

AN ORDINANCE BY THE PASCO COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING THE PASCO COUNTY LAND DEVELOPMENT CODE; SECTION 530.22 DONATION BINS; PROVIDING FOR APPLICABILITY; REPEALER; PROVIDING FOR SEVERABILITY; INCLUSION INTO THE LAND DEVELOPMENT CODE, AND AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 125.01, Florida Statutes, the Board of County Commissioners of Pasco County has the power to adopt ordinances necessary for the exercise of its powers and prescribe fines and penalties for the violation of ordinances in accordance with law; and

WHEREAS, the Pasco County Board of County Commissioners (hereinafter referred to as “the Board” or “BCC”) desires to protect the public health, safety, and welfare of the citizens of unincorporated Pasco County and maintain a high quality of life for its citizens through the regulation of donation bins and similar accessory structures, while providing an outlet for organizations and individuals to solicit and collect donations from the public through unattended donation bins; and

WHEREAS, the Board desires that the donation bins give citizens accurate information concerning the recipient of their donated goods, and to ensure that donation bins are placed with the consent of the property owner, are lawful accessory uses of property, and do not conflict with approved site development plans or county regulations requiring landscaping, parking, or other code requirements; and

WHEREAS, many irresponsible donation bin owners have failed to maintain the donation bins, resulting in debris surrounding the donation bins that is unsightly and/or poses a health and safety risk to the public; and

WHEREAS, in 2016, the Board adopted regulations requiring persons to obtain a permit prior to placing or maintaining a donation bin on property in unincorporated Pasco County, and amended those regulations in 2017 to provide a timetable for acting on donation bin permit applications; and

WHEREAS, the Board finds further amendment is necessary to clarify certain provisions of the ordinance to make the regulations consistent with its ordinance concerning junk and debris, and consistent with court rulings concerning charitable and commercial speech; and

WHEREAS, the Local Planning Agency conducted a public hearing on September 5, 2019 and found the proposed amendments consistent with the Pasco County Comprehensive Plan; and

WHEREAS, the Board of County Commissioners conducted duly noticed public hearings on September 18, 2019 and October 7, 2019, where the Board of County Commissioners considered all oral and written comments, including staff reports and information received during said public hearings and found the proposed amendments consistent with the Pasco County Comprehensive Plan; and

WHEREAS, the Board of County Commissioners finds that the adoption of this ordinance is a legitimate exercise of its powers granted by Section 125.01(t), Fla. Stat. and Section 553.7931, Fla. Stat.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Pasco County, Florida, as follows:

SECTION 1. AUTHORITY.

This ordinance is enacted pursuant to Chapter 125, Florida Statutes (2019) and under the home rule powers of the County.

SECTION 2. LEGISLATIVE FINDINGS OF FACT.

The foregoing WHEREAS clauses are hereby adopted as legislative findings of the Board of County Commissioners and are ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

SECTION 3. AMENDMENT TO THE PASCO COUNTY LAND DEVELOPMENT CODE.

The Pasco County Land Development Code, Section 530.22 Donation Bins is hereby amended as follows:

- CHAPTER 500. ZONING STANDARDS**
- SECTION 530. SUPPLEMENTAL REGULATIONS
- 530.22. **Donation Bins**

The requirements of this Section apply to donation bins (**hereinafter referred to as “bins” or “boxes”**) which function as accessory uses or structures when used **or designed** for the purpose of collecting recyclable materials and/or re-sellable goods. This Section shall not apply to primary principal use recycling operations and donation facilities that are located within the same building, and are accessory to a primary principal use, and/or recycling operations in permanent structures. Said primary uses shall meet all applicable development standards of the district in which they are located. The requirements of this Section shall not apply to trash cans, dumpsters, and/or community recycling program containers for glass, metals, paper, cardboard, or similar curbside recyclable materials as described in Chapter 90 of the Pasco County Code of Ordinances.

Unless otherwise stated in this Code, donation bins may be permitted in

accordance with this Code on commercial properties zoned C 1 Neighborhood Commercial District, C 2 General Commercial District and C 3 Commercial/Light Manufacturing District and industrial properties Zoned I 1 Light Industrial Park District and I 2 General Industrial Park District and commercial or industrial portions of MPUD Master Planned Unit Development Districts.

