



CITY of NOVI CITY COUNCIL

Agenda Item 2
August 13, 2018

SUBJECT: Consideration to adopt Ordinance No. 18-192, an ordinance to amend the City of Novi Code of Ordinances to add Chapter 16.5, "Collection Bins," Sections 16.5-1 through 16.5-9, in order to establish regulations for the placement, operation, and maintenance of collection bins in the City. **FIRST READING**

SUBMITTING DEPARTMENT:

CITY MANAGER APPROVAL: 

BACKGROUND INFORMATION:

Attached is a draft Collection Bin Ordinance addressing proposed regulations related to the placement, operation, and maintenance of outdoor bins used for the collection of clothing, shoes, books, and other salvageable items of personal property. In the past several years, a growing number of communities have adopted similar regulations in response to the proliferation of collection bins that have appeared in communities across the state. These bins are sometimes placed without the approval of the property owner and are frequently found in groups located in required parking, landscaped areas, vacant lots, and other inappropriate locations. If not properly maintained and managed, the bins can encourage illegal dumping and contribute to visual clutter and blight caused by graffiti and the accumulation of debris outside of the bins.

In 2015, the federal Sixth Circuit Court of Appeals in the case of *Planet Aid v City of St. Johns*, 782 F.3d 318 (6th Cir. 2015), made the regulation of outdoor donation bins decidedly more difficult when it struck down an ordinance that prohibited donation bins in the city of St. Johns. The court's decision found that outdoor donation bins "speak" and are deserving of strong First Amendment protection. The court's decision relied on cases involving in-person charitable solicitation and concluded that the city's ordinance operated as a content-based ban on charitable donation bins in violation of Planet Aid's First Amendment rights.

Although the court in *Planet Aid* rejected a total ban on charitable donation bins, it acknowledged that the physical characteristics of outdoor bins may be regulated provided the regulations are content-neutral. This left open the opportunity to regulate the height, size, cleanliness, location, and other content-neutral characteristics.

Taking into consideration the rulings in *Planet Aid* and other similar cases, the Ordinance Review Committee reviewed the attached ordinance to regulate collection bins in the city. The bins have been labeled "collection bins" as opposed to "donation bins" based on the court's inference in *Planet Aid* that donation bins may be synonymous with charitable giving. In preparing the ordinance, the City staff researched various ordinances from around the state and country, including those adopted within the last several years by the City of Lansing, Comstock Township, and Ypsilanti Township. Model ordinances drafted by Planet Aid and by the Association of Secondary Materials and Recycled Textiles, an international trade association comprised of companies involved in the recycling industry were also reviewed. The draft ordinance follows closely with the ordinances adopted in Lansing and Comstock Township, and

STATE OF MICHIGAN

COUNTY OF OAKLAND

CITY OF NOVI

ORDINANCE NO. 18-192

AN ORDINANCE TO AMEND THE CITY OF NOVI CODE OF ORDINANCES TO ADD CHAPTER 16.5, "COLLECTION BINS," SECTIONS 16.5-1 through 16.5-9, IN ORDER TO ESTABLISH REGULATIONS FOR THE PLACEMENT, OPERATION, AND MAINTENANCE OF COLLECTION BINS IN THE CITY.

THE CITY OF NOVI ORDAINS:

PART I. That Chapter 16.5, "Collection Bins," Sections 16.5-1 through 16.5-9 is hereby added to read as follows in its entirety:

Chapter 16.5 – COLLECTION BINS

ARTICLE I. – IN GENERAL

Sec. 16.5-1. - Purpose.

The purpose of this chapter is to promote the general health, safety, and welfare of Novi citizens by providing minimum standards for the placement, operation, and maintenance of collection bins within the city to ensure that the bins remain clean and safe, do not create hazards to pedestrians or to vehicular traffic, and remain free of graffiti, blight, and the accumulation of material outside the collection bin.

Sec. 16.5-2. Definitions.

In addition to those definitions and rules of construction in Section 1-2, the following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section:

Collection Bin means any unstaffed drop-off box, container, receptacle, or similar device that accepts textiles, shoes, books, and/or other salvageable personal property items to be used by the operator for distribution, resale, or recycling. Collection bin does not include receptacles used for the collection of solid waste and recyclable materials regulated under Chapter 16 of the Novi Code of Ordinances, Refuse Bins (Dumpsters, Trash Receptacles) as defined under Article 2.0 and regulated under the Novi Zoning Ordinance, or receptacles located within an enclosed building or structure.

Collection bin operator means a person who owns, operates, supervises or otherwise is in control of a collection bin that accepts collections of salvageable personal property.

Sec. 16.5-3. – License Required.

- (a) No person shall place, operate, maintain, or allow a collection bin within the city without having first obtained a license issued by the city clerk.
- (b) One license may be issued to cover all collection bins in the city under the same ownership, provided that application materials are submitted and approved and a license fee is paid for each collection bin. A collection bin that complies with this chapter may be added to an existing application and license upon receipt of the license fee and submittal of the information required for approval of a license.
- (c) A license fee in an amount set by resolution of the council shall be paid at the time the application is made for the license or renewal thereof. A license issued pursuant to this chapter shall be nontransferable and nonassignable.

Sec. 16.5-4 – Violations.

A violation of any provision or requirement of this chapter is a civil infraction, subject to enforcement and the fines and penalties for civil infraction violations as set forth in this Code, in addition to the penalties set forth in this chapter.

ARTICLE II. – LICENSE APPLICATION AND REVIEW

Sec. 16.5-5. – Application.

Any person desiring a license pursuant to this chapter shall file with the city clerk a license fee and the required certificate of insurance together with a sworn application for a license on forms furnished by the city, which application shall contain the following information:

- (a) Name, address, telephone number, email, and website address (if any) of the applicant, and of each officer if a corporation or each partner if a partnership. The same information shall be provided for the collection bin operator if different from the applicant.
- (b) Name, address, telephone number, email, and website address (if any) of the owner of the real property on which the collection bin will be located.
- (c) Name, address, telephone number, email, and website address (if any), including 24-hour contact information, of the person responsible for the daily operation and management of the collection bin.
- (d) A signed and notarized affidavit and authorization from the property owner to allow placement of the collection bin on the property.

- (e) Signed and notarized acknowledgements from the property owner and from the collection bin owner acknowledging receipt of a copy of this chapter and responsibility for joint and several liability for violations of this chapter.
- (f) A certificate of liability insurance issued by a responsible insurance company authorized to do business in the state confirming the existence of a commercial general liability insurance policy in an amount established by resolution of the council, and as may be modified by resolution from time to time, that names the city as an additional insured. The city clerk shall be notified in writing upon discontinuance or alteration of any such insurance coverage for any reason. The policy of insurance underlying the certificate shall provide for continuing liability to the full amount established by resolution, notwithstanding any recovery thereon, and that the insolvency or bankruptcy of the insured shall not constitute a release thereof. The policy of insurance underlying the certificate shall further provide that it shall not be cancelled, surrendered, revoked, or the amount of coverage reduced except after ten (10) days written notice to the city clerk, furnished by the insurance company issuing the policy. The cancellation, surrender, reduction in insurance coverage amounts, or other modification or termination of any insurance policy issued and for which a certificate is filed with the city in compliance with this chapter, shall automatically terminate a license issued under this chapter unless another policy complying with this chapter shall be in effect and a certificate of insurance is deposited with the city, prior to the time of such cancellation, termination, or reduction.
- (g) A textual description and scaled drawing or map on 8 ½" x 11" paper or other size accepted by the city that shows:
 - (1) The proposed location of the collection bin.
 - (2) The location and dimensions of all parcel boundaries, buildings, driveways, sidewalks, parking spaces, easements, and landscaped areas, and the distance from each to the proposed location of the collection bin.
 - (3) The distance between the proposed location of the collection bin and the nearest residential property.
 - (4) The location and distance of all collection bins within 1,000 feet of the proposed collection bin location.
 - (5) A photograph of the collection bin to be installed.
- (h) A description of the locking mechanism of the collection bin.
- (i) A maintenance plan that includes a plan for graffiti removal, rust protection, pick-up schedule, and litter and trash removal on and around the collection bin that is sufficient to prevent and/or eliminate blight-related conditions.

Sec. 16.5-6. – Regulations and restrictions.

The following regulations apply to licensed collection bins:

- (a) Collection bins are allowed in the B-2, B-3, I-1, and I-2 zoning districts.

- (b) Collection bins shall be fabricated of durable and waterproof materials.
- (c) Collection bins are required to be placed on a paved or concrete surface. Collection bins must be level and stable.
- (d) Collection bins shall be locked with a tamper resistant locking mechanism so contents cannot be accessed by anyone other than those responsible for retrieval of the contents. Collection bins shall be tightly covered at all times to prevent the harboring of rodents and the scattering of debris.
- (e) Collection bins shall be maintained in good condition and appearance with no structural damage, holes, visible rust, or graffiti. The area surrounding the bin shall be maintained free from any overflow items, furniture, rubbish, debris, hazardous materials, and noxious odors.
- (f) Collection bins shall be no larger than 84 inches high, 60 inches wide and 60 inches deep.
- (g) Collection bins shall not be permitted:
 - (1) On any unimproved lot or parcel that is not currently used or occupied or where the principal building or structure has been closed or unoccupied for more than thirty (30) days.
 - (2) Within a landscaped area or required building setback for the zoning district.
 - (3) Within one thousand (1,000) feet from another collection bin as measured along a straight line from one bin to the other.
 - (4) Within five hundred (500) feet from the property line of any lot used or zoned for residential purposes, within fifty (50) feet of any driveway, and less than ten (10) feet from a public right of way or sidewalk.
 - (5) Within a designated fire lane, or in or adjacent to a handicap parking space.
- (h) Collection bins shall not cause a visual obstruction to vehicular or pedestrian traffic as determined by the city, or block access to required parking, emergency vehicle routes, building entrances or exits, easements, and dumpsters or trash enclosure areas.
- (i) A collection bin shall prominently display its license on the front of the bin, along with the following information in at least one-half inch typeface:
 - (1) Name, address, email, and 24-hour telephone number of the person responsible for servicing and maintaining the collection bin.
 - (2) The type of material that may be deposited.
 - (3) The frequency of pickup.
 - (4) A notice that no materials shall be left outside the collection bin.

Sec. 16.5-7. – Investigation of application; grant or denial.

- (a) The city clerk shall examine all applications filed under this chapter and shall make or cause to be made such further investigation of the application or applicant as the clerk shall deem necessary. Within ten (10) business days from receipt of a completed application and license fee, the city clerk shall either issue a license or notify the applicant in writing of the decision to deny the license. If the city clerk denies an application,

the clerk shall state in writing the specific reasons for denial. A license shall be issued if the requirements of this chapter are met.

- (b) A license issued under this chapter shall expire at 12:00 midnight on the thirty-first day of December of the year of issuance thereof.
- (c) A license issued to a collection bin that meets the requirements of this chapter shall automatically renew for successive one (1) year terms upon payment of a renewal fee, provided the city did not issue a written notice of violation of any provision of this chapter to the bin owner or property owner during the preceding one (1) year term. A license that does not qualify for automatic renewal may be renewed upon payment of a renewal fee if the bin meets the standards of this chapter and has no open citations, unpaid fines, or unresolved violations at the time of license renewal. A license shall not be renewed for a period of one (1) year if the city issued three or more written notices of violations of this chapter against the collection bin during the preceding twelve (12) months. The city clerk shall notify the applicant in writing of the decision to deny the renewal license and state the specific reasons for denial.

ARTICLE III. – REVOCATION, SUSPENSION, OR PROBATION OF A LICENSE; REMOVAL OF COLLECTION BINS; APPEAL

Sec. 16.5-8. – Hearing on a decision to suspend, revoke, place on probation, or deny a license; removal of collection bins.

