

CITY OF COTTONWOOD SHORES

ORDINANCE 14019

AN ORDINANCE OF THE CITY OF COTTONWOOD SHORES ESTABLISHING THE REQUIREMENT AND NEED TO REGULATE THE PARKING AND STORAGE OF COMMERCIAL VEHICLES, HEAVY DUTY VEHICLES AND HEAVY EQUIPMENT IN RESIDENTIAL (R1, R2, R3, M1 and M2) DISTRICTS; AMENDING CONFLICTING ORDINANCES; PROVIDING PENALTIES, ENFORCEMENT, SEVERABILITY, OPEN MEETINGS AND EFFECTIVE DATE CLAUSES.

WHEREAS: The City Council of the City of Cottonwood Shores desires to protect the integrity, value and character of residential neighborhoods along with public health and safety.

WHEREAS: The City Council of the City of Cottonwood Shores desires to clearly define what is considered a Commercial Vehicle and Heavy Equipment; and

WHEREAS: The City Council of the City of Cottonwood Shores desires to identify locations and standards for parking or storage of Commercial Vehicles and Heavy Equipment within the City; and

WHEREAS: It is in the best interest of the City of Cottonwood Shores that the parking of commercial vehicles and heavy equipment be regulated in residential (R and M) zoning districts in instances as defined in this ordinance.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Cottonwood Shores, Texas that:

Section I. Definitions.

Abandoned motor vehicle:

For the purposes of this chapter, a motor vehicle is abandoned if the motor vehicle:

1. is inoperable, is more than five years old, and has been left unattended on public property for more than 48 hours;
2. has remained on private property without the consent of the owner or person in charge of the property for more than 48 hours;
3. has been left unattended on the right-of-way of a designated city, county, state, or federal highway for more than 48 hours;

Abandoned nuisance vehicle: means a derelict motor vehicle that has not been moved for more than six months if meets definition of derelict.

Commercial Vehicle: means any motor vehicle, the principal use of which is the transportation of commodities, merchandise, produce, freight, vehicles, animals, passengers for hire, or which is used primarily in construction or farming, including but not limited to bulldozers, backhoes,

excavators, loaders, trenchers, motor scrapers, motor graders, crawler loaders, tractors and cranes.
(Special Mobile Equipment Included)

Commercial Motor Vehicle: (DMV): A commercial motor vehicle can be defined as:

1. Vehicle with a gross vehicle weight rating of 26,001 or more pounds
2. Vehicle designed to transport 16 or more passengers, including the driver
3. Vehicle designed to transport 11 or more passengers, including the driver, and used to transport students under the age twenty-one years of age to and from school
4. Any vehicle transporting hazardous materials which is required to be placarded.
5. Recreational vehicles (RV) are not considered commercial vehicles unless they are utilized for commercial purposes.

Derelict: A commercial or heavy vehicle is derelict when any of these criteria are evident: flat tire(s), overgrown grass or other weeds surrounding vehicle, broken windows, damaged components, missing parts, or state of disassembly.

Emergency vehicles: defined as an authorized emergency vehicle according to Texas Transportation Code, §541.201(1) are exempt from the provisions of this ordinance provided said vehicles are currently registered and shown as on active duty within a city, agency or department .
In this subtitle:

1. "Authorized emergency vehicle" means:
 - (A) a fire department or police vehicle;
 - (B) a public or private ambulance operated by a person who has been issued a license by the Department of State Health Services;
 - (C) an emergency medical services vehicle:
 - (i) authorized under an emergency medical services provider license issued by the Department of State Health Services under Chapter 773, Health and Safety Code; and
 - (ii) operating under a contract with an emergency services district that requires the emergency medical services provider to respond to emergency calls with the vehicle;

Farm tractor means a motor vehicle designed and used primarily as a farm implement to draw an implement of husbandry, including a plow or a mowing machine.

Fire apparatus (or firefighting apparatus) is a generic term that refers to a vehicle designed to fight fires, such as a fire engine or fire truck (i.e.: Engine, Pumper, Mini Pumper, Ladder Truck, Tinder, etc.) and will be considered a heavy duty vehicle.

Gross vehicle weight rating (GVWR): the value specified by the manufacturer as the maximum design loaded weight of a vehicle. This is the weight as expressed on the vehicle's registration, and includes the weight the vehicle can carry or draw.

Heavy-duty vehicle: any passenger vehicle or truck capable of transporting people, equipment, or cargo that has a gross vehicle weight rating (GVWR) greater than 8,500 pounds, and is required to

Heavy-duty class vehicles are divided into the following subclasses:

Light heavy-duty vehicle--Any passenger vehicle or truck capable of transporting people, equipment, or cargo that has a GVWR greater than 8,500 pounds, but less than or equal to 10,000 pounds.

Medium heavy-duty vehicle--Any passenger vehicle or truck capable of transporting people, equipment, or cargo that has a GVWR greater than 10,000 pounds, but less than or equal to 26,000 pounds.

