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ORDINANCE NO. 1804.12

SCRAP TIRE ORDINANCE

A ORDINANCE OF THE CITY OF SAN ELIZARIO ENACTING REQUIREMENTS FOR THE PROPER STORAGE, TRANSPORTATION, AND DISPOSAL OF USED AND SCRAP TIRES; REQUIRING REGISTRATION AND A PERMIT OF SCRAP TIRE BUSINESSES; DECLARING A MISDEMEANOR OFFENSE AND PROVIDING FOR A PENALTY NOT TO EXCEED \$200 PER OFFENSE; AND AN EFFECTIVE DATE

RECITALS

WHEREAS, the City of San Elizario desires to protect the safety and welfare of its citizens, and to protect and enhance the quality of its environment; and

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

WHEREAS, a comprehensive program for the proper handling and disposal of tires will serve as a public safeguard, and be of benefit to the City; and

WHEREAS, pursuant to Texas Local Government Code Section 51.001, the City has general authority to adopt an ordinance or police regulation that is for the good government, peace or order of the City and is necessary or proper for carrying out a power granted by law to the City; and

WHEREAS, the City Council finds that it is necessary and proper for the good government, peace, or order of the City to adopt this Ordinance providing for the appropriate and proper storage, transportation, record keeping and disposal of used and scrap tires.

NOW, THEREFORE, BE IT ORDAINED by the City Council of San Elizario, Texas, that:

ARTICLE I. FINDINGS OF FACT

The foregoing recitals are adopted as facts and are incorporated fully herein.

ARTICLE II. ADOPTION AND ENACTMENT

The City Council of the City of San Elizario hereby adopts and enacts the "Scrap Tire Ordinance" *Attachment A*, attached hereto and incorporated fully herein for all intents and purposes.

ARTICLE III. REPEALER AND SEVERABILITY

REPEALER: All ordinances, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.

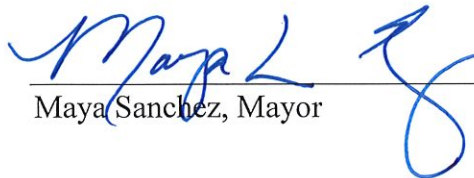
SEVERABILITY: Should any of the clauses, sentences, paragraphs, sections or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

ARTICLE IV. EFFECTIVE DATE AND PUBLICATION

This Ordinance shall be effective immediately upon passage and publication in the city's official newspaper.

PASSED AND APPROVED this, the 13th day of March 2018, by a vote of 5 (*ayes*) to 0 (*nays*) to 0 (*abstentions*) of the City Council of San Elizario, Texas.

CITY OF SAN ELIZARIO, TEXAS



Maya Sanchez, Mayor

CITY OF SAN ELIZARIO SCRAP TIRE ORDINANCE

Section 1. Purpose and Intent

The City of San Elizario desires to protect the health, safety and welfare of its citizens, and to protect and enhance the quality of its environment.

The purpose of this Scrap Tire Ordinance is to institute and maintain a comprehensive program for the handling and disposal of tires in order to ensure that the storage, transportation, collection, processing and disposal of tires does not adversely affect the planning, safety, and well-being of the public and does not degrade the quality of the environment.

This Ordinance shall be known as the "Scrap Tire Ordinance".

Section 2. Definitions

The following words, terms and phrases 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 Elizario.

Dump means to throw, discard, place, deposit, discharge, bury, or dispose of.

Manifest means a form or document used for identifying the quantity and the origin, routing, and destination of tires during transportation from the point of generation, through any intermediate points, to an end user, processor or disposer.

Mobile tire repair service means and includes any motorized vehicle occupied, used or maintained for the purpose of providing tire repair road services that include selling, offering or exposing for sale, keeping with the intention to sell, generating, repairing, processing, storing, utilizing and disposing of any and all types of tires.

Scrap/used/waste tire means a tire that is no longer suitable for its original intended purpose because of wear, damage, or defect. The term "scrap/used/waste tire" also includes any tire that is destined for a tire disposer or re-processor (*i.e.*, re-capper).

Tire means a continuous solid or pneumatic rubber covering encircling the wheel of a bicycle, motorcycle, automobile, truck, trailer, tractor or other vehicle.

