

City of Magnolia, Texas

Ordinance 2009-147

**AN ORDINANCE OF THE CITY OF MAGNOLIA, TEXAS
REGULATING THE TRANSPORTATION OF HAZARDOUS
MATERIALS BY ADOPTING CERTAIN DEFINITIONS;
BY DESIGNATING HAZARDOUS MATERIALS TRUCK
ROUTES; PROVIDING A SEVERABILITY CLAUSE;
PROVIDING FOR A PENALTY; PROVIDING FINDINGS
OF FACT AND OTHER MATTERS RELATED THERETO
AND PROVIDING FOR PUBLICATION.**

WHEREAS the City Council of the City of Magnolia, Montgomery County, Texas finds that there are federal and state laws that regulate hazardous material transportation and that those laws do not exclude local government regulation when such local regulation is not inconsistent therewith;

WHEREAS the City Council further finds that the provisions of this chapter address the city's local concerns, including, without limitation, the establishment of appropriate transportation routes in the city and the implementation of effective enforcement;

WHEREAS the City Council finds that the routes designated in this chapter minimize the risk of transportation of hazardous material and hazardous waste in the city, provide for reasonable accessibility to places of pickup and delivery, provide routes that are continuous with the commonly used commercial routes outside the city, do not produce a discontinuity of routes between jurisdictions, do not prevent through traffic and do not result in unnecessary delay in the transportation of hazardous material or hazardous waste; and

WHEREAS the City Council finds that existing federal laws contain extensive standards for the safe transportation of hazardous material and hazardous waste, and the city council intends in this chapter to adopt those standards as the requirements for the transportation of such material in the city. The city council finds that such adoption will decrease the extreme risk to public health and safety posed by the transportation of hazardous material and hazardous waste in the city and promote more effective enforcement by creating such a capability at the local

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

Section 1. Findings and Intent.

The purpose and intent of this ordinance is to provide for the public health, safety, and welfare from the potential hazards of fire, explosion, and exposure to toxic substances that accompany a hazardous materials incident by regulating the transportation of hazardous materials in and through the City of Magnolia, and by providing for a process to obtain information necessary for enforcement and emergency planning, as well as the development and maintenance of the capability for emergency response. 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. Scope.

This chapter shall apply to all hazardous materials as defined herein which are transported in and through the City of Magnolia, and shall be in addition to all other sections of ordinances of the City of Magnolia regarding hazardous substances or materials, or any rules or regulations of other city departments, boards, or commissions pertaining thereto.

Section 3. Definitions.

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

Hazardous means and shall have its usual and ordinary meaning.

Hazardous materials means, but shall not be limited to, the following listed materials and materials substantially similar to them:

- (1) *Explosive*. An explosive is any chemical compound, mixture or device, the primary or common purpose of which is to function by explosion, i.e., with substantially instantaneous release of gas and heat, unless such compound, mixture or device is otherwise specifically classified.
- (2) *Flammable liquids*. Flammable liquids are:
 - a. Any liquid which gives off flammable vapors (as determined by flashpoint from Tagliabue's open-cup tester, as used for test of burning oils) at or below a temperature of 140 degrees Fahrenheit; and
 - b. Pyroforic liquids that become self-igniting when exposed to air.
- (3) *Flammable solid*. A flammable solid is any solid material, other than one classified as an explosive, which, under conditions incident to transportation, is liable to cause fires through friction, absorption of moisture, spontaneous chemical changes, retained heat from manufacturing or processing, or which can be ignited readily and when ignited burns so vigorously and persistently as to create a serious transportation hazard; such as, not by way of limitation, but by way of example only, certain metallic hydrides, metallic sodium and potassium, and certain oily fabrics, processed meals, and nitrocellulose products.
- (4) *Oxidizing material*. An oxidizing material is a substance such as a chlorate, permanganate, peroxide, nitro carbo nitrate, or a nitrate that yields oxygen readily to stimulate the combustion of organic matter.
- (5) *Acids and other corrosive liquids*. Corrosive liquids are those acids, alkaline caustic liquids and other corrosive liquids which, when in contact with living tissue, will cause severe damage of such tissue by chemical action; or in case of leakage, will materially damage or destroy other freight by chemical action; or are liable to cause fire when in contact with organic matter or with certain chemicals.
- (6) *Flammable compressed gas*. A flammable compressed gas is any compressed gas that is so classified by section 173.300 of the Regulations of the Department of Transportation Governing the Transportation of Dangerous Articles of Tank Motor Vehicles, dated September 1967.
- (7) *Nonflammable compressed gas*. A nonflammable compressed gas is any compressed gas which is poisonous to human beings or which has asphyxiating or toxic effect to human beings.

(8) *Class A poisons.* Class A poisons are poisonous gases or liquids of such nature that a very small amount of the gas or vapor of the liquid, mixed with air is dangerous to life. This class includes, not by way of limitation, but by way of example only, the following:

- a. Bromacetone.
- b. Cyanogen.
- c. Cyanogen chloride containing less than 0.9 percent water.
- d. Diphosgene.
- e. Ethyldichlorarsine.
- f. Hydrocyanic acid (see note 1 of this subsection).
- g. Lewisite.
- h. Methyldichlorarsine.
- i. Mustard gas.
- j. Nitrogen peroxide (tetroxide).
- k. Phenylcarbylamine chloride.
- l. Phosgene (diphosgene).
- m. Nitrogen tetroxide-nitric oxide mixtures containing up to 33.2 percent weight nitric oxide.

Note 1--Diluted solutions of hydrocyanic acid of not exceeding five percent strength are not class A poisons.

(9) *Class B poisons.* Class B poisons are those substances, liquid or solid (including pastes and semisolids) other than class A poisons, which are known to be so toxic to man as to afford a hazard to health during transportation, or which, in the absence of adequate data on human toxicity, are presumed to be toxic to man.

(10) *Radioactive materials.* Radioactive materials include any nuclear or fissionable material, radioactive or waste that have external radiation requiring critical safety control.

State law references: Similar provisions, V.T.C.A., Health and Safety Code § 775.151; similar provisions, V.T.C.A., Local Government Code § 353.001.

Section 4. REGULATIONS CONCERNING THE OPERATION OF MOTOR VEHICLES CARRYING HAZARDOUS MATERIALS; PARKING PROHIBITED.

(a) It shall be unlawful for any truck to transport a cargo of over 100 gallons or over 1,000 pounds of hazardous materials anywhere within the city, with the following three exceptions:

(1) Vehicles transporting hazardous materials, as specified in Section 3 shall comply with 49 C.F.R. § 397.3 while operating within the City. If a vehicle transporting hazardous materials commits a moving traffic violation other than a moving traffic violation constituting a felony, it shall be a violation of this Chapter, subject to the penalty established in Section 6, in addition to any other penalty imposed for said violation.

(2) Except when overtaking or passing, regardless of direction of travel, or except where the conditions of travel make it impractical to do so, all vehicles transporting hazardous materials as specified in Section 3 shall maintain a minimum distance of at least 300 feet from other vehicles carrying hazardous materials. This requirement shall apply whether such vehicles are moving or parked, except when at a destination or point of origin.

(3) Hazardous materials may be transported on the following routes within the City limits of Magnolia, Texas:

(i) FM 1488;

(ii) FM1774; and

(4) Hazardous materials may be transported to a large consumer who has first applied to the city council for an exception and has been granted an exception in writing by the council. The term "large consumer" means any person which regularly or frequently uses more than 100 gallons or more than 1,000 pounds of hazardous materials. Such exceptions shall not be valid for more than 12 months.

(5) Hazardous materials may be transported to a destination within the city for one of the following three permitted purposes:

- a. To a retail outlet engaged in business to the general public;
- b. Butane or propane deliveries to a residential customer, not for resale;
- c. To a swimming pool, either private, commercial or municipal; or
- d. Municipal water and sewer plants and operations.

