

ORDINANCE NO. _____, SERIES 2023

AN ORDINANCE AMENDING SECTIONS 156.005 AND 156.052 OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT CODE OF ORDINANCES RELATED TO DONATION DROP-OFF BINS DUE TO THE REPEAL OF CHAPTER 117.

SPONSORED BY: COUNCIL MEMBER MULVIHILL

WHEREAS, On August 8, 2019, the Louisville Metro Council passed Ordinance No. 112, Series 2019 repealing Louisville/Jefferson County Metro Government Code of Ordinances (“LMCO”) Chapter 117 which governed charitable solicitations; and

WHEREAS, LMCO Chapter 117 provided terms and definitions as well as the registration and licensing process governing donation drop-off bins in LMCO §§ 156.005 and 156.052(L); and

WHEREAS, LMCO §§ 156.005 and 156.052(L) must be amended due to the repeal of LMCO Chapter 117.

NOW, THEREFORE, BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT AS FOLLOWS:

SECTION I: LMCO § 156.005 is hereby amended to add the following definitions:

CHARITABLE or CIVIC ORGANIZATION. Any person determined by the Internal Revenue Service or the Kentucky Department of Revenue to be a tax-exempt organization; or a person or organization defined under KRS 367.650(2).

PROFESSIONAL SOLICITOR.

(1) A person who for compensation or other financial consideration solicits contributions in this County directly or indirectly, for or on behalf of a charitable organization. A person qualifies as a professional solicitor if he/she is hired on a fee, commission, or percentage basis and the work is performed by him/her or his agents or the employees or volunteers of the benefiting charitable organization under the direction, supervision, or instruction of the solicitor. A professional solicitor conducts or supervises specific fundraising activities or events in which gifts are solicited, received, and deposited by the professional solicitor or his/her agents, expenses are paid, and net proceeds delivered to the charitable organization. A bona fide salaried officer, employee, or volunteer of a charitable organization shall not be deemed to be a professional solicitor,

unless he/she is employed or engaged as a fundraising consultant or a professional solicitor by another charitable organization.

(2) Any person, professional solicitor, fundraising consultant, or telemarketer who acts as a subcontractor or agent or employee for or on behalf of any person, professional solicitor, or fundraising consultant to solicit contributions in Jefferson County directly or indirectly for or on behalf of any charitable or civic organization, for purposes of this chapter shall be considered as a professional solicitor and shall comply with all provisions of this chapter.

SOLICIT and SOLICITATION. Engaging in or requesting, directly or indirectly, that an addressed person or limited audience or the public generally make a contribution or contributions. Solicitation shall be deemed to have taken place when the request is made, whether or not the requested contribution is made.

SECTION II: LMCO §§ 156.052(L) is hereby amended as follows:

(L) *Donation drop-off bins.* Any owner who intends to install and use a donation drop-off bin for any purpose on the exterior property of the owner's premises shall first make application and obtain a license from the Director in the manner required hereunder. No owner shall own, install, operate, or use more than one donation drop-off bin on the exterior property of each separately addressed premises such person owns. In addition to the license required herein, an owner shall also pay the permit fee required herein for each separate donation drop-off bin the owner installs, owns, operates, or uses. Any person who intends to own, install, operate, or use one or more donation drop-off bins for any purpose on the exterior property of any premises not owned by such person shall first obtain the written permission of each owner of the premises where each donation drop-off bin is to be located before making application to obtain a license from the Director. In addition to the required license, any person that owns, installs, operates, or uses one or more donation drop-off bins for any purpose on the exterior property of premises not owned by such person shall also pay the permit fee required herein for each separate donation drop-off bin to be operated and used by such person. Both the owner of the premises and the person who has been given written permission to own, install, operate, or use a donation drop-off bin on the owner's premises shall be jointly and severally liable for any violations of this chapter.