Heavy heavy-duty vehicle--Any passenger vehicle or truck capable of transporting people, equipment, or cargo that has a GVWR greater than 26,000 pounds.

Heavy Equipment: heavy-duty vehicles, specially designed for executing construction tasks, most frequently, ones involving earthwork operations. Also known as construction equipment, earth movers, engineering vehicles, or simply equipment. They usually comprise five equipment systems: implement, traction, structure, power train, control and information. (Special Mobile Equipment included)

Improved Lot: any segregated or defined tract or parcel of land, or two or more such contiguous tracts or parcels of land under one ownership, which meets one or more of the following criteria

1. A residence or other structure has been constructed on the lot, or
2. The lot has been landscaped, terraced or altered in such a manner as to change the natural condition and cause it to stand out among adjacent unimproved properties.

Non-road equipment--Any device powered by a gasoline fueled spark-ignition internal combustion engine or a diesel fueled compression-ignition, Texas Commission on Environmental Quality Page 10 Chapter 114 - Control of Air Pollution from Motor Vehicles combustion engine that is not required to be registered under Texas Transportation Code, §502.040.

Physical Blinding/Screening: means a privacy fence, screening or structure that is in accordance with all existing applicable codes including but not limited to building codes, fire codes and zoning codes and of a height sufficient to provide visual abatement from the street and the properties adjacent to the subject property.

Semitractor: means a motor vehicle designed and used to draw another vehicle but not constructed to carry a load independently or a part of the weight of the other vehicle or its load.

Semitrailer: means a vehicle with or without motive power, other than a pole trailer:

1. designed to be drawn by a motor vehicle and to transport persons or property; and
2. constructed so that part of the vehicle's weight and load rests on or is carried by another vehicle.

Special mobile equipment: means a vehicle that is not designed or used primarily to transport persons or property and that is only incidentally operated on a highway.

1. includes ditch digging apparatus, well boring apparatus, and road construction and maintenance machinery, including an asphalt spreader, bituminous mixer, bucket loader, tractor other than a truck tractor, ditcher, levelling grader, finishing machine, motor grader, road roller, scarifier, earth-moving carryall and scraper, paving machines, slurry seal machines, heavy duty pump trucks, stone crushers, portable hot mix plant, tunneling equipment, power shovel or dragline, or self-propelled crane and earth-moving equipment; and
2. excludes a vehicle that is designed to transport persons or property and that has machinery attached, including a house trailer, dump truck, truck-mounted transit mixer, crane, and shovel.

Trailer: a "trailer" is a vehicle designed for carrying persons or property on its own structure and for being drawn by a motor vehicle, whether or not part of its weight rests upon or is carried by any other vehicle. As used in this section, "trailer" does not include a vehicle designed for human habitation or human occupancy.

Section II. General.

Prohibiting storage and parking of commercial vehicles and heavy equipment in residential zones

Purpose: The intent of this section is to regulate the parking or storage of commercial vehicles heavy duty vehicles/equipment and heavy equipment within residential (R and M) zoning districts.

Commercial vehicles, trailers and heavy equipment of all types shall not be parked or stored on any lot in any residential (R and M) district except in accordance with the following requirements:

1. No more than two (2) operable commercial vehicles/trailers/heavy equipment shall be permitted to park on a developed 5,000 square foot residential lot or in such a way as to not cause a hindrance to neighbors, local traffic, or in an unsafe manner. Vehicles must not violate the street parking ordinance.
2. Commercial motor vehicles or heavy equipment must be parked beyond the profile of the home with lawfully permitted physical blinding/screening to provide visual abatement from the street and the properties adjacent to the subject property.
3. Commercial vehicles or heavy equipment may not be parked or stored on unimproved non-contiguous residential lots.
4. The parking of construction vehicles or heavy equipment, semitrailers and semitractors on residential property shall be prohibited with the exception that construction equipment being parked or stored on residential property during the development of such property shall be permitted and must be removed within ten (10) days of the issuance of a certificate of occupancy or upon the expiration of the building permit for the site, whichever occurs first.

5. No derelict commercial vehicles or inoperable equipment may be stored in developed residential districts unless screened.

Vehicles and Equipment Exempt: the following vehicles and equipment are considered exempt from this ordinance:

Recreational vehicles (noncommercial use), Off Road All-Terrain Vehicles, , lawn and garden tractors, riding lawn mowers, skid steer loaders, small farm tractors, farm trailers.

Section III. Impoundment.

Any vehicle found to be in violation of this Section may be declared to be a public nuisance and is subject to impoundment by any licensed peace officer after citation, hearing and court order.

Section IV. Storage and Towing Fees.

The police department shall be entitled to have the next rotation wrecker service remove and store, at the owner's expense, any commercial vehicle and other equipment pursuant to this ordinance. The wrecker service may charge fees they deem appropriate for such removal and storage, and those fees are not considered part of any fine that may also be incurred

Section: V. Notice of Abandonment of Commercial Vehicle or Heavy Equipment.

