

CITY of ALBUQUERQUE

TWENTY FIFTH COUNCIL

COUNCIL BILL NO. O-22-38 ENACTMENT NO. _____

SPONSORED BY: Klarissa Peña

1 ORDINANCE

2 ADOPTING A NEW ARTICLE IN CHAPTER 9 OF THE REVISED ORDINANCES
3 OF ALBUQUERQUE 1994, "HEALTH, SAFETY AND SANITATION", TO BE
4 KNOWN AS THE "ALBUQUERQUE SCRAP TIRE ORDINANCE",
5 ESTABLISHING A PERMIT AND PERMITTING FEE.
6 BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF
7 ALBUQUERQUE:

8 SECTION 1. A new Article 23 in Chapter 9 of the Revised Ordinances of
9 Albuquerque 1994 is hereby adopted as follows:

10 §9-23-1. SHORT TITLE

11 This article shall be known and may be cited as the "Albuquerque Scrap Tire
12 Ordinance."

13 §9-23-2. DEFINITIONS

14 ILLEGAL DUMPING. Illegal dumping means disposal of trash, scrap tires or
15 any solid waste on public or private property that is not licensed or permitted
16 to receive waste.

17 PERSON. Person means any individual, partnership, company, corporation,
18 firm, association, trust, estate or legal entity, not including government
19 entities.

20 SCRAP TIRE. Scrap tire means a tire that is no longer suitable for its originally
21 intended purpose because of wear, damage, defect or obsolescence, but does
22 not include a tire that is used as a feedstock for tire derived fuel at a permitted
23 or registered facility that is in compliance with applicable federal, state, and
24 local regulations.

25 SCRAP TIRE CUTTER. Scrap tire cutter is any mechanical device capable of
26 safely cutting any scrap tire received by any scrap tire generator into at least

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion

- 1 four (4) pieces within one minute or less and approved by the Mayor or
2 designee.
- 3 SCRAP TIRE GENERATOR. Scrap tire generator means a person who
4 generates or stores scrap tires, including, but not limited to, retail tire dealers,
5 retreaders, scrap tire processors, automobile dealers, automobile salvage
6 yards, private company vehicle maintenance shops, automotive repair
7 garages, service stations, motorcycle or ATV retail or repair shops but does
8 not include persons who generate scrap tires in a household or beneficial
9 agricultural operations.
- 10 SCRAP TIRE GENERATOR PERMIT. Scrap tire generator permit is the permit
11 that may be granted by the City pursuant to this ordinance that allows a scrap
12 tire generator to operate in the City for a period of one year.
- 13 SCRAP TIRE HAULER. Scrap tire hauler means a person who transports tires
14 for hire for the purpose of recycling, disposal, transformation or use in civil
15 engineering application and is appropriately registered as a scrap tire hauler
16 as required by New Mexico Environment Department.
- 17 SCRAP TIRE SELF-HAULER. Scrap tire self –hauler means a scrap tire
18 generator who does not contract with a scrap tire hauler, but instead collects
19 and transports its own scrap tires to the municipality solid waste landfill or
20 recycling facility. A self-hauler shall not provide collection and transportation
21 services to someone else for compensation.
- 22 SCRAP TIRE MANIFEST. Scrap tire manifest means a chain-of-custody
23 document containing information required by 20.9.20.50 NMAC and is
24 necessary when transporting ten (10) or more scrap tires in the City of
25 Albuquerque and the State of New Mexico. A scrap tire hauler and or a scrap
26 tire self-hauler shall not transport scrap tires without possessing a New
27 Mexico scrap tire manifest approved by the New Mexico Department, as
28 required by 20.9.20.8. NMAC.
- 29 TIRE DERIVED FUEL. Tire-derived fuel means a low sulfur, high-heating-value
30 derived from tires.
- 31 VECTOR. Vector means any agent capable of transmitting a disease from one
32 individual or organism to another. Vectors include, but not limited to,
33 mosquitoes, flies and other insects, rodents, and vermin.

1 §9-23-3. PROHIBITED ACT

2 No person who is a scrap tire generator shall be allowed to operate a business
3 within the city of Albuquerque unless that person possesses an operational
4 scrap tire cutter on the premises where scrap tires are generated, or can
5 demonstrate that they are in a valid written agreement with a scrap tire hauler
6 to remove the tires or a self-hauler as defined in this ordinance. Storage of
7 scrap tires must be limited and maintained so that they do not promote
8 harborage of disease vectors or pose fire risk and must be consistent with the
9 requirements of the Integrated Development Ordinance.

10 §9-23-4. PERMIT

11 The City shall issue a scrap tire generator permit to any applicant who meets
12 all of the requirements of this ordinance as determined by the Mayor or
13 designee. A permit issued under this ordinance is not transferable nor
14 assignable and may not be sold.

