ORDINANCE NO. 2746
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SULPHUR SPRINGS, TEXAS: AMENDING CHAPTER 15 OF THE SULPHUR SPRINGS MUNICIPAL CODE BY ADDING ARTICLE VII, SECTIONS 15-301-15-308; 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 and storage of used scrapped tires is an issue of major concern to the City of Sulphur Springs 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 SULPHUR SPRINGS, TEXAS:

SECTION 1. The Sulphur Springs Municipal Code, Chapter 15, is hereby amended by adding Article VII, Sections 15-301-15-308, as follows:

ARTICLE VII. STORAGE AND DISPOSAL OF TIRES
Sec. 15-301. Definitions
(a) “Code Compliance Officer” shall mean the Building Official or his designees.
(b) “Facility” shall mean all businesses referred to herein as, Mobile Tire Repair Business and/or Tire Business.
(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 and whites that are muted and flat in emulation of the natural colors found in the soils, grasses, trees and rocks found in the Northeast 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 that generator has rendered unusable; or any portion of 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.
(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) “Used Tire” means a tire, including a recapped or retreated tire, suitable for continued use for its original intended purpose.

Sec.15-302 - 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 Scrap tire.
(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, or in another manner approved by the Code Compliance Officer.
(c.) The unlawful disposal of any whole or a portion of a tire is declared to be a public nuisance. 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 recodified, are hereby adopted.

Sec. 15-303. 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. If tires are not stored in a building or enclosed container that is capable of being secured against unlawful access or natural elements, then those persons having tires in their possession shall monitor the tires at least once every two weeks for vector control.

(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 and protected from rainwater accumulation:
      (A) 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.
   (2) properly stored:
      (A) on racks or neatly stacked not in excess of the lower of 10 feet in height or the height of the screen or fence shielding such tires from public view; 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 2 containers may be stored at any one scrap tire facility location; and
   (3) in compliance with all applicable fire code provisions.
(c) No Tire Business shall, in any event, store more than the total number of 500 whole Scrap or Used tires on the ground or in an outside location and 1500 Scrap or Used tires in an enclosed trailer or container at any time.

It is defense to prosecution under this section that the Tire Business is licensed as a Scrap Tire Storage Site as defined in Tx. Admin. Code, Ch. 328, Subchapter F, Sec. 328.53.

Sec. 15-304. 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. 15-305. 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, not to exceed six (6) months from the effective date of this Ordinance to comply with all the requirements of this article.
(b) Facilities which are annexed into the City shall have a period not to exceed six (6) 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. 15-306. 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.

A violation of any of the provisions of this article constitutes a misdemeanor that shall be punishable, upon conviction, by a fine of not more than $500.00, 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. 15-308. 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. 15-309-15-399. 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 Sulphur Springs, 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 any provision of this ordinance is a misdemeanor which shall be punishable, upon conviction, by a fine of between $250.00 and $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 provide in the applicable state law.

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

PASSED AND APPROVED by the City Council of the City of Sulphur Springs, Texas, on the First Reading this the ________day of ________________, 2019.

PASSED AND ADOPTED on Second and Final Reading the ________day of ____________________, 2019. 

Attest:

Norman R. Sanders, Mayor

Gale Roberts, City Secretary