

ORDINANCE NO. 2941

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS AMENDING CHAPTER 8, ARTICLE II OF THE CODE OF THE CITY OF MESQUITE BY AMENDING CERTAIN DEFINITIONS AND ADDING DEFINITIONS TO SECTION 8-26, AND ADDING A DIVISION 6 PROVIDING REQUIREMENTS RELATING TO THE OPERATION OF A HORSE DRAWN CARRIAGE WITHIN THE CITY; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY AND DECLARING AN EMERGENCY.

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

SECTION 1. That Chapter 8, Article II, of the Code of the City of Mesquite is amended by amending certain definitions and adding the following definitions to Section 8-26, and adding Division 6, Horse Drawn Carriage, to read as follows, in all other respects said Code, Chapter and Article to remain in full force and effect:

Section 8-26. Definitions.

Add the following definitions:

Horse Drawn Carriage means a non-motorized wheeled vehicle for carrying persons, pulled by one or more horses whose movement is guided and directed by a carriage driver.

Horse Drawn Carriage Service means a passenger transportation service operated for hire that uses horse drawn carriages in the operation of the service and includes (but is not limited to) a staging area, a facility from which the service is operated, horse drawn carriages and drivers used in the operation, and a person who owns, controls, or operates the service.

Staging Area means a stationary horse feeding and watering location.

Amend the following definitions:

Vehicle for hire means a taxicab, special service vehicle or horse drawn carriage defined by this article.

DIVISION 6. HORSE DRAWN CARRIAGE**Section 8-157. Required.**

(a) A person may not operate a horse drawn carriage for hire upon any public street within the City without operating authority granted under this article, nor may a person transport for hire a passenger upon a public street within the City by horse drawn carriage unless the person driving the carriage or another who employs or contracts with the driver has been granted operating authority under this article.

(b) A person shall not engage or hire a horse drawn carriage to transport him within the City, using the public streets, which he knows does not have operating authority from the City.

Section 1-158. Transfer.

(a) An annual permit fee may not be transferred to another unless the holder files a written application for the transfer in a manner and containing the information prescribed by the Chief of Police and the transfer application is approved by the City Council.

(b) A temporary permit or reciprocal agreement is not transferable.

Section 8-159. Annual Permit; Investigation of Application; Permit Renewal.

(a) Upon receipt of an application and application fee for an annual permit under this division, the Chief of Police shall conduct an investigation and make findings of fact concerning public convenience and necessity and other relevant factors, including but not limited to:

- (1) The financial responsibility of the applicant;
- (2) The character, experience and responsibility of applicant;
- (3) The number, kind, age, and type of equipment and the color scheme to be used by the applicant;
- (4) The probable effect of the service on local traffic conditions.

(b) The applicant for a permit has the burden of proving that the proposed horse drawn carriage service is appropriate for the proposed service area and will not interfere with traffic and public convenience and that the applicant is qualified and financially able to provide the service proposed in the application.

(c) Within a reasonable time following the date of application, the Chief of Police shall report in writing his findings of fact and recommendation to the City Manager for transmittal to the City Council. The City Council shall then consider whether an annual permit should be granted as prescribed by this Article.

(d) If the City Council determines that a permit is granted, that permit shall be in force and in effect for a term not longer than twelve (12) months from and after the effective date of Council authorization, unless sooner termination by reason of default due to a suspension or revocation as provided for under the requirements of this Article.

(e) A permit granted under the terms of this Article, that has had no material changes may be renewed by the Chief of Police on written application by the horse drawn carriage service not less than thirty (30) days prior to the expiration date of said permit and payment of the permit fee described herein.

(f) The City Council may approve a renewal of a permit when there are material changes recommended to the original permit either by the Chief of Police or holder.

Section 8-160. Annual Permit Granted by City Council.

(a) Before an annual permit is granted, a person shall make application to the City in the manner prescribed by this Section. The applicant must be the person who will own, control, or operate the proposed horse drawn carriage service. An applicant shall file with the City Secretary and the Chief of Police a written, verified application statement containing the following:

- (1) The form of business of the applicant; if the business is a corporation or association, a copy of the documents establishing the business and the name, address, social security number, date of birth, and citizenship of each person with a direct interest in the business;
- (2) Name, address, and notarized signature of the applicant;
- (3) Documentary evidence from an insurance company, authorized to do business in the state indicating a willingness to provide liability insurance required by this Article, and as part of said insurance provide a waiver of subrogation in favor of the City.
- (4) Such additional information as the applicant desires to include to aid in the determination whether the requested operating authority shall be granted; and

- (5) Such additional information as the Chief of Police or City Council considers necessary to assist or promote the implementation or enforcement of this Article for the protection of the public's safety.
 - (6) A one hundred-fifty dollar (\$150.00) non-refundable application fee shall be attached to the application.
- (b) Granting of an annual permit to a horse drawn carriage service applicant is in the discretion of the City Council, but will not be granted unless:
- (1) The proposed horse drawn carriage service will not be detrimental to the public convenience and traffic safety;
 - (2) The applicant is willing, and able to operate the horse drawn carriage service in accordance with the requirements of this Article, rules and regulations of the Chief of Police, provisions of the annual permit, and other applicable law; and
 - (3) The applicant has paid the annual permit fee.