Tire business means a person, company or corporation, engaged in the resale of tires or the generation of waste tires, the transportation of waste tires, tire hauling, and/or mobile tire repair road service.

Tire hauler means any person engaged in the business of picking up or transporting waste tires for the purpose of removal to a tire recycling facility, waste tire disposer, processor, end user, or disposal facility.

Tire recycling facility means any facility, mandated and licensed, which recycles or properly disposes tires.

Section 3. Business Permit Required

- 3.1 A business registration permit is required for tire businesses located within the city limits and engaged in the resale of tires or the generation of waste tires, the transportation of waste tires, tire hauling, and/or mobile tire repair road service.
- 3.2 A tire business shall be registered annually with the City in accordance with the City's Business Registration Ordinance. Failure to register shall subject the business owner and/or operator to penalties and fines as prescribed in the Business Registration Ordinance.
- 3.3 Separate permits shall be acquired for each location and/or tire related business, including a mobile tire repair service.
- 3.4 Application for a business permit shall be made on a form provided by the City and, in addition to that information required on the form, shall include:
 - a. Applicant's name, physical address, telephone, facsimile number, and email address;
 - b. Tax identification number or taxpayer identification number;
 - c. Proof of current business license and/or state issued permits or licenses for operations relating to a tire business;
 - d. Name, mailing address, telephone and facsimile number of the owner of the tire business (if different from applicant);
 - e. Estimated number of tires that will be stored on site;
 - f. A statement setting forth and describing the available space for properly accommodating and protecting all tires with a site plan showing the storage area and buildings;
 - g. Proof of insurance as required by state law; and
 - h. Such other information as the City may require.
- 3.5 Each registered tire business shall immediately post an issued permit in a conspicuous place within the business premises. Permits are nontransferable.
- 3.6 The city may refuse to issue or renew a business permit or may suspend or revoke a permit if:
 - (1) The applicant or permit holder refuses to allow entry into the business by the City or otherwise obstructs the inspection of the business for purposes of enforcement of this Ordinance;
 - (2) There are repeated violations or a serious violation occurs of any city ordinance by the business;
 - (3) The business fails to comply with any provisions of this Ordinance and/or any other applicable city ordinance, including those involving health and sanitation (illegal dumping); or
 - (4) The business fails to comply with any applicable state or federal law, rule or regulation.

Section 4. Storage of Tires

- 4.1 Tire businesses shall properly store tires at each facility in accordance with local, state and federal law. To eliminate potential nuisances of litter, insect breeding, fire hazards and other planning and safety risks, each tire business shall at all times during storage:
- (1) Store tires in covered, screened, or enclosed areas, or under an impermeable cover, in accordance with applicable planning and safety laws, including, but not limited to, the county and/or city fire code, to prevent the accumulation of water and to screen from public view;
 - (2) Secure tires at each facility to prevent easy access or theft; lock, chain or store inside a building or other securable structure;
 - (3) Accumulate tires in piles in accordance with the county and/or city fire code and stacked no higher than ten (10) feet in height;
 - (4) Isolate tires from other stored materials that may create hazardous products if there is a fire, including, but not limited to, paints, fuels, electricity, lead acid batteries, fuel tanks, solvent barrels, and pesticide containers; and
 - (5) Store no more than ten tires per 250 square feet outside storage.

Section 5. Illegal Dumping, Tire Disposal and Tire Accumulation

- 5.1 It shall be unlawful for any person or tire business to cause or allow the dumping of tires in the city, including, in or on any public highway, road, street, alley, thoroughfare, any portion of the right-of-way, any public or private property in the city or any waters in the state as defined by the State of Texas.
- 5.2 It shall be unlawful for any person in a residential zone to accumulate more than five scrap tires on or around property which they own or occupy.
- 5.3 Scrap, used tires are not to be placed on a street right-of-way. Property owners with accumulated tires on a street right-of-way adjoining their property shall be responsible for the pick-up and delivery of such used tires to a tire recycling facility at their expense or be subject to penalties or fines.
- 5.4 A retail tire dealer may hold up to 250 scrap tires in storage.
- 5.5 Tires shall be properly disposed of in accordance with state law by the delivery and manifesting of tires to an authorized tire disposal or tire recycling facility. Tire businesses contracting with a tire hauler for the proper disposal of tires generated by such business shall require such hauler to utilize in accordance with state law a transmittal manifest documenting the pick-up and delivery of the tires to an authorized tire disposal or tire recycling facility.