15 §9-23-5. APPLICATION

16 An application for a permit shall be completed and submitted to the Mayor or
17 designee. The application shall include:

18 (a) the name, home address, home phone, business phone, and business
19 address of the applicant;

20 (b) the type of ownership of the business, i.e., corporation, limited liability
21 company, partnership, sole proprietorship, etc., all officers and agents of
22 the business, and affirm that the applicant is the person or legal entity that
23 will be operating the business;

24 (c) a description of the scrap tire cutter owned or leased by the applicant; if
25 the scrap tire cutter is not owned by the applicant, a copy of the lease must
26 be included; if using a scrap tire hauler, a copy of the written agreement
27 with the scrap tire hauler must be included; if self-hauling the scrap tires,
28 the application shall include the name, address and phone number of the
29 landfill destination.

30 (d) a statement describing the physical space on the premises where the
31 applicant intends to place and use the scrap tire cutter;

1 (e) such other information as the Mayor or designee shall find reasonably
2 necessary to effectuate the purpose of this article and arrive at a fair
3 determination of whether the terms of this article have been complied with;
4 (f) if approved, and if any of the information contained therein changes, the
5 application shall be updated by the applicant within ten (10) calendar days
6 of such change. Failure to comply with this provision shall be grounds for
7 the suspension and or revocation of the scrap tire generator permit
8 pursuant to this article as well as business registration status pursuant to
9 §§ 13-1-1 through 13-1-99 of the Albuquerque Code of Ordinances.
10 (g) if the application is approved, the Scrap Tire generator permit shall be
11 approved for a period of one year.

12 §9-23-6. DUTIES OF SCRAP TIRE GENERATORS

13 (a) Every person who is a scrap tire generator who does not meet
14 subsection (d) of this section shall possess and use a scrap tire cutter to
15 cut the scrap tires on any premises in that person's possession and cut
16 into four (4) or more pieces for lawful disposal or recycling;
17 (b) Scrap tire generators who do not meet subsection (d) & (e) of this
18 section shall take all reasonable precautions to ensure the safe operation
19 of the scrap tire cutter;
20 (c) Every scrap tire generator who does not meet subsection (d) & (e) of
21 this section shall have a commercial refuse bin of a size and pickup
22 frequency sufficient for the removal of the cut tires from its premises and
23 that all scrap tires shall be placed in said bin immediately.
24 (d) Scrap tire generators operating single or multiple locations may use a
25 scrap tire hauler as an alternative to a scrap tire cutter. During a
26 compliance inspection, scrap tire generators shall provide proof of a
27 business contract/agreement with a registered scrap tire hauler as well as
28 copies of manifests to ensure proper recycling or disposal of tires.
29 (e) Scrap tire self-hauler shall provide proof of the approved landfill
30 destination as well as copies of the manifest to ensure the proper disposal
31 of the scrap tires.

32 §9-23-7. FEE

33 The City will establish a reasonable annual permit fee..

1 §9-23-8. INVESTIGATIONS AND INSPECTIONS

2 (a) Whenever necessary to make an inspection to enforce any of the
3 provisions of this chapter, the Mayor or designee may enter any building or
4 premises at all reasonable times to inspect the same or to perform any duty
5 imposed upon the Mayor or designee by this ordinance; provided that if
6 such building or premises be occupied, the Mayor or designee shall first
7 present proper credentials and request entry; if such building or premises
8 is unoccupied, the Mayor or designee shall first make a reasonable effort to
9 locate the owner or other persons having charge or control of the building
10 or premises and request entry. If such entry is refused, the Mayor or
11 designee shall have recourse to every remedy provided by law to secure
12 entry. Permits may be suspended for failure to comply with the
13 requirements of this ordinance, as well as for violations of other applicable
14 laws or regulations.

15 (b) Within ten days after receipt of an application as provided herein, the
16 Mayor or designee shall cause an onsite inspection to be made of the
17 applicant's premises and an investigation of the operation.

18 §9-23-9. APPEALS

19 (a) Any party aggrieved by an order or decision granting or denying the
20 scrap tire generator permit under this article may appeal such grievance
21 to the Mayor or designee to hear such appeal.

22 (b) Written notice of such an appeal must be given to the Mayor or
23 designee within 30 calendar days after the order or notice of the
24 decision is mailed to the aggrieved party. The notice shall contain an
25 enumeration of the order or decision complained of, the date of the
26 issuance of such order or decision, and a brief statement of the reasons
27 why such practice, order or decision is unlawful, unwarranted, or
28 creates an unnecessary hardship. The 30-day period is jurisdictional
29 and may not be waived.