Section 8-161. Amendment; Suspension; Revocation; Reinstatement.

- (a) *Amendment.* A horse drawn carriage service permit is amendable under the conditions and in the manner prescribed by this Article. An annual permit is amendable at any time by the City Council.
- (b) *Suspension and revocation of permit.* The following regulations apply to the suspension or revocation of a permit:
- (1) The City Manager or his designate may suspend or revoke a permit if it determines that the holder has:
 - (a) Failed to comply with a directive issued to the holder by the Chief of Police, within the time specified in the order;
 - (b) Intentionally or knowingly impeded the department or other law enforcement agency in the performance of its duty or execution of its authority;
 - (c) Failed to comply with any provision of this Article;

- (d) Had a final conviction for violation of another City, State, or Federal law, which violation reflects unfavorably on the fitness of the holder to perform a public transportation service;
- (e) Substantially breached the terms of the permit;
- (f) Failed to pay City ad valorem taxes on any property of the holder used directly or indirectly in connection with the horse drawn carriage service; or
- (g) Failed to pay a permit fee at the time it was due.

(2) A suspension of a permit does not affect the expiration date of the permit.

(d) *Reinstatement.* A holder whose permit has been suspended or revoked may appeal such suspension or revocation to the City Manager or his designated representative if, within 10 (ten) business days of receipt of notification suspension or revocation, the holder files a written appeal requesting reinstatement of the permit. Such appeal must include reasons why the permit should be reinstated. The Chief of Police shall inspect the operation of the suspended holder to determine if the violation or deficiency causing the suspension or revocation has been corrected by the holder. The finding of such inspection shall be reported to the City Manager or his designated representative by the Chief of Police and the Chief of Police shall submit his recommendation together with supporting facts to the City Manager or his designated representative.

Upon receipt of all pertinent information the City Manager or his designated representative shall set the time and place of the hearing and act as the hearing officer. The hearing officer shall give the holder and the Chief of Police an opportunity to be heard and to present evidence and argument. At his discretion, the hearing officer may hear evidence from other interested parties. Formal rules of evidence shall not apply and the hearing officer shall make his ruling on the basis of preponderance of the evidence presented to him at the hearing. If the evidence shows that correction has been effected by the holder, unless good cause is exhibited to deny reinstatement, the hearing officer shall reinstate the permit. Good cause shall include but not be limited to a finding of multiple and repetitive failures or violations or a finding that the holder has a final conviction of City, State, or Federal law, which conviction reflects unfavorably on the fitness of the holder to perform a public transportation service.

The decision of the hearing officer shall be final.

Section 8-162. Permit Fee.

The horse drawn carriage service shall pay a permit fee to the City of five hundred dollars (\$500.00) per year. The permit fee is payable in the manner and at the time prescribed by Section 8-160.

Section 8-163. Refusal to Convey Passengers.

While operating a horse drawn carriage service a driver shall not refuse to convey a person who requests service during normal hours of operation unless:

- (a) The person is disorderly;
- (b) The driver is engaged in answering a previous request for service;
- (c) The driver has reason to believe that the person is engaged in unlawful conduct; or
- (d) The driver is in fear of his personal safety, or the safety of others.

Section 8-164. Passenger Limitations.

- (a) While operating a horse drawn carriage service a driver on duty may carry only a person who is a paying passenger, unless the passenger is an employee of the holder that employs or contracts with the driver, a governmental inspector acting in an official capacity, or unless it is authorized by the holder's operating authority.
- (b) A driver may not carry at the same time more passengers than the designed seating capacity of the horse drawn carriage.
- (c) The Chief of Police may establish rules governing passenger limitations.

Section 8-165. Routes and Staging Area to be Specified.

- (a) Horse drawn carriage operations will be allowed only on those routes specifically authorized by the City Council.
- (b) A staging area location must be identified and written permission obtained from the property owner.

Section 8-166. Conduct of Drivers.

