

## ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE amending Chapter 9.30 of the Lincoln Municipal Code relating to Donation Boxes by amending Section 9.30.010 relating to Definitions to set forth definitions of additional terms; repealing Section 9.30.020 relating to Legislative Intent; amending Section 9.30.030 relating to Prohibitions, to delete requirements for permits and prescribing percentage of proceeds that must be used for charitable purposes, and adding provisions requiring Disclosures on Donation Boxes and prohibiting Deceptive Representations; amending Section 9.30.040 relating to Permits, by deleting any requirement for a separate Donation Box Permit; amending Section 9.30.050 relating to Enforcement; Penalties; Injunction, to delete provisions making owners of property responsible for violations on their properties and provisions requiring Donation Box Permits; and repealing Section 9.30.060 relating to Exemptions; and repealing Sections 9.30.010, 9.30.030, 9.30.040, and 9.30.050 of the Lincoln Municipal Code as hitherto existing.

BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

Section 1. That Section 9.30.010 of the Lincoln Municipal Code be amended to read as follows:

**9.30.010 Definitions.**

As used in this chapter:

“**Bold letters**” shall mean a primary color on a white background so as to be clearly visible to the public.

“**Charitable organization**” shall mean a benevolent, educational, philanthropic, humane, patriotic, religious, or eleemosynary organization of persons organized for any lawful purpose or purposes not involving pecuniary profit or gain for its officers or members that has received a

determination that it is exempt under Section 501(c)(3) of the federal “Internal Revenue Code of 1986”, as amended, or a public, parochial or private school.

“**Donation Box**” shall mean a receptacle that is not enclosed by any other building, placed by a person for accepting donations of unwanted household items, clothing or other items of personal property, which may be reusable without additional reprocessing or alteration of the item, beyond cleaning or minor repair.

“**Paid Fundraiser**” shall mean a Person who is not an employee of a Charitable Organization who maintains or services a Donation Box, or collects donations made to a Donation Box and receives compensation in any form from a Charitable Organization for those services, including but not limited to a portion of the donations made or a portion of the proceeds of sale of donations made to the Donation Box.

“**Person**” shall mean an individual, organization, group, association, partnership, corporation, limited liability company, trust, any other legal entity, or any combination of legal entities.

“**Recycling Collection Container**” shall mean a container used exclusively for collection of waste products, such as used paper, cardboard, motor oil, glass, bottles, metal, cans, rags or other used material that requires additional reprocessing beyond cleaning or minor repair before it may be reused.

Section 2. That Section 9.30.020 of the Lincoln Municipal Code be and the same is hereby repealed.

**9.30.20 ——— Legislative Intent:**

——— (a) ——— ~~It has come to the attention of the council that commercial enterprises are soliciting donations of clothing, household items, or other items of personal property to donation boxes that appear to be for charitable purposes, but that such commercial enterprises may thereafter be selling~~

~~such items for profit with little or no benefit to any charitable organization. Maintenance of such donation boxes by commercial enterprises have the potential to deceive the public into believing that they are making contributions to charity, cause taxpayers to attempt to claim improper tax deductions on state and federal income tax returns in the mistaken belief that they have made deductions to a charitable organization, and divert donations from charitable organizations within the city that perform valuable services for the residents of Lincoln.~~

~~———— (b) ——— It is the purpose of this chapter to prevent deception and confusion of the public, prevent mistaken attempts to claim tax deductions for charitable contributions, and to support the public purposes and benefits of legitimate charitable organizations by prohibiting commercial enterprises from soliciting donations of household items, clothing or other items of personal property by the furnishing of commercial donation boxes on commercial properties, which result in gifts to such commercial enterprises that do not benefit charitable organizations or purposes.~~

Section 3. That Section 9.30.030 of the Lincoln Municipal Code be amended to read as follows:

**9.30.030 Prohibitions.**

~~———— (a) ——— No person shall place or hold out to the public any donation box for people to drop off articles of unwanted household items, clothing or other items of personal property, unless at least 80% of the gross proceeds from the sale of such items shall be utilized for charitable purposes.~~

(a) **Disclosures Required.** No Person or Charitable Organization, or agent of a Person or Charitable Organization, whether paid or not paid, shall place any Donation Box in a public place for solicitation purposes unless the Donation Box conspicuously discloses the following information in a typed or printed clearly legible form:

(1) The name, address, and telephone number of each Person that will take possession of the property deposited in the Donation Box or receive the proceeds of its sale, and whether each such Person is a Charitable Organization;