In addition to any applicable Zoning District and Land Development Regulations, all donation bins allowed as accessory uses or structures under this Section shall conform to the following requirements.

A. Zoning and Permitting Requirements

No donation bin (or box) shall be established unless and until the applicant **submits the required information and obtains** ~~has obtained~~ approval in the form of a Donation Bin Permit, subject to annual renewal, as provided in this Code.

1. Application and Submittal Requirements. In order to obtain zoning approval for one or more donation bin(s) on a site, the applicant shall file with the Planning and Development Department, in writing, the following information:

- a. A completed Donation Bin Permit application in accordance with Section 530.22 and applicable fees; and
- b. A site plan showing the location of the proposed donation bin; ~~all required on-site parking and all site improvements on the building site.~~ The location of the donation bin shall comply with the requirements of this Section **and may not be placed in a location that would interfere with any required parking spaces such that the elimination of the parking space causes the on-site business to be in violation of the minimum required parking spaces pursuant to its approved site plan and/or the Land Development Code;** and
- c. Written consent of the property owner or legal designee to establish the donation bin; and
- d. Information as to the manner and schedule for which the donation bin(s) will be emptied and maintained; and
- e. ~~Evidence that the applicant is authorized to conduct business in the State of Florida and in Pasco County.~~ **Evidence that the charitable organization and professional fundraiser, if any, are registered to solicit charitable contributions in the State of Florida.**

2. Ongoing Requirements. Following the issuance of a donation bin permit, the donation bin must not be relocated elsewhere within the site unless the applicant obtains a new Donation Bin Permit. The donation bin must meet all applicable permitting requirements. Thereafter, a Donation Bin Permit renewal must be issued annually for each donation bin.

Renewal applications shall include the following:

- a. An affidavit that all information and statements in the original application continue to be true and correct.
- b. An affidavit that the subject donation bin(s) are not subject to ongoing enforcement action.

B. Location and Site Development Requirements

1. Location Requirements. All donation bins must be located only upon improved, level, paved surfaces which constitute part of larger developed and occupied non-residential site in commercial, industrial zoning districts, or commercial or industrial portions of MPUD Master Planned Unit Development Districts. No donation bin shall be permitted on any site that is developed but unoccupied. Each donation bin must be ~~affixed to the paved surface upon which it is located~~ **on the site** in such a manner that ~~in the event of severe weather the bin is not overturned or relocated due to the~~ **a severe weather event. If not physically affixed to the paved surface, the permittee shall provide a signed indemnification form, which shall indemnify and defend the County from any and all claims and/or damages that may result from movement of the bin and/or its contents as a result of a severe weather event. Indemnification shall be provided on a form approved by the County Attorney's Office. The indemnification form may be signed by the permittee, bin operator, or bin owner.** All sites shall have adequate driveway access and maneuverability to accommodate service vehicles and loading vehicles in accordance with Chapter 900 of this Code.
2. Maximum Number. A donation bin shall be limited to one bin per parcel, except that one additional donation bin may be permitted if the parcel or lot has more than three hundred (300) feet of road frontage.
3. Development Standards. All sites shall meet the following requirements:
 - a. If more than one donation bin is located on a property, then all donation bins within the approved location must be arranged side-by-side and may not be separated by more than 12 inches.
 - b. The receiving door on each donation bin must be oriented toward the interior of the site and away from the public right-of-way.
 - c. Each donation bin must be enclosed by use of a receiving door or safety chute to prevent vandalism and locked so that the contents of the bin cannot be accessed by anyone other than those responsible for the retrieval of the contents.
 - d. No donation bin shall exceed 25 square feet in area nor 7 feet

in height.