- (a) Whenever a determination is made that a collection bin does not conform to a requirement in this chapter, the city clerk or designee shall notify the collection bin operator and/or property owner of the noncompliance by email and/or by the 24-hour contact information identified on the collection bin or provided in the license application. The violation must be abated and proof of such submitted to the city clerk or designee within 72 hours after receipt of such notification.
- (b) If a violation of this chapter is not corrected within 72 hours of notification as provided above, the city clerk or designee may send a written notice of violation by first class mail to the collection bin owner and property owner to the addresses shown on the application for license or last known addresses on file. The written notice shall describe the violation and the actions necessary to correct the condition. The failure to remedy the violation or take the actions set forth in the written notice within ten (10) days from the date of written notification shall be deemed to be a violation of this chapter.
- (c) Licenses may be suspended, revoked, or placed on probationary status by the council if a violation of this chapter has occurred or if the information contained in the application for license or license renewal was false or misleading.

- (d) A public hearing before the council shall be held before a license issued under this chapter is suspended or revoked. The licensee and property owner shall be provided with due notice prior to the public hearing. The City Council may alternatively appoint an independent Hearing Officer to conduct the hearing and make a recommendation to the Council.
- (e) If the violation of this chapter is not corrected within the time provided in the written notice, the city or its designees are empowered, upon the giving of proper notice, to enter upon the property on which the collection bin is located for the purpose of accomplishing abatement of the violation. Such actions may include but not be limited to engaging the services of a waste hauler to remove and dispose of materials deposited on the outside of the bin or engaging a contractor to correct deficiencies with the bin.
- (f) Upon revocation of a license, a collection bin shall be removed from the property within ten (10) business days and, if not so removed within the time period, may be removed, stored, sold at public auction, or otherwise disposed of by the city at the expense of the collection bin owner and/or property owner.
- (g) All expenses incurred by the city in the performance of any work performed under the provisions of this chapter shall be the joint and several responsibilities of the property owner and collection bin owner to the extent allowed by law. If payment is not made on or before the due date, the city may place a lien upon the real property on which the collection bin was located when the violation occurred, and may add to the charges a penalty in the amount of one (1) percent per month for each month or portion of a month payment has not been made in full or such other amount as authorized by law. The city may collect charges assessed against real property, together with all interest and accrued penalties, in the manner provided under Chapter 9 of the Code.

Sec. 16.5-9 – Appeal.

Any person aggrieved by a decision of a city official under the provisions of this chapter may appeal such decision to the city council by filing a written request to the city clerk within ten (10) days following personal delivery or the date of mailing of a written notice of the decision. City council shall have the power to reverse, affirm or modify the decision. The City Council may in its discretion appoint an independent Hearing Officer to conduct a hearing and make a recommendation to the Council.

The determination by the council shall be final, subject to appeal to a court of competent jurisdiction.

PART II.

Severability. Should any section, subdivision, clause, or phrase of this Ordinance be declared by the courts to be invalid, the validity of the Ordinance as a whole, or in part, shall not be affected other than the part invalidated.

PART III.

Savings Clause. The amendment of the Novi Code of Ordinances set forth in this Ordinance does not affect or impair any act done, offense committed, or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment, pending or incurred prior to the amendment of the Novi Code of Ordinances set forth in this Ordinance.

PART IV.

Repealer. All other Ordinances or parts of Ordinances in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

PART V.

Effective Date. The provisions of this Ordinance are ordered to take effect following publication in the manner prescribed by the Charter of the City of Novi.

PART VI.

Adoption. This ordinance is hereby declared to have been adopted by the Novi City Council in a meeting thereof duly held and called on the ___ day of _____, 2018, in order to be given publication in the manner prescribed by the Charter of the City of Novi.

Robert J. Gatt, Mayor

Cortney Hanson, City Clerk

Certificate of Adoption

I hereby certify that the foregoing is a true and complete copy of the ordinance adopted at the regular meeting of the Novi City Council held on the ____ day of _____, 2018.

Cortney Hanson, City Clerk