

ORDINANCE NO. 102-2016

**TITLE: AMEND BARBERTON DEVELOPMENT CODE
“DONATION BOXES”**

AN ORDINANCE AMENDING THE BARBERTON DEVELOPMENT CODE BY ADDING A SECTION ESTABLISHING “DONATION BOXES,” TO CHAPTER 1250 AS SECTION 1250.11.

WHEREAS, at the September 21, 2016 Planning Commission meeting, the Planning Commission respectfully recommended to City Council the addition of a new section entitled, “Donation Boxes,” and the addition of its definition; and

WHEREAS, a public hearing was held in Council Chambers on September 26, 2016, regarding this proposed text amendment.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Barberton, State of Ohio:

SECTION 1. That Council hereby amends the Barberton Development Code by adding the following section to establish “Donation Boxes” in Chapter 1250 as 1250.11:

SECTION 1250.11 DONATION BOXES

DEFINITIONS

- A. “Contents” means any items in or on a donation box or any items surrounding a donation box that appear to be donated or abandoned goods or rubbish.
- B. “Director” means the Director of the Department of Planning and Community Development or his/her designee, unless otherwise indicated.
- C. “Donation Box” means any receptacle designed with a door, slot, or other opening that is intended to collect and store donated goods, including but not limited to, clothing, shoes, or household items. “Donation Box” shall not include any receptacle that is physically attended at all times of collection by one or more persons, any receptacle that is located inside a building, receptacles exclusively used to recycle paper or any receptacle owned by a Governmental Agency.
- D. “Donation Box License” means a license issued for the operation and placement of a donation box in accordance with the provisions of this chapter.
- E. “Lessee” means any person or entity, other than the owner, in lawful control of the property.
- F. “Licensed Operator” means the operator listed on the donation box license application of a validly licensed donation box.
- G. “Operator” means any person or entity having actual control over a donation box, other than the owner, who is primarily responsible for the placing, emptying, servicing, maintaining, and removing of the donation box.
- H. “Owner” means a person or entity in whom ownership, dominion, control, or title is vested.
- I. “Parcel” means contiguous parcel or parcels, described in the Summit County Land Records, under single ownership, developed or used for a single unified use, including as vacant land.

GENERAL PROHIBITIONS

- A. No owner or operator of a donation box shall place or maintain a donation box on any property in the City of Barberton without first obtaining and maintaining a valid license for such donation box from the Department of Planning and Community Development in accordance with the requirements of this chapter.

- B. No owner or operator of a donation box shall fail to service and maintain any donation box in the City of Barberton in accordance with the standards and requirements of this chapter.
- C. No owner or lessee of property in the City of Barberton shall allow a donation box to be placed or remain on the property in violation of this chapter.

DONATION BOX LICENSE APPLICATION; FEE; ISSUANCE; TERM

A. Application.

Before placing a donation box on any property in the City of Barberton, the owner of the donation box shall file a license application with the Department of Planning and Community Development for each donation box, on the form provided by the City, which shall contain the following information:

- 1. If the Applicant is a Business Entity:
 - a) The legal name, business address, daytime phone number, email address of applicant, and tax identification number of the organization. A copy of the current articles of incorporation or other operating or formation documents for the organization.
 - b) The name, title, address, phone number, and email address of the operator of the donation box.
- 2. If the Applicant is an Individual:
 - a) The name, address, daytime phone number, email address of applicant, and social security number of the individual.
 - b) A copy of a valid form of state or federal identification for the owner.
- 3. For all Applicants:
 - a) A signed authorization from the owner or lessee of the property where the donation box will be placed, which shall state the owner or lessee's consent to have the donation box placed on the property and include the owner or lessee's name, address, phone number, and email address (if any).
 - b) Current photos of the donation box (taken within 6 months of the filing of the license application), showing all sides of the donation box, excluding the bottom, including a readable view of any text displayed on the donation box.
 - c) A property site plan showing the proposed placement of the donation box.
 - d) A certificate of liability insurance providing evidence of liability insurance coverage in an amount determined by the director.
 - e) A One Hundred Dollar (\$100.00) non-refundable annual license application fee per donation box, which shall not be prorated based upon the time of year the license application is filed.
 - f) Such other information as the director shall require.

B. Issuance

- 1. No donation box license shall be issued unless the applicant files a valid application as required by this chapter.
- 2. No donation box license shall be issued if the donation box owner or operator, or the property owner or lessee listed on the application has been convicted of three or more violations of this chapter or is liable for any unpaid charges under this chapter.
- 3. Prior to issuing a donation box license under this chapter, the director or his/her designee shall review and approve a property site plan.
 - a) No donation box license shall be issued if the Director of the Department of Planning and Community Development or his or her designee determines that the placement of the donation box as shown on the site plan would violate any provision of the City of Barberton Zoning Code or create a sight obstruction or other hazard.
 - b) No donation box license shall be issued if, in the determination of the Director of the Department of Planning and Community Development or his/her designee, the issuance of a license and the placement of a donation box on the subject property would create an unreasonable density of donation boxes in the area relative to the surrounding population and commercial activity.

4. No more than two (2) donation box licenses shall be issued at any time for any parcel, unless specifically approved by the director.
5. No more than one (1) donation box owner may be issued a license for any individual parcel.

C. License Term

Each license issued under this chapter shall be valid from the date of issuance until the following December 31st.

D. Duty to Update Application

No applicant shall fail to update its donation box license application upon any change in the information contained on the donation box license application at any time, including, but not limited to, after a donation box license has been issued.