4. Setbacks. All donation bins must conform to the following setbacks:
 - a. From any residential use: thirty (30) feet;
 - b. From any residential zoning district boundary: thirty (30) feet;
 - c. From any right-of-way: five (25) feet;
 - d. From any other property line: five (5) feet.
5. Landscaping. No additional landscaping shall be required. However, donation bins shall not encroach on any required landscaping, and no required landscaping shall be removed to install a donation bin.
6. Signage. ~~Signage shall be permitted on two sides of the donation bin, provided that one of the two sides must be the front or depositing side.~~ Signage shall be limited to **five (5)** square feet per side, and shall only advertise the donation bin's (1) permittee, and (2) if applicable, benefitting organization. Any donation bin operated by a person or entity other than a non-profit permittee must also include the following statement on the depositing side of the bin, not less than two inches (2") high, below the bin chute, in conspicuous and clear lettering at least two inches (2") high, "[Permittee name] is not a charitable organization. The materials deposited in the bin are not re-used by any charitable organization but are instead recycled and re-sold for profit, and are not tax deductible contributions." A permittee's donation bin with a benefitting foundation or organization may also state: "A portion of the proceeds of the sale of the materials deposited in this bin benefits [name of benefitting foundation or organization]." Each donation bin must be clearly marked to identify the name and telephone number of its responsible operator. The permit number shall be displayed on the donation bin (box) as provided in the Donation Bin Permit. **The following information shall be visible from the front of any charitable donation bin:**

- a. Name, telephone number, and website of the Permittee of the charitable donation bin.**
- b. Name, telephone number, and website of the benefitting nonprofit organization (if not the Permittee).**
- c. Permit sticker.**

The following information shall be visible from the front of any charitable donation bin that is not operated by a nonprofit organization or a professional fundraiser registered to solicit charitable contributions on behalf of a nonprofit organization in the State of Florida:

- a. "This bin is operated by a commercial company that sells the contents for profit."**

This disclosure shall be printed on the depositing side of the donation bin in bold and a minimum of four (4) inch font size.

7. Parking and Travel Lane Design. No donation bin shall be located so as to occupy or block access to any parking space that is needed to meet the minimum number of parking spaces required by Section 907 of this Code.

For attended semi-tractor trailers or other temporary structures, a loading and unloading drive through area shall be provided with a minimum of three (3) waiting spaces (including the car being served). One employee parking space shall be provided.

8. Indoor Donation Bins. Notwithstanding any other requirement of this Section, donation bins may be located within a principal building or structure without further review or regulation. Donation bins also may be located within a parking garage provided that all parking and travel lane design requirements of this Section are met.

9. ~~Nuisance Prohibited.~~ **Maintenance Standards.** ~~The use shall be conducted in a manner so as not to constitute a nuisance with regard to odor, noise, rust, or other environmental effects.~~ Donation bins must be regularly emptied of their contents so that materials and donations do not overflow. The appearance of donation bins shall be maintained including but not limited to, rust free, fresh paint, legible signage, and clean. The area surrounding the donation bin shall be free of any junk, garbage, trash, debris, donations, or another refuse material. All donated items must be located entirely within the donation bin. ~~The permittee and property owner shall be individually and jointly responsible for abating and removing all garbage, trash, debris and other refuse material in the area surrounding any donation bin within 24 hours written or verbal notice by the County.~~

- ~~10. Responsibility and Liability. The owner of the donation bin, the permittee, and the owner of any private property upon which a violation of these regulations occur may be held individually and severally responsible and liable for such violation. Violations of these regulations may result in the denial of a donation bin renewal permit or revocation of an existing donation bin permit.~~

10. Exception for Non-Profit Organizations and Religious Institutions. Notwithstanding the zoning district requirements of this part, any non-profit organization or religious institution that engages in collection of recyclable materials as part of its organizational mission may maintain its own accessory donation bins on its own building site. All such donation bins must obtain a Donation Bin Permit.

C. Application Completeness Review and Review Timeframes

1. Application; determination of completeness. Before any Donation Bin Permit is issued, a written application in the form provided by the County Administrator or designee shall be filed together with such information required in this Code Section 530.22.A. Upon submission

of an application, staff shall have ten (10) business days to determine whether **the application** is complete. If staff finds that the application is not complete, the applicant shall be provided, in writing, a list of deficiencies within the ten (10) business day period. Upon resubmission of the application, staff shall have five (5) additional business days to determine whether the applicant's revisions are sufficient to complete the application. If they are not, staff will again inform the applicant of any remaining deficiencies in writing. This process shall continue until the applicant has submitted a complete application or demands that the application be reviewed "as is."

