



AN ORDINANCE: By Public Services & Safety
Committee
Re: Renumbering Code §21-40 as §21-41 and
creating Code §21-40 relating to regulation of
Collection Boxes

ORDINANCE NO. 2013-13

Introduced: June 5, 2013

Committee/Commission Action:

RECOMMENDED FOR PASSAGE

AN ORDINANCE

The Common Council of the City of Neenah, Wisconsin, do ordain as follows:

Section 1. Section 21-40 of the Code of Ordinances of the City of Neenah is renumbered as Section 21-41.

Section 2. Section 21-40 of the Code of Ordinances of the City of Neenah is created to read as follows:

Sec. 21-40. Collection Boxes.

(a) *Intent & Definitions.*

(1) *Findings & Intent.* The Common Council finds that the growth of collection boxes in the City has resulted in unsightly conditions that detract from property values and promote the growth of nuisance conditions. The Collection Boxes Ordinance is intended to address those conditions as to be a regulatory ordinance for the public's health, safety and welfare for the protection of all citizens who use collection boxes. The intent of this Collection Boxes Ordinance is to impose restrictions and conditions on all collection boxes in the City so that they are, and remain, clean, safe and do not create hazards to pedestrians and to vehicular traffic. The ordinance is passed under the City's regulatory authority pursuant to Wis. Stat. §§ 62.11(5) and 62.23(9)

(2) *Definitions.* The following terms shall have the listed definitions.

"Collection boxes" means any receptacle, container or similar device located outside of an enclosed building designed, intended or used for collection and storage of donated items or materials including, but not limited to, furniture, clothing, shoes, books and other like items.

“Department” means the Department of Community Development and Assessment.

“Real property, Property or Land” means a lot of record located in the City of Neenah.

“Property owner” means the person who is an owner of real property where the collection box(es) are located.

- (b) *Prohibition.* No person or business shall place, use or allow the installation or operation of a collection box within the City of Neenah on all public and private property except under all the following conditions:
- (1) Collection boxes may be located only on property used for commercial purposes and where the primary structure on the property is owned or controlled by the owner of the collection box, and the collection box is used exclusively in support of the collection box owner’s principal business on the property. In the alternative, where the owner of the property is not the owner or lessee of the collection box, the collection box may be located on such commercial property if the property owner provides a sworn affidavit to the Department providing written permission for locating the collection box on the property, as well as an acknowledgement from the property owner of receipt of this ordinance. The property owner shall further acknowledge that the property owner is responsible for violations of this section by the collection box and its owner. The form of affidavit required under this subsection shall be as prescribed by the Department. For purposes of this subsection, the affidavit and acknowledgment may be executed by an individual who is an officer, director, member or manager of an entity owning the property.
 - (2) Collection boxes shall be metal and be maintained in good condition and appearance with no structural damage, holes or visible rust and shall be free of graffiti.
 - (3) Collection boxes shall be locked or otherwise secured in such a manner that the contents cannot be accessed by anyone other than those responsible for the retrieval of the contents.
 - (4) Collection boxes must be located a minimum of ten (10) feet from any lot line and within two (2) feet of the principal building on the property. Collection boxes shall be located so as to not cause a visual obstruction or distraction to vehicular or pedestrian traffic, and not cause safety hazards with regard to a designated fire lane or building exit. .
 - (5) Collection boxes must placed on a level, hard (asphalt or concrete), dust-free surface.
 - (6) All donations must be fully enclosed in a collection box. Donations that are not fully enclosed in a collection box are considered a public nuisance and subject to removal by the city at the owners' expense ten days after notification from the building inspector that their box is a public nuisance.

- (7) The collection box must be no larger than six feet wide, six feet deep and eight feet high.
- (8) Collection boxes shall have, at minimum, 1/2 inch type visible from the front of each collection box the name, address, email, website and phone number of the operator/owner of the box, and in 4 inch type visible from the front of each both whether the collection box is owned and operated by a for profit company or a not for profit company. The collection box shall not have information, advertising or logos other than those relating to the Operator.
- (9) Collection boxes shall be located not less than 1000 feet from any other collection box as measured along a straight line from one box to another. Notwithstanding this separation requirement, up to two (2) collection boxes per property are permitted if the two (2) collection boxes are side by side and are no more than one foot apart and otherwise meet the requirements of this section.

(c) *Enforcement, Appeal, Penalty, Remedies and Effective Date for Enforcement.*

- (1) *Enforcement.* The City's building inspector, or designee, shall have primary enforcement responsibility for the collection box ordinance.
- (2) *Appeal.* Any person aggrieved by a decision rendered by the Building Inspector regarding any enforcement order under this section, may appeal the decision to the Public Services & Safety Committee. The appeal shall be made by filing a written notice thereof with the Department, with a copy to the City Clerk, setting forth the grounds for the appeal not later than ten (10) days after receiving notice of violation from the Building Inspector. The Public Services & Safety Committee may grant relief if the applicant presents clear and convincing evidence that there was a substantive error in the Building Inspector's decision.
- (3) *Penalty.* Any person violating the provisions of this section is subject to a forfeiture pursuant to Code §1-20. Any condition caused or permitted to exist in violation of the provisions of this section, or any ordinance, shall be deemed a new and separate offense for each day that such condition continues to exist.
- (4) *Remedies.* In addition to the penalty listed above, the collection box owner and property owner shall be subject to the following remedies.
 - a. Upon notice of violation, the collection box shall be brought into compliance within ten (10) days and, if not brought into compliance within the time period, the City may remove, store or dispose of the collection box at the expense of the collection box owner and/or property owner. The costs associated with the removal of the collection box incurred by the City, or the City's contractor shall be the responsibility of the collection box owner and property owner. If such obligation is not paid within thirty (30) days after mailing of a billing of costs to the collection box owner and property owner, the City may place a lien upon the property where the collection box was located enforceable as a special charge pursuant to Wis. Stat. § 66.0627.

- b. Nothing in this section shall prevent the City from pursuing any other remedy provided by law in conjunction with or in lieu of prosecuting persons under this section for violation of this section.
 - c. The real property owner and collection box owner shall be jointly and severally liable for each violation and for payment of any forfeiture and costs of abatement.
- (5) *Effective Date for Enforcement.* No forfeitures shall be imposed for a violation of this section until sixty (60) days after its effective date. All collection boxes existing at the effective date of the ordinance shall be brought into compliance with the conditions required under this section within sixty (60) days of the effective date of the enacting ordinance. Any collection boxes not in compliance with this section after sixty (60) days of the effective date shall be subject to all remedies for violation as provided herein.

Section 3. Severability. In the event any section, subsection, clause, phrase or portion of this ordinance is for any reason held illegal, invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remainder of this ordinance. It is the legislative intent of the Common Council that this ordinance would have been adopted if such illegal provision had not been included or any illegal application had not been made.

Section 4. Repeal and Effective Date. All ordinances or parts of ordinances and resolutions in conflict herewith are hereby repealed. This ordinance shall take effect from and after its passage and publication.

Moved by: Ald. Ahles/Hillstrom
 Adopted: June 5, 2013
 Approved: June 5, 2013
 Published: June 10, 2013

Approved:



George Scherck, Mayor

Attest:



Patricia A. Sturn, City Clerk

THIS INSTRUMENT WAS DRAFTED BY:
 City Attorney James G. Godlewski
 211 Walnut Street
 Neenah, WI 54956
 State Bar No. 1005210

