

**ORDINANCE 2023-02
CITY OF BELLMEAD**

AN ORDINANCE OF THE CITY OF BELLMEAD, TEXAS AMENDING THE CODE OF ORDINANCES, ARTICLE XI. – UNATTENDED DONATION/COLLECTION BOXES; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Unattended Donation/Collection Boxes (UDCB) were first regulated in 2019 with Ordinance 2019-11; and,

WHEREAS, the amendment will update the annual fees by referring them to the Master Fee Schedule; and,

WHEREAS, the amendment will include additional requirements for approval and additional regulations for the UDCB site maintenance and location.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BELLMEAD, TEXAS AS FOLLOWS:

SECTION 1.

Sec. 11-150. – Purpose.

The purpose of these regulations is to promote the health, safety, and welfare of the public by providing minimum performance standards for the operation of unattended donation/collection boxes ("UDCBs"). These regulations serve to protect the aesthetic well-being of the community, to promote the tidy and ordered appearance of property, and to ensure adequate education of the public regarding the purpose of UDCBs by regulating UDCBs. This includes establishing criteria to ensure that material is not allowed to accumulate outside of the UDCBs, the UDCBs remain free of graffiti and blight, UDCBs are maintained in sanitary conditions, and residents and/or users are fully informed of those who operate the UDCBs so that they can be contacted if there are any blight-related questions or concerns.

Sec. 11-151. – Conflicting provisions.

Where a conflict exists between the regulations or requirements in this article and applicable regulations or requirements contained in other articles of the Code, the applicable regulations or requirements of this article shall prevail.

Sec. 11-152. – Violation.

Failure to comply with any of the provisions of this article is declared to be prima facie evidence of an existing violation, a continuing blight, and a declared public nuisance and shall be abated by the City of Bellmead in accordance with the provisions of this article. Any person in violation will be subject to citations, administrative penalties, civil action and/or other legal remedies.

Sec. 11-153. – Responsibility.

The parcel owner and the UDCB operator (operator) have joint and several liability for violations of this article, including fees, citations, civil actions, and/or legal remedies relating to a UDCB. The parcel owner remains liable for any violation of duties imposed by this article even if the parcel owner has, by agreement, imposed on the operator the duty of complying with the provisions of this article.

Sec. 11-154. – Definitions.

Accessory activity means an activity that is incidental to, and customarily associated with, a specified principal activity.

Agent means a person who is authorized by the parcel owner to act on their behalf to be the applicant for a UDCB permit. To be considered an agent, a person must be given express written authorization from the parcel owner to apply specifically for a UDCB permit. For the purpose of this article, a person who is only given general authorization to act on the behalf of a parcel owner for various activities and transactions regarding a property is not considered an agent.

Blight or Nuisance means the conditions as set forth in Chapter 13 of the City of Bellmead Code of Ordinances.

City manager means the City Manager of the City of Bellmead and his or her designees.

Donated/collected material means salvageable personal property, such as clothing, books and household items that is collected for periodic transport off-site for processing

or redistribution or both.

Parcel owner or property owner means the owner of real property on which a UDCB is located or is proposed to be placed.

Person includes an individual, sole proprietorship, corporation, association, nonprofit corporation, partnership, joint venture, a limited liability company, estate, trust, public or private organization, or any other legal entity.

Principal activity means an activity that fulfills a primary function of an establishment, institution, household, or other entity.

Principal building means a main building that is occupied by a principal activity.

UDCB operator or operator means a person or entity who utilizes or maintains a UDCB to solicit donations/collections of salvageable personal property.

UDCB permit or permit means the City of Bellmead's annually renewable permit required to place, operate, maintain, or allow a UDCB within the Bellmead city limits.

Unattended donation/collection boxes or UDCBs means unstaffed drop-off boxes, containers, receptacles, or similar facility that accept textiles, shoes, books and/or other salvageable personal property items to be used by the operator for distribution, resale, or recycling.