When information exists sufficient to allow notice of abandonment of Commercial Vehicles or Heavy Equipment to the owner and lien holder, notice shall be given by mail to the registered owner and lienholder as follows:

1. The Police Department shall send notice of abandonment to each registered owner and lienholder showing of record pursuant to the Certificate of Title Act, Chapter 501, Texas Transportation. Code, or, as applicable, Chapter 31, Parks & Wildlife Code.
2. Such notice shall be given within ten (10) days of the date the police department receives a report of abandonment. Any vehicle found to be in violation of this Section may be declared to be a public nuisance and is subject to impoundment by any licensed peace officer after citation, hearing and court order.
3. If owner of abandoned vehicle/equipment has not removed the vehicle after 10 days of the initial notice of abandonment, the vehicle will be removed.
4. A second notice shall be given by certified mail, return receipt requested, specifying the year, make, model and identification number of the item, set forth the location of the facility where the item is being held, inform the owner and any lienholder of the right to reclaim the item not later than the 20th day after the date of the notice, on payment of all towing, preservation, storage and/or garage keeper charges.

5. The notice shall state that the failure of the owner or lienholder(s) to exercise their right to reclaim the item within the time provided shall be deemed a waiver of all right, title, and interest in the item and their consent to the sale of the item at a public auction.

If the identity of the last registered owner cannot be determined, if the registration contains no address for the owner, or if it is impossible to determine with reasonable certainty the identity and addresses of all lienholders, notice by one publication in a newspaper of general circulation in the City shall be made within ten (10) days from the date the item was taken into custody, or from the date the report of abandonment was received. The published notice shall be sufficient if it contains the information otherwise required to be included in the notice by mail. A list of commercial vehicles and heavy equipment may be included in the same publication.

Section VI. Enforcement.

Civil and Criminal Penalties

The City shall have the power to administer and enforce the provisions of this Ordinance as may be required by governing law. Any Police Officer, Code Enforcement Official or City Official is authorized to enforce the provisions of this Ordinance. Any person violating any provision of this Ordinance is subject to suit for injunctive relief as well as prosecution for criminal violations. Any violation of this Ordinance is hereby declared to be a nuisance.

Criminal Prosecution

Any person violating any provision of this Ordinance shall, upon conviction, be fined a sum not exceeding two thousand dollars (\$2,000.00). Each day that a provision of this Ordinance is violated shall constitute a separate offense. An offense under this Ordinance is a Class C Misdemeanor. Any person or entity shall be suspended from obtaining any additional permits if said person or entity owes unpaid fines, fees or charges to the City.

Civil Remedies

Nothing in this Ordinance shall be construed as a waiver of the City's right to bring a civil action to enforce the provisions of this Ordinance and to seek remedies as allowed by law, including, but not limited to the following.

1. Injunctive relief to prevent specific conduct that violates the Ordinance or to require specific conduct that is necessary for compliance with the Ordinance; and
2. A civil penalty up to one hundred dollars (\$100.00) a day after owner is notified of the provisions of the Ordinance and after receiving notice committed acts in violation of the Ordinance or failed to take action necessary for compliance with the Ordinance; and
3. Any other available relief as dictated by the municipal judge.

Section VII. Jurisdiction.

The provisions of this Ordinance shall apply within the corporate limits of the City as defined by state law.

Section VIII. Repeal of Conflicting Ordinances.

All Ordinances or parts of Ordinance in conflict with this Ordinance are hereby superseded by this Ordinance to the extent of such conflict.

Section IX. Severability.

If any provision of this Ordinance or the application of any provision to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications hereof, which can be given effect without the invalid provision or application. To this end, the provisions of this Ordinance are declared to be severable.

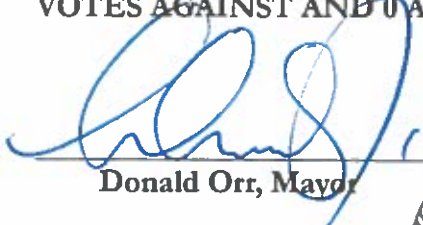
Section X. Effective Date.

This Ordinance shall take effect immediately from and after the passage and publication in the manner set forth with the provisions of the Local Government Code.

Section XI. Open Meetings.

It is hereby found and determined that the meeting at which this Ordinance is passed was open to the public as required and that public notice of the time, place and purpose of said meetings was given as required by the Open Meetings Act (Chapter 551, Texas Local Government Code).

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF COTTONWOOD SHORES, TEXAS, THERE BEING A QUORUM PRESENT AT A MEETING ON THE 16TH DAY OF FEBRUARY, 2017 WITH 5 VOTES IN FAVOR, 0 VOTES AGAINST AND 0 ABSTENTIONS.


Donald Orr, Mayor



Attest:


Sheila C. Moore
City Administrator/City Secretary