(b) No vehicle containing hazardous materials as specified in Section 3 may be parked on any City street at any time, unless it is necessary for a pick-up or delivery and is otherwise permitted by law. No person shall park or store any vehicle that is required by any existing law within the State of Texas to display a United States Department of Transportation Hazardous Material placard, or a panel displaying a United Nations or North American 4-digit Identification Number, or to carry Shipping Papers identifying a Hazardous Materials cargo within the jurisdiction of the City of Magnolia as designated on the City General Plan, except while actually loading or unloading cargo on or in said vehicle.

(c) Peace officers of the city or personnel of the city's fire department are authorized to immobilize, impound, or otherwise direct the disposition of a motor vehicle transporting hazardous material in the city if such person deems that the motor vehicle or the operation thereof is unsafe and when such immobilization, impoundment, or disposition is appropriate under or required by rules and regulations promulgated by the Texas Public Utilities Commission pursuant to Section 40-2.1-103, C.R.S., including without limitation, when there is any deficiency in the vehicle's steering, brake, lighting, tire, wheel, exhaust, fuel, or suspension system, or cargo-carrying capability, or in case of leakage of a hazardous material or hazardous waste.

(d) Proof that a truck transporting hazardous materials was within the city and not on roadways enumerated in Section 3(a)(1) or in violation of Section 3(b) in this Ordinance shall constitute prima facie evidence of a violation of this article; however, the owner or operator of such truck shall have the right to introduce evidence to show that the truck was being driven to or from a destination within the city for purposes of discharging or receiving hazardous material in one of the three categories stated in this section.

(State law references: City may designate routes for transport of hazardous materials, V.T.C.A., Transportation Code § 644.202.

Section 5. Cumulative

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Magnolia, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

Section 6. Severability.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, illegal, or invalid, or the application to any person or circumstance for any reasons thereof ineffective or inapplicable, such unconstitutionality, illegality, invalidity, or ineffectiveness of such section or part shall in no way affect, impair or invalidate the remaining portion of portions thereof; but as to such remaining portion or portions, the same shall be and remain in full force and effect and to this end the provisions of this ordinance are declared to be severable.

Section 7. No liability.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Magnolia in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

Section 8. Enforcement.

Whenever in this Ordinance an act is prohibited or is made or declared to be unlawful for an offense or a misdemeanor, the violation of any such provision of this Ordinance shall be punishable by a fine not to exceed five hundred dollars (\$500.00); 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.

Section 9. Publication.


The City Council finds, determines and declares that a sufficient written notice was posted and this Ordinance was passed in accordance with the Open Meetings Act.

The Acting City Secretary is instructed to publish the Caption of this Ordinance in the Official Newspaper of the City of Magnolia in the 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 date of publication to this Ordinance.

PRESENTED on the 10th day of March, 2009, and passed and approved by a vote of 4 ayes and 0 nays at a regular meeting of the City Council of the City of Magnolia, Texas.

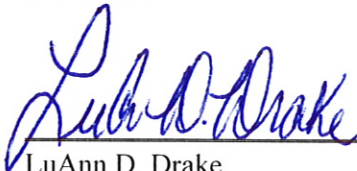
APPROVED and **EXECUTED** this, the 10th day of March, 2009.

City of Magnolia, Texas



Jimmy W. Thornton, Jr.
Mayor

Attest:



LuAnn D. Drake
City Secretary

APPROVED AS TO FORM:

Leonard V. Schneider, City Attorney

AFFIDAVIT OF PUBLICATION

BEFORE ME, the undersigned authority, on this day personally appeared,
Tracy Herron who on her oath stated:

*Received & Filed
in the Office of*

MAR 20 2009

*City Secretary
City of Magnolia, Texas*

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OTHER MATTERS RELATED
THERE TO AND PROVIDING
FOR PUBLICATION.

I am the Account Manager of the TOMBALL MAGNOLIA TRIBUNE a newspaper
published in Montgomery County, Texas and know the facts stated in this affidavit.
The attached matter is a true and correct copy of the publication of the citation
of which it purports to be a copy, as the same appeared in such newspaper in the
respective issues of:

3/16, 2009

_____, 2009

Tracy Herron
Tracy Herron, Account Manager

Subscribed and sworn to this 18th day of March, 2009