2. Administrative review. Administrative review of **a** Donation Bin Permit applications shall include the review of all information submitted to determine the conformity with this Code.
3. The County Administrator or designee shall approve or deny the Donation Bin Permit application based on whether it complies **with** of the requirements of this Code Section 530.22 and shall approve or deny the Donation Bin Permit within twenty (20) business days after receipt of a complete application or from the date the applicant demands that the application be reviewed "as is". The County Administrator or designee shall prepare a written notice of its decision describing the applicant's appeal rights and send **the decision** by certified mail, return receipt requested to the applicant pursuant to Section 407.1. The applicant may file an appeal application to the BCC within thirty (30) calendar days after the date of receiving the appeal application. If the BCC does not grant the appeal, then the appellant may seek relief in the Circuit Court for the County, as provided by law.

D. Nonconforming Use. Bins lawfully sited and placed on a property prior to October 25, 2016 may be considered a nonconforming use, pursuant to Chapter 1200 of this Code, and subject to the procedures and restrictions in that Chapter. A nonconforming use determination may be requested with respect to the following elements of the County's donation bin regulations"

- 1. The maximum number of bins allowed on a parcel;**
- 2. The setback requirements for bins; and**
- 3. The maximum size of signage on bins. Nonconforming signage that existed prior to October 25, 2016, but is larger than allowed by this ordinance, may remain only until replaced or changed and must thereafter meet the size requirements of this ordinance.**

Bins located on a property prior to October 25, 2016 will not be considered lawfully sited and/or placed and will not be considered nonconforming uses if placed on undeveloped property, located in violation of the approved site plan for the property, located without the permission of the property owner, or located or placed in violation of any other law or regulation existing at the time of placement.

- E. **Violations. Violations of these provisions may be enforced as described in Chapter 100 of this Code. In addition, violations of any of these standards may result in revocation of a permit. The process for revocation is as follows:**

The County Administrator or designee shall prepare a written notice of its decision to revoke the permit, describing the grounds for the decision and the affected parties' appeal rights, and send it by certified mail, return receipt requested, to the property owner, permittee, and other known parties in interest (e.g., the benefitting organization). Any owner, permittee, and/or interested party may file and appeal application to the Board of County Commissioners (BCC) within thirty (30) calendar days after the date of receiving the notice of revocation. If the BCC does not grant the appeal, then the appellant may seek relief in the Circuit Court for the County, as provided by law.

SECTION 4. APPLICABILITY. This Ordinance shall be applicable in the unincorporated areas of Pasco County, Florida.

SECTION 5. SEVERABILITY.

It is declared to be the intent of the Board of County Commissioners of Pasco County, Florida, that if any section, subsection, sentence, clause, or provision of this Ordinance shall be declared invalid, the remainder of this Ordinance shall be construed as not having contained said section, subsection, sentence, clause, or provision and shall not be affected by such holding. In the event any state or federal law is enacted that is more restrictive in nature, those portions of this Ordinance that conflict with the state or federal law will cease to be in effect. In addition, this Ordinance will automatically sunset upon the effective date of any state or federal law that preempts other regulations related to the subject matter and restrictions contained in this Ordinance.

SECTION 6. INCLUSION IN CODE.

It is the intent of the Board of County Commissioners that the provisions of this Ordinance shall become and be made a part of the Pasco County Code of Ordinances, and that the sections of this Ordinance may be renumbered or re-lettered and the word "Ordinance" may be changed to "section," "article," "regulation," or such other appropriate word or phrase in order to accomplish such intentions.

SECTION 7. EFFECTIVE DATE.

A certified copy of this ordinance shall be filed with the Florida Department of State by the Clerk to the Board within ten (10) days after adoption and shall take effect upon such filing.

ADOPTED with a quorum present and voting this 10th day of October, 2019.

(SEAL)

BOARD OF COUNTY
COMMISSIONERS
OF PASCO COUNTY, FLORIDA

ATTEST:

NIKKI ALVAREZ-SOWLES, ESQ
PASCO COUNTY CLERK & COMPTROLLER

RONALD E. OAKLEY, CHAIRMAN