

2009-10-29-0861

AN ORDINANCE

AMENDING CHAPTER 16 OF THE CITY CODE TO CREATE A NEW ARTICLE XVIII TO REGULATE THE TRANSPORTATION, STORAGE, RECORD KEEPING AND PROPER DISPOSAL OF USED AND SCRAP TIRES; DECLARE THE UNAPPROVED STORAGE OF USED AND SCRAP TIRES A PUBLIC NUISANCE; ESTABLISH PENALTIES FOR VIOLATIONS; AND PROVIDE FOR PUBLICATION.

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WHEREAS, the illegal dumping of used and scrap tires is an issue of major concern to the City of San Antonio and its citizens because the problem impacts every sector of the City; and

WHEREAS, abandoned and/or unregulated stockpiles of used and scrap tires pose a serious fire hazard and threat to the public health and safety; and

WHEREAS, the City currently lacks enforcement authority to regulate the transportation, storage, record keeping, and proper disposal of used and scrap tires; and

WHEREAS, the abatement of these abandoned and/or unregulated stockpiles of used and scrap tires places a financial burden on the City; and

WHEREAS, this amendment establishes regulations and procedures for the safe transportation, appropriate storage, accurate record keeping, and proper disposal of used and scrap tires; **NOW THEREFORE**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. Chapter 16 of the City Code of San Antonio, Texas is hereby amended by adding language as a new Article XVIII entitled "Tire Storage, Transportation, and Disposal," consisting of the new sections 16- 920 to 16-937, as follows:

ARTICLE XVIII. TIRE STORAGE, TRANSPORTATION, AND DISPOSAL

DIVISION 1. GENERALLY.

Sec. 16-920. Purpose of article.

The purpose of this article is to establish regulations and procedures for the safe transportation, appropriate storage, and proper disposal of used or scrap tire.

Sec. 16-921. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

City means the City of San Antonio.

Department means the Housing and Neighborhood Services Department.

Director means the Director of Housing and Neighborhood Services or designee.

Driver means a person designated to act as a driver of a permittee's truck(s) pursuant to the permit.

Elements of nature means rainfall, snow, sleet, hail or other natural precipitation.

Manifest means a record of all used or scrap tires transported and/or received at a scrap tire facility.

Operator means the person in care, custody and control of a scrap tire facility.

Permit means a valid tire transporters permit issued by the City pursuant to this article.

Permittee means a person who holds a valid tire transporters permit issued by the City pursuant to this article.

Public highway means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

Scrap tire means a whole tire or any portion of a tire that can no longer be used for its original intended purpose or is being held, transported, or processed for disposal or recycling.

Scrap tire facility means any business or establishment where 100 or more scrap tires per year are collected, repaired, processed, recycled, scrapped, sold, bought or stored.

Storage means the collection or accumulation of scrap tires on the ground or in roll-off containers.

Tire means any tire, whether new or used, whether serviceable or unserviceable, made wholly or partially of rubber which was manufactured for use on any vehicle propelled by a motor (including vehicles pushed or pulled by a vehicle propelled by a motor), regardless of whether such vehicle is intended for use on a public highway,

provided that such tire is not mounted upon a wheel or rim and in service upon or carried as a component spare part of a vehicle.

Tire disposer means any person who, in compliance with all applicable state, federal and local laws, rules and regulations, disposes of or converts tires to another purpose including, without limitation, persons who:

- a. landfill, incinerate or otherwise dispose of tires as waste or as fuel; or
- b. by shredding, grinding, chemical treatment or other means reduce tires into basic components for oil, steel, carbon black, rubber, road paving or other marketable salvage materials; or
- c. convert tires into other useful items such as doormats and sandal soles.

Tire marking means the marking of a scrap tire with the facility's permit number.

Tire piece means a particle of scrap tire or scrap tire piece that has been split, quartered or shredded to a usable size such as two-inch minus, or other size required by an industry user or recycler.

