

ORDINANCE NO. 4024

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AMENDING CHAPTER 9 OF THE CODE OF THE CITY OF MESQUITE, TEXAS, BY ADDING A NEW ARTICLE XI THEREBY IMPLEMENTING AND ENFORCING THE TEXAS STATE RULE ON LOCALLY ENFORCED MOTOR VEHICLE IDLING LIMITATIONS AND AUTHORIZING THE CITY MANAGER TO EXECUTE A MEMORANDUM OF AGREEMENT WITH THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY TO ENFORCE THIS RULE LOCALLY; PROVIDING A REPEALER CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY NOT TO EXCEED FIVE HUNDRED (\$500.00) DOLLARS FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE THEREOF.

WHEREAS, the Dallas-Fort Worth area is a federally designated non-attainment area for the pollutant ozone and air quality impacts the public and economic health of the entire region; and

WHEREAS, the U.S. Environmental Protection Agency ("EPA") and the Texas Commission on Environmental Quality ("TCEQ") jointly have considered emission reductions to control air pollution from motor vehicles, and the Texas Legislature has created the Texas Clean Air Act found in Chapter 382 of the Texas Health & Safety Code ("Act"), which addresses that purpose; and

WHEREAS, Section 382.113 of the Act provides authority for municipalities to enact and enforce local laws and ordinances for the control and abatement of air pollution; and

WHEREAS, Locally Enforced Idling Restrictions is a Voluntary Mobile Source Emissions Reduction Program commitment in the Dallas-Fort Worth 8-Hour Ozone Attainment Demonstration State Implementation Plan ("SIP"); and

WHEREAS, the City of Mesquite, Texas ("City"), desires to actively participate in improving the air quality of the region; and

WHEREAS, the City Council finds that the adoption of this ordinance serves a public purpose, and protects the health, safety and welfare of the citizens of the City by limiting the pollution created by motor vehicles unnecessarily idling within the City's jurisdiction.

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

SECTION 1. That Chapter 9 of the Code of the City of Mesquite, Texas, is hereby amended by adding a new Article XI to read as follows, in all other respects said Code and Chapter to remain in full force and effect:

ARTICLE XI. AIR POLLUTION

Sec. 9-341. Motor vehicle idling during ozone season.

- (a) 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:
- (1) *Commercial passenger transportation* means a mode of transportation provided by a bus or motor coach designed to accommodate more than 10 passengers, including the operator, for compensation and that is powered by a primary propulsion engine, but specifically excluding the modes of railroad, light rail or taxicabs.
 - (2) *Idle* means the operation of an engine in the operating mode where the engine is not engaged in gear.
 - (3) *Mechanical operations* means the use of electrical tools or equipment in construction, maintenance or repair of facilities.
 - (4) *Motor vehicle* means any self-propelled device powered by an internal combustion engine and designed to operate with four or more wheels in contact with the ground, in or by which a person or property is or may be transported, and is required to be registered under Texas Transportation Code, §502.002, excluding vehicles registered under §502.006(c).
 - (5) *Passenger transit operations* means a regional mode of public transportation that is funded through a portion of sales tax for the region being served.
 - (6) *Primary propulsion engine* means a gasoline or diesel-fueled internal combustion engine that:
 - a. Is attached to a motor vehicle; and
 - b. Provides the power to propel the motor vehicle into motion and maintain motion.
- (b) *Idling prohibited.* A person commits an offense if, at any time from April 1 through October 31 of any calendar year, he causes, suffers, allows or permits the primary propulsion engine of a motor vehicle to idle for more than five consecutive minutes when the motor vehicle is not in motion.
- (c) *Defenses.* It is a defense to prosecution under this section that:
- (1) The motor vehicle has a gross vehicle weight rating of 14,000 pounds or less;
 - (2) The motor vehicle was forced to remain motionless because of traffic conditions over which the operator had no control;

