

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AMARILLO, TEXAS: AMENDING THE AMARILLO MUNICIPAL CODE, AMENDING ARTICLE IV, CHAPTER 8-3, SECTION 8-3-82; ADDING ARTICLE V, CHAPTER 8-3, SECTIONS 8-3-116 THROUGH 8-3-131 TO PROVIDE REGULATION OF TIRE BUSINESSES; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEALER; PROVIDING FOR CONTINUATION OF PRIOR LAW; PROVIDING PENALTY; PROVIDING FOR PUBLICATION AND EFFECTIVE DATE.

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

WHEREAS, safe and environmentally responsible removal, reuse and disposal of tires, promotes public health and safety; and,

WHEREAS, there is a need to establish visual aesthetic standards for certain businesses that utilize outdoor storage; 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, to accomplish the aforementioned goals there is a need to regulate and license tire businesses; and

WHEREAS, the City Council finds the provisions of this ordinance are necessary and reasonable to promote and protect the public health, safety, and welfare;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AMARILLO, TEXAS:

SECTION 1. The Amarillo Municipal Code, Article IV, Chapter 8-3, Section 8-3-82, be and is hereby amended to read as follows:

Sec. 8-3-82. - Disposal of tires.

(a) It shall be unlawful for any person to set out for collection or to place within any City owned refuse container a whole tire or split, quartered or shredded tire pieces.

(b) It shall be unlawful for any person to dispose of a whole tire or a portion of a tire ~~except by delivery to a registered used and scrap tire transporter, processor or disposal facility~~ except as provided by Article V of Chapter 8-3.

(c) It shall be unlawful to deliver to the City landfill any tire except a whole tire or shredded tire pieces no larger than four (4) inches square. An off-the-road tire intended for use on heavy equipment may not be delivered to the landfill.

(d.) The unlawful disposal of any whole or a portion of a tire is declared to be a public nuisance and shall be disposed of as required by the procedures specified in Article V of Chapter 8-3. The Declaration of Nuisance and all terms of this Article shall be applicable to and enforceable both within the city limits and for a distance of five thousand feet (5000') beyond the city limits or such other distance allowed by state law.

(e) Chapter 361 of the Texas Health and Safety Code concerning the disposal of tires and the administrative rules codified in Chapter 328 of the Texas Administrative Code , Subchapter F, "Management of Used or Scrap Tires" as such now exists and hereafter amended or re-codified, are hereby adopted.

SECTION 2. The Amarillo Municipal Code, Article V, Chapter 8-3, Section 8-3-116 be and hereby is added to read as follows:

ARTICLE V. STORAGE, TRANSPORTATION AND DISPOSAL OF TIRES

Sec. 8-3-116. Definitions

(a) "Code Compliance Officer" shall mean the Building Official, Fire Marshall, Health Official or their designees.

- (b) “Facility” shall mean all businesses referred to herein as, Mobile Tire Repair Business, Tire Business, and Tire Recycling Facility.
- (c) “Generator” means tire dealers, junkyards, fleet operators, and others who generate used or scrap tires.
- (d) “Natural earth-tone color” means shades of browns, tans, greys, greens, oranges, whites, and some reds, that are muted and flat in emulation of the natural colors found in the soils, grasses, trees and rocks found in the Panhandle region of Texas.
- (e) “Mobile Tire Repair Business” means a business that repairs tires at any temporary location, including but not limited to a roadway, alley, parking lot, or residence. The term does not include a business that only changes out or replaces tires, but does not make any repairs to a tire.
- (f) “Mobile Tire Repair Unit” means any vehicle or trailer used in a mobile tire repair business.
- (g) “Scrap tire” means a whole tire or any portion of a tire that can no longer be used for its original intended purpose;
- (h) “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.
- (i) “Scrap tire transportation unit” means any vehicle or trailer used to transport scrap tires.
- (j) “Tire Business” means any business or establishment where used tires are collected, repaired, processed, recycled, scrapped, sold, bought, or stored, including but not limited to a mobile tire repair business or scrap tire transportation business.
- (k) “Tire Recycling Facility” means a state-registered facility that processes, recycles, or conducts energy recovery with scrap tires.

