

**BOROUGH OF DARBY
COUNTY OF DELAWARE
COMMONWEALTH OF PENNSYLVANIA**

ORDINANCE NO. 770

**AN ORDINANCE OF THE BOROUGH OF DARBY
REGULATING UNATTENDED DONATION BOXES**

WHEREAS, the Borough of Darby is a municipal corporation organized and existing under the laws of the Commonwealth of Pennsylvania, including but not limited to the Borough Code; and,

WHEREAS, the Legislature of the Commonwealth vests the Borough of Darby with the power and authority to make and adopt all such ordinances, bylaws, rules and regulations not inconsistent with or restrained by the Constitution and laws of this Commonwealth, as is expedient or necessary for the proper management, care and control of, inter alia, the borough's finances, the maintenance of peace, good government, safety and welfare of the borough, its trade, commerce and manufacturers; and,

WHEREAS, after reviewing the existing ordinances, it is in the best interest of the efficient operation of government, good government, and public safety to adopt and implement an Ordinance regulating unattended donation boxes; and,

NOW, THEREFORE, BE IT ORDAINED, by the Council of the Borough of Darby that:

SECTION I: There shall be added to the Code of the Borough of Darby a chapter regulating unattended donation boxes in the Borough of Darby, which shall read as follows:

- 1. Purpose and intent.** To regulate the placement of unattended donation boxes within the borough. The procedures and requirements of this chapter are enacted to:
 - A. Promote the community's health, safety, and welfare by regulating unattended donation boxes for clothing or other salvageable personal property within the borough;
 - B. Ensure that unattended donation boxes do not pose a hazard to pedestrian and vehicular traffic;
 - C. Ensure that material is not allowed to accumulate outside of the unattended donation boxes where it can be scattered by adverse weather conditions, animal contacts or human activities; and
 - D. Establish criteria that avoids attracting vermin, unsightliness, and public health hazard.

2. Definitions.

A. "Code Enforcement Department" means the Borough Department charged with enforcing the Code of the Borough of Darby and other codes providing for the health, safety and welfare in the Borough of Darby.

B. "Operator" means a person, entity, association or organization who places, maintains or operates unattended donation box(es) to solicit donations of salvageable personal property.

C. "Permittee" means the property owner who is issued a permit authorizing placement of unattended donation box(es).

D. "Property owner" means the person, entity, association or organization who owns the real property where the unattended donation box(es) are or are proposed to be located.

E. "Residential district" includes residential zoning districts as established pursuant to Darby Zoning Ordinance.

F. "Unattended donation box" means any unattended container, receptacle, or similar device that is located on any property within the Borough used for soliciting and collecting donations of clothing or other salvageable personal property. This term does not include recycle bins for the collection of recyclable materials.

3. Permits.

A. Unless otherwise exempt, it shall be unlawful and a public nuisance for any property owner or operator to place, operate, maintain or allow unattended donation boxes on real property unless the property owner first obtains a permit pursuant to this ordinance and the unattended donation box is placed, operated and maintained in accordance with all provisions in this ordinance. Unattended donation boxes existing in the Borough of Darby before enactment of this ordinance shall apply for all required permits within 30 days of this ordinance's enactment.

B. The permit application shall be made on a form provided by the Code Enforcement Department and shall include the following information:

1. The name, address, e-mail, website (if available) and telephone number of the applicant;

2. Written proof sufficient to establish that the operator who will utilize the unattended donation box is qualified to solicit donations of salvageable personal property pursuant to Pennsylvania Law;

3. The text of the disclosures that will be made on the unattended donation box as required by Pennsylvania Law; and

4. The physical address of the property owner's real property and a drawing sufficient to indicate the proposed location of the unattended donation box on the property owner's real property, as well as the size of the proposed unattended donation box.

C. Each application shall be accompanied by a nonrefundable fee in the amount of \$250.00, which may be changed from time to time, established by resolution of the Borough Council. This fee shall be in addition to any fee or tax imposed by the Borough pursuant to any other provision of this ordinance.