Unpermitted UDCB means a UDCB established either without a UDCB permit or with a UDCB permit that was issued in error or on the basis of incorrect or incomplete information supplied, or in violation of any law, ordinance, rule, or regulation.

- (a) With the exception of UDCBs described in subsection (b), below, it is unlawful to place, operate, maintain or allow a UDCB on any real property unless the parcel owner/agent and operator first obtain an annually renewable UDCB permit from the City of Bellmead. A separate UDCB permit is required for each UDCB.
- (b) UDCBs that are enclosed within a principal building shall not require a UDCB permit. However, UDCBs that are accessory to a principal activity on a property

owned or leased by the operator shall meet all other requirements of this article.

- (c) The UDCB permit applicant shall be the UDCB operator and the permit may not be transferred, conveyed, or otherwise assigned to another person or entity.
- (d) Decisions regarding UDCB permit applications shall be made by the city manager and the building inspector shall be considered the investigating official acting for the City of Bellmead.

Sec. 11-156. – Application requirements.

Applicants for permits under the article shall file a written, sworn application with the City of Bellmead. The UDCB permit application shall be made on a form provided by the City of Bellmead. All applications shall include:

- (1) A signed agreement stating that the parcel owner/agent and operator will abide by all the processes and requirements described in this article;
- (2) A nonrefundable annual application fee as listed on the Master Fee Schedule;
- (3) A signed authorization from the parcel owner/agent to allow placement of the UDCB;
- (4) A signed acknowledgement of responsibility from the parcel owner/agent and the operator for joint and several liability for violations of this article;
- (5) The name, address, email, website (if available) and telephone number of the UDCB operator and parcel owner, including twenty-four-hour contact information;
- (6) A vicinity map showing 1) the proposed location of the UDCB; and 2) the distance between the site and all existing UDCBs within one thousand (1,000) feet of the proposed UDCB location;
- (7) Photographs of the location and adjacent properties;
- (8) A site plan containing:
 - a. Location and dimensions of all parcel boundaries;
 - b. Location of all buildings;
 - c. Proposed UDCB location;

- d. Distance between the proposed UDCB, parcel lines, and buildings;
 - e. Location and dimension of all existing and proposed driveways, garages, carports, parking spaces, maneuvering aisles, pavement, and striping/markings; and,
 - f. Any other site information requested by the City Manager.
- (9) Elevations showing the appearance, materials, and dimensions of the UDCB, including the information required in this article to be placed on the UDCB and notice sign;
- (10) A description and/or diagram of the proposed locking mechanism of the UDCB;
- (11) A maintenance plan (including graffiti removal, pick-up schedule, and litter and trash removal on and around the UDCB) that is sufficient to prevent/eliminate blight-related conditions;
- (12) Any other reasonable information regarding time, place, and manner of UDCB operation placement and/or maintenance that the City Manager requires to evaluate the proposal consistent with the requirements of this article; and,
- (13) Proof of general liability insurance in a form acceptable to the city of a minimum \$1,000,000 coverage the applicant's UDCB and naming the City of Bellmead as an additional insured, and such other additional insurance as the city may require.

Sec. 11-157. – UDCB permit expiration and renewal.

- (a) Unless renewed as described in subsection (b) below, each UDCB permit shall expire and become null and void annually on the anniversary of its date of issuance.
- (b) A UDCB operator may apply for permit renewal by submitting to the City of Bellmead at least sixty (60) days prior to the expiration of the active UDCB permit. The UDCB permit renewal application shall be made on a form provided by the City of Bellmead. All applications shall be filed with the City of Bellmead and shall include:
 - 1) A signed agreement stating that the parcel owner/agent and operator will abide

- by all the processes and requirements described in this article;
- 2) Photographs of the existing UDCB;
 - 3) A nonrefundable annual application fee as listed on the Master Fee Schedule;
 - 4) A signed authorization from the parcel owner/agent to allow placement of the UDCB;
 - 5) A signed acknowledgement of responsibility from the parcel owner/agent and the operator for joint and several liability for violations of this article;
 - 6) The name, address, email, website (if available) and telephone number of the UDCB operator and parcel owner, including twenty-four-hour contact information; and,
 - 7) Any other reasonable information regarding time, place, and manner of UDCB operation, placement, and/or maintenance that the City Manager requires to evaluate the proposal consistent with the requirements of this article.
- (c) The City Manager shall either approve or deny the renewal of a UDCB permit within thirty (30) days of receipt of a complete renewal application and payment of the renewal fee.
- (d) The City Manager shall approve the renewal of a UDCB permit if he or she finds that no circumstances existed during the term of the UDCB permit or existed at any time during the review of the application for renewal that are inconsistent with any criteria required for approval of a new UDCB permit as specified in section 11-159 or that would justify the revocation of the UDCB permit as specified in section 11-166.

Sec. 11-158. – Requirements for the approval and renewal of a UDCB permit.

The director shall not issue a UDCB permit or renewal unless 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 UDCB managed by the proposed operator;

- (3) All existing unpermitted UDCBs that are managed by the proposed operator have been removed;
- (4) Any verified blight on the subject property has been abated and any case of a complaint to the city regarding blighted conditions on the subject property has been closed; and,
- (5) The application is consistent with all the requirements of this article.
- (6) For renewals, the site does not have a history of having nuisance conditions even if incidents of blight were abated. For the purpose of this subsection, “history of having a nuisance conditions” means a notice of violation from the city has been sent to the applicant in the previous twelve (12) months.

Sec. 11-159. – Time limit for final decision.

The city manager shall provide a written decision regarding the placement of a UDCB within thirty (30) days of the submission of a complete application for a UDCB permit. Failure of city staff to comply does not grant automatic approval.

Sec. 11-160. – Appeal and petition processes.

Within ten (10) calendar days after the date of a decision by the city manager on an application for a UDCB permit or a renewal of such, any appeal from said decision must be filed by the applicant or any other interested party. The appeal shall be made in writing and submitted to the city secretary. In the event the last date of appeal falls on a weekend or holiday when city offices are closed, the next date such offices are open for business shall be the last date of appeal. The written appeal application must be complete and shall state specifically wherein it is claimed there was an error or abuse of discretion by the city manager or wherein his or her decision is not supported by the evidence in the record. The appeal itself must raise each and every issue that is contested, along with all the arguments and evidence in the record, which supports the basis of the appeal; failure to do so will preclude the appellant from raising such issues during the appeal and/or in court.

If a hearing is held on the appeal, then during such hearing, the appellant will be limited to issues and/or evidence previously raised in the appeal application itself. The appellant shall not be permitted to present any other issues and/or oral, written and/or documentary evidence during the appeal process.

In considering the appeal, the city council shall determine whether the proposal conforms to the requirements of this article, and may grant or deny a permit or require such changes in the proposed use or impose such reasonable conditions of approval as are in its judgment necessary to ensure conformity to said criteria. The written decision of the city council shall be final and shall be made within thirty (30) days of the submission of the appeal.

Sec. 11-161. – Location.

- (a) No UDCB shall be located within one thousand (1,000) feet from any other UDCB.
- (b) With the exception of areas described in subsection (c) below, UDCBs are only allowed to be located in the following zones, which are designated in the zoning maps and described in the city's zoning code of ordinances as business district (B-1).
- (c) No UDCBs are permitted within two hundred (200) feet of roadway or cross streets.
- (d) A UDCB is only permitted on a lot that also contains a principal building that contains at least one (1) operating business or other ongoing activity.
- (e) UDCBs are prohibited within any of the following locations:
 - (1) Required building setbacks, landscaping, buffer yard, access easement, drainage easement, floodplain, driveway, required parking space, utility easement, or fire lane;
 - (2) Five hundred (500) feet from lots that are zoned or used for residential or mixed-use commercial purposes as designated in the city's zoning maps, said distance shall be measured from lot line;

