

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF KYLE, TEXAS, AMENDING
ORDINANCE NUMBER 955 TO ADOPT PARKING REGULATIONS;
MAKING VIOLATIONS OF THE PARKING ORDINANCE A CIVIL
OFFENSE; ESTABLISHING HEARING PROCEDURES; AND
PROVIDING FOR RELATED MATTERS**

Whereas, the City of Kyle, Texas, a home rule municipality, is authorized by state law and the City Charter to regulate the stopping, standing, and parking of motor vehicles;

Whereas, state law and the City Charter authorize the City Council to provide suitable penalties for violations of ordinances adopted by the City;

Whereas, Section 542.202, Texas Transportation Code provides that nothing in Subtitle C, Title VII, Transportation Code prevent a City from, in the reasonable exercise of its police powers from regulating the stopping, standing, or parking of a vehicle;

Whereas, the city council finds and determines that vehicles unlawfully parked, stopped, or left standing, damage the public by causing traffic congestion, constituting safety hazards, as well as decreasing the efficiency of traffic control and traffic flow efforts during regular traffic and special events; and

Whereas, the City Council finds that the regulations adopted herein constitute a reasonable exercise of police powers, provide a suitable penalty for violations of regulations governing the stopping, standing, or parking of a vehicle, and promote the public health, safety, and welfare;

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

Section 1. Findings. The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

Section 2. Reservation of Sections. Sections 47-2 and 47-76 of the City of Kyle Code of Ordinances (the "Code") are hereby repealed and will be designated as "Reserved."

Section 3. General Parking Restrictions. Section 47-26 of the Code is hereby amended in its entirety to read as follows:

Sec. 47-26. – General Parking Restrictions.

(a). It is unlawful for a person to leave, stand or park a large motor vehicle, travel trailer, personal watercraft or boat, either attached or unattached to a motor vehicle on a public street in any zoning district in excess of 24 hours.

- (b) Parking on streets, where allowed, must be in conformance with state law. Failure to comply with any state law dealing with the parking of vehicles, such as distance from curb, proper facing, too close to intersections, and similar violations, is a violation of this chapter.
- (c) A person shall not stop, stand, or park a vehicle at any time upon any public street, alleyway, other public place or fire lane when signs are erected or curbs are painted giving notice that stopping, standing, or parking is prohibited or where City ordinance prohibits such stopping, standing, or parking.
- (d). A person shall not stop, stand, or park a vehicle in front of a public or private driveway, except momentarily to pick up or discharge a passenger
- (e). A person shall not stop, stand, or park a vehicle on a two-way roadway with the left-hand wheels of the vehicle facing the curb.

Section 4. Tow-Away Zones. Section 47-28 of the Code is hereby amended in its entirety to read as follows:

Sec. 47-28. – Tow-away zones.

- (a) Notwithstanding any section of this chapter, any street, alley or city owned property or part thereof may be designated as a no parking tow-away zone by separate ordinance.
- (b) When signs or markings are placed giving notice thereof, no person shall park a vehicle in any area designated as a no parking tow-away zone.
- (c). Fire apparatus access roads shall not be obstructed in any manner, including the parking of vehicles. The minimum widths and clearances established in section 503.2.1 of the International Fire Code and any area marked as a fire lane tow-away zone or as a no-parking tow away zone as described in section 503.3 of the International Fire Code shall be maintained at all times. Section 503.4 of the International Fire Code adopted by the City is hereby amended to read as set forth in this section.
- (d) Any person designated by the city may authorize the removal of a vehicle parked in a no parking tow-away zone or in a fire lane tow-away zone. The owner and operator of the vehicle are liable for all reasonable towing and storage fees incurred in the removal and storage of the vehicle.

Section 5. Administrative Adjudication of Parking Offenses. Chapter 47, City of Kyle Code of Ordinances (the “Code”) is hereby amended by adding Article IX, to entitled “Administrative Adjudication of Parking Offenses” to read as follows:

ARTICLE IX. ADMINISTRATIVE ADJUDICATION OF PARKING OFFENSES;
IMPOUNDMENT.

Division 1. Administrative Adjudication of Parking Offenses

Sec. 47-205. – Parking violations made civil offenses; hearing.

- (a) A violation of a provision of this Code governing stopping or parking of a vehicle is designated as a civil offense.
- (b) A violation of a provision of this Code pertaining to interference with enforcement, immobilization or impoundment is a criminal offense.
- (c) A person charged with violating a stopping or parking ordinance is entitled to an administrative adjudication hearing as provided in this article. This hearing shall take place no later than ten business days following the date upon which a citation is issued.