STANDARDS

A. Standards for Display, Service, Maintenance and Repair

Each donation box shall be maintained according to the following standards:

1. No donation box shall be placed on any property in the City of Barberton unless such donation box clearly and prominently displays, at all times, the name, address, and daytime phone number of the owner or licensed operator of the box. No donation box shall be placed on any property in the City of Barberton unless a license sticker, provided by the director upon issuance of a donation box license, is affixed and maintained prominently on the exterior of the donation box. No person shall tamper with, remove, deface, damage, or destroy any license sticker affixed to any donation box.
2. No donation box shall be placed on any surface other than evenly paved surface.
3. No donation box shall be placed in any location other than the location specified in a site plan approved by the Department of Planning and Community Development.
4. Every donation box shall be regularly emptied, serviced, and maintained so that the contents of the donation box are not overflowing, over-packed, exposed to the elements, or otherwise untidy or unsightly.
5. Every donation box shall be maintained in a neat, clean, and attractive condition and in good repair at all times. Specifically, and without limiting the foregoing, each donation box shall be serviced and maintained so that it is free of the following:
 - A. Dirt and grime;
 - B. Chipped, Peeling, Cracked or Faded Paint or Graffiti;
 - C. Rust or Corrosion;
 - D. Cracks or Dents; and Broken, Defective, Dangerous, or Missing Pieces or Components.

B. Duty to Service Upon Request

Each donation box owner or operator shall service, repair, and/or empty, as appropriate, any donation box within forty-eight (48) hours of notification by the owner or lessee of the property that the donation box is full or otherwise in need of maintenance according to the standards set forth in this chapter.

ORDERING IMPROPER CONDITIONS TO BE REMEDIED

A. Notice and Order to Comply

Upon determination of the director that a donation box has been placed or is being maintained in violation of this chapter, the director or his/her designee shall issue a notice of the violating conditions and a written order to correct or remove the conditions within five (5) business days of mailing or posting, whichever is first, (a "Notice and Order to Comply" or "Order"). The notice and order to comply shall be posted on the donation box and served upon the following interest parties, by personal service or certified mail:

1. The owner of the property, at the address provided in the most recent donation box license application or at the address where the Summit County Fiscal Office mails the tax bill for the property; and
2. Any lessee of the property, at the property; and
3. The owner of the donation box, at the address provided in the most recent donation box application, or if no application has been filed regarding the donation box to any address shown on the exterior box; and
4. Any licensed operator of the donation box, at the address provided in the most recent donation box application.

B. Emergency Order

Whenever the director finds that a violation of this chapter constitutes an emergency, which requires immediate action (within 24 hours) to protect the public health, safety or welfare or to prevent imminent property damage or injury, the director may, without notice, issue an order to comply stating the existence of such an emergency and requiring that such immediate action be taken as he/she deems necessary to abate or remedy the emergency condition. Any person to whom the order is directed shall comply therewith immediately. Additionally, the director may immediately take any action that he/she deems necessary to abate or remedy the emergency condition.

APPEAL OF THE ORDER TO COMPLY

A. Appeal Process

Because actions of administrative officials and bodies under city regulation are subject to error or dispute, the Board of Zoning and Building Appeals may hear appeals of such actions and modify them if the board finds an error has been made. The Barberton Development Code Section 1310.03 (c) outlines the appeal procedure.

NONCOMPLIANCE; PENALTY

If an order has not been complied with at the expiration of the five (5) business day period provided for in the notice and order to comply, the following shall occur:

- A. Any donation box license issued for that donation box shall be revoked by the director without further hearing, notwithstanding the provisions of Section 1310.03 (c) of this code.
- B. The director or his/her agent is authorized to remedy the violating condition, up to and including removing the donation box and its contents from the property, at the sole expense of the interested parties.
- C. An administrative penalty shall be imposed upon the interested parties in the amount of Two Hundred Fifty Dollars (\$250.00) per order.
 1. All interested parties shall be jointly and severally liable for any administrative penalties imposed and any and all expenses incurred by the City in remedying the violating condition and/or removing the donation box and its contents under this chapter (together the “charges”).
 2. All charges incurred shall be reported to the Director of Finance , who shall mail a statement of the charges to all interested parties at the addresses provided in the most recent application or tax record, after thirty (3) days, the charges remains unpaid, the Director of Finance may certify the property owner’s name, the total amount of the property to the Summit County Fiscal Officer to be entered upon the tax duplicate to be a lien on the land from the date of entry, to be collected as other taxes and assessments and returned to the city, pursuant to Ohio Revised Code § 731.54. Nothing in this section is intended to limit or restrict in any way the city’s authority to take lawful collection action against any and all interest parties for payment of the charges.

- D. Any donation box removed from property pursuant to this section shall be stored by the city for a period of thirty (30) days, at the sole expense of the donation box owner. Donation box owners or licensed operators may retrieve donation boxes from the city upon payment of all charges incurred, including the expenses incurred by the city in storing the donation box at a rate of Twenty Five Dollars (\$25.00) per day. If a donation box stored by the city is not so retrieved by the donation box downer or licensed operator within thirty (30) days of removal, the donation box shall be considered abandoned property, shall become the property of the city, and may be disposed of or otherwise utilized by the city.
- E. The contents of any donation box removed by the city under this chapter shall be considered abandoned property and may be disposed of or otherwise utilited by the city immediately upon clean-up or removal of the donation box and/or contents.

SECTION 2. That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were taken in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action were meetings open to the public in compliance with the law.

SECTION 3. That this ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, convenience and welfare of the City of Barberton and the inhabitants thereof, in order to facilitate this amendment in a timely manner, and provided it receives the necessary votes required by the City Charter, shall be in full force and effect from and after its passage and approval; otherwise to be in full force and effect from and after the earliest period allowed by law.

Passed _____ 2016

Clerk of Council

President of Council

Approved _____ 2016

Mayor