

City of Houston, Texas, Ordinance No. 2015- 1032

AN ORDINANCE AMENDING CHAPTER 39 OF THE CODE OF ORDINANCES, HOUSTON, TEXAS, AND BY CREATING A NEW ARTICLE VIII OF CHAPTER 39 OF THE CODE OF ORDINANCES, HOUSTON, TEXAS, RELATING TO STORAGE, TRANSPORTATION AND DISPOSAL OF TIRES; REPEALING CHAPTER 21, ARTICLE VII OF THE CODE OF ORDINANCES, HOUSTON, TEXAS, RELATING TO STORAGE, TRANSPORTATION AND DISPOSAL OF TIRES; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; DECLARING CERTAIN CONDUCT TO BE UNLAWFUL AND PROVIDING PENALTIES THEREFORE; DECLARING AN EFFECTIVE DATE; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

* * * * *

WHEREAS, Chapter 39 of the City of Houston Code of Ordinances contains the City's measures to be implemented to address solid waste and litter control; and

WHEREAS, the Solid Waste Management Department (SWMD) is responsible for collecting, transporting and disposing of solid waste within the City and planning for ways to address the region's future needs; and

WHEREAS, the illegal disposal of scrap tires is a significant health and safety problem in the City of Houston, because these tires provide breeding grounds for mosquitoes and other organisms that can carry disease, and have an adverse effect on the health of its citizens; and

WHEREAS, the City Council finds that it is appropriate to recover the City's costs of administering the scrap tire program established by the Ordinance through the assessment of application and other fees; and

WHEREAS, the City Council finds that the Department of Solid Waste Management has analyzed the costs of administering the program, and related those costs to the types of application fees issued by the City; and

WHEREAS, the City Council finds that the fees are reasonably related to the cost of administering the program; **NOW, THEREFORE**;

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. That the findings contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as a part of this Ordinance.

Section 2. That Section 39-18 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"Sec. 39-18. Duties.

The department and the employees assigned to the department shall:

- (1) Supervise and be responsible for the collection, transportation and disposal of solid waste.
- (2) Carry out the policies of the mayor and city council in the overall planning effort to develop a reliable and efficient method for solid waste disposal.
- (3) Administer and enforce this chapter and related laws.
- (4) Have such other duties and responsibilities as may be assigned by the mayor and city council."

Section 3. That Chapter 39 of the Code of Ordinances, Houston, Texas, is hereby further amended by adding a new Article VIII that reads as set forth in **Exhibit A**, attached hereto and incorporated herein.

Section 4. That Article VII of Chapter 21 of the Code of Ordinances, Houston, Texas, is hereby repealed.

Section 5. That the City Council hereby approves the fees applicable to the new Article VIII of Chapter 39 adopted in Section 4 of this Ordinance, in the initial amounts set forth in the schedule attached hereto and incorporated herein as Exhibit B. The Director of Finance is hereby directed to incorporate these newly approved fees into the City Fee Schedule


Section 6. That the various former ordinance provisions that are amended in this Ordinance are saved from repeal for the limited purpose of their continuing application to any violation committed before the effective date of this Ordinance, as

applicable. For this purpose, a violation is deemed to have been committed before the effective date of this Ordinance, as applicable, if any element of the offense was committed prior to the effective date of this Ordinance, as applicable.

Section 7. That, if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 8. That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance be passed finally on such date and shall take effect at 12:01 a.m. on January 1, 2016.

PASSED AND APPROVED this 21st day of October, 2015.



Mayor of the City of Houston

Prepared by Legal Dept. 

PMG:10/19/15

Assistant City Attorney

Requested by Harry Hayes, Director, Solid Waste Management Department

L.D. File No. 0741100004001

CAPTION PUBLISHED IN DAILY COURT
REVIEW

DATE: OCT 27 2015

AYE	NO	
✓		MAYOR PARKER
••••	••••	COUNCIL MEMBERS
✓		STARDIG
✓		DAVIS
✓		COHEN
✓		BOYKINS
✓		MARTIN
✓		NGUYEN
✓		PENNINGTON
✓		GONZALEZ
✓		GALLEGOS
✓		LASTER
✓		GREEN
✓		COSTELLO
✓		ROBINSON
✓		KUBOSH
		ABSENT-CITY BUSINESS
		BRADFORD
✓		CHRISTIE
CAPTION	ADOPTED	

EXHIBIT A

Houston, Texas, Code of Ordinances

Chapter 39

SOLID WASTE

ARTICLE VIII. STORAGE, TRANSPORTATION AND DISPOSAL OF TIRES

DIVISION 1. GENERALLY

Sec. 39-151. Definitions.