While on duty, a driver shall:

- (a) Be courteous at all times;
- (b) Maintain a sanitary and well-groomed appearance;
- (c) Not consume or be under the influence of alcoholic beverage, drugs, or other substance which could adversely affect his ability to drive a horse drawn carriage;
- (d) Not permit or allow any person on the back of a horse under said driver's control;
- (e) Not leave a horse unattended except when securely confined to a stable or other enclosure;
- (f) Not permit a horse drawn carriage to be parked without first effectively setting the brake equipment thereon;
- (g) Not permit or allow excrement to drop from a horse's diaper;
- (h) Operate the horses and horse drawn carriage at a safe speed and in a prudent manner, and in no event permit a horse or horses to gallop;
- (i) Keep all routes and carriage stands clean and free of animal excrement;
- (j) Upon request at any reasonable time and without prior notice, make a horse available for inspection by the City Manager, any officer of the police department and/or any veterinarian employed with or contracted by the City;
- (k) Not interfere with the Chief of Police in the performance of his duties.

Section 8-167. Return of Passenger's Property.

- (a) Upon finding property in a horse drawn carriage left by a passenger, the driver shall immediately return the property to the owner. However, if the driver is unable to locate the owner or if the driver does not know the identity or whereabouts of the owner, the driver shall, within a reasonable time, deliver the property to the holder who employs or contracts with the driver.

(b) Upon return of property to the owner or delivery of property to the holder, the driver shall prepare a written report stating the description of the property, the identity of the owner if known, the date the property was left in the horse drawn carriage, the circumstances relating to the loss, and the horse drawn carriage number. The holder shall keep the report on file for at least one (1) year and shall hold the property for not less than three (3) months.

Section 8-168. Fares.

(a) A holder may charge only rates of fare which have been approved by the City Council. A holder may propose a change in the rates of fare by filing the proposal with the City Secretary and the Chief of Police for consideration of the City Council.

(b) The City Council shall hold a hearing to consider the proposed change in the rates of fare. After the hearing the City Council may approve, disapprove, or modify the proposed change.

(c) The City Secretary shall maintain on file a current schedule of the rates of fare charged by each holder.

(d) A driver shall not charge a fare for operating a horse drawn carriage in the City that is inconsistent with the rates on file with the City Secretary for the holder under whose operating authority the horse drawn carriage is operated.

(e) Until rates are established, the rates approved that are in effect in the City of Dallas shall control.

Section 8-169. Hours of Operation.

(a) A driver may operate a horse drawn carriage Monday through Sunday between the hours of 10:00 a.m. and 2:00 a.m. of the following day.

(b) Notwithstanding the provisions of subsection (a), all carriage operations shall be suspended whenever the ambient weather temperature is at or exceeds 99 degrees or falls below 40 degrees as reported by the National Weather Service.

Section 8-170. Carriage Requirements and Inspections.

(a) A holder or driver shall at all times keep each horse drawn carriage clean and free of refuse and in safe operating condition.

- (b) A horse drawn carriage must not have any cracks, broken or missing parts, or other visible damage. All wheels must be firmly attached to the hub of a horse drawn carriage and all springs, axles, and supporting structures of each horse drawn carriage must be intact.
- (c) A horse drawn carriage must be consistent with the description and type outlined in the original application of holder.
- (d) The Chief of Police may accept the horse drawn carriage inspections completed by an approved agency in lieu of a horse drawn carriage being inspected under this section. Approved inspecting agencies are as follows:
 - (1) City of Dallas
 - (2) City of Fort Worth

Notwithstanding inspection by an approved agency, the Chief of Police may inspect each horse drawn carriage, for compliance with this Article and regulations of the Chief of Police, and a holder, owner, or driver shall make a horse drawn carriage available for inspection when ordered by the Chief of Police, and be subject to all inspection provisions set forth herein.

(e) If the permit applicant or permit holder is not permitted under the agencies listed in (d) then the following provisions are applicable.

Chief of Police inspects:

- (1) The Chief of Police shall inspect each horse drawn carriage, for compliance with this Article and regulations of the Chief of Police, before it is placed in service and at other times determined necessary by the Chief of Police.
- (2) A holder, owner, or driver shall make a horse drawn carriage available for inspection when ordered by the Chief of Police.
- (3) If a holder, owner, or driver fails to make a horse drawn carriage available for inspection or if the Chief of Police determines that a horse drawn carriage is not in compliance with this Article or regulations of the Chief of Police, the Chief of Police may order the horse drawn carriage removed from service until it is made available for inspection and brought into compliance.

(4) If the Chief of Police determines that inspection of the mechanical condition or safety equipment of a horse drawn carriage by an expert mechanic or technician is necessary, the holder, owner, or driver shall pay the cost of the inspection.

