

ORDINANCE NO. 1, 2012

AN ORDINANCE PROVIDING FOR CLOTHING DONATION BINS IN THE CITY OF LINWOOD AND REPEALING ALL ORDINANCES HERETOFORE ADOPTED, THE PROVISIONS OF WHICH ARE INCONSISTENT HEREWITH.

Section 1. Definitions.

For the purposes of this chapter only, the terms "solicitation" or "solicit" shall mean the request, directly or indirectly, for money, credit, property, financial assistance, or other thing of any kind or value. Solicitation shall include, but not be limited to, the use or employment of canisters, cards, receptacles or similar devices for the collection of money or other thing of value. A solicitation shall take place whether or not the person making the solicitation receives any contribution.

Section 2. Requirements for placement; use of clothing bins for solicitation purposes.

Whereas, pursuant to N.J.S.A. 40:48-2.60 et seq. entities utilizing clothing bins for the receipt of donations are required to obtain a permit from the municipality permitting such use;

Notwithstanding any other provision of law to the contrary, no person shall place, use, or employ a donation clothing bin within the City of Linwood for solicitation purposes without obtaining a permit from the Zoning Officer, which is approved by City Council. Permits are renewable on an annual basis during the month of January.

Section 3. Permit fee and Limitation on Licenses.

- A. The application fee, which must be submitted with the application, shall be \$25.
- B. The fee for annual renewal of the permit shall be \$25 per bin and will be used to offset the costs involved in enforcing this chapter.
- C. All permits and renewals obtained shall be in effect for one year and shall expire on December 31 of the year of the permit and renewals.
- D. The Zoning Officer shall not be authorized to issue more than 5 total Clothing Donation Bin permits within the City, and no more than two at any given site.

Section 4. Application requirements.

The application for obtaining a permit shall include:

- A. The location where the bin would be situated, as precisely as possible;
- B. The manner in which the person anticipates any clothing or other donations collected via the bin would be used, sold, or dispersed, and the method by which the proceeds of the collected donations would be allocated or spent;

- C. The name and telephone number of the bona fide office of any person or entity which may share or profit from any clothing or other donations collected via the bin at which such person can be reached during normal business hours. For the purposes of this subsection, an answering machine or service unrelated to the person does not constitute a bona fide office; and
- D. Written consent from the property owner to place the bin on his or her property.

The owner/applicant shall be recognized as a charitable nonprofit 501 (c)(3) corporation, organization, or an officer of such corporation or organization on whose behalf the application is being made. Such applicant shall submit the required sufficient documentation demonstrating the formal creation and recognition by the Internal Revenue Service of the establishment and present status of the charitable corporation or organization.

Section 5. Renewal application requirements.

In addition to the above application requirements, renewal applications must include:

- A. A statement on the manner in which the person has used, sold, or dispersed any clothing or other donation collected via the bin, the method by which the proceeds of collected donations have been allocated or spent, and any changes the person anticipates may be made in these processes during the period covered by the renewal;
- B. The name and telephone number of the bona fide office of any entity which shared or profited from any clothing or other donations collected via the bin, and of any entities which may do so during the period covered by the renewal; and
- C. If the location of the bin is to be moved, the new location where the bin is to be situated, as precisely as possible and written consent from the property of the new location, and approved by the Zoning Officer.

Section 6. Placement of bins.

- A. The City of Linwood shall not grant an application for a permit to place, use, or employ a donation clothing bin if it determines that the placement of the bin could constitute a safety hazard. Such hazards shall include, but not be limited to, the placement of a donation clothing bin within 100 yards of any place which stores large amounts of, or sells, fuel or other flammable liquids or gases; or the placement of a bin where it interferes with vehicular or pedestrian circulation.
- B. The person placing, using or employing a donation clothing bin shall maintain the bin and the area surrounding the bin such that there shall be no accumulation of clothing or other donations outside the bin.
- C. Notwithstanding the provisions of Subsection 4 & 5, no donation clothing bin shall be placed, used or employed pursuant to this Chapter unless such donation clothing bin is free of rust, peeling, or other deleterious effects.
- D. No donation clothing bin shall be placed on any municipally owned property.

- E. No bin will be authorized in any Residential Zone
- F. Bins will be authorized in Business Zones only and are subject to annual renewal

Section 7. Display of permit.

The following information shall be clearly and conspicuously displayed on the exterior of the donation clothing bin:

- A. The permit number and its date of expiration;
- B. The name and address of the registered person who owns the bin, and/or any other entity which may share or profit from any clothing or other donations collected via the bin;
- C. The telephone number of the owner's bona fide office, and, if applicable, the telephone number of the bona fide office of any other entity which may share or profit from any clothing or other donations collected via the bin. For the purposes of this subsection, an answering machine or service unrelated to the person does not constitute a bona fide office;
- D. In cases when any entity other than the person who owns the bin may share or profit from any clothing or other donations collected via the bin, a notice, written in a clear and easily understandable manner, indicating that clothing or other donations collected via the bin, their proceeds, or both, may be shared, or given entirely to, an entity other than the person who owns the bin, and identifying all such entities which may share or profit from such donations; and
- E. A statement, consistent with the information provided to the City in the most recent permit or renewal application, indicating the manner in which the owner anticipates any clothing or other donations collected via the bin would be used, sold, or dispersed, and the method by which the proceeds of collected donations would be allocated or spent.

Section 8. Receipt and investigation of complaints.

- A. The Code Enforcement Officer shall receive and investigate, within 30 days, any complaints from the public about the bin. Whenever it appears to the Code Enforcement Officer that a person has engaged in, or is engaging in, any act or practice in violation of this chapter, the person who placed the bin, and the property owner, shall be issued a warning, stating that if the violation is not rectified or a hearing with the City of Linwood is not requested within 45 days, the bin will be seized or removed at the expense of the person who placed the bin and the property owner. Any clothing or other donations collected via the bin will be sold at public auction or otherwise disposed of. In addition to any other means used to notify the person who placed the bin, such warning shall be affixed to the exterior of the bin itself.

- B. In the event that the person who placed the bin and the property owner do not rectify the violation or request a hearing within 45 days of the posting of the warning, the City of Linwood may seize the bin, remove it, or have it removed, at the expense of the person who placed the bin, and the property owner, and sell at public auction or otherwise dispose of any clothing or other donations collected via the bin. Any proceeds from the sale of the donations collected via the bin shall be paid to the Chief Financial Officer of the City.

Section 9. Violations and penalties; remedies.

In addition to any other penalties or remedies authorized by the laws of this state, any person who violates any provision of this chapter or the provisions of P.L. 2007, c. 209 (N.J.S.A. 40:48-2.60 et seq.), shall be subject to the following penalties:

A.

- (1) For the first offense: \$100 per day;
- (2) For the second offense: \$250 per day;
- (3) For the third offense: mandatory revocation of permit.

Any penalty monies collected shall be paid to the Chief Financial Officer of the City; and

B. May be deemed ineligible to place, use, or employ a donation clothing bin for solicitation purposes pursuant to this chapter and P.L. 2007, c. 209 (N.J.S.A. 40:48-2.61). A person disqualified from placing, using, or employing a donation clothing bin by violating the provisions of P.L. 2007, c. 209 (N.J.S.A. 40:48-2.60 et seq.), may apply to City Council to have that person's eligibility restored. City Council may restore the eligibility of a person who:

- (1) Acts within the public interest; and
- (2) Demonstrates that he or she made a good faith effort to comply with the provisions of this chapter and P.L. 2007, c. 209 (N.J.S.A. 40:48-2.60 et seq.), and all other applicable laws and regulations, or had no fraudulent intentions.

Section 10.

All ordinances or parts of ordinances inconsistent herewith are hereby repealed to the extent of such inconsistencies.

Section 11.

Should any sentence, clause, sentence, phrase or provision of this ordinance be declared unconstitutional or invalid by a Court of competent jurisdiction, such decision shall not affect the remaining portions of this ordinance.

Section 12.

This ordinance shall take effect upon its final passage, publication and adoption in the manner prescribed by law. It shall apply to all donation clothing bins in place on the effective date and to all donation clothing bins placed or to be placed subsequent to the effective date.

<i>FIRST READING:</i>	<i>January 4, 2012</i>
<i>PUBLICATION:</i>	<i>January 12, 2012</i>
<i>PASSAGE:</i>	<i>January 25, 2012</i>

The within Ordinance was introduced at a meeting of the Common Council of the City of Linwood, County of Atlantic and State of New Jersey held on, January 4, 2012 and will be further considered for final passage after a public hearing thereon at a meeting of said Common Council on January 25, 2012.

LEIGH ANN NAPOLI, RMC, MUNICIPAL CLERK

RICHARD L. DEPAMPHILIS, III, MAYOR