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

Driver means an individual who operates a permittee's truck pursuant to the permit.

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

Permit means a written grant of approval issued by the director for the transportation of tires pursuant to this article.

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

Registrant means a person who holds a valid registration issued by the director pursuant to this article.

Registration means a written grant of approval issued by the director to tire facilities pursuant to this article.

Scrap tire means a tire that a tire generator has rendered unusable; or a tire that can no longer be used for its original intended purpose because it has:

- (1) Tire tread less than one-sixteenth inch deep;
- (2) Chunking, bumps, knots, or bulges evidencing cord, ply, or tread separation from the casing or other adjacent material; or
- (3) Exposed tire cords or belting material as a result of damage to the tire.

The term "scrap tire" shall not include any tire that has been shredded, ground or cut up into pieces one quarter or less the size of the whole tire from which they were derived.

Store means to place, collect or accumulate tires that are not for sale or resale as tires, whether the tires are directly on the ground, in roll-off containers or otherwise.

Tire means any covering for a wheel, whether new, used, or scrap, made wholly or partially of rubber that 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 street, 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:

- (1) Landfill, incinerate or otherwise dispose of tires as waste or as fuel; or
- (2) Shred, grind, chemically treat or use other means to reduce tires into basic components for oil, steel, carbon black, rubber, road paving or other marketable salvage materials; or
- (3) Convert tires into other useful items such as doormats and sandal soles.

Tire facility means any business or establishment where 100 or more tires per year are collected, repaired, processed, recycled, scrapped, sold, bought or stored. For purposes of this article a tire facility does not include a business or establishment owned or operated by a governmental entity.

Tire generator means a fleet operator, an automotive dismantler, or a retailer, wholesaler, manufacturer, recapper, or retreader of new or used tires.

Tire transporter means a person who is responsible for causing tires to move along a public street from one location to another within the city.

Truck means a vehicle operated by a permittee's driver for the transport of tires pursuant to a permit issued pursuant to this article.

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

Vector control means any method to limit or eradicate organisms capable of transporting infectious agents.

Sec. 39-152. Open storage of tires prohibited; nuisance.

It shall be unlawful for any person to store any tire in the city in such a manner that the tire is exposed to the elements of nature, and this action is hereby declared to be a nuisance, subject to abatement at the expense of the owner of the premises where the tire is stored as provided by law and this Code.

Sec. 39-153. Storage; precautions; reports; affirmative defense.

(a) All persons having any tires in their possession shall keep tires secure at all times that such persons, their agents or employees are not physically present on the premises where the tires are stored. If tires are not stored in a building or enclosed container that is capable of being secured, then those persons having tires in their possession shall monitor the tires at least once every two weeks for vector control, and the tires themselves must be secured by passing a heavy bar or chain made of steel not less than three-eighths of one inch in thickness through the center of the tire and locking the bar or chain to a fixture; provided, the director may upon written request grant permission for an alternate method of storage. The proposed alternative storage method must comply with all applicable federal, state and local laws and regulations and provide equivalent security from theft and vector control.

(b) All tires for sale shall be stacked, sorted, classified and arranged in an organized manner.

(c) Each theft of any tire shall be reported to the director in writing within five days after the theft or its discovery. The report shall include the number of tires stolen and a description thereof. The report shall be made regardless of whether such theft is also reported to the police department.

(d) It is an affirmative defense to prosecution under subsection (a) that a person having tires in his possession stores them in a manner consistent with an alternate use such as, but not limited to, a swing, planter, stabilizing platform for sports equipment, etc.

Sec. 39-154. Actions authorized to enforce article.

(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. 39-155. Criminal sanctions.