Section 6. Disposal Records; Transmittal Manifest

- 6.1 A tire business shall keep disposal records in a transmittal manifest as required by state law. The manifest must be maintained and clearly state, as required by state law, the following:
- a. Name, address, telephone number, permit number and authorized signature for the tire hauler;

- b. Name, address, telephone number, and authorized signature of the tire business who is contracting for the removal of the tires along with the permit number for such business;
 - c. Date of removal/transport and the number of tires being transported;
 - d. Name, address, and telephone number of the location where the tires are to be delivered; and
 - e. Upon delivery, the name and signature of the person accepting the tires, including the date of acceptance.
- 6.2 The manifest shall at all times accompany tires while in transit. A tire business directly delivering waste or used tires generated at its business location to a tire disposal or tire recycling facility shall also utilize the transmittal manifest and make such manifest available for production or inspection by representatives of the City, upon request.
- 6.3 The tire manifest shall be retained at each business location for a minimum of three years and shall be made available to the City upon request at reasonable hours for inspection.
- 6.4 A tire hauler contracted to deliver tires to a recycling facility or disposal facility shall maintain a duplicate copy of the manifest reflecting the delivery of such tires for proper disposal. To the extent required by state law, the tire recycling or tire disposal facility shall sign the manifest upon acceptance of the tires and also maintain a copy of the manifest for the facility's records.

Section 7. Administration and Enforcement; Right of Entry

- 7.1 The City code compliance officer and City Marshal/Police Department is hereby authorized to promulgate all rules and regulations necessary and proper to effectuate the implementation and enforcement of this Ordinance.
- 7.2 Enforcement of this Ordinance shall be the responsibility of the City Marshal and the code compliance officer of the City. The City Marshal Department is authorized to stop and investigate any and all trucks, trailers or persons engaged in scrap tire selling, hauling, moving, transporting, or delivering in order to verify compliance with this Ordinance..
- 7.3 The City, by and through its authorized representatives, is authorized to enter any property regulated by this Ordinance at reasonable or necessary times in order to properly inspect for violations.

Section 8. Notice of Violation

- 8.1 Notice of violation of this Ordinance shall be given prior to seeking criminal or civil enforcement.
- 8.2 Such notice shall be given:
- a. in writing addressed and mailed by certified mail to the property owner or tenant, or business owner at the address of the violation;
 - b. alternatively, notice may be given by:
 - (1) publication at least once;
 - (2) posting the notice on or near the front door of each building on the property to which the violation relates; or

(3) posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates.

8.3 The notice of violation shall contain the following:

- a. name of the property owner or business owner;
- b. address of the premises;
- c. the violation; and
- d. a statement that:
 - (1) the owner has seven (7) days from the date of notice to correct the violation; and
 - (2) that failure to correct the violation may result in civil and/or criminal enforcement taken against the owner.

8.4 For a notice mailed in accordance with this section and returned as “refused” or “unclaimed”, the validity of the notice is not affected, and the notice is deemed delivered.

Section 9. Public Nuisance; Offense; Penalty

9.1 A violation of this Ordinance is hereby declared to be a public nuisance.

9.2 Any person violating any provision of this Ordinance is subject to suit for injunctive relief as well as prosecution for criminal violations.

(1) Criminal Prosecution. Violation of any provision of this Ordinance is a misdemeanor offense and punishable, upon conviction, by a fine not to exceed \$200. Each day of the violation is a separate offense.

(2) Civil Remedies. Nothing in this Ordinance shall be construed as a waiver of the City’s right to bring a civil action to seek civil remedies, including but not limited to the following:

- i. injunctive relief to prevent specific conduct that violates the Ordinance or to require specific conduct that is necessary for compliance with the Ordinance; and
- ii. a civil penalty not to exceed \$100.00 a day upon a showing that the defendant was notified of the provisions of the Ordinance and after receiving notice, nonetheless committed acts in violation of the Ordinance or failed to take action necessary for compliance with the Ordinance; or
- iii. other available relief.

9.3 In any civil action commenced by the City, the City shall be entitled to recover from the defendant reasonable attorney's fees, costs of suit, and any other costs of enforcement, including but not limited to, inspection costs.