(1) “Used Tire” means a tire, including a recapped or retreaded tire, suitable for continued use for its original intended purpose.

Sec. 8-3-117. Scrap tire processing and identification.

(a) Scrap tires shall be made unusable by cutting or drilling side wall, cutting tire bead, or other approved method within twenty-four (24) hours of receipt.

(b) Whole scrap tires shall be marked on the outside of the tire in an approved manner sufficient to provide notice of ownership with the permit number of the scrap tire business—within twenty-four (24) hours of receipt.

Sec. 8-3-118. 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. 8-3-119. 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 this Article 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. 8-3-120. Classification, License; License Fee.

-(a) Tire businesses shall be classified based on the size of the facility. The fee for issuance or renewal of a license or permit required herein as follows:

<u>CATEGORY</u>	<u>CLASS</u>	<u>FEE</u>
<u>Tire business license</u>	<u>I. Less than 5,000 square feet</u>	<u>\$50.00</u>
	<u>II. 5001 to 21,780 square feet</u>	<u>\$65.00</u>
	<u>III. 21,781 to 43,560 square feet</u>	<u>\$80.00</u>
	<u>IV. More than 43,560 square feet</u>	<u>\$100.00</u>
<u>Mobile tire repair unit permit/decals</u>		<u>\$50.00</u>
<u>*each additional Mobile tire repair units</u>		<u>\$25.00</u>
<u>Scrap tire transportation unit permit/decals</u>		<u>\$50.00</u>
<u>*each additional scrap tire transportation units</u>		<u>\$10.00</u>
<u>Technology fee</u>		<u>\$10.00</u>

The fee for issuing a duplicate license or permit required under this article for one that is lost, stolen, or mutilated is \$50.

(b) The license or permit shall be renewable annually. A licensee or permittee shall apply for renewal at least thirty (30) days before expiration of the license or permit. Failure to apply for renewal prior to the expiration will result in a \$25.00 late fee if application received within the first 30 days, after which a \$50.00 late fee will be assessed in addition to the ordinary license or permit fee.

(c) A mobile tire repair unit permit or scrap tire transportation unit permit granted under this article expires upon expiration, revocation, suspension or non-renewal of the tire business license.

Sec. 8-3-121. Application for License/Permit.

(a) All applications for and renewals of licenses to operate a facility must be made in writing to the Building Official on a form prescribed by the Building Official and shall, among other things contain:

(1) The name and residence address of the applicant (this information shall be listed for each member of a partnership or limited liability company and for each officer of a corporation);

(2) The name, business address, physical address, telephone number and nature of the proposed operation, existing operation or annexed operation;

(3) The present zoning and legal description of the premises for which application is being applied;

(4) The tax identification number or tax payer identification number for the operation and each owner and operator listed in the license application;

(5) For tire businesses with mobile tire repair units or scrap tire transportation units, the number and description of vehicles the applicant proposes to use as mobile tire repair units or scrap tire transportation units, including the year, make, model, vehicle identification number, and state license registration number for each vehicle, and proof that each vehicle is in compliance with state requirements for vehicle registration, vehicle inspection and vehicle financial responsibility;

(6) A copy of the National Pollution Discharge Elimination System Discharge Permit or notice of coverage for that location, as applicable;

(7) A copy of the Storm Water Pollution Prevention Plan for that location, as applicable;

(8) A copy of the state registration for a tire recycling facility, as applicable;

(9) A copy of all other records and permits required by all state and federal agencies that regulate tire businesses including but not limited to the Texas Commission on Environmental Quality (TCEQ) and the Environmental Protection Agency (EPA);

(b) Production of any of the records or permits listed in subsection (a) shall not be required upon presentation of certification from the appropriate agencies or entities that such records or permits are not required for that location;

(c) The Building Official may require code enforcement officers to physically ascertain that documents required by this article are kept on file at the facility as an alternative to the inclusion of such documents with an application. In such cases, the application must not be approved until the officers have ascertained the documents' existence. Enforcement of federal or state requirements shall remain the responsibility of the appropriate agencies.

