

(Motion was made by MIKE NEWMAN, seconded by JOHN CHAMPAGNE, and passed by a vote of \_\_\_\_\_ to \_\_\_\_\_, that the following ordinance be passed.)

**ORDINANCE NO. 2010 - 08**

**AN ORDINANCE OF THE CITY OF MONTGOMERY, TEXAS, GRANTING A SPECIAL USE PERMIT TO BUSINESS OWNER ISRAEL CURTIS' AUCTIONS FOR USE OF THE LEASED PREMISES AT 21049 EVA ST. AS AN ANTIQUE AUCTION BUSINESS; ESTABLISHING CERTAIN TERMS, CONDITIONS AND LIMITATIONS; PROVIDING FOR PENALTY, SEVERABILITY, AND EFFECTIVE DATE.**

**WHEREAS**, the City of Montgomery has received a request from business owner Israel Curtis' Auctions for a special use permit pursuant to Section 98-33 of the Code of Ordinances of the City of Montgomery, Texas, authorizing the use of a portion of the hereinbelow referenced real property as an antique auction business; and

**WHEREAS**, the matter was referred to the City of Montgomery Planning and Zoning Commission for consideration and recommendation, and the Planning and Zoning Commission, after due notice, did consider and make a report on the request for the special use permit, as provided by Section 98-33 (a) of the Code of Ordinances; and

**WHEREAS**, the City Secretary caused to be issued and published the notice of public hearing required by the City of Montgomery Zoning Ordinance and laws of the State of Texas applicable thereto; and

**WHEREAS**, the City Council, pursuant to such notice, held its public hearing and heard all persons wishing to be heard both for and against the proposed special use permit, on the 27<sup>th</sup> day of July, 2010; and

**WHEREAS**, the City Council, after determining that all legal requirements of notice and hearing have been met, is of the opinion and finds that the requested special use of the property described herein is authorized by Section 98-33 of the Code of Ordinances; and

**WHEREAS**, the City Council further finds that the granting of a special use permit to Israel Curtis' Auctions will not have an adverse effect on the City's comprehensive zoning plan or on the character and development of the neighborhood in which the property is situated, so long as the City imposes appropriate conditions and safeguards;

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MONTGOMERY, TEXAS, THAT:**

**SECTION 1. Grant of Permit.** A special use permit is hereby granted to business owner Israel Curtis' Auctions to use the leased premises at 21049 Eva St., Montgomery, Texas

77356 (the "Property"), as an antique auction business. The special use permit is granted upon and subject to the terms, provisions and limitations specified in Section 2.

**SECTION 2. Terms, Provisions and Limitations.** The special use permit herein granted is expressly subject to the following terms, provisions and limitations, each of which is hereby deemed to be a condition precedent to the grant and continued effectiveness of the permit:

- (a) All business activity shall be conducted within the leased premises, and shall be within a fully-enclosed structure.

- (b) The Auction Business shall maintain hours of operation as follows:

Auction:      Tuesday, 6-10 PM  
                 Saturday (occasional) 10 am -2 pm

Deliveries:   Mondays (loading/unloading in the Back)

- (c) The products and services offered shall be restricted to those described and identified on the Owner Plans, attached as Exhibit "A," and incorporated herein by reference.
- (d) Parking shall be provided in accordance with City Ordinances, and in no event shall parking interfere with traffic on FM 149 or State Hwy. 105. The parking lot currently located on the Property shall be cleared of overgrowth and debris and shall be maintained in a neat and attractive manner.
- (e) A dumpster shall not be required on the Property. Prior to opening the business or conducting business, the building on the Property shall be inspected by a licensed inspector to ensure safety and shall be certified to comply with all building codes of the City. A Certificate of Occupancy shall be required prior to opening for business.

If the business owner intends to use adjacent property for overflow parking, the business owner shall obtain and file with the City letters from the adjacent property owners authorizing such use.

- (f) The City shall have the authority to inspect the Property from time to time to confirm Israel Curtis' Auctions' compliance with the terms and conditions of this special use permit.
- (g) This special use permit does not waive, amend, abrogate or affect any law, rule or regulation, including any ordinance of the City of Montgomery. Israel Curtis' Auctions shall comply with all ordinances of the City of Montgomery.

- (h) In the event of a violation by Israel Curtis' Auctions of the terms and provisions of this special use permit and the continuation of such violation after ten (10) days written notice from the City to Israel Curtis' Auctions, at the option of City Council, this permit shall be revoked and shall be of no further force or effect. Such revocation will be effective immediately upon action by City Council.
- (i) This permit may be revoked by City Council upon the sale or transfer of the business to any third party.

**SECTION 3.** Any person, firm, or corporation violating a provision of this ordinance, upon conviction, is guilty of an offense punishable as provided in the Montgomery Code of Ordinances, as amended, by a fine not to exceed two thousand dollars (\$2,000.00); and each day or portion thereof during which the violation is committed, continued or permitted shall be a separate offense.

**SECTION 4.** It is the intention of the City Council that this Ordinance, and every provision thereof, shall be considered severable and the invalidity of any section, clause or provision or part or portion of any section, clause, or provision of this Ordinance shall not affect the validity of any other portion of this Ordinance.

**SECTION 5.** This Ordinance shall become effective immediately upon its passage.

**PASSED AND APPROVED this 16<sup>th</sup> day of August, 2010.**

**CITY OF MONTGOMERY, TEXAS**

By: 

Travis Mabry, Mayor

**ATTEST:**

By: \_\_\_\_\_

Carol Langley, City Secretary

**APPROVED AS TO FORM:**

By: 

Bryan P. Fowler, City Attorney

10-15-2010

was on  
paid admin  
leave at  
this time

Carol  
Langley