

ORDINANCE NO. 11- 60

AN ORDINANCE OF THE CITY OF HARLINGEN, TEXAS BY ADDING CHAPTER 123 OF THE HARLINGEN CITY CODE, SECTIONS 123.01 THRU 123.13 AS AMENDED; PROHIBITING THE ACCUMULATION OF TIRES ON RESIDENTIAL PROPERTY; REQUIRING TIRE BUSINESSES TO HAVE AN ANNUAL PERMIT; REQUIRING A TIRE HAULER TO HAVE AN ANNUAL PERMIT FOR EACH VEHICLE USED TO TRANSPORT TIRES; PROVIDING FOR RENEWAL, SUSPENSION OR REVOCATION OF PERMITS FOR A VIOLATION OF THE ORDINANCE; PROVIDING FOR DESTRUCTION, STORAGE AND DISPOSAL OF TIRES; PROVIDING FOR DISPOSAL RECORDS AND A TRANSMITTAL MANIFEST; PROVIDING FOR ENFORCEMENT AND CRIMINAL PENALTIES; PROVIDING FOR PUBLICATION; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND ORDAINING OTHER MATTERS PERTAINING TO THE FOREGOING.

WHEREAS, the City of Harlingen is a home-rule municipality;

WHEREAS, the Elective Commission of the City of Harlingen, Texas may adopt an ordinance that is for good government, peace or order of the municipality;

WHEREAS, the Elective Commission of the City of Harlingen has determined that tires are being improperly disposed of throughout the City;

WHEREAS, improperly discarded tires are a prime reproduction site for the mosquito which is the vector for the spread of dengue fever. Used tires also provide habitats for rodents, insects, and other vermin, and present a fire hazard to the residents of the City;

WHEREAS, the improper disposal of waste tires found throughout various areas of the City is a major fiscal and waste management problem to the City;

WHEREAS, it is the intent and purpose of the City to provide for the public planning, safety and welfare of the residents of the City specifically as it relates to the improper disposal of

tires in the City and to eliminate the fiscal and waste management problem resulting from such improper activity;

WHEREAS, the Elective Commission of the City of Harlingen has determined it to be in the best interest of the citizens of Harlingen to adopt this ordinance for the protection of its citizens and to establish standards for transporting, proper disposal of tires and the permitting of tire businesses engaging in the resale of tires or that generate waste tires; and

WHEREAS, the Elective Commission of the City of Harlingen deems it necessary to also require the permitting and registration of waste tire haulers engaged for the purpose of transporting used or waste tires to tire recycling or disposal facilities; and hold residents accountable for such actions as to cause or let cause the illegal disposal of used or waste tires within any part of their property including street right-of way.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF HARLINGEN:

SECTION 1. That Harlingen City Code, Title XI, Business Regulations, is hereby amended to add Chapter 123: Tire Business and Tire Hauler Registration, with Sections 123.01 thru 123.13 to read as follows:

CHAPTER 123. TIRE BUSINESS AND TIRE HAULER REGISTRATION.

§123.01 Purpose and Intent.

It is declared to be the purpose and intent of the City to protect the public planning, safety, and welfare of its citizens, prevent the spread of disease and creation of nuisances, and to protect and enhance the quality of its environment. The purpose of this Chapter is to institute and maintain a comprehensive city-wide program for tire disposal which will assure 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.

§123.02 Definitions.

As used in this Chapter, the following words and phrases shall have the meaning described to them herein:

(A) "Dump" shall mean to throw, discard, place, deposit, discharge, bury, or dispose of.

(B) "Planning Director" shall mean the person designated as being Director of Planning Department of City of Harlingen or authorized representative(s) who are empowered to enforce the provisions of this Chapter.

(C) "Manifest" shall mean 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.

(D) "Mobile Tire Repair Road Service Unit" shall mean and include 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.

(E) "Person" shall mean any and all persons, natural or artificial, including any individual, corporation, firm or association.

(F) "Tire" shall mean a continuous solid or pneumatic rubber covering encircling the wheel of a bicycle, motorcycle, automobile, truck, trailer, tractor or other vehicle.