Tire transporter means a person or entity permitted by the City to pick up and deliver used and/or scrap tires or shredded tire pieces from and to dealers of tires or permitted scrap tire facilities or state-registered tire recycling facilities.

Truck means a vehicle designated to be operated by a permittee's drivers for the transport of scrap tires pursuant to the permit.

Used tire means a tire, including a recapped or retreaded tire, suitable for continued use for its original intended purpose.

Sec. 16 – 922. Approved storage methods.

All used tires, scrap tires and tire pieces stored within the city must be kept in a manner which prevents their exposure to and collection of the elements of nature. Tires must not be allowed to hold water, dirt, rubbish or other foreign materials. Monitoring and control measures are to be implemented as necessary to eliminate the presence of mosquito breeding and rodent harborage.

- (a) Used tires, scrap tires and tire pieces shall be stored separately.
- (b) Used tires, scrap tires and tire pieces stored outside shall be:
 - (1) screened from public view;
 - (2) properly stored:
 - (A) on racks or neatly stacked not in excess of 10 feet in height; or
 - (B) in a roll-off container front-load dumpster, or other metal storage container, including a trailer not exceeding 45 ft x 8 ft by 13 ft if covered and if the stacked tires do not exceed height of 13 feet and the container and contents are shielded from rainwater. No more

than 4 containers may be stored at any one scrap tire facility location; and

- (3) in compliance with all applicable fire code provisions.

Sec. 16-923. Unapproved storage of tires declared a public nuisance.

The storage of any tire upon any premises within the city in such a manner that does not conform to the approved storage methods defined in 16-922 is hereby declared to be a public nuisance which is subject to abatement at the expense of the owner of such premises as provided by law.

Sec. 16-924. Penalty for violations of this article.

A violation of any of the provisions of this article constitutes a Class C misdemeanor that shall be punishable, upon conviction, by a fine of not less than \$100.00 nor more than \$2,000.00. Each day that any violation continues shall constitute a separate offense. In the event a defendant has once previously been convicted under this article, the defendant shall be fined an amount not less than two hundred dollars (\$200.00) and not less than three hundred dollars (\$300.00) for a third conviction and for each conviction thereafter.

Sec. 16-925. Exemptions.

This article does not apply to any department, branch or agency of federal, state, or municipal government. Landfilled scrap tires are not subject to the storage requirements provided herein.

DIVISION 2. PERMITS AND RECORDS

Sec. 16-926. Scrap tire facility license required.

(a) It shall be unlawful for any person to own or operate a scrap tire facility without a valid scrap tire facility license issued under this article.

(b) To obtain a scrap tire facility license, an application must be submitted to the Director. The applicant must be the person who will own, control, or operate the tire business. The application must be signed and verified by the applicant and contain all of the following information:

- (1) The name, mailing address, and telephone numbers of each owner and operator of the facility.
- (2) The physical address and telephone number of the facility.
- (3) The approximate number of scrap tires that will be stored on site at the facility.

(c) A one-time processing fee of twenty-five (\$25.00) dollars shall be charged upon initial registration and an annual assessment of two hundred and fifty (\$250.00) thereafter.

Sec. 16-927. Scrap tire identification.

- (a) Scrap tires shall be marked with the permit number of the scrap tire facility within twenty-four (24) hours of receipt.
- (b) Whole scrap tires shall be marked on the outside of the tire in a manner sufficient to provide notice of ownership. Said marking of the permit number shall be at least one inch in height.

Sec. 16-928. Scrap tire facility transport and records.

- (a) It shall be unlawful for any scrap tire facility to cause or permit any scrap tire to be transported upon any public highway other than by a permitted tire transporter.
- (b) All scrap tires shall be covered and secured during transport upon any public highway by a permitted tire transporter.
- (c) Each scrap tire facility shall maintain a daily manifest of the numbers of scrap tires received and delivered. The daily manifest shall include:
 - (1) the number of tires received from the transporter or other means;
 - (2) the number of tires removed by the transporter;
 - (3) the date of transaction;
 - (4) the name and permit number of the transporter.