(d) The applications must contain the following statement: **“THE LICENSE APPLIED FOR SHALL BE SUBJECT TO ALL PROVISIONS OF THE CODES AND ORDINANCES OF THE CITY RELATING TO TIRE BUSINESSES AS WELL AS ALL STATE AND FEDERAL REGULATIONS RELATING TO SUCH OPERATIONS.”**

(e) All applications must be signed and sworn to by the party applying for the license.

(f) A separate license is required for each separate Facility. A separate mobile tire repair unit or scrap tire transportation unit decal is required for each separate vehicle operated as a mobile tire repair unit or scrap tire transportation unit.

(g) A single establishment operating more than one type of business for which a license or permit is required shall make application for and obtain the appropriate license for each type of business or yard operated at the establishment.

(h) Licenses and permits are not transferable between persons, yard, businesses, or vehicles.

(i) Each application shall be accompanied by a non-refundable \$50 application fee.

Sec. 8-3-122. Issuance or Denial of Licenses or Permit Renewals.

Annual licenses and permits shall be issued by the Building Official upon receipt of the prescribed fee and the completed application, including all required supporting documentation, provided that:

(a) The applicant, including partners, members of the limited liability company or officers of the corporation, as applicable, have not been convicted within the previous five (5) years of two (2) or more violations of this article; and

(b) After inspection, the premises are in compliance with this article and other applicable City ordinances and codes. In the event a license is denied, the applicant may request reinspection for an additional \$50 re-inspection fee.

(c) A license or permit issued under this section must be displayed in a manner and location approved by the Building Official. A license or permit must be presented upon request to the proper fire, health, police, code enforcement or building authority.

(d) If the Building Official denies an application for a license or permit required under this article, the Building Officials determination shall be appealable to the City Council.

Sec. 8-3 123. Revocation of a License or Permit.

The Building Official may revoke a tire business license, a mobile tire repair permit or scrap tire transportation unit permit if the licensee or permittee:

(1) refuses to allow any agent of the City entry into and inspection of the tire business license or a mobile tire repair unit during business hours;

(2) is convicted or assessed an administrative or civil penalty twice within a 24-month period of a violation of any city ordinance or state or federal law regulating solid waste, litter, dumping, pollution, standing water, insect, rodent or vermin infestation, or other similar health, sanitation or environmental concerns, or;

(3) violates any provision of this article.

(4) is otherwise not eligible for a license or permit because the Facility is not in compliance with the requirements of this article.

Sec. 8-3-124. Appeal to City Council.

(a) Any appeal of the denial of an application, renewal or revocation by the Building Official shall be filed in writing with the City Secretary within ten (10) business days of receipt of the decision or action specifying the exact grounds and reasons for the appeal. The appeal shall be heard by the City Council within thirty (30) days of receipt of the properly filed appeal. The thirty (30) day hearing requirement may be waived by the Appellant.

(b) Upon appeal of the Building Officials denial of an application, renewal or revocation, the decision of the City Council with regard to the license or permit shall be made only after a public hearing before the council on the question at which interested parties shall have the opportunity to be heard. The Building Official shall mail notices to the owners of all property located within two hundred (200) feet of the area of the existing or proposed site of the tire business, or expansion. The notice shall state:

(i) The nature of the approval sought;

(ii) The location of the requested expansion or business;

(iii) The date, time, and location of the hearing; and

(iv) That the applicant and interested parties will have the opportunity to be heard regarding the requested expansion or establishment of the tire business.

(c) The City Council may uphold, reverse, or modify the Building Official's decision or action. The determination of the City Council shall be final.

Sec. 8-3-125. Compliance for Existing and Newly Annexed Tire Businesses.

(a) Tire Businesses in operation within the City limits on the effective date of this ordinance shall have a reasonable time to comply with the all the requirements of this article.

