

ORDINANCE NO. O-09022019-2

AN ORDINANCE OF THE ELKHART CITY COUNCIL OF THE CITY OF ELKHART, TEXAS, THAT ESTABLISHES A MOTOR VEHICLE PARKING REGULATIONS ORDINANCE O-09022019-2, REGULATING PARKING OF MOTOR VEHICLES WITHIN THE CITY OF ELKHART; REPEALING ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT THEREWITH.

PREAMBLE

WHEREAS, Texas Law provides for actions to be taken by a municipality as necessary or expedient to promote the safety and health of the residents of its community and encourage economical and orderly development of such community;

WHEREAS, it has come to the attention of the City of Elkhart City Council, that a need exists for parking regulations on streets within the City of Elkhart, promoting safe motor vehicle parking habits; and

WHEREAS, this City Council, after careful deliberation and study, finds that establishing such motor vehicle parking regulations promote the safety of the residents of the City of Elkhart.

WHEREAS, this City Council here now declares it to be the policy of the City to eliminate and prevent safety hazards by providing for the standards and regulations necessary to accomplish these purposes;

WHEREAS, this Ordinance is enacted in order to achieve the establishment of civil penalties for any person found to be in violation of the rules set forth herein, and thus subjecting the general safety and welfare of the public.

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

SECTION 1. RECITALS INCORPORATED.

The facts and recitals contained in the Preamble of this Ordinance are hereby found and declared to be true and correct.

SECTION 2. PURPOSE

The City Council finds that establishing civil penalties for the illegal parking of motor vehicles will promote the safety and welfare of the residents of the Elkhart community and encourages order to the community. It is, therefore, declared to be the policy of the City to eliminate and prevent safety hazards and to promote order within the Elkhart community by providing for the standards and regulations necessary to accomplish these purposes. This ordinance is enacted in order to establish rules, regulations and civil

penalties to minimize possible impacts, and to promote the safety and general welfare of the public.

SECTION 2.1 APPLICABILITY

This ordinance shall apply to any motor vehicle operated within the City limits of the City of Elkhart, Texas.

SECTION 3. DEFINITIONS

The definitions adopted herein are aligned with those established by the Texas Transportation Code.

(1) **“Authorized emergency vehicle”** means:

- (a) a fire department or police vehicle;
- (b) a public or private ambulance operated by a person who has been issued a license by the Department of State Health Services;
- (c) an emergency medical services vehicle:
 - (i) authorized under an emergency medical services provider license issued by the Department of State Health Services under Chapter 773, Health and Safety Code; and
 - (ii) operating under a contract with an emergency services district that requires the emergency medical services provider to respond to emergency calls with the vehicle;
- (d) a municipal department or public service corporation emergency vehicle that has been designated or authorized by the governing body of a municipality;
- (e) a county-owned or county-leased emergency management vehicle that has been designated or authorized by the appropriate official(s);
- (f) a private vehicle of a volunteer firefighter or a certified emergency medical services employee or volunteer when responding to a fire alarm or medical emergency;
- (h) an industrial emergency response vehicle, including an industrial ambulance, when responding to an emergency, but only if the vehicle is operated in compliance with criteria in effect September 1, 1989, and established by the predecessor of the Texas Industrial Emergency Services Board of the State Firemen's and Fire Marshals' Association of Texas;

