

ORDINANCE NO. 2009-03-016

AN ORDINANCE OF THE CITY OF MCKINNEY, TEXAS AMENDING THE CODE OF ORDINANCES CHAPTER 62, "MOTOR VEHICLES AND TRAFFIC," OF THE CODE OF ORDINANCES OF THE CITY OF MCKINNEY, BY ADDING A NEW ARTICLE X, "LOCALLY ENFORCED MOTOR VEHICLE IDLING RESTRICTIONS" RELATING TO IMPROVING AIR QUALITY IN MCKINNEY BY ENFORCING NO-IDLING RESTRICTIONS AGAINST CERTAIN ENUMERATED TYPES OF VEHICLES; PROVIDING FOR A PENALTY OF A FINE NOT TO EXCEED FIVE HUNDRED DOLLARS (\$500.00) FOR EACH OFFENSE; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; 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, the City desires to actively participate in improving the air quality of the region; and

WHEREAS, the City Council of McKinney, Texas ("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 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. Chapter 62, of the Code of Ordinances of the City of McKinney, Texas is hereby amended, in part, by adding Article X, to read as follows:

"ARTICLE X. LOCALLY ENFORCED MOTOR VEHICLE IDLING RESTRICTIONS.

Sec. 62-800. TCEQ Rule Adopted by Reference.

The City Council hereby adopts the Texas Commission on Environmental Quality ("TCEQ") Idling Limitations Rule as published in the Texas Administration Code, Title 30, Part 1, Chapter 114, Subchapter J, Operational Controls for Motor Vehicles, Division 2, Locally Enforced Motor Vehicle Idling Limitation and the City Council approves the adoption and implementation of the TCEQ Idling Limitation Rule by reference. The provisions of the State rules are included in the remainder of this Article, but where there is a conflict between the State Rule and the provision of this Article, the State Rules shall prevail.

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; or
 - (d) within 1,000 feet of a public school during its hours of operation.
- (3) 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.

Sec. 62-802. Definitions.

The terms used in this Article have the meanings commonly ascribed to them under 30 TAC §114.510. The following words and terms, when used in this Article, have the following meanings, unless the context clearly indicates otherwise:

- (a) *Idle* means the operation of an engine in the operating mode where the engine is not engaged in gear, where the engine operates at a speed at the revolutions per minute specified by the engine or vehicle manufacturer for when the accelerator is fully released, and there is no load on the engine.
- (b) *Motor vehicle* means any self-propelled device powered by an internal combustion engine and designed to operate with four or more wheels in contact with the ground, in or by which a person or property, is or may be transported, and is required to be registered under Texas Transportation Code § 502.002, excluding vehicle registered under § 502.006(c).
- (c) *Primary propulsion engine* means a gasoline or diesel-fueled internal combustion engine attached to a motor vehicle that provides the power to propel the motor vehicle into motion and maintain motion.

Sec. 62-803. Exemptions.

The provisions of Section 62-801 do not apply to:

- (a) a motor vehicle that has a gross vehicle weight rating of 14,000 pounds or less and does not have a sleeper berth;
- (b) a motor vehicle that has a gross vehicle weight rating of 14,000 pounds or less, after September 1, 2009;

- (c) a motor vehicle forced to remain motionless because of traffic conditions over which the operator has no control;
- (d) a motor vehicle being used by the United State military, national guard, or reserves forces, or as an emergency or law enforcement motor vehicle;
- (e) the primary propulsion engine of a motor vehicle providing a power source necessary for mechanical operation, other than propulsion, and/or passenger compartment heating or air conditioning;
- (f) the primary propulsion engine of a motor vehicle being operated for maintenance or diagnostic purposes;
- (g) the primary propulsion engine of a motor vehicle being operated solely to defrost a windshield;
- (h) the primary propulsion engine of a motor vehicle that is being used to supply heat or air conditioning necessary for passenger comfort and safety in vehicles intended for commercial or public passenger transportation, or passenger transit operations, in which case idling up to a maximum of thirty (30) minutes is allowed;
- (i) the primary propulsion engine of a motor vehicle being used to provide air conditioning or heating necessary for employee health or safety while the employee is using the vehicle to perform an essential job function related to roadway construction or maintenance;
- (j) the primary propulsion engine of a motor vehicle being used as airport ground support equipment;
- (k) the owner of a motor vehicle rented or leased to a person that operates the vehicle and is not employed by the owner; or
- (l) a motor vehicle when idling is necessary to power a heater or air conditioner while a driver is using the vehicle's sleeper berth for a government-mandated rest period and is not within two (2) miles of a facility offering external heating and air conditioning connections at a time when those connections are available."

Section 3. Any person violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction in the municipal court of the City of McKinney, may be fined in the amount not to exceed the sum of five hundred dollars (\$500.00) for each offense.

Section 4. 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 5. 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 6. 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 3rd DAY OF MARCH, 2009.

CITY OF McKINNEY, TEXAS



BILL COX, Mayor Pro-Tem

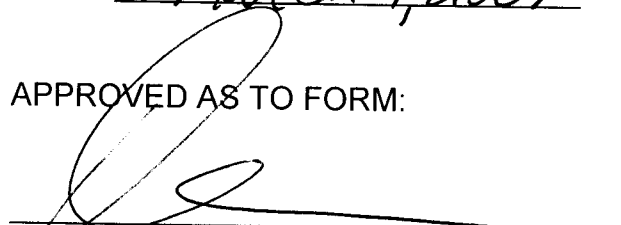
CORRECTLY ENROLLED:



SANDY HART, TRMC, MMC
City Secretary
LINCOLN THOMPSON
Deputy City Secretary

DATE: March 4, 2009

APPROVED AS TO FORM:



MARK S. HOUSER
City Attorney