(G) "Tire Recycling Facility" shall mean any facility, mandated and licensed which recycles or properly disposes tires.

(H) "Scrap/Used/Waste Tire" shall mean a tire that is no longer suitable for its original intended purpose because of wear, damage, or defect. It also includes any tire that is destined for a tire disposer or re-processor (i.e., re-capper).

(I) "Waste Tire Hauler" shall mean 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.

(J) "Waste Tire Disposer" shall mean any person who is approved to receive waste tires from waste tire generators or waste tire haulers for the purpose of waste tire processing, shredding or otherwise facilitating recycling or resource recovery techniques for waste tires.

(K) "Waste Tire Generator" shall mean any person that generates waste tires. Generators may include, but are not limited to: retail tire dealers, retreaders, tire shops, waste tire disposers not approved by the federal or state, automotive dealers, maintenance shops, garages, service stations, any tire business.

§123.03 Residential Property.

Property owners or persons in control of property within the City of Harlingen's city limit and its extraterritorial jurisdiction shall not cause or let cause, suffer the accumulation of scrap, waste tires within their private property or right-of-way. The City of Harlingen will not pick up used or waste tires from private property or right-of way.

(A) **Accumulation.** No residential zoned property will be allowed to store more than five (5) scrap, waste tires on or around property which they own or occupy. In case of a tire dump, the property owner, contractor, developer, builder or other person responsible for the property shall cause the property to be cleaned and to come into full compliance with this ordinance. City of Harlingen shall not be responsible for any cost of cleanup or remediation.

(B) Right-of-way. Scrap, used tires are not to be placed on street right-of-way. Residential properties that cause or let cause the accumulation of used tires on a street right-of-way shall be solely responsible for the pick-up and delivery of such used tires to a tire recycling facility at their own cost.

(C) Enforcement. The City of Harlingen Code Enforcement Division, Police Department and Environmental Services Department shall be responsible for enforcement of this Section.

(D) Disposal of Tires. Each tire delivered to the Sanitary Transfer Station by automobile the sum of \$3 per tire (13" and 14"), \$4 per tire (15" and 16") and \$6 per tire (truck tires 20" and 22") or as determined by the Harlingen City Code, as amended.

(E) Violation and Penalties. Any resident violating or failing to comply with any provision of this Section shall be guilty of a misdemeanor, subject to a minimum civil penalty of \$50.00 and a maximum civil penalty up to \$2,000 for each offence as determined by the City's Municipal Court. Each day of continued violation(s) shall constitute a separate offense. The expenses incurred by the City of Harlingen for cleanup, enforcement of violations and penalties shall be chargeable to the violator, including, but not limited to: court costs, filing fees, special investigations, mutual aid assistance from other agencies and other costs necessary for the reasonable enforcement of this ordinance. Remedies will be as follows:

(1) In the event that any person violates any provision of this Section, the City or other appropriate authority may, in addition to other remedies, institute an action for injunction, cleanup or stop work orders, mandamus, irreversible damage fines, lien on property or other appropriate action or proceeding to prevent such unlawful acts or to correct or abate any such violation. In addition, the City may immediately revoke or suspend any and all business

issued permit until such time that compliance is met, or until the ruling of a Court of competent jurisdiction is obtained, at which time respective permits may be reissued; and

(2) Upon finding evidence of violation, a Notice of Violation may be issued at the discretion of the enforcing officer(s) in lieu of a citation. In the absence of corrective action or in the event that a second violation occurs, the evidence constituting the Notice of Violation may be submitted as evidence for consideration as a first offense before a Court with competent jurisdiction; and

(3) If a person is found guilty of a violation of the provisions of this Section, the Court and/or the City may cause written notice to be given, or incorporate into the Court Order to the violator instructing that person to properly address any provision still remaining in violation of this Section for which said violator is convicted.

§123.04 Tire Business Permit.