(b) Facilities which are annexed into the City shall have a period not to exceed twelve (12) months from the effective date of the annexation to comply with all the requirements of this article. Annexed Facilities shall also demonstrate compliance with existing federal, state and local laws and regulations applicable to fencing requirements for such Facilities at the date of annexation. Subsequent to annexation, the Building Official shall promptly notify affected Facilities in newly annexed areas of the obligations under this article.

Sec. 8-3-126. Scrap Tire Facility or Tire Recycling Facility Fencing.

(a) All Scrap Tire Storage or Tire Recycling Facilities shall be enclosed on all sides (including front and rear) with a substantial and anchored wall or screen fence constructed as an adequate barrier to inhibit the migration of vermin, trash, junk, debris, or other material from the yard or business to an adjacent property. The wall or screen fence shall be constructed with appropriate drains so as not to inhibit necessary water drainage.

(b) The wall or screen fence shall be at least six feet in height and constructed such that the interior of the Facility is not visible from the exterior.

EXCEPTION: The wall or screen fence for facilities that operate machinery or equipment or as the result of any industrial process spews, shoots, or in any manner allows junk,

trash, debris or shards of metal or other material to become a projectile shall be of sufficient height to prevent the projectile from leaving the premises of the Facility.

(c) Those sections of a Facility that are contiguous with another business shall be exempt from subsection (b), if those sections otherwise have an adequate barrier as required by subsection (a), to inhibit the migration of vermin, trash, junk, debris or metal shards or other material between the junkyards, automotive wrecking and salvage yards, recycling businesses or tire businesses.

(d) All walls and screen fencing shall be maintained in a neat, solid, substantial, and safe condition. No wall or screen fence shall be kept in a listing, damaged or decaying condition. All walls and screen fencing shall be a Natural Earth Tone color and may not have any sign appear on its surface other than a sign indicating the business name that complies with Chapter 4-2 of this Code and a sign as provided in this article for premises license or permit number identification.

(e) Gates for access to the Facility at each street or alley line shall not have combined openings exceeding thirty (30) percent of the alley or street frontage. Gates for access shall not swing outward and shall be kept closed when the Facility is not open for business.

Sec. 8-3-127. Manner of Storage.

(a) Tires, scrap tires, recycling material, and all other types of materials, equipment or machinery on the premises of a Facility shall be arranged so that a reasonable inspection of, or access to, all parts of the premises can be had at any time by the proper fire, health, police, code enforcement, and building authorities at any reasonable time. Metal racks shall be arranged to provide for ease of inspection, control of vermin and to facilitate water drainage, containment and waste control. Neither tires, scrap tires nor other salvage articles shall be stored or stacked higher than the height of the Facility's wall or screen fence.

(b) No tires, scrap tires, or recycling material shall be placed in any manner outside the surrounding screen fence or wall of the Facility.

(c) Premises shall be kept clean of any weeds and brush in compliance with Section 4-3-2.

(d) All Scrap Tire Storage Facilities shall have a fire lane. No tires, or scrap tires shall be placed within ten (10) feet of the surrounding wall or screen fence. The Code compliance Officer shall oversee fire protection access specifications and compliance for each Facility and may alter the required number of feet in accordance with the location, use, size, and other characteristics of an individual yard or business.

Sec. 8-3-128. Tire generators; disposal of tires; records.

(a) It shall be unlawful for any tire generator to cause or allow any tire to be transported upon any public street other than by a permittee. Each tire generator shall maintain records of the numbers of tires generated at each premises under his control and his disposition. A receipt showing the number of tires, the names of the tire permittee for each consignment of tires. Each receipt shall be issued at least in duplicate and signed by both parties with one copy thereof to be retained by the tire generator and one copy to be retained by the permittee.

Sec. 8-3-129. Provisions Applicable Scrap Tire Transportation Units.

