

ORDINANCE 12-2009

ORDINANCE OF THE BOROUGH OF MADISON AMENDING THE BOROUGH CODE TO INCLUDE A NEW CHAPTER 82 ENTITLED "CLOTHING BINS"

WHEREAS, the Borough Administrator has recommended the adoption of an Ordinance to regulate Clothing Bins in conformity with N.J.S.A. 40:48-2.60 et. seq.; and

WHEREAS, the Council desires to enact such Ordinance.

NOW, THEREFORE, BE IT ORDAINED, by the Council of the Borough of Madison, in the County of Morris and State of New Jersey as follows:

SECTION 1: The Madison Borough Code is hereby amended to include a new Chapter 82 entitled "Clothing Bins" which shall provide as follows:

Chapter 82 Clothing Bins

82-1 Permit Required

In accordance with N.J.S.A. 40:48-2.61, notwithstanding any other provision of law to the contrary, no person or entity shall place, use, or employ a donation clothing bin, for solicitation purposes, within the Borough of Madison unless the person or entity shall obtain a permit, valid for a period of one year, issued by the Borough Clerk, upon approval of the Borough Council, in accordance with this Chapter 82.

82-2 Issuance of Permit

1. An application shall be filed with the Borough Clerk on forms designated by the Borough Clerk which shall include the following:

(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 collected donations would be allocated or spent;

(c) the name, and telephone number of the bona fide office required pursuant to subsection b. of this section, of any entity which may share or profit from any clothing or other donations collected via the bin;

(d) written consent from the property owner to place the bin on his property; and

(e) a zoning permit issued by the Madison Zoning Officer pursuant to section 195-30.5 of the Madison Land Development Ordinance.

2. The Borough Council 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;

3. The applicant shall pay to the Borough of Madison a permit fee of \$25, to offset the costs involved in enforcing this Chapter and N.J.S.A 40:48-2.60 et seq.

82-3 Renewal of Permit

1. An expiring permit for a donation clothing bin may be renewed upon application for renewal and payment of a \$25.00 fee for such renewal, to offset the costs involved in enforcing Chapter and N.J.S.A 40:48-2.60 et seq. Such application shall include:

(a) the location where the bin is situated, as precisely as possible, and, if the person intends to move it, the new location where the bin would be situated after the renewal is granted and written consent from the property owner to place the bin on his property;

(b) the manner in which the person has used, sold, or dispersed any clothing or other donations collected via the bin, the method by which the proceeds of collected donations have been allocated or spent, and any changes the person anticipates it may make in these processes during the period covered by the renewal; and

(c) The name, and telephone number of the bona fide office required pursuant to subsection b. of this section, 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

82-4 Display of Information on Bin

1. All bins shall comply with the following display requirements:

(a) The permit number and its date of expiration shall be clearly and conspicuously displayed on the exterior of the donation clothing bin, in addition to the information required pursuant to subsection c. of this section;

(b) The person, and any other entity which may share or profit from any clothing or other donations collected via the bin, maintains a bona fide office where a representative of the person or other entity, respectively, can be reached at a telephone information line during normal business hours for the purpose of offering information concerning the person or other entity. For the purposes of this subsection, an answering machine or service unrelated to the person does not constitute a bona fide office; and

(c) The following information is clearly and conspicuously displayed on the exterior of the donation clothing bin:

(1) The name and address of the registered person that owns the bin, and of any other entity which may share or profit from any clothing or other donations collected via the bin;

(2) The telephone number of the person'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;

(3) 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

(4) A statement, consistent with the information provided to the Borough of Madison in the most recent permit or renewal application pursuant to subparagraph (b) of paragraph (1) of subsection a. of this section and subparagraph (b) of paragraph (4) of subsection a. of this section, indicating 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 collected donations would be allocated or spent.

82-5 Complaints

1. The Borough of Madison shall receive and investigate, within 30 days, any complaints from the public about the bin. Whenever it appears to the Borough of Madison that a person has engaged in, or is engaging in any act or practice in violation of section 2 of N.J.S.A. 40:48-2.61 or any provisions of this Chapter, the person who placed the bin shall be issued a warning, stating that if the violation is not rectified or a hearing with the Borough Council is not requested within 45 days, the bin will be seized or removed at the expense of the person who placed the bin, and 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.

2. In the event that the person who placed the bin does not rectify the violation or request a hearing within 45 days of the posting of the warning, the Borough of Madison may seize the bin, remove it, or have it removed, at the expense of the person who placed the bin, 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 Borough of Madison.

82-6 Penalties

1. In addition to any other penalties or remedies authorized by the laws of this State, any person who violates any provision of N.J.S.A. 40:48-2.60 et seq. which results in seizure of the donation clothing bin shall be:

(a) Subject to a penalty of up to \$20,000 for each violation. The Borough of Madison may bring this action in the municipal court or Superior Court as a summary proceeding under the Penalty Enforcement Law of 1999, N.J.S.A..2A:58-10 et seq, and any penalty monies collected shall be paid to the chief financial officer of the Borough of Madison; and

(b) Deemed ineligible to place, use, or employ a donation clothing bin for solicitation purposes pursuant to section 2 of 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 N.J.S.A .40:48-2.60 et seq. may apply to the Borough Council to have that person's eligibility restored. The Borough Council may restore the eligibility of a person who:

(1) Acts within the public interest; and

(2) Demonstrates that he made a good faith effort to comply with the provisions of N.J.S.A..40:48-2.60 et seq. and this Chapter and all other applicable laws and regulations, or had no fraudulent intentions.

SECTION 2: If any section or provision of this Ordinance shall be held invalid in any Court of competent jurisdiction, the same shall not affect the other sections or provisions of this Ordinance, except so far as the section or provision so declared invalid shall be inseparable from the remainder or any portion thereof.

SECTION 3: All Ordinances or parts of Ordinances, which are inconsistent herewith are hereby repealed to the extent of such inconsistency.

SECTION 4: The Ordinance shall take effect immediately after final passage and publication in the manner provided by law.

ADOPTED AND APPROVED

March 23, 2009

MARY-ANNA HOLDEN, Mayor

Attest:

MARILYN SCHAEFER, Borough Clerk

Introduced and passed: March 9, 2009

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