(5) When a horse drawn carriage is removed from service and placed back in service after fifteen (15) days by the same owner, the owner shall pay to the city twenty-five dollars (\$25.00) for reinspection.

(6) Before any horse drawn carriage will be approved for service, the Chief of Police shall be provided with proof of ownership of the horse drawn carriage.

(7) The City of Mesquite shall charge fifty dollars (\$50.00) per year per horse drawn carriage if inspection is made by the City of Mesquite.

Section 1-871. Required Equipment and Distinctive Marking.

Horse drawn carriages and equipment:

- (a) Shall comply with the provisions of Article 6701d, Section 122(e), Vernon's Annotated Civil Statutes, and all other applicable federal and state laws;
- (b) Be equipped with an approved braking system in good operating condition;
- (c) Be equipped with a "Slow Moving Vehicle" sign attached to the rear of the horse drawn carriage;
- (d) Shall be marked with the company name and unit number conspicuously located on the rear of the horse drawn carriage in letters and numbers not less than two inches in height;

Section 8-172. Care of Horses.

- (a) Before any horse may be used in a horse drawn carriage service, the holder of a permit to operate the service must furnish the Chief of Police with:
 - (1) a state certificate of veterinary inspection identifying the horse by description or photograph and showing that the horse has been examined at least once within the preceding six months by a veterinarian licensed by the State of Texas who specializes in equine medicine;

- (2) proof that the horse has had tetanus, rabies, and Eastern-Western encephalitis vaccinations; and
 - (3) photographs showing identifying marks of the horse.
- (b) A horse used in a horse drawn carriage service must:
- (1) be appropriately shod to work on paved streets; if a horse loses a shoe while working, an "eazy" type boot may be used to finish the scheduled work day;
 - (2) not have any open wound, oozing sore, cut below the skin level, or bleeding wound;
 - (3) not have evidence of lameness, such as but not limited to head bobbing or irregular rhythm;
 - (4) be provided with appropriate and sufficient food at reasonable intervals and have access to and be provided with fresh, potable water as needed;
 - (5) have at least a 10 minute rest period after each 50 minutes worked;
 - (6) not work longer than nine hours in a 24 hour period, nor more than 5 shifts in any week;
 - (7) have all harnesses properly fitted and in good repair with no deficiencies that could reasonably be deemed a safety hazard;
 - (8) be properly cleaned with no offensive odors or caked dirt or mud;
 - (9) wear a special sanitary device for containing animal excrement;
 - (10) be examined at least once every six months by a veterinarian licensed by the State of Texas who specializes in equine medicine, and receive a state certificate of veterinarian inspection which must be submitted to the Chief of Police.
- (c) The Environmental Health Officer, or his designated representative may require the holder or driver of a horse drawn carriage to remove from service any horse that appears to be ill, overtired, undernourished, overloaded, injured, or lame or whose health or life, in the opinion of a veterinarian or qualified equine animal control officer, is in imminent danger. To reinstate a horse removed from service, the

horse must be reexamined and a new state certificate of veterinarian inspection issued for the horse by a veterinarian licensed by the State of Texas and specializing in equine medicine, which certificate must be submitted to the Chief of Police.

(d) A person commits an offense if he harasses or startles, or attempts to harass or startle any horse while the horse is pulling a carriage or at rest or otherwise treats a horse inhumanely while it is working in a horse drawn carriage service.


(e) . For the purposes of this section, a horse is considered to be working any time it is on a public street or sidewalk, or other public right of way or portion of a designated route during any hour of operation of the horse drawn carriage service.

SECTION 2. That should any word, sentence, clause, paragraph or provision of this ordinance be held to be invalid or unconstitutional the remaining provisions of this ordinance shall remain in full force and effect.


SECTION 3. That any person, firm, or corporation violating any of the provisions or terms of this ordinance shall be deemed to be guilty of a Class C Misdemeanor and upon conviction in the Municipal Court shall be punished by a fine not to exceed Five Hundred (\$500.00) Dollars for each offense.

SECTION 4. The fact that the present ordinances of the City of Mesquite are inadequate to protect the public interest, comfort and general welfare, creates an urgency and an emergency and requires that this ordinance shall take effect immediately from and after its passage and publication of said ordinance, as the law in such cases provides.

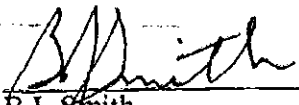
DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on the 15th day of November, 1993.


 Cathye Ray
 Mayor

ATTEST:


 Lynn Prugel
 City Secretary

APPROVED:


 B.J. Smith
 City Attorney