(1) *Licenses and permits.* Whether for the owner of the premises or the person who has obtained the written permission of the owner, the fee to obtain the initial license to own, install, operate, or use a donation drop-off bin is \$200 that must be tendered at the time of license application. Such license may be annually renewed on or before the anniversary date of the application for an annual renewal fee of \$200. Regardless of the number of donation drop-off bins owned, installed, operated, or used by a license applicant, the applicant shall only pay one annual license fee. The initial permit fee for a donation drop-off bin is \$50 per bin payable at the time of application for the license. The annual renewal fee for each donation drop-off bin permit is \$50 payable on or before the anniversary date of the initial application. Each donation drop-off bin shall display its

current permit at all times, and;

(a) Shall be in full compliance with all applicable laws and regulations of the Commonwealth of Kentucky and Metro Louisville, and;

(b) Shall have a label or appended sign that states "PLEASE REPORT ANY OVERFLOW OF ITEMS, DAMAGE, OR MALFUNCTION TO [PERMIT HOLDER'S NAME] AT [PERMIT HOLDER'S TELEPHONE NUMBER] OR TO THE DIRECTOR OF CODES AND REGULATIONS AT [TELEPHONE NUMBER DESIGNATED BY DIRECTOR]." Such label or appended sign shall be in lettering no less than three inches in height and no less than one-half inch in width, and;

(c) If none of the proceeds from the sale of the donated items collected in the donation drop-off bin will be given to a "charitable or civic organization" ~~as that term is defined in § 117.01~~, there shall be a label or sign permanently attached to the donation drop-off bin which identifies the permit holder's name and address and states: "DONATIONS ARE NOT FOR CHARITABLE OR CIVIC ORGANIZATIONS AND WILL BE SOLD FOR PROFIT. DONATIONS ARE NOT TAX DEDUCTIBLE." Said label or appended sign shall be prominently displayed on the receptacle in the largest lettering on the receptacle or appended sign but said lettering shall be no less than three inches in height and no less than one-half inch in width, or;

(d) If 100% of the items, or the proceeds from the sale of the items, collected in the donation drop-off bin will be used for the benefit of a "charitable or civic organization" ~~as that term is defined in § 117.01~~, there shall be a label or sign permanently attached to the donation drop-off bin that identifies, at least, the legal name of the charitable or civic organization receiving the benefit of the donated items, ~~as it appears on the certificate of registration issued to the charitable or civic organization by the Director pursuant to Chapter 117~~, in the largest lettering on the donation drop-off bin or appended sign but said lettering shall be no less than three inches in height and no less than one-half inch in width, or;

(e) If a professional solicitor, ~~as that term is defined in § 117.01~~, owns, installs, operates, or uses a donation drop-off bin pursuant to a contractual arrangement with a charitable or civic organization whereby the professional solicitor receives either a flat fee or a percentage of the proceeds from the sale of the donated items, have a label or sign permanently attached to the donation drop-off bin which states: "SOLICITATIONS FOR DONATIONS ARE MADE BY (NAME OF PROFESSIONAL SOLICITOR) ON BEHALF OF (NAME OF CHARITABLE OR CIVIC ORGANIZATION). DONATIONS WILL BE SOLD FOR PROFIT BY (NAME OF PROFESSIONAL SOLICITOR)." Said label or appended sign shall be prominently displayed on the donation drop-off bin in the largest lettering on the thereon but said lettering shall be no less than three inches in height and not less than one-half inch in width, and;

(f) Shall be placed only on premises commercially used by an established business or on church or school property, however, there shall be no more than seven

permitted donation drop-off bins per charitable or civic organization, whether installed, operated, and used by the organization or a professional solicitor on its behalf, in each Metro Council District in Metro Louisville.