Sec. 47-206. – Presumptions; liability of vehicle owner and operator; copy of citation; failure to appear.

- (a) In any administrative adjudication hearing under this chapter:
 - (1) It is a rebuttable presumption that the registered owner of the motor vehicle is the person who parked or stopped the vehicle at the time and place of the offense charged; and
 - (2) A computer-generated record of the Texas Department of Transportation's files showing the current registered vehicle owner is prima facie evidence of the contents of the record.
- (b) In an administrative adjudication hearing under this article for a charge of parking in a front or side yard or a vacant lot:
 - (1) It is a rebuttable presumption that the real property owner of the property on which the vehicle is parked is the person who allowed the vehicle to remain parked at the time and place of the offense charged; and
 - (2) A computer-generated record of the Hays, Caldwell, Guadalupe or Comal County Tax Assessors' files showing the current real property owner is prima facie evidence of the contents of the record.
- (c) For a citation charging a person with removing a parking ticket from the vehicle of another or placing a ticket from the vehicle of another on the person's vehicle, proof that the parking ticket found on a vehicle contains identifying information for a different vehicle, creates a rebuttable presumption that the person named in the citation removed the ticket from the vehicle of another or placed a ticket from another vehicle on the person's own vehicle.
- (d) For a citation charging use of a prior ticket, proof that the time of issuance on the ticket is more than 24 hours prior to the time the ticket is found, creates a rebuttable presumption that the person named in the citation placed the prior ticket on the vehicle.
- (e) For any parking or stopping citation:
 - (1) The registered owner and the operator of the vehicle, when not the same, are both liable to the city for the parking citation.
 - (2) The registered owner will not be held liable if the registered owner proves that the vehicle was operated without his or her express or implied consent.

- (3) For a parking on the side or front yard or vacant lot citation the real property owner of the property on which the vehicle is parked may be held liable in addition to the owner or operator of the vehicle.
- (f) The original or any copy of the citation, including an electronic copy, shall be kept as a record in the ordinary course of business of the city and is rebuttable proof of the facts it contains.
- (g) A person who fails to appear at the administrative hearing, or who fails to respond to the citation within ten days, is considered to admit liability to the offense charged.

Sec. 47-207. - Parking citations; notices.

- (a). A parking citation serves as summons and notice of the administrative adjudication hearing under this article.
- (b). A parking citation may be issued by a parking technician, a police officer, a code enforcement officer, or any other authorized parking enforcement agent designated by or upon authority of the city manager.
- (c). If the owner or operator of the vehicle is not present at the time the citation is issued, the person issuing the citation may affix the citation to the vehicle in a conspicuous place.
- (d) The citation shall include:
 - (1) The charged offense;
 - (2) The, date, time and location of the violation;
 - (3). The make, model and state license plate number of the vehicle, or if the license plate number is not visible or legible, the VIN number or state inspection number in lieu of the license number;
 - (4) Notice of the recipients right to an instant hearing within ten days, that such right shall be exercised by either requesting a hearing by mail postmarked within ten days of the date of citation or appearing before a hearing officer within ten days of the date of citation, and the hours instant hearings are available; and,
 - (5). Notice that failure to answer the citation or appear within ten days is considered an admission of liability.

Sec. 47-208. - Hearing officer; powers; duties; functions.

- (a). The municipal court judge and the associate municipal court judge and any other person appointed by the city manager are designated as hearing officers.
- (b) The hearing officer shall have the authority to:
 - (1). Administer oaths;
 - (2). Issue orders enforceable by the municipal court compelling the attendance of witness and the production of documents;
 - (3). Hear and determine contests of parking violations under this Code;
 - (4). Issue orders of immobilization or impoundment of vehicles;

- (5). Set conditions for the release of vehicles immobilized or impounded under this chapter; and
- (6). Dismiss parking citations or cases that are unenforceable or that were erroneously issued.

Sec. 47-209. - Administrative adjudication hearing; notice to city attorney; orders; hearing on immobilization or impoundment.