(2) If a Paid Fundraiser will maintain, service, or collect contributions deposited in the Donation Box, the name, address and telephone number of that Person, and the following disclosure, clearly and conspicuously displayed in bold letters at least two inches high:

**“MAINTAINED OR SERVICED BY A PAID FUNDRAISER”**

(3) If items placed in the Donation Box will be sold, the following disclosure, clearly and conspicuously displayed in bold letters at least two inches high:

**“DONATED ITEMS WILL BE SOLD FOR PROFIT”**

~~(b) No person shall place or maintain any Donation Box on any premises open to the public except when issued a permit by the Department of Building and Safety.~~

**(b) Deceptive Representations Unlawful.**

(1) It shall be unlawful to mark a Donation Box or any sign within 50 feet of the Donation Box in any manner that represents or implies that personal property placed in the Donation Box, or the proceeds of that personal property, is or will be donated to one or more Charitable Organizations if no portion of the property or proceeds will be so donated.

(2) It shall be unlawful to display the name, logo, trademark, or service mark of a Charitable Organization on a Donation Box or on any sign within 50 feet of the Donation Box if that Charitable Organization does not receive any of the personal property or any of the proceeds of that personal property placed in the Donation Box.

~~(c) The owner, lessee, or other person in control of the property where a Donation Box is being maintained and the person that owns, maintains, or operates a donation box in violation of this chapter shall be jointly and severally liable for any violation of this section.~~

**(c) Inapplicable to Recycling Collection Containers.** This section shall not apply to Recycling Collection Containers that are used exclusively for the collection of waste products for recycling.

Section 4. That Section 9.30.040 of the Lincoln Municipal Code is amended to read as follows:

**9.30.040 Permits: Building Code Requirements.**

~~(a) Any person wishing to place or utilize a donation box within the limits of the City of Lincoln in a place that is open to the public must obtain a Donation Box Permit from the Department of Building and Safety.~~

~~(b) Only entities or organizations that have a tax status under Section 501(c) (3) of the Internal Revenue Code, as amended, or a public, parochial or private school, may apply for and obtain a permit. Proof of such tax status or that the applicant is a public, parochial or private school and a letter of authority or permission from the owner of the real property upon which the donation box is to be located must accompany an application for a permit.~~

~~(c) A donation box that is subject to the provisions of this chapter must have clearly identified, in writing, on its face the charitable organization that is maintaining the donation box. A phone number and address for such entity must also be written on the donation box.~~

~~(d) Placement and maintenance of a Donation Box shall be subject to the provisions of the Lincoln Municipal Code, including Title 20, Building Code, and Chapter 22.05, Lincoln Construction Sign Code.~~

~~(e) The fee for a Donation Box Permit shall be \$150.00.~~

Section 5. That Section 9.30.050 of the Lincoln Municipal Code be amended to read as follows:

**9.30.50 Enforcement; Penalties; Injunction.**

(a) The owner, lessee, or other person in control of the property where a donation box is being maintained in violation of this chapter and the person or entity which owns, maintains, or operates a Donation Box in violation of this chapter shall each be responsible for any violation of this chapter.

(b) Code enforcement officers of the Department of Building and Safety and the Lincoln Police Department are hereby authorized to issue citations for any violations of this chapter.

(c) Any violation of this chapter shall be a misdemeanor, and any person convicted thereof shall be punished by imprisonment in the county jail for a period not to exceed six months, or by a fine of not to exceed \$500.00, recoverable with costs, or both. Each day that a violation of this chapter continues shall constitute a separate and distinct offense and shall be punishable as such.

(d) Notwithstanding the foregoing, the City Attorney may institute an injunction action in the name of the City to assure compliance with the terms of this chapter.

Section 6. That Section 9.30.060 of the Lincoln Municipal Code be and the same is hereby repealed.

**~~9.30.060 Exemption:~~**

~~—————This chapter shall not apply to any donation box that is maintained by and located on premises that are owned or leased by any charitable organization.~~

Section 7. That Sections 9.30.010, 9.30.030, 9.30.040, and 9.30.050 of the Lincoln Municipal Code as hitherto existing be and the same are hereby repealed.

Section 8. That this ordinance shall take effect and be in force from and after passage and publication in one issue of a daily or weekly newspaper of general circulation in the City, according to law.

Introduced by:

\_\_\_\_\_

Approved as to Form & Legality:

\_\_\_\_\_  
City Attorney

Approved this \_\_\_ day of \_\_\_\_\_, 2014:

\_\_\_\_\_  
Mayor