- (3) The public right-of-way and thirty (30) feet of the public right-of-way; or,
- (4) Ten (10) feet from any property line.
- (f) UDCB cannot block or impede access to:
 - (1) Required parking or driveways;
 - (2) Pedestrian routes;
 - (3) Emergency vehicle routes;
 - (4) Building ingress and egress;
 - (5) Required handicapped accessibility routes;
 - (6) Required easements;
 - (7) Trash enclosure areas or access to trash bins/trash enclosures; or,
 - (8) Traffic nor visually impairs any motor vehicle operation within a parking lot, driveway, or street.
- (g) UDCBs cannot impede the functioning of exhaust, ventilation, or fire extinguishing systems.
- (h) No more than one (1) UDCB is permitted per parcel, except that if more than one (1) school occupies a parcel, each school will be allowed one (1) UDCB. A UDCB is only permitted on a lot that is 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 (1) contiguous lot.
- (i) The donation/collection area 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.

Sec. 11-162. – Physical attributes.

- (a) UDCBs shall:

- (1) Be fabricated of durable and waterproof materials;
- (2) Be placed on ground that is paved with durable cement;
- (3) Be placed on a durable pad site with metal tray capable of catching any leaked or seeping material;
- (4) Not exceed sixty (60) inches high, sixty (60) inches wide and sixty (60) inches deep;
- (5) Not be electrically or hydraulically powered or otherwise mechanized;
- (6) Not be a fixture of the site or considered an improvement to real property;
- (7) Be adjacent to at least one (1) stacking or parking space for the use of persons accessing the UDCB;
- (8) The color and associated signage shall not be high-intensity or fluorescent; and,
- (9) Have the following information conspicuously displayed on at least two-inch type visible from the front on the UDCB:
 - a. The name, address, twenty-four-hour telephone number, and, if applicable, the internet web address, and email address of the owner and operator of the UDCB and the parcel owner/owner agent;
 - b. Address and parcel number of the site;
 - c. Instructions on the process to register a complaint regarding the UDCB 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 UDCB;
 - f. The pickup schedule for the UDCB; and,
 - g. A city approved identification system that identifies the UDCB as being properly permitted by the city.

(10) The following information must be conspicuously displayed in at least five-inch, red, upper-case type on each side of the UDCB:

- a. Any disclosure required by law, including, where applicable, Texas Business and Commerce Code § 17.921 et seq., as amended.

Sec. 11-163. – Maintenance.

- (a) No nuisance shall be within thirty (30) feet of the UDCB including, but not limited to donation/collection overflow, litter, debris, and dumped material.
- (b) UDCBs 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.
- (c) UDCBs shall be serviced not less than weekly between 7:00 a.m. and 7:00 p.m. on weekdays and 10:00 a.m. and 6:00 p.m. on weekends. This servicing includes the removal of donated/collected material and abatement of the blight described in this section.
- (d) The operator shall maintain an active email address and a twenty-four-hour telephone service with recording capability for the public to register complaints.
- (e) UDCBs cannot be used for the collection of solid waste and/or any hazardous materials.

Sec. 11-164. – Indemnity.

Operators, owners, and agents shall indemnify and hold harmless the city, its officers, agents, and employees from any and all liabilities, demands, actions, losses, damages, and costs resulting from UDCB operations and maintenance. This indemnification shall cover the costs of defense for claims resulting from the use or occupancy of the city properties or rights-of-way, including but not limited to claims, liabilities and actions based upon acts or omissions of negligence of not only operators, owners, and agents, but also the city, its officers, agents, and

employees resulting from operator's activities within the city limits. Upon demand, operators, owners, and/or agents shall, at their expense, provide the required defense to the city, its officers, agents, and employees, through competent legal counsel acceptable to the city.

Sec. 11-165. Compliance process.