D. Applications shall be filed with the Code Enforcement Department.

E. Within 30 days of receiving a completed application, the Code Enforcement Department shall issue a permit or deny the issuance of a permit.

F. The Code Enforcement Department shall not issue a permit unless:

1. The property owner has submitted a complete and accurate application accompanied by the applicable fee;

2. The operator who will maintain or operate the unattended donation box is qualified to solicit donations of salvageable personal property pursuant Pennsylvania Law;

3. The proposed location and placement of the unattended donation box on the property owner's real property is in compliance with all applicable laws and will not impede pedestrian or bicycle sight distances onto adjacent streets or vehicular traffic.

G. If the Code Enforcement Department denies an application, the Code Enforcement Department shall provide the property owner, in writing, the specific reasons for denial.

H. A permit issued hereunder shall be valid for one unattended donation box. Each unattended donation box shall have its own individual permit.

I. The term of the permit shall expire one year from the date of issuance.

J. No person or operator to whom a permit has been issued shall transfer, assign, or convey such permit to another person or operator.

K. Prior to expiration of the permit, the permittee may voluntarily cancel the permit by notifying the Code Enforcement Department in writing of the intent to cancel the permit. The permit shall become void upon the Code Enforcement Department's receipt of a written notice of intent to cancel the permit.

4. Renewal of permits.

A. A permittee may apply for permit renewal by submitting to the Code Enforcement Department, before the expiration of the permit, a renewal application and a non-refundable renewal fee in the amount of \$50.00.

B. The Code Enforcement Department shall either approve or deny the renewal of a permit within 30 days of receipt of the complete renewal application and payment of the renewal fee.

C. The Code Enforcement Department shall approve the renewal of a permit if it finds that no circumstances existed during the term of the permit, existed at the time of submission of an application for renewal, or existed at any time during the review of the application for renewal, that are inconsistent with any finding required for approval of a new permit as specified in Section 3 hereof, or that would justify the revocation of the permit as specified in Section 6 hereof.

5. Requirements and maintenance.

A. The permittee and operator shall be individually and severally responsible for operating and maintaining, or causing to be operated and maintained, all unattended donation boxes located in the Borough as follows:

1. The unattended donation box shall be of the type that are enclosed by use of a receiving door and locked so that the contents of the unattended donation box may not be accessed by anyone other than those responsible for retrieval for the contents. Each unattended donation box shall be surrounded by a privacy fence sufficient to shield the unattended donation box from public view.

2. Each unattended donation box shall not cover a ground surface area in excess of five feet by five feet, nor be more than six feet in height.

3. Unattended donation boxes shall be maintained in good condition and appearance with no structural damage, holes, or visible rust, and shall be free of graffiti;

4. Unattended donation boxes shall be locked or otherwise secured;

5. Unattended donation boxes shall contain the following contact information in two-inch type visible from the front of each unattended donation box: the name, address, e-mail, and phone number of both the permittee and operator;

6. The permittee and operator shall place a copy of the permit in a prominent and visible location in the front of the box in plain view for inspection by the public and borough officials;

7. Unattended donation boxes shall be serviced and emptied as needed, but at least once per month, or within five business days of a request by the Code Enforcement Department.

B. The permittee and operator shall be individually and severally responsible for maintaining, or causing to be maintained, the area surrounding the unattended donation boxes free of any junk, garbage, trash, debris or other refuse material.

C. The permittee and operator shall be individually and severally responsible for abating and removing all junk, garbage, trash, debris and other refuse material in the area surrounding the unattended donation boxes within 24 hours of written or verbal notice from the borough.

D. The permittee and operator shall be individually and severally responsible for all costs for abating and removing any junk, garbage, trash, debris and other refuse material from the area surrounding the unattended donation boxes.

E. It shall be unlawful for any property owner or operator to place an unattended donation box in any residential district.

