

ORDINANCES

Jennifer Richie, City Attorney, Waco
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WHAT IS AN ORDINANCE?

- Used to enact legislation
- State law requires an ordinance for certain actions
- May be used for administrative actions that are non-legislative
- Process for enactment of ordinances usually is more cumbersome than for resolutions

PROCEDURE FOR PASSAGE

- Governed by Chapter 52 of the Texas Local Government Code and City Charter
- Depends on type of city
- Home Rule City: Caption and Penalty must be published
- Charter may require multiple readings



Retired Fire Station # 5

DRAFTING PROCESS

City	What	Prohibited from where	Exception for loading and unloading	Other unusual exceptions	Other normal exceptions	Other good provisions
Amarillo	motor home, truck tractor, road tractor, truck, semi-trailer, Mobile Home, Travel Trailer, boat trailer, stock trailer, pole trailer, bus, or any Commercial Motor Vehicle with a rated capacity in excess of one (1) ton	public Street, Alley, Parkway, boulevard, or Public Place (excluding the driveway of a residence) within or adjacent to any area zoned as a single-family Dwelling District, two-family Dwelling District, multiple-family Dwelling District, townhouse Dwelling District, moderate density Dwelling District or Mobile Home District	Yes; allows towing upon second incident	--Can park these in front of your own house for 72 hours	-- Street repairs and construction --Public service utilities --Buses unloading passengers --Emergency repairs	--Cannot park car on street if displaying for sale sign, washing or repairing car except if an emergency, or displaying material for sale or rent
Bryan	any truck or other vehicle with a rated capacity in excess of one ton according to the manufacturer's classification, or any other motor home, trailer, truck-tractor, or recreational vehicle	any part of the city	Yes	--A recreational vehicle owned by an out-of-town guest of a residential property owner may be parked on the street in front of the property owned by such person for a period not to exceed five days.	-- Street repairs and construction --Public service utilities --Buses unloading passengers	--Cannot park car on street if displaying for sale sign, washing or repairing car except if an emergency, or displaying material for sale or rent

- Who should be included in the process
- Benchmarking the ordinance
- Borrowing language from other cities' ordinances
- Always do your own research on the issue
- Draft, read, revise, pause, re-read

TERMS

Required

- Caption
- Ordaining Clause
- Penalty Provision
- Culpable Mental State
- The Enactments – what are you prohibiting, requiring, regulating?

Optional

- Effective Date
- “Whereas” Clauses
- Severability Clause
- Repealing Provision
- Savings Clause

STRICT LIABILITY

- Can dispense with culpable mental state
- Only if fine is under \$500
- Most cities do this in General Provisions section of Code



PENALTY PROVISION

- Not to exceed:
 - \$500 -- General fine for municipal ordinances
 - \$2000 -- Ordinances re: fire safety, zoning, or public health and safety
 - \$4000 -- Ordinances re: the dumping of refuse
- Per day of violation



EFFECTIVE DATE AND PUBLICATION

- Ordinances with penalties must be published
- These ordinances are not effective until prescribed time after publication
 - State law prescribes unless charter provision
 - Waco's charter makes penal ordinances effective 10 days after publication
- May have an effective date that is further out

SAVINGS CLAUSE



“That nothing in this ordinance shall be constructed to affect any suit or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or prior ordinance; nor shall any legal right or remedy of any character be lost, impaired, or affected by this ordinance.”

GENERAL PROVISIONS

- Chapter at the beginning of the Code
- Can have:
 - Definitions, e.g. “City”
 - Rules of Construction, e.g. “Computation of time”
 - Catch all clauses, e.g. severability
 - Dispense with culpable mental state
- Safe Harbor

AFFIRMATIVE DEFENSES, NOT EXCEPTIONS



It shall be unlawful for any person to park or stand a commercial vehicle ... upon any public street ... within any part of the city classified by the zoning ordinance of the city as a single-family residence district....

It is an affirmative defense to this section that the vehicles are:

1. In the act of loading or unloading passengers, freight, or merchandise;
2. Publicly owned or franchised emergency or utility vehicles carrying out official duties...

OTHER DRAFTING TIPS

- Simple Language
- Pictures, examples, and charts
- Attachments and Administrative Materials
- Amending or Repealing
- Use of Definitions
- Active voice
- Actor before the verb



OTHER DRAFTING TIPS

- Avoid discretionary words
 - “Shall” not “May” or “Should”
 - Ordinances are not “guidelines”
- Avoid references to state law or other provisions of your code
- Try to think like a defense attorney or your worst actor
 - Loopholes
 - Side effects
 - Worst case scenarios

PREEMPTION

- 88th Texas Legislative Session
 - H.B. 2127
 - H.B. 1750
 - H.B. 2308