- (a) Whenever the city code enforcement officer determines that a UDCB with a valid permit does not conform to any requirement in this article he/she shall promptly notify the parcel owner/agent and UDCB operator through electronic email of the violation. The violation must be abated and proof of such submitted to the City of Bellmead within seventy-two (72) hours after receipt of such notification.
- (b) If an UDCB does not have a current, valid permit, then both the UDCB and any blight within (20) feet of the UDCB shall be removed within twenty-four (24) hours after the parcel owner/agent or UDCB operator is notified of the violation.
- (c) The property owner or owner's agent shall have the right to rescind consent for a UDCB to be placed on the property, provided written notice of the rescission is provided to the UDCB operator and the city, and the UDCB shall be removed from the property within seventy-two (72) hours of such rescission.
- (d) Each day that a violation of a requirement of this article is not abated constitutes a new and separate offense.
- (e) Any UDCB located within the jurisdiction of the city that does not have a current, valid permit shall be subject to impoundment by the city. Any UDCB impounded by the city shall be released to the owner upon payment of all applicable impoundment and storage fees.
- (f) Any permit issued hereunder may be revoked by the city code enforcement officer if the permit holder has received three (3) notices of violations for violations of this article or any other provisions of this Code of Ordinances within a twelve-month time period or has knowingly made a false material statement in the application or otherwise becomes disqualified for the issuance of a permit under the terms of tis

article.

- (1) Notice of the revocation shall be given to the 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. The revocation shall become effective the day following personal service or if mailed, three (3) days from the date of mailing.
- (2) The permit holder shall have ten (10) days from the date of such notice of revocation in which to file notice with the City Manager their appeal from the order revoking said permit. The City Manager shall provide for a hearing on the appeal not later than fifteen (15) days after the notice of the appeal is filed.
- (3) Any appeal of revocation pursuant to this section shall stay the revocation until said revocation is finalized.
- (4) If the revocation is affirmed, the permit holder shall remove said UDCB no later than twenty-four (24) hours after said final decision. Upon expiration of this twenty-four (24) grace period, the UDCB shall have a noncompliant status and be subject to immediate impoundment by the city without further notice.
- (5) In the event the permit of any permit holder is revoked by the city code enforcement officer, no additional permit shall be issued to such person and/or organization within one (1) year of the date such permit was revoked.
- (6) In the event that any permit holder has two (2) or more UDCB permits revoked within a twelve-month (12) period, then all permits issued to the person and/or organization shall be revoked and all UDCBs operated by the person shall be removed.
- (g) The property owner and operator are jointly and severally liable and responsible for all fees, citations, and compliance with the regulations.
- (h) All notices for unpermitted UDCBs shall be in writing and personally delivered to the parcel owner/agent and UDCB operator or by depositing such notice in the

Unites States mail, postage paid, and addressed to the parcel owner/agent at the owner(s) last known address as it appears on the UDCB itself, if the city cannot reasonably determine the name and/or address of the unpermitted UDCB operator, placing the written notice on the UDCB itself constitutes sufficient notice.

Sec. 11-166. – 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 five hundred dollars (\$500.00). Each continuing day's violation shall constitute as a separate offense. A culpable mental state is not required for the commission of an offense under 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 2

That all ordinances or resolutions or parts of ordinances or resolutions in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

SECTION 3

That should any section or part of any section, paragraph, or clause of this ordinance be declared invalid or unconstitutional for any reason, it shall not invalidate or impair the validity, force, or effect of any section or sections or part of a section or paragraph of this ordinance.

SECTION 4

That the Code of Ordinances of the City of Bellmead, Texas as amended shall remain in full force and effect, save and except as amended by this ordinance.

SECTION 5

The above changes will become effective upon final reading and approval.

PASSED AND APPROVED ON FIRST READING APRIL 11, 2023.

PASSED AND APPROVED ON SECOND READING MAY 16, 2023.

PASSED AND APPROVED ON THIRD AND FINAL READING MAY 16, 2023.

CITY OF BELLMEAD



Trombadori

Mayor

ATTEST:

Holly Owens

City Secretary, Holly Owens

APPROVED AS TO FORM & LEGALITY:

[Signature]

City Attorney