F. No unattended donation box shall be placed within 400 feet from another unattended donation box.

G. No unattended donation box shall be placed on required parking spaces or in such a manner as would obstruct traffic or interfere with clear sight triangles, on-site circulation, required setbacks, landscaping, parking, and shall be placed on a concrete or stable paved surface. No unattended donation box placed on commercial property shall face a residential area.

H. No more than one unattended donation box shall be placed on each parcel of real property.

6. Revocation of permit, removal of unattended donation boxes and liability. The Code Enforcement Department shall have the right to revoke any permit issued hereunder if any of the grounds to refuse issuance of the initial permit exists. In addition, the failure of the permittee to comply with the provisions of this ordinance, or other provisions of this Darby code or other law, shall also constitute grounds for revocation of the permit. The Code Enforcement Department shall provide a written notification to the permittee stating the specific grounds for revocation. Upon revocation, the unattended donation box shall be removed from the permittee's real property within 30 calendar days and, if not removed within this time period, the Borough may remove, store and dispose of the unattended

donation box at the permittee's sole cost and expense. Upon revocation, a permittee shall be prohibited from applying for a permit for a period of one year. Any violation of the provisions of this ordinance is a public nuisance subject to abatement pursuant to the Darby code or as otherwise permitted by law.

7. Violation – Penalty. Nothing in this chapter shall limit the Borough from using any remedy legally available for violations of this chapter.

8. Appeal to borough manager. Any person aggrieved by the decision rendered by the Code Enforcement Department in granting or denying an application for a permit under this chapter, or in revoking or refusing to renew a permit issued hereunder, may appeal the decision to the borough manager. The appeal shall be made by filing a written notice thereof with the borough secretary not later than 10 calendar days after receiving notice of the decision of the Code Enforcement Department. The borough manager shall hold a hearing on the appeal within 30 calendar days. The borough manager's decision shall be final.

9. Administrative fees. Reasonable fees and deposits to defray the cost of processing applications and proposals and for the administration shall be as stated in the Borough Fee Schedule.

10. Exemption. Unattended donation boxes located entirely within the interior of a building are exempt from the requirements of this chapter.

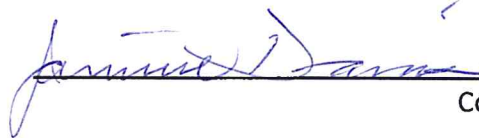
SECTION II: All Borough elected and appointed officials are authorized to take all action necessary to ensure the implementation and effect the purpose hereof.

SECTION III: Any and all Ordinances or parts of Ordinances inconsistent with this Ordinance are hereby repealed to the extent of their inconsistency. The Borough Council may from time to time amend, supplement, change, modify or repeal this ordinance pursuant to the provisions of Federal, State and Local Laws.

SECTION IV: The provisions of this Ordinance are severable, and if any clause, sentence, subsection or section hereof shall be adjudged by any court of competent jurisdiction to be illegal, invalid or unconstitutional, such judgment or decision shall not affect, impair or invalidate the remainder but shall be confined in its operation and application to the clause, sentence, subsection or section rendered. It is hereby declared the intent of the Borough Council that this ordinance would have been adopted if such illegal, invalid, or unconstitutional clause, sentence, subsection, or section had not been included therein.

SECTION V: This is effective immediately upon enactment according to law, and shall remain in effect hereafter until revised, amended, or revoked by action of the Council of the Borough of Darby.

ADOPTED by the Borough Council this 17th day of December, 2014.



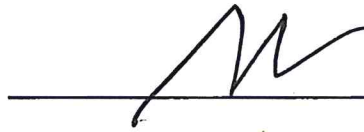
Council President

APPROVED by the Mayor, this 17th day of December, 2014.



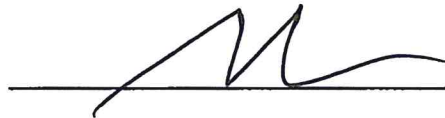
Mayor

ENACTED this 17th day of December, 2014.



Secretary

I **HEREBY CERTIFY** that the foregoing is a true and correct copy of the said Ordinance duly adopted at a meeting of Borough Council held on the 17th day of December, 2014.



Secretary