



CITY OF MANITOWOC

WISCONSIN, USA

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August 14, 2018

TO: Common Council

FROM: City Attorney's Office

RE: Regulating Donation Drop Boxes

The Public Safety Committee asked our office to identify the most restrictive regulations legally allowed. To answer this question, I reviewed federal and state case law.

In, Village of Schaumburg v. Citizens for a Better Environment, 444 U.S. 620 (1980), the US Supreme Court held that solicitation of charitable donations is constitutionally protected speech. Relying on that on subsequent supreme court rulings, the Fifth Circuit determined donation bins were “silent solicitors and advocates for particular charitable causes” thus subjecting them to First Amendment protections. National Federation of the Blind of Texas, Inc. v. Abbott, 647 F.3d 202 (5th Cir. 2011). This determination was mirrored by the Sixth Circuit in Planet Aid v. City of St. Johns, 782 F.3d 318 (6th Cir. 2015).

Given that declaration, the City must be cautious with the level of and justification for any regulation of the donation bins. The threshold question is whether the regulation is content-based or content-neutral.

Content-based government regulation is subject to strict scrutiny analysis, the most stringent standard of review, and the regulation will only be upheld if it is *narrowly tailored* to serve a *compelling* state interest. See e.g., Porter v. State, 2018 WI 79, P59 (emphasis added). If an ordinance is content-neutral, meaning, it regulates only the time, place or manner of protected speech, it will be upheld if “it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is *no greater than is essential* to the furtherance of that interest.” Turner Broad. Sys. v. FCC, 512 U.S. 622 (1994).

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As currently written, draft ordinance 11.090 is a content-neutral regulatory scheme intended to address the government's substantial interest in eliminating the nuisance of ongoing, improper disposal of rubbish and junk, that tends to accumulate around unsupervised donation collection bins by creating a permit system for bin placement and management including contact information for parties responsible for disposing of rubbish on or around the bins. This purpose is not related to the underlying speech associated with charitable giving and the ordinance does not specifically target one kind of donation bin over another. Nor does the ordinance address the value of any donation bin collection program over another. As such, I believe draft ordinance 11.090 would be upheld so long as the regulations therein are not unreasonable.

A requirement that any donation bin organization pay a permit fee of \$5,000 annually will almost certainly eliminate the presence of donation bins within the City. It will also raise legal red flags as it effectively serves to prohibit donation bin activity and would therefore be properly categorized as a content-based regulations. It would also not likely pass strict scrutiny analysis. I also don't believe it would pass intermediate scrutiny as it would almost certainly be considered unreasonable.

The City's purpose for regulating donation bins is 1) to establish a database of contact information to facilitate fast removal of improperly dumped junk, 2) to offset the costs incurred by the City for ensuring the bins are regularly cleared and properly maintained, and 3) to establish a process for removing violating junk and preventing the future dumping of junk.

To achieve those goals while withstanding judicial scrutiny, I strongly advise that any regulation of donation bins follow these rules:

1. The permit fees should be reasonable and should be no more than necessary to offset the City's enforcement and regulatory expenses;

It's difficult to calculate the City's actual cost of donation bin maintenance enforcement given the variety of circumstances and number of staff involved. The most expensive fee currently on record is a \$1,000 Adult Entertainment License fee and I think the costs would be similar here.

2. The forfeitures imposed for donation removal, maintenance or placement should be graduated and the forfeiture for a first offense violation should be no more than any other forfeiture for a first offense violation.

The most expensive first offense forfeiture currently on record is \$2581, escort service or prostitution violations. The second highest is \$2571, selling synthetic THC. First offense building violations are \$250- \$376; second offense violations are \$439- \$565; 3rd offense are \$691- \$1069.