Sec. 16-929. Transporter permit required.

- (a) It shall be unlawful for any person to transport scrap tires upon any public highway within the city unless such person is acting pursuant to a permit prominently displayed on the truck.
- (b) It is an affirmative defense to prosecution under this section that the cargo transported by such person:
 - (1) Contains four or less scrap tires; or
 - (2) Contains four percent or less scrap tires by volume and is part of a general cargo of "municipal solid waste" as that term is defined by Chapter 361.003 of the Texas Health and Safety Code; or
 - (3) Originated outside of the city and is destined for transport outside of the city, provided that no scrap tires are loaded or unloaded within the city.
- (c) Each person desiring a tire transporter permit shall make application to the Department setting forth:
 - (1) The name of such person;
 - (2) The business address of such person;

- (3) The address within the county at which the records required in this division will be maintained;
- (4) The principal business or occupation of such person;
- (5) A description of each truck which will be used by such applicant for the transport of scrap tires including the manufacturer, gross weight, license number, color, vehicle identification number, year of manufacture and registered owner thereof;
- (6) The name and residence address of each driver who will be authorized to drive the applicant's trucks and their respective driver's license numbers; and
- (7) That neither the applicant nor any proposed driver has had a permit which has been revoked under this article within the immediately preceding period of three years.

(d) A fee of fifty (\$50.00) dollars per truck shall be assessed annually.

Sec. 16-930. Issuance, duration, and amendment.

(a) The Department shall issue a permit or permits to the applicant designating the truck(s) and driver(s) authorized pursuant thereto unless it is found that:

- (1) Any statement on the application was incomplete or false;
- (2) The applicant or any driver listed on the application has committed any offense involving the unlawful disposal or storage or theft of tires within the immediately preceding period of three years; or
- (3) The applicant or any driver listed on the application has had a permit under this article revoked within the immediately preceding period of three years.

(b) Permits are valid for a period of twelve months from date of issuance and are non-transferable.

(c) In addition to the permit itself, the Department shall issue to the permittee one identification card for each driver covered thereby and one or more identification plates, stickers or decals to be attached by the permittee in such places and manner as the Director may administratively direct to each truck covered thereby.

(d) Permits issued under this article may be amended as to the trucks or drivers authorized thereunder upon application to the Director in the same manner as the original application. Such fees shall not be prorated, and no credit shall be allowed for any truck or driver which is deleted.

Sec. 16-931. Authorized drivers and trucks.

- (a) It shall be unlawful for a permittee to allow any truck to be used for the transport of scrap tires except those trucks designated in the permit. The permittee shall ensure that each such truck bears the plates, stickers or decals issued at all times.
- (b) It shall be unlawful for any permittee to allow any truck while used for the transport of scrap tires to be operated except by the drivers designated in the permit.
- (c) It shall be unlawful for any person to act as a driver of any permittee's truck while used for the transport of scrap tires unless the person is in possession of the driver identification cards issued in such person's name to the permittee.

Sec. 16-932. Tire transporter disposal and records.

- (a) It shall be unlawful for any transporter to dispose of any scrap tires transported by such permittee other than by the delivery of such tires to a registered scrap tire facility.
- (b) Each transporter shall maintain a daily manifest of the numbers of scrap tires received and delivered. The daily manifest shall include:
 - (1) the name and address of the facility from where scrap tires were received and/or delivered;
 - (2) the number of tires received or disposed; and
 - (3) date of transaction.

Sec. 16-933. Maintenance and inspection of records.

- (a) The records required to be made pursuant to this article are government records under Chapter 37.01 of the Texas Penal Code.
- (b) Such records shall be retained for three years from date of creation at the address designated in the application for registration.
- (c) All required records shall be made available to the Department upon request during regular business hours.
- (d) Said records may be inspected, audited, or copied by the Department as required to ensure compliance with this article.