All tire businesses located within the City limits and its extraterritorial jurisdiction, engaging in the resale of tires or the generation of waste tires shall be issued a permit annually by the City for a non-refundable fee of fifty (\$50.00) dollars. A tire business with multiple locations shall purchase a permit for each business location. Tire businesses that have their own trucks utilized to transport waste tires will receive one (1) decal included with the permit fee to be used on one (1) truck. A separate decal must be purchased by such business for any additional truck utilized by the tire business to transport waste tires at a cost of twenty-five (\$25.00) dollars per decal. If such business has a Mobile Tire Repair road service unit the permit/decal will be fifty (\$50.00) dollars for each unit in service. The City Manager's designated representation will conduct random inspections of such tire business for the sake of monitoring compliance with the foregoing requirement.

(A) Application. Every person, firm or corporation obligated to comply with the permit requirement set forth herein shall make written application to the City. The application shall be made on a form obtained from the City of Harlingen, Planning Department, setting forth, among other things the following:

(1) Name, physical address, telephone and facsimile number (if applicable), of the applicant;

(2) Tax identification number or taxpayer identification number;

(3) Proof of current county business license, issued to the applicant at the proposed business address;

(4) Conditional Use Permit issued by Planning and Zoning Department if applicable;

(5) Name, mailing address, telephone and facsimile number of the owner of the tire business (if different from #1 above);

(6) Estimated number of tires that will be stored on site;

(7) The current physical address of the site;

(8) 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;

(9) Proof of insurance required as by state law; and

(10) Such other and further information as the City Manager's designated representative may require.

(B) Annual Fees.

(1) All permit and decal fees are due annually by October 1st, of each calendar year. These annual fees shall be paid in advance of the issuance of such permit and decal.

(2) A current valid permit or decal may be replaced by the City for a fee of fifteen (\$15.00) dollars.

(C) **Issuance.** The City shall issue a permit and decal to a tire business which submits the required and completed application, pays to the City the fee as required in this Section, and has demonstrated compliance with all applicable city ordinances. Each tire business registered in accordance with the provisions of this Section shall immediately post such permit and decal in a prominent manner, or cause such permit to be posted in conspicuous place within the premises where such tire business in thereby authorized to be established, maintained or operated. The decal shall be conspicuously displayed on each vehicle owned by such tire business that is utilized to transport used or waste tires. Any permit or decal issued hereunder shall not be sold, assigned, mortgaged or otherwise transferred, by doing so, permit and decal shall be revoked and will be considered null and void and person or company will not be allowed to apply for re-issue of permit till after a term of one (1) year from date of citation. Permit and decal shall expire upon termination of the existence of the tire business or revocation of such business' permit.

(D) **Effective Period.** The permit shall be effective beginning on October first until the next ensuing thirtieth day of September, on and after which date it shall be null and void.

§123.05 Tire Hauler Permit.

All tire haulers, not affiliated with a tire business that is properly permitted as required herein, transporting used or waste tires within the City limits shall be issued a permit and decal annually by the City for a non-refundable fee of twenty-five (\$25.00) dollars. Tire haulers with multiple locations shall purchase a permit for each business location. Tire haulers will receive one (1) decal included with the permit fee. A separate decal must be purchased by such hauler for any

additional vehicles utilized by the hauler to transport waste tires at a cost of fifteen (\$15.00) dollars per decal/vehicle.

(A) Application. Every person, firm or corporation obligated to comply with the permit and decal requirements set forth herein shall make written application to the City. The application shall be made on a form obtained from the City, setting forth, among other things, the following:

- (1) Name, physical address, telephone and facsimile number for the applicant;
- (2) Tax identification number or tax payer identification number (if applicable);
- (3) Proof of current State, County, and City License;
- (4) Proof of insurance required in accordance with the State of Texas'

Financial responsibility laws; and

- (5) Such other and further information as the City may require.

(B) Annual Fees. All permit and decal fees are due annually by October 1st of each calendar year at the City. These annual fees shall be paid in advance of the issuance of such permit. A current valid permit or decal may be replaced by the City for a fee of fifteen (\$15.00) dollars.

(C) Issuance. The City shall issue a permit and decal to a tire hauler who submits the required and completed application, pays to the City the fee as required in this Chapter, and has demonstrated compliance with all applicable city ordinances. Each waste tire hauler registered in accordance with the provisions of this Chapter shall conspicuously post and maintain such decal in his/her vehicle which is used for transporting tires, at all times. Any permit or decal issued hereunder shall not be sold, assigned, mortgaged or otherwise transferred, by doing so,

permit and decal shall be revoked and will be considered null and void and person or company will not be allowed to apply for re-issue of permit till after a term of one (1) year from date of citation. The permit or decal issued shall expire upon termination of the tire hauler's business or revocation of such hauler's permit.