- (i) a vehicle of a blood bank or tissue bank, accredited or approved under the laws of this state or the United States, when making emergency deliveries of blood, drugs, medicines, or organs;
 - (j) a vehicle used for law enforcement purposes that is owned or leased by a federal governmental entity; or
 - (k) a private vehicle of an employee or volunteer of a county emergency management division in a county with a population of more than 46,500 and less than 48,000 that is designated as an authorized emergency vehicle by the commissioner's court of that county.
- (2) **"Bicycle"** means a device that a person may ride and that is propelled by human power and has two tandem wheels at least one of which is more than 14 inches in diameter.
- (3) **"Bus"** means:
- (a) a motor vehicle used to transport persons and designed to accommodate more than 10 passengers, including the operator; or
 - (b) a motor vehicle, other than a taxicab, designed and used to transport persons for compensation.
- (4) **"Farm tractor"** means a motor vehicle designed and used primarily as a farm implement to draw an implement of husbandry, including a plow or a mowing machine.
- (5) **"House trailer"** means a trailer or semitrailer, other than a towable recreational vehicle, that:
- (a) is transportable on a highway in one or more sections;
 - (b) is less than 45 feet in length, excluding tow bar, while in the traveling mode;
 - (c) is built on a permanent chassis;
 - (d) is designed to be used as a dwelling or for commercial purposes if connected to required utilities; and
 - (e) includes plumbing, heating, air-conditioning, and electrical systems.
- (6) **"Implement of husbandry"** means:
- (a) a vehicle, other than a passenger car or truck, that is designed and adapted for use as a farm implement, machinery, or tool for tilling the soil;

- (b) a towed vehicle that transports to the field and spreads fertilizer or agricultural chemicals; or
 - (c) a motor vehicle designed and adapted to deliver feed to livestock.
- (7) **“Light truck”** means a truck, including a pickup truck, panel delivery truck, or carryall truck, that has a manufacturer's rated carrying capacity of 2,000 pounds or less.
- (8) **“Moped”** means a motor-driven cycle that cannot attain a speed in one mile of more than 30 miles per hour and the engine of which:
- (a) cannot produce more than two-brake horsepower; and
 - (b) if an internal combustion engine, has a piston displacement of 50 cubic centimeters or less and connects to a power drive system that does not require the operator to shift gears.
- (9) **“Motorcycle”** means a motor vehicle, other than a tractor, that is equipped with a rider's saddle and designed to have when propelled not more than three wheels on the ground.
- (10) **“Motor-driven cycle”** means a motorcycle equipped with a motor that has an engine piston displacement of 250 cubic centimeters or less. The term does not include an electric bicycle.
- (11) **“Motor vehicle”** means a self-propelled vehicle or a vehicle that is propelled by electric power from overhead trolley wires. The term does not include an electric bicycle or an electric personal assistive mobility device, as defined by Section 551.201.
- (11-a) **“Multifunction school activity bus”** means a motor vehicle that was manufactured in compliance with the federal motor vehicle safety standards for school buses in effect on the date of manufacture other than the standards requiring the bus to display alternately flashing red lights and to be equipped with movable stop arms, and that is used to transport preprimary, primary, or secondary students on a school-related activity trip other than on routes to and from school. The term does not include a school bus, a school activity bus, a school-chartered bus, or a bus operated by a mass transit authority.
- (12) **“Passenger car”** means a motor vehicle, other than a motorcycle, used to transport persons and designed to accommodate 10 or fewer passengers, including the operator.
- (13) **“Pole trailer”** means a vehicle without motive power:

- (a) designed to be drawn by another vehicle and secured to the other vehicle by pole, reach, boom, or other security device; and
 - (b) ordinarily used to transport a long or irregularly shaped load, including poles, pipes, or structural members, generally capable of sustaining themselves as beams between the supporting connections.
- (13-a) **“Police vehicle”** means a vehicle used by a peace officer, as defined by Article 2.12, Code of Criminal Procedure, for law enforcement purposes that:
- (a) is owned or leased by a governmental entity;
 - (b) is owned or leased by the police department of a private institution of higher education that commissions peace officers under Section 51.212, Education Code ; or
 - (c) is:
 - (i) a private vehicle owned or leased by the peace officer; and
 - (ii) approved for use for law enforcement purposes by the head of the law enforcement agency that employs the peace officer, or by that person's designee, provided that use of the private vehicle must, if applicable, comply with any rule adopted by the City Council or Commissioners Court of a County under Section 170.001, Local Government Code , and that the private vehicle may not be considered an authorized emergency vehicle for exemption purposes under Section 228.054, 284.070, 366.178, or 370.177, Transportation Code, unless the vehicle is marked.
- (14) **“Road tractor”** means a motor vehicle designed and used to draw another vehicle but not constructed to carry a load independently or a part of the weight of the other vehicle or its load.
- (15) **“School activity bus”** means a bus designed to accommodate more than 15 passengers, including the operator, that is owned, operated, rented, or leased by a school district, county school, open-enrollment charter school, regional education service center, or shared services arrangement and that is used to transport public school students on a school-related activity trip, other than on routes to and from school. The term does not include a chartered bus, a bus operated by a mass transit authority, a school bus, or a multifunction school activity bus.
- (16) **“School bus”** means a motor vehicle that was manufactured in compliance with the federal motor vehicle safety standards for school buses in effect on the date of manufacture and that is used to transport pre-primary, primary, or secondary students on a route to or from school or on a school-related activity trip other than on routes to

and from school. The term does not include a school-chartered bus, or a bus operated by a mass transit authority.

(17) “**Semitrailer**” means a vehicle with or without motive power, other than a pole trailer:

- (a) designed to be drawn by a motor vehicle and to transport persons or property; and
- (b) constructed so that part of the vehicle's weight and load rests on or is carried by another vehicle.

(18) “**Special mobile equipment**” means a vehicle that is not designed or used primarily to transport persons or property and that is only incidentally operated on a highway. The term:

- (a) includes ditchdigging apparatus, well boring apparatus, and road construction and maintenance machinery, including an asphalt spreader, bituminous mixer, bucket loader, tractor other than a truck tractor, ditcher, levelling grader, finishing machine, motor grader, road roller, scarifier, earth-moving carryall and scraper, power shovel or dragline, or self-propelled crane and earth-moving equipment; and
- (b) excludes a vehicle that is designed to transport persons or property and that has machinery attached, including a house trailer, dump truck, truck-mounted transit mixer, crane, and shovel.

(19) “**Towable recreational vehicle**” means a nonmotorized vehicle that:

- (a) is designed:
 - (i) to be towable by a motor vehicle; and
 - (ii) for temporary human habitation for uses including recreational camping or seasonal use;
- (b) is permanently built on a single chassis;
- (c) may contain one or more life-support systems; and
- (d) may be used permanently or temporarily for advertising, selling, displaying, or promoting merchandise or services, but is not used for transporting property for hire or for distribution by a private carrier.

(20) “**Trailer**” means a vehicle, other than a pole trailer, with or without motive power:

- (a) designed to be drawn by a motor vehicle and to transport persons or property; and

(b) constructed so that no part of the vehicle's weight and load rests on the motor vehicle.

(21) **“Truck”** means a motor vehicle designed, used, or maintained primarily to transport property.

(22) **“Truck tractor”** means a motor vehicle designed and used primarily to draw another vehicle but not constructed to carry a load other than a part of the weight of the other vehicle and its load.

(23) **“Vehicle”** means a device that can be used to transport or draw persons or property on a highway. The term does not include:

(a) a device exclusively used on stationary rails or tracks; or

(b) manufactured housing as that term is defined by Chapter 1201, Occupations Code.

(24) **“Electric bicycle”** means a bicycle that:

(a) is designed to be propelled by an electric motor, exclusively or in combination with the application of human power;

(b) cannot attain a speed of more than 20 miles per hour without the application of human power; and

(c) does not exceed a weight of 100 pounds.

SECTION 3. PARKING REGULATIONS.

The City of Elkhart incorporates herein the rules and regulations set forth in the Texas Transportation Code as attached, and shall create and adopt the additional following rules and regulations set forth by the City Council for the City of Elkhart:

SECTION 3.1. INCORPORATION OF TEXAS TRANSPORTATION CODE

See attached.

SECTION 3.2. PARALLEL PARKING NEXT TO CURB.

It shall be unlawful to park any vehicle as defined in Section 2 hereinabove, or to allow any vehicle as described in Section 2 hereinabove, to stop and stand on any street within the limits of the City, unless the right side of said vehicle is parallel to the curb of said street and unless both side wheels of said vehicle nearest said curb are at a distance no greater than 12 inches from said curb.