- (3) The motor vehicle was being used:
 - a. By the United States military, national guard or reserve forces; or
 - b. As an emergency or law enforcement motor vehicle.
 - (4) The primary propulsion engine of the motor vehicle was providing a power source necessary for a mechanical operation of the vehicle other than:
 - a. Propulsion; or
 - b. Passenger compartment heating or air conditioning.
 - (5) The primary propulsion engine of the motor vehicle was being operated for maintenance or diagnostic purposes;
 - (6) The primary propulsion engine of the motor vehicle was being operated solely to defrost a windshield;
 - (7) The primary propulsion engine of the motor vehicle was being used to supply heat or air conditioning necessary for passenger comfort or safety, if the vehicle:
 - a. Was a school bus or was intended for commercial passenger transportation or passenger transit operations; and
 - b. Did not idle more than 30 consecutive minutes.
 - (8) The primary propulsion engine of the motor vehicle was being used to provide air conditioning or heating necessary for employee health or safety while the employee was using the vehicle to perform an essential job function related to roadway construction or maintenance;
 - (9) The primary propulsion engine of the motor vehicle was being used as airport ground support equipment;
 - (10) The person charged with the offense was the owner of a motor vehicle that had been rented or leased to the person operating the vehicle at the time of the offense if the vehicle operator was not employed by the vehicle owner; or
 - (11) A motor vehicle when idling is necessary to power a heater or air conditioner while a driver is using the vehicle's sleeper berth for a government-mandated rest period and is not within two miles of a facility offering external heating and air conditioning connections at a time when those connections are available.
- (d) Penalties.
- (1) An offense under this section is punishable by a fine not to exceed \$500.00. Each instance of a violation of this section is a separate offense.

- (2) Prosecution for an offense under this section does not preclude the use of other enforcement remedies or procedures that may be available to the City.

Sec. 9-342. Noise from the idling of commercial motor vehicles.

- (a) 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) *Commercial motor vehicle* means any motor vehicle with a gross vehicle weight rating (GVWR) over 14,000 pounds.
 - (2) *Idle* means the operation of a motor vehicle engine in operating mode where the engine is not engaged in gear.
- (b) A person commits an offense if he idles a commercial motor vehicle for more than five consecutive minutes at a location within the following:
 - (1) A residence district, as defined in this chapter;
 - (2) 1,000 feet of a hospital; or
 - (3) 1,000 feet of a public school during its hours of operation.
- (c) A person commits an offense if, on any premises that he owns or controls, he permits the idling of a commercial motor vehicle for more than five consecutive minutes at a location within the following:
 - (1) A residence district, as defined in this chapter;
 - (2) 1,000 feet of a hospital; or
 - (3) 1,000 feet of a public school during its hours of operation.
- (d) It is a defense to prosecution under Subsections (b) and (c) of this section that the commercial motor vehicle:
 - (1) Was idling in obedience to an official traffic control device;
 - (2) Was idling while stopped in traffic;
 - (3) Was idling in obedience to a peace officer;
 - (4) Was idling while being repaired in an enclosed structure;
 - (5) Was idling in order to defrost a windshield;
 - (6) Was a school bus;

- (7) Was intended for commercial passenger transportation and was not idling on a public street, highway or alley;
 - (8) Was a concrete mixer truck that was only idling while actually pouring concrete or staging to pour concrete;
 - (9) Was a utility truck that was only idling while providing power as needed to perform utility work; or
 - (10) Met a defense set forth in Section 9-341 of this code.
 - (11) A motor vehicle when idling is necessary to power a heater or air conditioner while a driver is using the vehicle's sleeper berth for a government-mandated rest period and is not within two miles of a facility offering external heating and air conditioning connections at a time when those connections are available.
- (e) Penalties.
- (1) An offense under this section is punishable by a fine not to exceed \$500.00. Each instance of a violation of this section is a separate offense.
 - (2) Prosecution for an offense under this section does not preclude the use of other enforcement remedies or procedures that may be available to the City.
- (f) Nothing in this section may be construed to authorize idling of a commercial vehicle in violation of Section 9-341 of this code.