(D) **Effective Period.** The permit shall be effective beginning on October 1st until the next ensuing thirtieth day of September on and after which date it shall be null and void.

(E) **Permit Exemptions.** The following entities are exempt from the tire hauler permit requirements:

(1) A tire hauler who is regulated or licensed by and is currently in compliance with, state or federal agencies; or

(2) A private entity transporting the individual's own waste tires to an approved disposal or tire recycling facility.

§123.06 Denial of Permit or Renewal; Suspension or Revocation of Permit.

In addition to the penalties set forth in Section 123.11, the City may refuse to issue or renew a tire business or tire hauler permit or may suspend or revoke such permit or decal if:

(A) The applicant or permit holder refuses to allow entry into the tire business by the authorized representative(s) of the City or otherwise willfully obstructs the inspection of the tire business; or

(B) There are repeated or a serious violation(s) occurs of any City Ordinance by the tire business or tire hauler; or

(C) The tire business or tire hauler fails to comply with any provisions of this Chapter and/or any other applicable city ordinance(s); or

(D) The tire business or tire hauler fails to comply with any applicable state or federal law, rule or regulation; or

(E) The tire business knowingly authorizes a tire hauler who is not properly permitted as required in Section 123.05 to transport tires on behalf of such business.

§123.07 Destruction of Tires.

Any tire that is no longer suitable for its original intended purpose or deemed unfit for resale by a tire business shall be rendered unusable and shall be properly disposed of at an authorized tire disposal or recycling facility. Each tire business shall have six (6) months from the effective date of this ordinance to comply with this provision. Failure to comply with this requirement shall be grounds for revocation of the permit holder's permit in accordance with Section 123.06.

§123.08 Storage of Tires.

Tire Business 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:

(A) Store tires in covered or enclosed areas, or under an impermeable cover, in accordance with applicable planning and safety laws, included but not limited to the City's current Fire Code or Property Maintenance Code, to prevent the accumulation of water;

(B) Secure tires at each facility to prevent easy access or theft. Lock chain or store inside a building or other securable structure;

(C) Accumulate tires in piles in accordance with the City's current Fire Code;

(D) 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 container(s) and such; and

(E) Store no more than 10 tires per 250 square feet outside storage.

§123.09 Disposal of Tires.

(A) It shall be unlawful for any person or tire business to cause, suffer or allow the dumping of tires at any place in the City including, without limitation, in or on any public highway, road, street, alley, or thoroughfare, including any portion of the right of way thereof, any public or private property in the City or any waters in the State as defined by the State of Texas.

(B) It shall be unlawful for any person in a residential zone to accumulate more than five (5) scrap tires on or around property which they own or occupy.

(C) A retail tire dealer may hold up to 250 scrap tires in storage.

(D) It shall be unlawful for any person or tire business to cause, suffer, or allow the disposal of whole tires in a landfill.

(E) Tires shall be properly disposed of in accordance with this Chapter by the delivery and manifesting of tires to an authorized tire disposal or tire recycling facility designated by the City. Tire Businesses contracting with a tire hauler(s) for the proper disposal of tires generated by such business shall require such hauler(s) utilize a transmittal manifest documenting the pick-up and delivery of the tires to an authorized tire disposal or tire recycling facility.

§123.10 Disposal Records/Transmittal Manifest.

(A) Tire Businesses shall keep disposal records in the form of a transmittal manifest, as prescribed by the City, at each business location for a minimum of three (3) years and make such records readily available upon request at reasonable hours for inspection by representatives

of the City. The manifest must be maintained and signed off in triplicate and clearly state the following information:

(1) Name, address, telephone number, permit number and authorized signature for the tire hauler;

(2) 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;

(3) Date of removal/transport and the number of tires being transported;

(4) Name, address, and telephone number of the location where the tires are to be delivered; and

(5) Upon delivery, the name and signature of the person accepting the tires, including the date of acceptance.