SECTION 4. CIVIL PENALTY.

Violations of this this Ordinance and/or any rule or regulation set forth under the Texas Transportation Code as adopted here, shall be assessed as a civil penalty (parking ticket) in the amount of \$50.00. Each day's continuing violation shall be a separate and distinct offense. In the event the vehicle is not impounded, notice of violation and assessment of civil penalty may be delivered to the offender in person, or may be mailed by registered or certified mail to the last known address of the registered owner of the vehicle. If the offender fails to pay the penalty within ten days after being cited for a violation, the penalty may be recovered in a civil action in the nature of debt. Nothing herein shall preclude filing a complaint against the violator in any court of appropriate jurisdiction.

SECTION 5. TOWING OF ILLEGALLY PARKED VEHICLES.

Impoundment. Notwithstanding any civil penalty, any vehicle found standing or parked in violation of any regulation of the City, or any vehicle abandoned and left in any public place, or any wrecked or disabled vehicle that constitutes a traffic hazard, shall be immediately removed by a police officer or other person duly authorized and acting under and by authority and direction of any member of the City, and impounded at the towing facility selected by authorized personnel, with all charges for towing and storage cast by said facility being cast upon the owner of said vehicle. Any charges incurred by the City for said tow shall be reimbursed directly to the City and any funds received by the City for said penalty being deposited into the general fund of the City.

Storage fee. A storage fee shall be billed for each day after the first 24 hours such vehicle remains under the control and in the possession of the City's duly authorized agent and shall be collected by the authorized agent before the impounded vehicle is released.

Towing fee. The towing fee shall be billed to the City by the towing company (wrecker) and shall be collected by the Code Enforcement Department, or its duly authorized agent before the impounded vehicle is released.

Fees cumulative. All towing and storage fees shall be cumulative of any penalty provided for the violation of the regulation under which any vehicle is removed and impounded.

SECTION 6. SEVERABILITY

That it is hereby declared that the sections, articles, subsections, paragraphs, sentences, clauses, and phrases of this ordinance are severable and if any phrase clause, sentence, paragraph, subsection, article, or section of this ordinance shall be declared void, ineffective, or unconstitutional by a valid judgment or final decree of a coull of competent jurisdiction, such voidness, ineffectiveness, or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, subsections, articles,

or sections of this ordinance since the same would have been enacted by the City Council without the incorporation herein of any such void, ineffective, or unconstitutional phrase, clause, sentence, paragraph, subsection, article, or section.

SECTION 7. REPEAL.

All ordinances or parts of ordinances conflicting with or not consistent with the provisions of this ordinance are hereby repealed; provided that such repeal shall be only to the extent of such inconsistency or conflict, and in all respects, this ordinance shall be cumulative of all other ordinances of the City of Elkhart regulating and governing the subject matter covered in this ordinance. Any cause of action accruing prior to the passage of this ordinance shall continue as if this ordinance was not passed or any other ordinance had not been repealed.

SECTION 8. ENGROSSMENT AND ENROLLMENT.

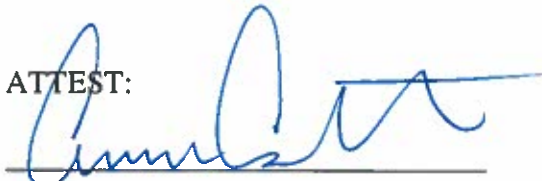
The City Secretary of the City is hereby directed to engross and enroll this ordinance by copying the caption, penalty clause (if any), publication clause and effective date clause in the minutes of the City Council and filing the ordinance in the ordinance records of the City.


SECTION 9. EFFECTIVE DATE.

It being necessary that this Ordinance be adopted immediately, this Ordinance shall take effect immediately upon and after its passage.

PASSED AND APPROVED ON this 3rd day of September, 2019.


Jennifer McCoy, Mayor

ATTEST:

Ami Ashworth,
City Secretary


Reviewed by Judith Cantrell,
City Administrator