

**CITY OF SANDY OAKS, TEXAS**

**ORDINANCE NO. 2018-107**

**AN ORDINANCE OF THE CITY OF SANDY OAKS, TEXAS REGULATING THE TRANSPORTATION OF HAZARDOUS MATERIALS THROUGHOUT THE CITY, DESIGNATING NON-HAZARDOUS MATERIAL ROUTES, PROVIDING FOR A PENALTY FOR VIOLATION OF THIS ORDINANCE, AND PROVIDING FOR PUBLICATION.**

**WHEREAS**, the City of Sandy Oaks, Texas is a Type A general law city incorporated by and through the laws of the State of Texas (herein referred to as "City"); and

**WHEREAS**, the City has exclusive control and power over the highways, streets, and alleys of the City pursuant to section 311.002 of the Texas Transportation Code, as it may be amended; and

**WHEREAS**, the City Council finds that there are federal and state laws that regulate hazardous material transportation and that those laws do not exclude local government regulation which such local regulation is not inconsistent therewith; and

**WHEREAS**, the City Council finds it necessary to adopt an ordinance regulating the transportation of hazardous materials within the city limits in order to protect the health, safety and welfare of the citizens of the City;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SANDY OAKS, TEXAS:**

**Section 1. Findings and Intent.** The purpose and intent of this ordinance is to protect the City, its residents, and residents' property from potential hazards that may be caused by the transportation and storage of Hazardous Material in and through the City by regulating the transportation and storage of Hazardous Material in and through the City and to provide for a process for enforcement.

**Section 2. Scope.** This ordinance shall apply to all Hazardous Materials which are transported in and through the City as those terms are defined herein.

**Section 3. Definitions.** The following words, terms and phrases, as used in this ordinance, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning. A term not herein defined

"City" shall mean the City of Sandy Oaks, Texas, a Type A municipal corporation incorporated under the laws of the State of Texas.

"Division 1.1 Explosive" consists of Explosives that have a mass explosion hazard. A mass explosion is one which affects almost the entire load instantaneously.

"Division 1.2 Explosive" consists of Explosives that have a projection hazard but not a mass explosion hazard.

"Division 1.3 Explosive" consists of Explosives that have a fire hazard and either a minor blast hazard or a minor projection hazard or both, but not a mass explosion hazard.

"Explosive" shall mean any substance or article, including a device, which is designed to function by explosion (*i.e.*, an extremely rapid release of gas and heat) or which, by chemical reaction within itself, is able to function in a similar manner even if not designed to function by explosion, unless the substance or article is otherwise classed under the provisions of this subchapter. The term includes a pyrotechnic substance or article, unless the substance or article is otherwise classed under the provisions of 49 CFR Subtitle B, Chapter I, Subchapter C.

"Hazardous Material(s)" shall include those materials designated by the U.S. Secretary of the Department of Transportation as posing an unreasonable threat to the public and the environment. The term "Hazardous Material(s)" includes (1) Hazardous Substances; (2) Hazardous Wastes, (3) Marine Pollutants, (4) Elevated Temperature Material, and (5) Materials identified as those terms are defined by 49 CFR § 172.101, and (6) Materials meeting the definitions contained in 49 CFR Part 173. Hazardous Materials include, but are not be limited to the materials listed or materials substantially similar to the materials listed as follows:

- a) Compressed gasses as defined in 49 CFR § 173.115.
- b) Corrosive materials as defined in 49 CFR § 173.136.
- c) Explosives as defined in 49 CFR § 173.50.
- d) Flammable and combustible liquids as defined in 49 CFR § 173.120.
- e) Flammable gasses as defined in 49 CFR § 173.115.
- f) Flammable solids as defined in 49 CFR § 173.124.
- g) Miscellaneous materials as defined in 49 CFR § 173.140.
- h) Nonflammable compressed gasses as defined in 49 CFR § 173.115
- i) Oxidizers as defined in 49 CFR § 173.127.
- j) Poisonous gasses as defined in 49 CFR § 173.115.
- k) Poisonous materials as defined in 49 CFR § 173.132.
- l) Radioactive materials as defined in 49 CFR § 173.403.

"Motor carrier" means an individual, association, corporation, or other legal entity that controls, operates, or directs the operation of one or more vehicles that transport persons or cargo over a road or highway in this state.

"Non-Hazardous Material Routes" shall have the meaning as provided by Section 5 herein.

"Person" shall mean an individual, firm, partnership, association, corporation, company, facility or organization of any kind.

"Vehicle" means every mechanical device, in, upon, or by which any Person or property is or may be transported or drawn upon a public highway, street or alley including Motor Vehicles, Commercial Trucks, Trucks, Truck-Tractors, Trailers, and Semi-Trailers defined below, but excluding devices moved by human power or used exclusively upon stationary rails or tracks. This definition includes the following:



- a) "Commercial Truck" shall mean any Motor Vehicle designed or used for the transportation of property, excluding a passenger bus, passenger automobile, motorcycle, delivery truck or pickup truck.
- b) "Motor Vehicle" shall mean any Vehicle which is self-propelled.
- c) "Semi-Trailer" shall mean every Vehicle of the trailer type so designated or used in conjunction with a Motor Vehicle that some part of its own weight and that of its own load rests upon or is carried by said Motor Vehicle.
- d) "Trailer" shall mean every Vehicle without motor power designed or used or carrying property or passengers wholly on its own structure for commercial use and designed to be drawn by a Motor Vehicle, excluding trailers used for recreations or agriculture purposes and/or trailers carrying commonly recognized recreations vehicles or agricultural products.
- e) "Truck" shall mean a Commercial Truck, Semi-Trailer, Trailer, Truck-Tractor, or any combination thereof.
- f) "Truck-Tractor" means every Motor Vehicle designed or used primarily for drawing other Vehicles and not so constructed as to carry a load other than a part of the weight of the Vehicle and load so drawn.

**Section 4. Compliance.** It shall be unlawful for any Person to use, transport, park or store on any public street within the City any Hazardous Materials contrary to any of the regulations contained in this ordinance.

**Section 5. Designation of Non-Hazardous Material Routes.** Except as provided below, no person shall operate or cause to be operated any Vehicle transporting Hazardous Material on the following streets within the City as they are designated as Non-Hazardous Material Routes:

21300 Block of Priest Road Southbound at Lamm Road;  
 22900 Block of Priest Road Northbound, north of IH-37 Northbound entrance ramp;  
 23300 Block of Mathis Road Southbound, south of Dillon Trucking;  
 23500 Block of Mathis Road Northbound at the city limit line;  
 3700 Block of Waterwood Pass Eastbound, just east of Priest Road; and  
 3700 Block of New Mathis Road Eastbound, just east of Mathis Road.

The City may erect appropriate signs or markings to designate the Non-Hazardous Material Routes designated above.

**Section 6. When transportation of Hazardous Materials permitted.** If a Person shows there is no alternative route, a Person may transport Hazardous Material through Non-Hazardous Material Routes, by application to the City Council for an exception and has been granted an exception in writing by the City Council. Such application must contain the name of the applicant, the date(s) the applicant will transport Hazardous Materials, a description of the Hazardous Materials to be transported including the type, weight and size, any safety measures imposed by the applicant and the route proposed by the applicant. Nothing in this section or ordinance shall require the City Council to approve such application.

**Section 7.     Attendance and surveillance of motor vehicles.**

(a) Except as provided in paragraph (b) of this section, a Vehicle which contains Division 1.1, 1.2, or 1.3 Explosive material must be attended at all times by its driver or a qualified representative of the Motor Carrier that operates it.

(b) The rules in paragraph (a) of this section do not apply to a Vehicle which contains Division 1.1, 1.2, or 1.3 Explosive material if all the following conditions exist— (1) The Vehicle is located on the property of a Motor Carrier, on the property of a shipper or consignee of the explosives, in a safe haven, or, in the case of a Vehicle containing 50 pounds or less of a Division 1.1, 1.2, or 1.3 Explosive material, on a construction or survey site; and (2) The lawful bailee of the Explosives is aware of the nature of the Explosives the Vehicle contains and has been instructed in the procedures which must be followed in emergencies under Federal and State law; and (3) The Vehicle is within the bailee's unobstructed field of view or is located in a safe haven.

(c) A Vehicle which contains Hazardous Materials other than Division 1.1, 1.2, or 1.3 Explosive materials, and which is located on a public street or highway, or the shoulder of a public highway, must be attended by its driver. However, the Vehicle need not be attended while its driver is performing duties which are incident and necessary to the driver's duties as the operator of the Vehicle.

(d) For purposes of this section— (1) A motor vehicle is attended when the person in charge of the Vehicle is on the Vehicle, awake, and not in a sleeper berth, or is within 100 feet of the Vehicle and has it within his/her unobstructed field of view. (2) A qualified representative of a Motor Carrier is a person who— (i) Has been designated by the carrier to attend the Vehicle; (ii) Is aware of the nature of the Hazardous Materials contained in the Vehicle he/she attends; (iii) Has been instructed in the procedures he/she must follow in emergencies under Federal and State law; and (iv) Is authorized to move the Vehicle and has the means and ability to do so. (3) A safe haven in an area specifically approved in writing by local, State, or Federal governmental authorities for the parking of unattended vehicles containing Division 1.1, 1.2, or 1.3 Explosive materials.

(e) The rules in this section do not relieve the driver from any obligation imposed by law relating to the placing of warning devices when a motor vehicle is stopped on a public street or highway.

**Section 8.     Parking and Storage Prohibited.**

(a) A Vehicle which contains Division 1.1, 1.2, or 1.3 Explosive materials must not be parked under any of the following circumstances— (1) On or within 5 feet of the traveled portion of a public street or highway; (2) On private property (including premises of fueling or eating facility) without the knowledge and consent of the person who is in charge of the property and who is aware of the nature of the Hazardous Materials the Vehicle contains; or (3) Within 300 feet of a bridge, tunnel, dwelling, or place where people work, congregate, or assemble, except for brief periods when the necessities of operation require the Vehicle to be parked and make it impracticable to park the Vehicle in any other place.

(b) A Vehicle which contains Hazardous Materials other than Division 1.1, 1.2, or 1.3 Explosive materials must not be parked on or within five feet of the traveled portion of public street



or highway except for brief periods when the necessities of operation require the Vehicle to be parked and make it impracticable to park the Vehicle in any other place.

**Section 9. Enforcement.** Violations of any of the provisions of this ordinance shall constitute an offense punishable by a fine of not more than two thousand dollars (\$2,000.00), to the extent such violation may pose a fire safety or public health threat in accordance with Local Government Code section 54.001(b) and provided that no penalty shall be greater or less than the penalty provided for the same or a similar offense under the laws of the State. Each day that a violation is permitted to exist shall constitute a separate offense.

Any peace officer of the City having citation authority is authorized to immobilize, impound, or otherwise direct the disposition of a Vehicle transporting Hazardous Material in the City in violation of this ordinance. Proof that a Vehicle transporting Hazardous Materials on the Non-Hazardous Material Routes as provided in Section 5 to this ordinance shall constitute *prima facie* evidence of a violation of this ordinance; however, the owner or operator of such Vehicle shall have the right to introduce evidence to show that the Vehicle was being driven to or from a direction within the City in compliance with this ordinance.

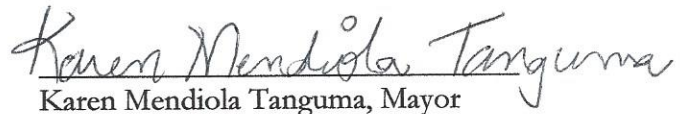
**Section 10. Publication.** The City Secretary is instructed to publish this ordinance or a caption that summarizes the purpose of the ordinance and the penalty for violating the ordinance in the official newspaper of the City in a manner provided and for the time required by section 52.011(a) of the Local Government Code at which time this ordinance takes effect. The City Secretary is directed to attach the notice and dates of publication to this ordinance.

**Section 11. Severability.** If any section, subsection, sentence, clause or phrase of this ordinance for any reason is held invalid, illegal, or incapable of being enforced, such section, subsection, sentence, clause or phrase shall be excluded to the extent of such invalidity, illegality, or unenforceability; all other sections, subsections, sentences, clauses or phrases hereof shall remain in full force and effect.

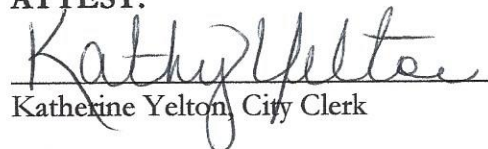
**Section 12. Effective Date.** This ordinance shall take effect when the publication requirement is satisfied pursuant to Local Government Code § 52.011.

**PASSED AND APPROVED** on this 13<sup>th</sup> day of September, 2018.

**CITY OF SANDY OAKS, TEXAS**

  
Karen Mendiola Tanguma, Mayor

**ATTEST:**

  
Katharine Yelton, City Clerk