(a). Administrative adjudication hearings before a hearing officer:

- (1) The defendant may admit, admit with an explanation, or deny the allegation.
- (2) The person who issued the citation is not required to attend the hearing.
- (3) The city attorney is not required to appear at the hearing. However, if the person charged is represented by legal counsel at the hearing, the hearing officer shall notify the city attorney's office or the designated municipal court prosecutor, as appropriate, so that the city attorney or the prosecutor may appear on behalf of the city at the hearing.
- (4) No formal or sworn complaint shall be necessary. At the hearing, the hearing officer shall examine the contents of the citation and the evidence related to ownership of the vehicle in question, the presumptions and other prima facie evidence established by this article and other applicable state law, and the testimony and evidence presented by the defendant and the city.
- (5) If the hearing officer determines by a preponderance of the evidence that the defendant committed the violation, he shall find the defendant liable for all fees and fines.
- (6) At the conclusion of the hearing, the hearing officer shall issue an order stating:
 - a. Whether the person charged with the violation is liable for the violation;
 - b. The amount of any fine, cost, or fee assessed against the person; and
 - c. A statement that the order may be enforced by the methods provided in this article.
- (7) The order shall be filed with the municipal court clerk and shall be kept in a separate index and file. The order may be recorded using microfilm, microfiche, or any data processing techniques.

(b) Hearings on immobilizing or impounding vehicles:

- (1). All hearings regarding the immobilizing or impoundment of motor vehicles will be conducted before a municipal court judge or associate judge.
- (2). The only issues to be decided at the immobilization or impoundment hearing are whether there are three or more unpaid adjudicated parking violations within a calendar year related to the vehicle and whether a compelling reason exists not to immobilize or impound the motor vehicle.

Sec. 47-210. - Appeal.

- (a) A person whom the hearing officer determines to be in violation of a vehicle parking or stopping ordinance may appeal the determination by filing a petition with the clerk of the municipal court and paying the costs required by law for municipal court not later than the 30th day after the date on which the order is filed.
- (b). The municipal court clerk shall schedule an appeal hearing and notify the appellant and the municipal court prosecutor of the date, time, and place of hearing.
- (c). The appellate hearing shall be a de novo review by whichever of the municipal court judge or the associate municipal court judge that did not preside at the original hearing. The judge hearing the appeal shall use the same criteria as the administrative adjudication hearing. If the judge determines by a preponderance of the evidence that the person committed the parking offense, the judge shall find the defendant liable.

Sec. 47-211. - Enforcement.

- (a). An order filed pursuant to this article may be enforced by:
 - (1). Impounding or immobilizing the vehicle if the offender has committed three or more parking or stopping offenses in the past calendar year; and
 - (2). Imposing an additional fine if the original fine is not paid within a specified time.
- (b). Provided however that no vehicle shall be impounded or immobilized under this article unless written notice is mailed to the last known registered owner, or current owner if that information is contained in the order filed pursuant to Sec. 47-____, of the vehicle by certified mail-return receipt requested with a ten-day return at least ten business days before the vehicle is impounded or immobilized notifying the registered owner that the vehicle is subject to impoundment or immobilization under this article and of the right to a hearing regarding same.

Sec. 47-212. - Orders for impoundment or immobilization.

- (a) *Procedures for impoundment or immobilization.*
 - (1). If a vehicle owner does not request a hearing or pay the penalty as provided by this article, the vehicle may be immobilized or impounded after notice and opportunity for a hearing has been provided to the last known registered owner of the motor vehicle.
 - (2). Written notice shall be sent by certified mail, return receipt requested, to the last known registered owner of a vehicle subject to a request for an impoundment or immobilization order. The notice shall contain at a minimum the following information.
 - a. The vehicle license plate number;
 - b. The name of the last registered owner of the vehicle;
 - c. The date issued, fine amounts, costs and fees for all outstanding parking citations;

- d. A statement that a request for a hearing to determine whether or not the motor vehicle will be immobilized or impounded must be made to the municipal court in writing, without requirement of bond, within ten days after the date the notice was mailed;
- e. A statement that failure to request a hearing before the expiration of the ten-day period, or failure to appear at a requested hearing will constitute a waiver of the opportunity to oppose the proposed impoundment or immobilization; and
- f. A statement indicating that the registered owner of the vehicle, in addition to being responsible for all outstanding parking citations, will be responsible for all fees and costs incurred in immobilizing and impounding the vehicle, including storage fees.

(b). Issuance of immobilizing and impoundment order.

- (1) If a hearing is requested, and the judge determines that a vehicle will be immobilized or impounded, the judge will issue a written order directing any police officer or parking technician of the city to immobilize and impound the vehicle. The municipal court will also charge a hearing fee of \$50.00 that is separate from the immobilization fee.
- (2). If the municipal court does not receive a request for a hearing from the owner of the motor vehicle or the owner's representative within ten days from the date the notice required by this section was mailed, or if the owner or owner's representative fails to attend a requested hearing, the judge will issue a written order directing the immobilizing and impoundment of the vehicle. If the owner or the owner's representative fails to attend a requested hearing, the municipal court will charge a \$50.00 hearing fee that is separate from the immobilization fee.
- (3). Upon a determination by the judge that a vehicle should be immobilized or impounded, the judge or the clerk of the municipal court will inform the owner or the owner's representative of the determination, in person if they appear at a hearing or by certified mail to the last known registered owner of the vehicle if they do not appear at a hearing.

Sec. 47-213. - Execution of immobilization order.

- (a) Any city officer or parking technician may immobilize a vehicle under a municipal court order by the installation or attachment of a device designed to restrict the normal movement of a vehicle.
- (b). When a vehicle is immobilized, the person executing the order will conspicuously attach to the vehicle a written notice on a form provided by the city, worded substantially as follows:
 - (1). The vehicle has been immobilized pursuant to court order, and any attempted movement may cause damage to the vehicle;
 - (2). It is unlawful for any person to tamper with, deface, damage, or attempt to remove an immobilization device when it has been attached to a vehicle;

- (3). Instructions on having the vehicle released may be obtained by calling the municipal court or the police department;
 - (4). The vehicle may be towed and impounded if the owner of the vehicle or the owner's representative has not arranged to have the immobilization device removed by the city before 4:00 p.m.; and
 - (5). The owner of the vehicle is responsible for payment of all applicable fees for towing, impoundment and storage of the vehicle, in addition to the fines, costs and fees for any outstanding parking citations.
- (c) Nothing under this section shall be construed to restrict or limit the authority of police officers to tow and impound vehicles under other applicable law.

Sec. 47-214. - Reclaiming immobilized or impounded vehicles.

- (a). The owner or a person with the right to possession of a vehicle which has been immobilized or impounded under this article may reclaim the vehicle by appearing at the municipal court Monday through Friday, between the hours of 8:00 a.m. and 5:00 p.m., and during all other times at the police department, and meeting the following requirements:
- (1). Present satisfactory evidence of the person's identity and of the person's ownership or right to possession of the vehicle; and
 - (2). Pay the accumulated amount of fines, costs and fees related to the vehicle.
- (b). Upon compliance with subsection (a), the person will be authorized to reclaim the impounded vehicle or to have the immobilization device removed.
- (c). The municipal court judge or the chief of police or their designees, are authorized to issue a written order releasing an impounded vehicle to its owner or to a person determined to have the right to possession of the vehicle. Nothing in the order shall authorize or imply the waiving of costs and fees associated with the impoundment and storage of the vehicle.
- (d). Upon payment of all impoundment and storage fees, presentment of either a signed release from the municipal court judge or the chief of police or their designees and proof of identity to the person in possession of the vehicle, the impounded vehicle shall be released to the person indicated in the release.

Section 6. Civil Penalty. Section 47-203 of the Code is hereby amended in its entirety to read as follows:

Sec. 47-203. – Penalties for Parking Violations.

- (a) A person who violates a parking regulation set forth in this Chapter shall be liable for a civil penalty of not more than \$30.00, subject to increases in the civil penalty as provided in this Section, except for disabled parking violations and parking in front of a fire hydrant which shall be a minimum of \$150.00.
- (b). Any penalty not paid within 15 days of the date due is subject to an additional fee of 50 per cent of the original penalty.

(c). In addition to the penalties provided for in subsection (a), a vehicle with three or more unpaid adjudicated parking violations within a calendar year may be either immobilized by the attachment of a vehicle immobilizing device or impounded and towed to a vehicle storage facility at the owner's expense in accordance with the provisions of this article.

(d). An administrative fee of \$50.00 to defray the city's costs in administering and enforcing orders pursuant to this article will be charged for each vehicle ordered immobilized or impounded.

Section 7. Amendment of Conflicting Ordinances. Ordinance No. 955, Chapter 47 of the Code, and the International Fire Code are hereby amended as provided in this Ordinance. In the event of a conflict or inconsistency between this Ordinance and any other code or ordinance of the City, the terms and provisions of the most restrictive ordinance shall govern.

Section 8. Effective Date. This Ordinance shall be published in the official newspaper of the City, as required by law and shall become effective after publication as provided by law.

Section 9. Severability. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, sentence, paragraph or section of this ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation in this Ordinance of any such invalid phrase, clause, sentence, paragraph or section. If any provision of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision, and to this end the provisions of this Ordinance are declared to be severable.

Section 10. Open Meetings. It is hereby officially found and determined that the meeting at which this Ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, *Chapt. 551, Tex. Gov't. Code*.

PASSED AND APPROVED on this _____ day of _____, 2019.

FINALLY PASSED AND APPROVED on this _____ day of _____, 2019.

ATTEST:

THE CITY OF KYLE, TEXAS

Jennifer Vetrano, City Secretary

Travis Mitchell, Mayor