SECTION 2. That the City Council of the City of Mesquite, Texas (the "City Council"), endorses the Texas Commission on Environmental Quality ("TCEQ") Idling Limitations Rule as published in the Texas Administration Code, Title 30, Part 1, Chapter 114, Subchapter J, Operational Controls for Motor Vehicles, Division 2, Locally Enforced Motor Vehicle Idling Limitation.

SECTION 3. That the City Council approves the adoption and implementation of the TCEQ Idling Limitation Rule by reference.

SECTION 4. That the City Council hereby authorizes the City Manager to execute a Memorandum Of Agreement, a copy of which is attached hereto as Exhibit "A," with the TCEQ for the purposes of local enforcement of the Idling Limitation Rule in the City of Mesquite, Texas.

SECTION 5. That all ordinances or portions thereof in conflict with the provisions of this ordinance, to the extent of such conflict, are hereby repealed. To the extent that such ordinances or portions thereof are not in conflict herewith, the same shall remain in full force and effect.

SECTION 6. That should any word, sentence, clause, paragraph or provisions of this ordinance be held to be invalid or unconstitutional, the validity of the remaining provisions of this ordinance shall not be affected and shall remain in full force and effect.

SECTION 7. That any person, firm or corporation violating any of the provisions or terms of this ordinance shall be deemed to be guilty of a Class C Misdemeanor and upon conviction in the Municipal Court shall be punished by a fine not to exceed Five Hundred (\$500.00) Dollars for each offense.

SECTION 8. That this ordinance shall become effective immediately on and after its passage.

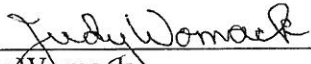
DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on the 5th of January, 2009.



John Monaco
Mayor

ATTEST:

APPROVED:



Judy Womack
City Secretary



B. J. Smith
City Attorney

**MEMORANDUM OF AGREEMENT
VEHICLE IDLING LIMITATIONS IN THE NORTH CENTRAL TEXAS AREA**

I. PARTIES

This Memorandum of Agreement ("Agreement") is entered into between the Texas Commission on Environmental Quality ("TCEQ") and the local governments signing this agreement (Local Governments), collectively, the "Parties."

1. The Parties represent that they have the authority to enter into this MOA, including the authority granted in the Texas Government Code Chapter 791 Interlocal Cooperation Contracts.

2. The TCEQ has authority under Section 5.229 of the Texas Water Code and Section 382.033 of the Texas Health and Safety Code to enter into this MOA.

3. The Performing Parties have authority under Section 382.115 of the Texas Health and Safety Code to enter into this MOA.

II. Intent and Purpose

The intent of this MOA is to memorialize the agreement between the Parties to implement the following rules aimed at the control of air pollution from motor vehicles: 30 Texas Administrative Code ("TAC") Chapter 114, Control of Air Pollution from Motor Vehicles, Subchapter J, Operation Controls for Motor Vehicles, Division 2, Locally Enforced Motor Vehicle Idling Limitations, Sections 114.510 – 114.512 and 114.517.

The parties enter into this MOA for the purpose of delegating rule enforcement from TCEQ to Local Governments and incorporating the emission reductions resulting from the implementation and enforcement of the above-referenced rules into the State Implementation Plan ("SIP").

III. Definitions

As used in this MOA the following terms have the meanings given below:

1. "EPA" shall mean the U.S. Environmental Protection Agency.
2. "TCEQ" shall mean the Texas Commission on Environmental Quality.
3. "Local Government" has the meaning assigned by 30 TAC Section 114.510.
4. "North Central Texas Area" shall refer to those Texas counties included in the Dallas-Fort Worth-Arlington (DFW) Texas, Metropolitan Statistical Area.
5. "SIP" shall refer to the State Implementation Plan.

IV. Background

1. Under Section 110 of the Federal Clean Air Act ("FCAA"), 42 U. S. Code (U.S.C.) Section 7410, each state that has a non-attainment area must submit a SIP to the EPA demonstrating strategies to come into compliance with the National Ambient Air Quality Standards ("NAAQS").

