

ORDINANCE NO. 2011-10-XXX

AN ORDINANCE OF THE CITY OF MCKINNEY, TEXAS AMENDING CHAPTER 62, "MOTOR VEHICLES AND TRAFFIC," OF THE CODE OF ORDINANCES OF THE CITY OF MCKINNEY, BY AMENDING SECTION 62-801, ENTITLED "CONTROL REQUIREMENTS FOR MOTOR VEHICLE IDLING," RELATING TO IMPROVING AIR QUALITY IN MCKINNEY BY ENFORCING NO-IDLING RESTRICTIONS AGAINST CERTAIN ENUMERATED TYPES OF VEHICLES BY PROHIBITING DRIVERS FROM IDLING WHILE USING A VEHICLE'S SLEEPER BIRTH AT A GASOLINE STATION AND LIMITING THE NUMBER OF MOTOR VEHICLES ALLOWED TO IDLE WHILE WAITING TO ACCESS A FUEL PUMP; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR GOVERNMENTAL IMMUNITY; PROVIDING PENALTIES FOR VIOLATIONS OF THIS ORDINANCE; PROVIDING FOR INJUNCTIONS; PROVIDING FOR THE PUBLICATION OF THE CAPTION OF THIS ORDINANCE AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of McKinney, Texas ("City") is a Home Rule City possessing the full power of local self-government pursuant to Article XI, Section 5 of the Texas Constitution, Section 51.072 of Texas Local Government Code and its Home Rule Charter; and

WHEREAS, the Dallas-Fort Worth area is a federally designated nonattainment area for the pollutant ozone and air quality impacts the public and economic health of the entire region; and

WHEREAS, the U.S. Environmental Protection Agency ("EPA") and the Texas Commission on Environmental Quality ("TCEQ") jointly have considered emission reductions to control air pollution from motor vehicles, and the Texas Legislature has created the Texas Clean Air Act ("Act"), which addresses that purpose; and

WHEREAS, Section 382.113 of the Act provides authority for municipalities to enact and enforce local laws and ordinances for the control and abatement of air pollution; and

WHEREAS, Locally Enforced Idling Restrictions is a Voluntary Mobile Source Emissions Reduction Program commitment in the Dallas-Fort Worth 8-Hour Ozone Attainment Demonstration State Implementation Plan ("SIP"); and

WHEREAS, in March 2009, the City Council of McKinney, Texas ("City Council"), adopted Ordinance No. 2009-03-016 to actively participate in improving the air quality of the region; and

WHEREAS, the City Council desires to further expand the City's Locally Enforced Idling Restrictions by prohibiting the idling of vehicles with sleeper births at a gasoline station and limiting the number of vehicles waiting in a queue for a fueling pump to help reduce the amount of emissions generated and help control air pollution from motor vehicles; and

WHEREAS, the City Council finds that the adoption of this ordinance serves a public purpose, and protects the health, safety, and welfare of the citizens of the City of McKinney, by further limiting the pollution created by motor vehicles unnecessarily idling within the City's jurisdiction;

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

- Section 1. All of the above premises are found to be true and correct and are incorporated into the body of this Ordinance as if copied in their entirety.
- Section 2. Section 62-801 of the Code of Ordinances of the City of McKinney, Texas is hereby amended, by deleting said section in its entirety and replacing it with a new Section 62-801, entitled "Control Requirements for Motor Vehicle Idling," to read as follows:

"Sec. 62-801. Control Requirements for Motor Vehicle Idling.

- (1) In accordance with 30 TAC §114.512, no person shall cause, suffer, allow, or permit the primary propulsion engine of a motor vehicle to idle for more than five (5) consecutive minutes when the motor vehicle, as defined in Section 62-802 of this Article, is not in motion during the period of April 1 through October 31 of each calendar year.
 - (2) No driver using the vehicle's sleeper berth may idle the vehicle:
 - (a) in a residential area (as defined in Section 244.001 of the Texas Local Government Code);
 - (b) in a school zone;
 - (c) within 1,000 feet of a hospital;
 - (d) within 1,000 feet of a public school during its hours of operation; or
 - (e) at, on or about the premises of a service station, fueling station or gasoline station.
 - (3) No more than one motor vehicle may idle in each line adjacent to a fuel pump while waiting to access and add fuel to the motor vehicle.
 - (4) An offense under this Article may be punishable by a fine not to exceed \$500. A culpable mental state is not required for prosecution of an offense under this Article."
- Section 3. That this Ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of said ordinances except in those instances where provisions of those ordinances are in direct conflict with the provisions of this Ordinance and such ordinances shall remain intact and are hereby ratified, verified and affirmed.
- Section 4. If any section, article, paragraph, sentence, clause, phrase or word in this Ordinance, or application thereof to any person or circumstance, is held invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of the Ordinance, and the City Council hereby declares it would have passed such remaining portions of the Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.
- Section 5. All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any city official or employee charged with the enforcement of this ordinance, acting for the City of McKinney in the discharge of his duties, shall not thereby render himself personally liable; and he is hereby relieved from all personal liability for any damage

that might accrue to persons or property as a result of any act required or permitted in the discharge of his said duties.

Section 6. Any person, firm or corporation who violates any section of this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined any sum not in excess of \$500.00, and assessed court costs as provided by law.

Section 7. Any violation of this Ordinance may be enjoined, and this remedy shall be in addition to any penal provision in this Ordinance.

Section 8. This Ordinance shall become effective from and after the date of its final passage and publication as provided by law, and it is accordingly so ordained.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS ON THE 18th DAY OF OCTOBER, 2011.

CITY OF MCKINNEY, TEXAS

BRIAN LOUGHMILLER
Mayor

CORRECTLY ENROLLED:

SANDY HART, TRMC, MMC
City Secretary
BLANCA I. GARCIA
Assistant City Secretary

DATE: _____

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney