

ORDINANCE NO. 2011-16

AN ORDINANCE AMENDING CHAPTER 78, TRAFFIC AND VEHICLES, ARTICLE III, OPERATION OF VEHICLES GENERALLY, OF THE CODE OF ORDINANCES OF THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS, BY ADDING A NEW SECTION 78-74, THROUGH TRUCK TRAFFIC PROHIBITED; ESTABLISHING REGULATIONS RELATED TO TRUCK TRAFFIC ON PUBLIC STREETS DESIGNATED AS NO THROUGH TRUCK STREET; PROVIDING A PENALTY IN AN AMOUNT NOT TO EXCEED \$200 FOR EACH VIOLATION HEREOF; AND PROVIDING FOR SEVERABILITY; AND MAKING OTHER PROVISIONS AND FINDINGS RELATED THERETO.

* * * *

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS:

Section 1. The Code of Ordinances of the City of Tomball, Texas, is amended by the adding of a new Section 78-74 Through truck traffic prohibited, to Article III, Operation of Vehicles Generally, to Chapter 78, Traffic and Vehicles, that reads as follows:

“Sec. 78-74 Through truck traffic prohibited.

(a) **Definitions.** The following words, terms and phrases when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) *Authorized emergency trucks.* Fire department trucks, police trucks, public ambulances for which permits have been issued by the State Board of Health, emergency trucks of municipal or volunteer departments or public service corporations as are designated or authorized by the governing body of an incorporated city, private trucks operated by volunteer firemen or certified emergency medical volunteers while answering a fire alarm or responding to a medical emergency, and trucks owned by the state or by a political subdivision engaged in emergency utility repair or electric, water, or wastewater services.

(2) *Light truck.* Any truck with a manufacturer's rated carrying capacity of five-thousand (5,000) pounds or less, including trucks commonly known as pickup trucks, panel delivery trucks, and carryall trucks.

(3) *Proof of route.* A written verification of pick-ups, deliveries, or destinations, which may include a log book, delivery slip, shipping order, bill or any other document which identifies and specifies the date, address, and name of the person requesting or directing the pick-up or delivery and the destination of the pick up or delivery.

(4) *Truck.* A motor vehicle designed, used or maintained primarily for the transportation of property, including "truck tractors," "road tractors," "trailers," "semi-trailers," "pole trailers," and "special mobile equipment" as those terms are defined in Tex. Trans. Code Ann. § 541.201.

Terms not defined herein shall be construed in accordance with customary usage.

(b) *Through truck traffic.*

(1) *Regulation.* A person commits an offense if the person operates a truck upon a public street designated as a No Through Trucks street.

(2) *Affirmative defenses.* It is an affirmative defense to prosecution under this section if:

- (i) The truck was an authorized emergency truck;
- (ii) The truck was a bus or light truck; or
- (iii) The truck:
 - a. was being driven to seek service or repairs at a facility that engages in the business or repairs of commercial motor vehicles or the truck was being driven to or from home or to fulfill a local commercial obligation to a buyer or seller at a given destination, evidenced by a bill of sale or invoice; and
 - b. the public street was the only route to such destination.”

Section 2. Through truck traffic is prohibited on the following streets:

<u>Street</u>	<u>Extent</u>
South Elm Street	From Main Street (FM 2920) to Market Street
Market Street	From South Elm Street to South Cherry Street

Section 3. The Director of Public Works is directed to erect and place signs designating the above streets as “No Through Trucks” streets.

Section 4. All ordinances or parts of ordinances inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

Section 5. Any person who shall intentionally, knowingly, recklessly, or with criminal negligence, violate any provision of this Ordinance, shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed \$200. Each violation shall constitute a separate offense.

Section 6. It is the intent of the City that this Ordinance shall comply in all respects with the applicable provisions of the United States Constitution, the Texas Constitution, and the Charter of the City of Tomball. In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

Section 7. This Ordinance shall take effect immediately from and after its passage and the publication of the caption hereof, as provided by law and the City’s Home Rule Charter.

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 18TH DAY OF JULY 2011.

COUNCILMAN HUDGENS	<u>AYE</u>
COUNCILMAN STOLL	<u>AYE</u>
COUNCILMAN BROWN	<u>AYE</u>
COUNCILMAN TOWNSEND	<u>AYE</u>
COUNCILMAN DODSON	<u>AYE</u>

SECOND READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 26TH DAY OF JULY 2011.

COUNCILMAN HUDGENS	<u>AYE</u>
COUNCILMAN STOLL	<u>AYE</u>
COUNCILMAN BROWN	<u>AYE</u>
COUNCILMAN TOWNSEND	<u>AYE</u>
COUNCILMAN DODSON	<u>AYE</u>

Gretchen Fagan
Gretchen Fagan, Mayor

ATTEST:

Doris Speer
Doris Speer, City Secretary