30 (c) A hearing shall be held within 30 calendar days after notice of appeal is
31 received. A hearing may be canceled by agreement of the appellant and,
32 if applicable, the party or official who is the subject of an appeal.

- (d) Fifteen days' prior notice of this time, place, and nature of the hearing shall be afforded to all parties. In conducting a hearing, the hearing officer shall afford all parties an opportunity for a full and fair hearing, including right to be represented by counsel, and the right to call and examine witnesses, introduce exhibits and cross-examine witnesses who testify. The hearing shall not be bound by the technical rules of evidence. Notwithstanding the above, the hearing shall be conducted in an orderly manner, and the hearing officer shall exclude all irrelevant, immaterial, and unduly repetitious evidence.
- (e) For the purposes of hearing appeals the hearing officer shall have the power to order inspections and to require the submission of such plans and specifications or other evidence, as he or she deems necessary.
- (f) On the hearing of an appeal the hearing officer shall have the power to reverse, affirm or amend any order or decision of any official complained of by the aggrieved party.
- (g) Within five working days of the completion of the hearing the hearing officer shall issue a written decision memorializing the adjudication of the appeal. Every decision or opinion of the hearing officer shall be made a part of the official record of the appeal, and a copy of such decision or opinion shall be given to the aggrieved party.
- (h) If any party, including the City, feels the hearing officer acted improperly, or that such action as the hearing officer took was arbitrary, capricious or unlawful, said party shall have the right to appeal to the Second Judicial District Court. The hearing officer shall maintain a record of all matters heard before it, and all appeals to the District Court shall be from the record. Said record shall consist of a transcript or digital recording of all testimony taken during the hearing, all exhibits offered, all plans and specifications as may have been required, and a copy of the hearing officer's decision. The filing of an appeal in the District Court does not itself stay enforcement of the decision of the hearing officer, but the hearing officer may grant, or the District Court may order, such a stay upon appropriate terms.

§9-23-10. SUSPENSION AND REVOCATION

1 (a) The Mayor or designee may suspend or revoke any permit issued under
2 this article pending the hearing provided in this section upon the filing of a
3 sworn complaint with such Mayor or designee by any citizen, or upon
4 complaint by any peace officer or upon the initiative of the Mayor or
5 designee, charging the permittee of having violated any one or more of the
6 provisions of this article. Such suspension shall become effective upon the
7 service on the permittee of notice of such suspension.

8 (b) The requirements of such service of notice shall be satisfied if personal
9 service of the notice is made or is posted in a conspicuous place upon the
10 permitted establishment. The official serving such notice shall have the
11 authority to remove the permit from the premises and to deliver such
12 permit to the Mayor or designee. The Mayor or designee shall set a date for
13 a hearing on such complaint which shall be held not more than thirty days,
14 nor less than ten days after the date of any suspension, unless waived by
15 all parties thereto. The Mayor or designee shall appoint a hearing officer to
16 adjudicate all matters arising from this section. The notice of suspension
17 or revocation provided for in this subsection, shall specify the date and
18 time of the hearing. The permittee shall have the right to appear at such
19 hearing and to produce evidence. If, after holding the hearing, the hearing
20 officer determines that the scrap tire generator was in violation of any
21 provision of this article, as charged in the complaint, then the hearing
22 officer shall issue an order either suspending the permit for up to 30 days
23 or permanently revoking such permit. Any appeals of this outcome are to a
24 court of competent jurisdiction as provided by law.

25 (c) Any acts or omission in violation of this ordinance constitute grounds
26 for revocation or suspension of a permit issued under this ordinance are
27 also grounds for the Mayor or designee to commence a civil or criminal
28 action for any violation of this article and seek the penalties provided in §1-
29 1-99.

30 §9-23-11. PENALTY

31 Violations of this ordinance are punishable as provided in § 1-1-99 and by the
32 suspension and/or revocation of the Scrap Tire Generator Permit as provided
33 in this ordinance.]”

1 SECTION 2. SEVERABILITY CLAUSE. If any section, paragraph, sentence,
2 clause, work or phrase of this ordinance is for any reason held to be invalid or
3 unenforceable by any court of competent jurisdiction, such decision shall not
4 affect the validity of the remaining provisions of this ordinance.
5 SECTION 3. COMPILATION. Section 1 of this ordinance shall be incorporated in
6 and made part of the Revised Ordinances of Albuquerque, New Mexico, 1994,
7 as a new Article 23 of Chapter 9, titled "Albuquerque Scrap Tire Ordinance."
8 SECTION 4. EFFECTIVE DATE. This ordinance shall take effect 90 days after
9 publication by title and general summary.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

[Bracketed/Underscored Material] - New
[Bracketed/Strikethrough Material] - Deletion