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; provided, however, 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. 39-156. Fees.

There are hereby established and the director shall charge and collect fees for each permit (includes one truck) or registration application and for each additional truck to be covered by a permit. Fees shall be as stated for this provision in the city fee schedule. Payment of any applicable fees when due is a condition of the processing of any application under this article.

Sec. 39-157—39-170. Reserved.

DIVISION 2. REGISTRATIONS, PERMITS AND RECORDS

Sec. 39-171. Annual registration required.

It shall be unlawful for any person to own or operate a tire facility where tires will be stored without having a registration issued annually by the director.

Sec. 39-172. Annual permit required.

It shall be unlawful for any person to transport tires upon any public street within the city unless such person is acting pursuant to a permit issued annually by the director. It is an affirmative defense to prosecution under this section that the cargo transported by such person:

- (1) Contains five or fewer tires; or
- (2) Contains 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; or
- (3) Originated outside of the city and is destined for transport outside of the city, provided that no tires are loaded or unloaded within the city.

Sec. 39-173. Tire generators; disposal of tires; records.

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 daily 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 generator and permittee and the permit number of the permittee shall be obtained by a 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. Tire generators who are also permittees shall maintain internal trip tickets in lieu of receipts for tires that they transport. For purposes of this article, TCEQ form 10304, entitled "Whole Used or Scrap Tire Manifest," or any successor form, is a sufficient receipt.

Sec. 39-174. Registrants and permittees; disposal of tires; records.

It shall be unlawful for any registrant or permittee to dispose of any tire transported by the registrant or permittee other than by the delivery of the tire to a tire disposer. Each registrant and permittee shall maintain daily records of the number of tires received and delivered. Each registrant and permittee shall obtain a receipt showing the number of tires, the names of the registrant, permittee and tire disposer and the registration or permit number of the registrant and permittee for all tires delivered. Each receipt shall be issued at least in duplicate and signed by both parties with one copy to be retained by the tire disposer and one copy to be retained by the registrant and permittee. Tire disposers who are also registrants or permittees shall maintain internal trip tickets in lieu of the receipts for tires that they transport. Permittees shall maintain records of the name and residence address of each driver (including the permittee if the permittee intends to act as a driver under the permit) who will be authorized to drive the permittee's trucks, and their respective driver's license numbers.

Sec. 39-175. Inspection of records.

The records required by this article shall be retained for three years from their creation. Registrants and permittees shall maintain the records at the address designated in their applications. All records shall be made available during regular business hours for inspection, audit, or copying by the director, police department, and the city attorney or the city attorney's designee as often as may be necessary to ensure compliance with this article.

Sec. 39-176. Applications for registration; permit.

(a) Each person desiring to own or operate a tire facility shall apply for a registration in a form acceptable to the director, which shall include at a minimum all of the following:

- (1) The person's name;
- (2) The person's business address, including a facsimile number or email address;
- (3) The physical address within the county at which the records required in this article will be maintained;
- (4) The person's principal business or occupation; and
- (5) The person's state registration number, if applicable.

(b) Each person desiring a tire transporter's permit shall apply in a form acceptable to the director, which shall include at a minimum all of the following:

- (1) The person's name;
- (2) The person's business address, including a facsimile number or email address;
- (3) The physical address within the county at which the records required in this article will be maintained;
- (4) The person's principal business or occupation;
- (5) A description of each truck that the applicant will use for the transport of tires including the manufacturer, gross weight, license number, color, vehicle identification number, year of manufacture and its registered owner; and
- (6) A statement that the applicant has not had a permit revoked under this article within the immediately preceding period of three years.

(c) Each application shall be accompanied by an application fee and a fee for each truck described in an application under this section.

Sec. 39-177. Issuance, duration and amendment.

(a) The director shall issue a permit to the applicant designating the trucks authorized pursuant thereto unless the director has a reasonable basis to believe that:

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

(b) In addition to the permit itself, the director shall issue 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. Failure to properly display a required plate, sticker or decal shall be a violation of this article.

(c) Permits and registrations issued under this article shall be valid for one year from the date of issuance unless sooner revoked.

Sec. 39-178. Transfer of permit or registration prohibited; reporting.

(a) Permits, registrations, stickers or decals issued under this article are personal to the applicant and may not be transferred, leased, assigned, given away or sold in any manner or under any circumstances.

(b) It shall be the duty of each registrant and permittee to advise the director in writing within ten business days of any change to any item for which a representation or response was made in its application for registration or permit.

Sec. 39-179. Authorized trucks.

It shall be unlawful for a permittee to allow any truck to be used for the transport of tires except those trucks designated in his permit. The permittee shall ensure that, at all times, each truck bears the identification plates, stickers or decals issued by the director.

Sec. 39-180. Basis for revocation of registration or permit.

Any registration or permit issued under this article may be revoked in accordance with these procedures if the director determines there is a reasonable basis to believe that:

- (1) The registrant or permittee has violated any of the provisions of this article;
- (2) The registrant or permittee violates any state or municipal law or ordinance involving the unlawful disposal, storage or theft of tires;

- (3) The registrant or permittee violates any provision of Chapter 37 of the Texas Penal Code relating to the records required to be kept under this article;
- (4) Any truck bearing a decal or sticker issued pursuant to this article is used for the commission of any violation of any state or municipal law or ordinance involving the unlawful disposal, storage or theft of tires; or
- (5) Any statement made in the application for the permit or registration or any amendment thereto was known to be false.

Sec. 39-181. Investigation; notice.

The director, in consultation with the police department, shall investigate the facts underlying an allegation that there is a reasonable basis for revocation of a registration or permit. If the director determines that there is a reasonable basis for revocation of a registration or permit, the director shall give written notice to the registrant or permittee by personal service, by facsimile, or by certified mail, return receipt requested, which notice shall include, at a minimum:

- (1) The specific grounds upon which the registration or permit may be revoked;
- (2) That there will be a hearing before the director in which the city will seek to revoke the registration or permit;
- (3) The date, time and place of the hearing; and
- (4) That the permittee or registrant may appear in person and may be represented by an attorney.

Sec. 39-182. Revocation hearing.

(a) All hearings shall be held by the director or a designated representative. Such officer shall be referred to as the "hearing officer."

(b) All hearings shall be conducted under rules consistent with the nature of the proceedings, and the registrant or permittee shall have the burden of proof; provided, however, that the following rules shall apply to such hearings:

- (1) Each party shall have the right to representation by a licensed attorney, though an attorney is not required.
- (2) Each party may present witnesses in its own behalf.
- (3) Each party has the right to cross-examine all witnesses.

- (4) The hearing officer shall consider only the evidence presented at the hearing in rendering an order.

Sec. 39-183. Failure to appear at revocation hearing.

If the registrant or permittee fails to appear at the hearing at the date and time specified, the hearing officer may enter an order revoking the registration or permit.

Sec. 39-184. Findings of hearing officer after revocation hearing.

After completion of the presentation of evidence by all parties appearing, the hearing officer shall determine whether there is a reasonable basis to revoke the registration or permit. If there is a reasonable basis the hearing officer shall make written findings that specify the facts upon which the determination was based, and shall render a written order to revoke the registration or permit; provided, the hearing officer may exercise discretion to take other lesser actions such as a temporary suspension or revision of a registration or permit. A copy of the hearing officer's order shall be personally delivered, sent by facsimile or mailed by certified mail, return receipt requested, to the registrant or permittee.

Sec. 39-185. No refund of fee after revocation.

In the event any registration or permit is revoked, suspended or revised by the hearing officer, the city shall not be liable to any person for any refund of any part of the registration or permit fee.

Sec. 39-186. Surrender of permit, plates, decals upon revocation or suspension.

It shall be the duty of each person whose registration or permit has been revoked or suspended to return the permit to the director, as well as any identification plates, stickers or decals issued therewith.

EXHIBIT B

**SCHEDULE OF FEES FOR
STORAGE, TRANSPORTATION AND DISPOSAL OF TIRES**

Section	Description	Amount
39-172	Tire transporter permit (includes one truck), annual	\$172.09
39-172	Tire transporter permit (each additional truck), annual	\$43.29
39-171	Tire generator registration (one time)	\$66.27