



City Council Agenda Item Report

March 19, 2013

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SUBJECT: Deliberation and possible action on the first reading of an ordinance prohibiting parking, standing and leaving of commercial motor vehicles upon public and private property.

1. BACKGROUND/HISTORY

At the March 5th meeting, members of City Council requested particular consideration of an ordinance developed by the City of Mesquite that prohibits parking, standing and leaving of commercial motor vehicles upon public and private property.

Staff has attached that ordinance, with minimal modifications to change the city name, match the appropriate chapter, article & division of the Buda Code of Ordinances, reference the UDC rather than zoning ordinance, and reflect the appropriate signatories.

2. FINDINGS/CURRENT ACTIVITY

This ordinance differs significantly from the draft ordinance discussed at the March 5th meeting in a number of ways. These differences are further described in the attached comparative table. The following is an assessment of particular provisions of the Mesquite-based ordinance:

Definitions

The definitions for *commercial vehicle* and *integral part of a lawfully zoned business* are generally acceptable and defensible. The definition for *standard truck parking area* is problematic for a few reasons:

- This type of standard is typically found in a development code rather than within the general Code of Ordinances. Placing it in the Code of Ordinances causes confusion, as the purpose of the UDC is to put all such standards in one place for coordination, easy reference and conflict elimination.
- The City already requires through UDC Section 7.7(3) that All vehicular use areas in any site development shall be designed to be safe, efficient, convenient and attractive, considering use by all modes of transportation that will access the site including, without limitation, cars, trucks, buses, bicycles, pedestrian, and emergency vehicles.” The design/liability to meet this standard rests with the design engineer, particularly since the property owner is required to maintain rather than the City. Parking lot maintenance & damage can be addressed through the Property Maintenance Code.
- Regarding the actual standard, UDC 9.5(13a(v)) says “Fire apparatus access lanes shall be designed and maintained to support the imposed loads of fire apparatus (80,000 lbs. gross vehicle weight) and shall be provided with a surface so as to provide all-weather driving capabilities.” This could be accomplished without reinforced concrete pavement, thus creating a code conflict. Specifying a particular method on private property when

other acceptable engineering practices are available introduces liability should the system fail.

- Turning radii and approaches are dictated by UDC Section 9.5(13)c and the Austin Technical Manual referenced by the UDC. The Austin manual already addresses turning radii and is actually stronger in its requirements (requiring 30' or 40' radii) for larger vehicles.

Parking on Public Streets

Staff has reviewed this section and feels it could be a useful addition to the Code of Ordinances. However, staff would need additional time to modify the language to best fit Buda's circumstances. Prohibiting commercial vehicles from parking on public streets would address an isolated issue occurring near McDonald's along East Main Street. However, staff does have some concern about the affirmative defenses against prosecution created by the exceptions. For example, it is not clear what would constitute "expeditiously delivering or picking up." An alternative might be to tie this to a maximum period of time as a means to define "expeditiously." Likewise, the definition of "mechanical defect making it unsafe or impossible to proceed" is broad, and may lead to a number of plausible defenses difficult to verify for an officer.

Parking in Residential Areas

Staff is not currently aware of problems of this nature in Buda, but feels it could be a useful addition to the Code of Ordinances as a preventative measure and to clear up a grey area in regards to operating a commercial vehicle vs. parking a commercial vehicle in a residential area. However, staff would need additional time to modify the language to best fit Buda's circumstances. This has some of the same issues in terms of defenses against prosecution, but those can be addressed with appropriate modifications.

Parking in Non-Residential Areas

This standard appears clear at first blush—a blanket prohibition on the parking of commercial vehicles with certain exceptions. However, a number of issues are present and should be considered prior to adoption:

- This section can be enforced against the property owner as well as the truck. Staff's understanding from prior discussions was that City Council wished to target drivers and truck owners.
- This section amounts to a complete prohibition on commercial vehicles. Drivers would be prohibited from dining in restaurants or shopping in stores. One should expect concern from the business community, as it restricts their customer base. A possible alternative would be to place a time restriction on the time that can be spent parked, such as 3 hours. This allows legitimate stops for shopping & dining while still eliminating the broader problem. In addition, this would address some of the issues with defenses against prosecution, particularly the term "expeditiously."
- The exemption for industrially-zoned property is good, though this should be modified to directly reference Buda's two industrial zoning districts specifically.
- The defenses against prosecution discussed earlier are present in this section, and are most likely to be exercised in a prosecution of this section. This is a particular concern for the term "expeditiously."
- Staff would have no way of knowing which portions of a parking lot are designated for bus parking unless the property owner installed signs. For existing businesses, this would require owners to retrofit their parking lots with these signs.
- The ordinance establishes a temporary parking permit system for event facilities, and that these permits would be issued by the event center. This system could be abused with relative ease given that the permits are managed entirely by the owner and would lack any standard appearance for policing purposes. One could easily make an argument that Cabela's would fall into this category.
- The provision exempting rental trucks is good, but the 24-hour restriction may not be necessary. Simply being a customer of the hotel should be sufficient.

- The special approval process for truck parking at a hotel or motel by City Council presents several concerns:
 - Development approvals are typically structured within the UDC. Placing it in the Code of Ordinances causes confusion, as the purpose of the UDC is to put all such standards in one place for coordination, easy reference and conflict elimination.
 - This would represent the only site condition that triggers a special review by City Council. Site plan review is otherwise entirely administrative. Shifting to a review system by City Council or another board introduces legal liability for potential arbitrary and capricious decisions. As an alternative, the City could amend the UDC to establish conditions under which commercial vehicle parking would be allowed at a hotel or motel. This creates a predictable process that avoids potential accusations of arbitrariness or capriciousness.
 - The permitting process for existing hotels may present legal issues, as they would have to 'prove up' that their facility can handle trucks even though there have not been reported problems at the hotels & motels. The term 'support' require engineering certification and geotechnical reports to verify the parking lot is capable of withstanding the stresses from trucks. Again, UDC standards establish that the design/liability rests with the design engineer, particularly since the property owner is required to maintain rather than the City. Parking lot maintenance & damage can be addressed through the Property Maintenance Code.

Fines

The penalty is established separate and apart from the portion of the ordinance that would be codified. The penalty provision should be made part of the codified language for easier reference.

Method of Passage

It appears this ordinance was passed as an emergency provision in Mesquite. Review from legal questions whether this ordinance meets the necessary thresholds to be considered an emergency declaration in order to allow it to become effective immediately. The better practice is to follow the conventional ordinance approval method involving two readings, followed by publication due to the penalty clause.

3. FINANCIAL IMPACT

N/A

4. ACTION OPTIONS/RECOMMENDATION

City Council may discuss and take action to approve the ordinance, approve with amendments specified, table action pending revisions, or take no action.

5. ATTACHMENTS

Draft Ordinance