DIVISION 3. REVOCATION.

Sec. 16-934. Grounds for scrap tire facility license or transporter permit revocation.

Any permit issued under this article may be revoked in accordance with the procedures herein prescribed if it is found that the transporter designated in the permit has:

- (a) Violated the provisions of this article;
- (b) Violated any state or municipal law or ordinance involving the unlawful disposal or storage or theft of tires;
- (c) Violated any provision of Chapter 37 of the Texas Penal Code relating to the records required to be kept under this article; or
- (d) Provided any statement in the application for the permit which was known to be false or should have been known to be false by any person required to swear to the application.

Sec. 16-935. Investigation of facts prior to revocation; notice of possible revocation.

Whenever the Director receives reliable information that grounds for revocation exist, an investigation of the facts shall be conducted. If the Director finds that there are grounds for revocation, written notice shall be provided to the permittee by personal service or by certified mail, return receipt requested, to the address set forth in the application. Such notice shall set forth:

- (a) The specific grounds upon which the permit may be revoked;
- (b) That there will be a hearing before the Director in which the City will seek the revocation of the permit;
- (c) The date, time and place of such hearing; and
- (d) That the permittee may appear and present testimony.

Sec. 16-936. Administrative hearing on permit revocation.

- (a) All hearings shall be held by the Director or designated representative who shall serve as the hearing officer.
- (b) All hearings shall be conducted under rules consistent with administrative proceedings.
- (c) If the permittee fails to appear at the hearing, the City shall introduce evidence to establish a prima facie case showing that grounds exist for revocation of the permit.
- (d) After completion of the presentation of evidence by all parties appearing, the hearing officer shall issue a written order as to whether or not there are grounds for revocation of the permit.
- (e) A copy of the order shall be personally delivered or mailed by certified mail, return receipt requested, to the permittee within ten (10) days of the hearing.

Sec. 16-937. Appeals.

(a) The revocation of a permit may be appealed to district court upon the filing of a verified petition setting forth the legal grounds for the appeal. The petition must be filed within thirty (30) calendar days after a copy of the final decision of the hearing officer is provided to the permittee, or such decision shall become final upon expiration of the thirty-calendar-day period.

(b) Said appeal shall be limited to a hearing under the substantial evidence rule; whereunder the court may reverse or affirm, in whole or part, the hearing officer's decision.

SECTION 2. Should any Article, Section, Part, Paragraph, Sentence, Phrase, Clause, or Word of this ordinance, for any reason be held illegal, inoperative, or invalid, or if any exception to or limitation upon any general provision herein contained be held to be unconstitutional or invalid or ineffective, the remainder shall, nevertheless, stand effective and valid as if it had been enacted and ordained without the portion held to be unconstitutional or invalid or ineffective.

SECTION 3. The City Clerk is directed to promptly publish public notice of this ordinance in accordance with Section 17 of the City Charter of San Antonio, Texas.

SECTION 4. The publishers of the City Code of San Antonio, Texas are authorized to amend said code to reflect the changes adopted herein and to correct typographical errors and to index, format and number paragraphs to conform to the existing code.

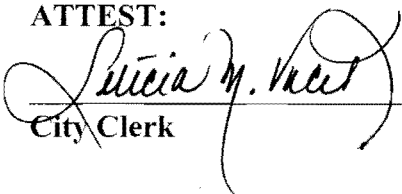
SECTION 5. This ordinance shall be effective on November 8, 2009.

PASSED AND APPROVED this 29th day of October, 2009



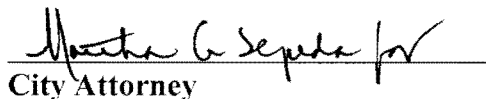
M A Y O R

ATTEST:



City Clerk

APPROVED AS TO FORM



City Attorney