation order. The Director shall provide for a hearing on the appeal not later than thirty (30) days after the notice of the appeal is filed. An appeal hearing shall be to the City Council, whose decision shall be final and binding.

4. Any appeal of revocation pursuant to this Section shall stay the revocation until said revocation is finalized.
5. If the revocation is affirmed, the UDB Operator shall remove said UDB no later than 24 hours after said decision. Upon expiration of such 24-hour period, the UDB shall have a non-compliant status and be subject to immediate impoundment by the city without further notice.
6. In the event the UDB Permit of any UDB Operator is revoked by the Director, no additional UDB Permit shall be issued to such person or entity within one (1) year of the date such UDB Permit was revoked.
7. In the event that any UDB Operator has two (2) or more UDB Permits revoked within a twelve (12) month period, then all UDB Permits issued to such person or entity shall be revoked, and all UDBs operated by such person or entity shall be removed.

#### 4.10.012. Penalty.

Any person that violates this Article shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined a sum not exceeding \$500. Each continuing day's violation shall constitute a separate offense. A culpable mental state is not required for the commission of an offense under this article, and none shall be pleaded or proven in the prosecution of a violation of this article. The penalty provisions imposed under this Article shall not preclude the city from filing suit to enjoin the violation. The city retains all legal rights and remedies available to it pursuant to local, state, and federal law.

**SECTION 4. SAVINGS/REPEALING CLAUSE.** All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict, but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

**SECTION 5. SEVERABILITY.** Should any section, subsection, sentence, clause, or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City hereby declares that it would have passed this Ordinance, and each section, subsection, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, and phrases be declared unconstitutional or invalid.

**SECTION 6. PENALTY.** Any person, firm, corporation, or entity violating this Ordinance, as it exists or may be amended, shall be subject to the penalty provision described in added Section 4.10.012. Nothing in this article shall limit the remedies available to the City in seeking to enforce the provisions of this article or other law, and all remedies shall be cumulative and not exclusive.

**SECTION 7. PUBLICATION AND EFFECTIVE DATE.** This Ordinance shall become effective immediately upon its adoption and its publication as required by law.

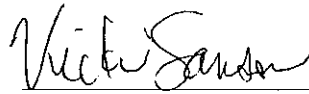
**SECTION 8. EXISTING UDBs.** The City Council hereby orders staff to provide written notice of this Ordinance to all owners and operators of UDBs in place on the effective date of this Ordinance, and owners of real property having such UDBs. Such owners and operators shall



thereafter be given a period of ninety (90) days to bring any existing UDBs into compliance with this Ordinance.

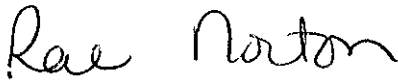
**SECTION 9. OPEN MEETING.** That it is hereby found and determined that the meeting at which this Ordinance was passed was open to the public as required by law and that public notice of the time, place, and purpose of said meeting was given, all as required by Chapter 551, Texas Government Code.

**DULY PASSED and APPROVED** by the City Council of the City of Lavon, Texas, on the 7<sup>th</sup> day of February 2023.



Vicki Sanson  
Mayor

ATTEST:



Rae Norton  
City Secretary