(B) The manifest required by this section shall at all times accompany tires while in transit. Any 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. The original manifest shall be maintained by the tire business evidencing all information and signatures required herein, notwithstanding the use of a tire hauler or direct delivery by the tire business. 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. 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.

§123.11 Administration/Enforcement.

(A) Administration and Enforcement of this Chapter shall be the responsibility of the Code Enforcement/Environmental Services Department/Police Department/Community Planning and Development Department/Planning Director. The City, by and through its authorized representatives, is hereby authorized to enter any property regulated by this ordinance, at reasonable or necessary times in order to properly inspect for violations.

(B) The Environmental Services Department/Code Enforcement is hereby authorized to promulgate all such rules and regulations considered necessary and proper to effectuate the implementation and enforcement of this Ordinance.

(C) The Police Department is hereby authorized to stop and investigate any and all trucks, trailers or persons engaged in scrap tire selling, hauling, moving transporting, or delivering and subject to the regulation requirements of this ordinance in order to verify compliance with this ordinance.

(D) Should a violation or attempted violation of this Chapter occur, the City Attorney and other city personnel may take any action to enforce this Chapter to prevent and summarily abate the action, remove or seize any goods and other objects used to violate this Chapter. These actions may also include but not be limited to allowing for municipal resources and personnel to: abate any premises or property, closure, remove any person or thing, court action, suspend, cancel, or void any license or permit issued by the City, and any and all other relief as may be necessary.

§123.12 Violations and Penalties.

Any tire business or tire hauler violating or failing to comply with any provision of this Chapter shall be guilty of a misdemeanor, subject to a criminal penalty of up to two thousand (\$2,000)

dollars for each violation per day as determined by the City's Municipal Court subject to the following:

(A) The improper storage of one or more tires shall constitute a separate offense per tire and be punishable by a minimum fine of fifty (\$50.00) dollars for each improperly stored tire on the location of the tire business. Each day of continued violation of this subsection constitutes a separate offense.

(B) The transport of one or more tires without the required permit and decal shall constitute a separate offense per tire and be punishable by a minimum fine of fifty (\$50.00) dollars for each tire being transported in violation of this Article. Each day of continued violation of this subsection constitutes a separate offense.

(C) The improper dumping of a tire shall constitute a separate offense per tire and be punishable by a minimum fine of one hundred (\$100.00) dollars for each tire found improperly dumped that is related back to a specific tire business. Each day of continued violation of this subsection constitutes a separate offense.

(D) Any violation of this Chapter shall be a Class C misdemeanor. A violator shall also be subject to the maximum penalties allowed by law for failing to appear in Court when charged with an offense as described herein. If conduct constituting an offense under this Chapter also constitutes an offense under another law, the person may be prosecuted under all applicable laws.

§123.13 Injunctive Relief.

In addition to, and cumulative of, all other penalties herein provided, the City shall have the right to seek injunctive relief, for any violation(s) of this Chapter.

SECTION 2. That the City Secretary of the City of Harlingen, Texas, is hereby

authorized and directed to cause a true and correct copy of the caption of this Ordinance to be published in a newspaper having general circulation in the City of Harlingen, Cameron County, Texas.

SECTION 3. That CHAPTER 123 of the Harlingen City Code, as amended, will remain in full force and effect, and save and except as amended by this ordinance.

SECTION 4. That the terms and provisions of this Ordinance are severable and are governed by Section 10.07 of CHAPTER 10 of the Harlingen City Code, as amended.

SECTION 5. That this Ordinance shall take effect on January 1, 2012 and it is accordingly so ordained.

FINALLY ENACTED THIS 27th day of December, 2011 at a special meeting of the Elective Commission of the City of Harlingen, Texas at which a quorum was present and which was held in accordance with TEXAS GOVERNMENT CODE, TITLE 5, SUBTITLE A, CHAPTER 551.

CITY OF HARLINGEN

BY:


Chris Boswell, Mayor

ATTEST:


Amanda C. Elizondo, City Secretary

APPROVED AS TO FORM:


Roxann Pais Cotroneo, City Attorney