(2) *Requirements.* Any party seeking to obtain the requisite license to operate donation drop-off bins and permits for each donation drop-box shall submit a written application to the Director upon a form provided by the Director. ~~If the applicant has on file with the Director a current Chapter 117 certificate of registration as either a charitable or civic organization or a professional solicitor, the applicant shall submit a copy of said certificate of registration, a photograph of each donation drop-off bin, the address of each proposed location for which a permit is sought, the written agreement(s) with the owner(s) of the proposed locations for the bin(s), a certificate of liability insurance in an amount not less than \$500,000 showing the owner of each bin location as an additional insured, and the maintenance agreement provided by the Director wherein the applicant affirms to the Director that each donation drop-off bin location will be monitored on a daily basis, emptied no less than every other calendar day, and no overflow of items from any bin shall remain on the ground for more than 24 hours. Any violation of the maintenance agreement terms shall be deemed a citable offense under subsection (5) below. In addition, an applicant shall also indicate whether the applicant would prefer to receive notice and orders by regular mail or electronic mail. If the applicant is not currently registered with the Director as a charitable or civic organization or professional solicitor,~~ ¶The application shall require the following information:

(a) The name, physical address (no P.O. boxes), telephone number, and electronic mail address of the applicant. ~~However, if the applicant is a charitable or civic organization or a "professional solicitor", as those terms are defined in § 117.01, but does not have a current Chapter 117 certificate of registration, the applicant also shall comply with the certificate of registration process set forth in Chapter 117 as part of the application process hereunder, and;~~

(b) A photograph of the donation drop-off bin and the proposed location for which a permit is sought. If the application is for more than one location, the applicant may submit a single application with a list of preferred locations and only one photograph of the type of donation drop-off bin to be used unless different types of bins will be used at different locations. In the event the applicant is using different types of bins at different locations, a photograph of each type of bin must be submitted, and;

(c) Whether the applicant would prefer to receive notice and orders by regular mail or electronic mail, and;

(d) The signature of the applicant, and;

(e) The required license and permit fees, and;

(f) If placed on property not owned or leased by the operator of the donation drop-off bin, a written agreement with the owner of each premises where a bin is to be located which evidences the agreement of the owner(s) to the placement of a donation drop-off

bin on the property. The applicant shall also provide a certificate of liability insurance in an amount not less than \$500,000 showing each owner of the premises where a bin is located as an additional insured, and;

(g) A maintenance agreement on the form provided from the Director wherein the applicant affirms that each donation drop-off bin location will be monitored on a daily basis, emptied no less than twice every calendar week, except in the event of a declared weather emergency by the National Weather Service or other natural disaster, and no overflow of items from the bin shall remain on the ground for more than 24 hours after actual or constructive notice of said overflow.

(h) The information supplied pursuant to this subsection shall be used for all notices, correspondence, or communications from the Director.

(3) Issuance of license and permits; appeals. Within ten business days after receipt of an application, the Director shall either issue the license and permits requested or give notice to the applicant of any deficiency in the application. The applicant will have five business days thereafter to correct the deficiencies in the application and if the applicant fails to do so, the Director shall immediately issue an order denying the application. Any applicant whose application is denied may appeal such denial by filing a written appeal to the Director within seven business days stating the specific reasons the order of denial was arbitrary or otherwise not in accordance with this chapter. Within ten business days of receipt of any written appeal, the Director shall issue a written order briefly stating the reasons why the appeal is either granted or denied. Any applicant whose appeal is denied by order of the Director may appeal such order to the Jefferson Circuit Court.

(4) Placement and appearance of donation bins. The rules set out below shall be obeyed to promote public safety, health and welfare as well as the general aesthetics of the entire metro area:

(a) Donation drop-off bin(s) shall be located on a hard and durable surface such as asphalt, concrete, aggregate, crushed rock and the like and all ingress and egress from each bin shall also be of a similar surface. In no event shall the placement of a donation drop-off bin or any means of ingress or egress be composed of sod, dirt, sand, or similar porous material. All donation drop-off bins shall be located on the designated premises so as not to interfere with sight triangles, on-site circulation of vehicular or pedestrian traffic, required setbacks, parking, landscaping, and all other applicable requirements imposed on the property as part of any governmental approval, including any zoning requirement;

(b) The placement of donation drop-off bins shall be restricted to an area within 75 feet from any wall of the largest permanent building on the premises or against a well-lit exterior wall of such building;

(c) A donation drop-off bin shall not be within a 1,000 foot radius of any other donation drop-off bin operated by the same licensee;