(a) It is a defense to prosecution under this article that:

(1) not more than six (6) scrap tires were being transported at the same time in the same vehicle; or

(2) the scrap tires were being transported from a point outside the Amarillo city limits to another point outside the Amarillo city limits, and the vehicle did not stop within the Amarillo city limits for the purpose of loading or unloading any scrap tires.

(3) the scrap tires are five percent or less tires by volume and is part of a general cargo of “municipal solid waste” as that term is defined by Chapter 361 of the Texas Health and Safety Code.

(b) A person commits an offense if he disposes of a scrap tire at any location within the City.

(c) It is a defense to prosecution under subsection (b) that the scrap tire was disposed of:

(1) at a city landfill in compliance with city regulations governing the landfill; or

(2) at a tire recycling facility or tire disposal facility that is registered or permitted by the state as required under Section 361.112 of the Texas Health and Safety Code, as amended, provided that the tires were delivered to the facility by a registered tire transporter and the manifest for the tires was signed by the transporter and the facility accepting the tires.

Sec. 8-3-130. Tire Business License or Permit Number Posted.

All tire businesses shall place and maintain a sign on the premises that may be read from the street right-of-way listing the license or permit numbers. The City will provide such sign at a cost of \$20.00. This sign shall be in addition to all other signage regulated by Chapter 4-2 of this Code.

Sec. 8-3-131. Penal Provision.

A violation of any of the provisions of this article constitutes a misdemeanor that shall be punishable, upon conviction, by a fine of not less than \$250.00 nor more than \$2,000.00, and each day that any violation continues shall constitute a separate offense; that an offense provided in this article which also constitutes an offense under state law shall be punishable as provided in the applicable state law.

Sec. 8-3-132. Civil Remedies

(a) The city, acting through the city attorney or the city attorney's designee, is hereby authorized to file an action in a court of competent jurisdiction to:

(1) Enjoin any person from violating the terms, conditions and restrictions of any registration or permit issued under this article;

(2) Enjoin the violation of the provisions of this article;

(3) Recover civil penalties for violation of the terms, conditions and restrictions of any registration or permit issued under this article;

(4) Recover civil penalties for violation for the provisions of this article; or

(5) Recover damages from the owner of a tire facility in an amount adequate for the city to undertake any construction or other activity necessary to bring about compliance with this article. This authority is in addition to all provisions of this Code relative to the definition of offenses and the provision of penalties for violations of such ordinances.

(b) The city, acting through the city attorney or the city attorney's designee, is hereby authorized to enter into agreements in lieu of litigation to achieve compliance with the terms, conditions and restrictions of any registration or permit issued under this article.

Sec. 8-3-133 Exemptions.

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

Sec. 8-3-134 – 8-3-140. - Reserved

SECTION 3. Severability. If any provision, section, subsection, sentence, clause or the application of same to any person or set of circumstances for any reason is held to be unconstitutional, void or invalid or for any reason unenforceable, the validity of the remaining portions of this ordinance or the application thereby shall remain in effect, it being the intent of

the City Council of the City of Amarillo, Texas in adopting this ordinance, that no portion thereof or provision contained herein shall become inoperative or fail by any reasons of unconstitutionality of any other portion or provision.

SECTION 4. Repealer. All ordinances, parts of ordinances resolutions and parts of resolutions in conflict with this ordinance are hereby repealed to the extent of conflict with this ordinance.

SECTION 5. Continuation. That nothing in this ordinance or any code hereby adopted shall be construed to affect any suit or proceeding ending in any court or an administrative proceeding, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed by this ordinance.

SECTION 6. Penalty. A violation of this ordinance is an offense punishable in accordance with Section 1-1-5 of this code of ordinances.

SECTION 7. Publishing and Effective Date. This ordinance shall be published and become effective according to law.

INTRODUCED AND PASSED by the City Council of the City of Amarillo, Texas, on First Reading this the _____ day of _____, 2016; and PASSED on Second and Final Reading the _____ day of _____, 2016.

Paul Harpole, Mayor

ATTEST:

Frances Hibbs, City Secretary

APPROVED AS TO FORM

William M. McKamie, City Attorney