2. Section 110 of the FCAA, 42 U.S.C. Section 7410 requires Texas to submit to the EPA for approval any SIP revisions and to demonstrate that such SIP revisions will not interfere with any applicable requirement concerning attainment and reasonable further progress or any other requirement of the FCAA, as required by Section 110(1) of the FCAA.

3. On November 17, 2004, the TCEQ adopted rules concerning locally enforced motor vehicle idling limitations, which are applicable only within the jurisdiction of a Local Government that has signed a Memorandum of Agreement with TCEQ delegating enforcement of the rules. The TCEQ submitted the rules to EPA for approval on December 6, 2004. EPA approved the rules on June 10, 2005.

4. The Parties acknowledge that they have entered into this MOA voluntarily and it shall become binding upon the signature of the Executive Director of TCEQ or his designated representative. The Parties agree to comply with the terms of this MOA.

5. The Local Governments understand and agree that the commitments in this Agreement become federally enforceable by the EPA, and by persons using the citizen suits provision of the Federal Clean Air Act (42 U.S.C.A. Section 7604), upon approval of this Agreement into the SIP.

V. Obligations of Parties

(A) Performing Parties agree as follows:

1. In accordance with the terms of this MOA, the Performing Parties agree to implement the following TCEQ Rules:
 - a. 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles, Subchapter J, Operation Controls for Motor Vehicle Idling Limitations, Sections 114.510 – 114.512 and 114.517. Changes to these rules shall be incorporated into this Agreement without requiring amendment of this Agreement.
2. The Performing Parties agree to submit the following information to the TCEQ for the rules listed above not later than forty-five (45) calendar days after the effective date of this MOA.
 - a. Detailed description of the plan for implementation of these rules;

- b. Copies of local ordinances or resolutions adopted to implement these rules; and
 - c. Copies of agreements entered between Performing Parties and other units of Local Government for the purpose of the implementation of these rules. Agreements entered into after the effective date of this MOA shall be submitted within forty-five (45) calendar days of their execution.
 - 3. Copies of any requisite resolutions under Section 7.352 of the Texas Water Code shall be submitted to the TCEQ within fourteen (14) calendar days after passage by the local governing body.
- (B) The TCEQ agrees to submit this agreement to the U.S. EPA as a technical support document to the DFW eight-hour ozone attainment demonstration SIP.

VI. Term and Termination

This MOA will become effective upon signature by the Parties and shall expire on January 2, 2013, unless renewed in writing by mutual agreement of the Parties. A Party may withdraw from this Agreement at any time upon thirty days written notice to the other Parties of this agreement. Withdrawal by a Local Government does not constitute termination of the entire MOA. This Agreement may be terminated at any time by mutual written consent of the Parties.

VII. Miscellaneous

This MOA represents the entire agreement between the TCEQ and the Performing Parties and supersedes all other agreements, understandings or commitments, written or oral, relative to the intent of this MOA. This MOA may not be amended or modified except pursuant to a mutual written agreement executed by each of the Parties.

This MOA shall be governed by and interpreted in accordance with the laws of the State of Texas.

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In Witness Whereof, Texas Commission on Environmental Quality and the Local Governments, by their authorized officers, have made and executed this MOA in multiple copies, each of which is deemed an original.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

By: 
Name: Mark R. Vickery, P.G.
Title: Executive Director

3-25-09
Date

Memorandum of Agreement

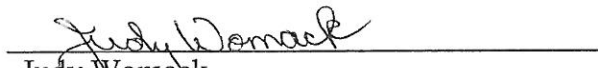
Local Government Signature Page

IN WITNESS THEREOF, the City of Mesquite, Texas, through its authorized officer, has made and executed this signature page that shall be attached to the Memorandum of Agreement to Control Air Pollution From Motor Vehicles Through Locally Enforced Vehicle Idling Limits, which is hereby incorporated by reference in its entirety.


Executed by:

CITY OF MESQUITE, TEXAS
Name: Ted Barron
Title: City Manager

ATTEST:


Judy Womack
City Secretary

APPROVED AS TO FORM:


B. J. Smith
City Attorney or his Designee