(d) Donation drop-off bins shall not be larger than six feet high by six feet wide by five feet deep;

(e) Donation drop-off bins shall be enclosed and operate by use of a securely locked receiving door so that the contents of the bin may not be accessed by anyone other than those persons authorized by the licensee to collect the contents;

(f) The donation drop-off bin must be regularly emptied, no less than twice every calendar week, to prevent overflow of clothing or other items that may be strewn about the premises. No overflow of items from a bin shall remain on the ground for more than 24 hours after actual or constructive notice of said overflow;

(g) Any person found illegally dumping at a donation drop-off bin pursuant to § 51.510 will be subject to the penalties set forth in § 51.999;

(h) Any graffiti placed on the donation drop-off bin must be removed within 72 hours following notice of its existence. However, within the 72 hours, the owner has the option to notify the Director in writing of the owner's intent to replace the donation drop-off bin within five days and along with said written notice submits a photograph of the new donation drop-off bin.

(i) If a donation drop-off bin is damaged to the extent the locking mechanism or receiving door has been compromised or one of its sides has been breached, it shall be repaired, replaced or removed within five days of receipt after notice of such damage from the Director unless the Director determines the damage is such that the donation drop-off bin constitutes a danger to persons or property in which case it shall be made safe or removed within 24 hours of notice of said condition.

(5) Violations and citations. Any violation of the provisions of this § 156.052(J) or any order of the Director or a Code Official are subject to citation and the civil penalties set forth in § 156.999(D). Any such citation and resulting penalty may be appealed to the Code Enforcement Board in the manner provided by § 32.284.

(6) Removal and impoundment by Metro Government. In the event that any licensee or person fails to comply with an order or citation issued pursuant to this § 156.052(J) and fails to timely appeal the citation as set forth in § 156.808, the Director, or an independent contractor retained by the Director, is hereby authorized to remove the donation drop-off bin which was the subject of the order or citation and impound it in a facility for redemption and/or disposition in accordance with the following provisions:

(a) The Director shall send written notice of such impoundment to the licensee or person named in the citation or order via the notice method chosen by the licensee in its license and in all other cases by regular mail to the person at the address listed in the citation or order. The notice shall state the address of the facility where the donation drop-off bin was impounded, the procedure to claim the impounded bin and its contents, the amount of the fines, the cost of removal, and the per diem impoundment fees which must be paid to redeem the donation drop-off bin, and a statement that failure to redeem the

donation drop-off bin within 30 days from service of such notice may result in the sale of the bin and its contents.

(b) Any donation drop-off bin impounded under this section may be redeemed by the licensee or owner thereof, or a properly credentialed agent, at any time prior to sale by tendering to the Director, during regular business hours, all sums due under subsection (a) above plus any advertising charge if the donation drop-off bin has been advertised for sale. Satisfactory proof of ownership or lawful right to possession shall be provided to the Director prior to release of the donation drop-off bin.

(c) The Director may dispose of any donation drop-off bin and its contents that is impounded and held in a facility beyond the 30-day redemption period after attempted service of notice upon the owner thereof in any manner permitted by law. In no event shall the Director dispose of any impounded and unclaimed donation drop-off bin which is the subject of a pending appeal.

(7) Exemptions. Donation drop-off bins owned, installed, operated, or used exclusively for the benefit of a religious organization or a publicly owned or non-profit privately endowed educational institution on property owned by such religious organization or educational institution are exempt from the licensing and permit requirements of this section. The term "religious organization" means any organization the activity of which is protected by Section 1(2) of the Kentucky Constitution and the First Amendment to the United States Constitution. The term "educational institution" means one which is approved or licensed by the Kentucky Board of Education, the Council on Higher Education, or an equivalent public authority of the jurisdiction where such institution is located.

SECTION III: This Ordinance shall take effect upon passage and approval or otherwise becoming law.

Sonya Harward
Metro Council Clerk

President of the Council

Craig Greenberg
Mayor

Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

BY: _____

O-308-22 - Ordinance amending 156.052 of Property Maintenance Code