

ORDINANCE NO. 2023-45

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS AMENDING CHAPTER 82, ARTICLE 4, STOPPING, STANDING, PARKING, DIVISION 1, OF THE SAN MARCOS CITY CODE BY MODIFYING THE REQUIREMENTS AND FEES FOR, AND REMEDIES RELATED TO, THE CITY'S IMMOBILIZATION OF VEHICLES ILLEGALLY PARKED ON PUBLIC RIGHTS-OF-WAY OR CITY PROPERTY; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF ANY CONFLICTING PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

RECITALS:

1. The City Council hereby finds and determines that the adoption of amendments governing the immobilization of vehicles illegally parked on public rights-of-way and City property is in the interest of the public health, welfare and safety.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

SECTION 1. Chapter 82, Traffic and Vehicles, Article 4, Stopping, Standing, Parking, Division 1 of the San Marcos City Code is amended as set forth below. Added text is indicated by underlining. Deleted text is indicated by strikethroughs.

SECTION 2. Section 82.157 is amended to read as follows:

Sec. 82.157. Parking citations; notices.

(a) A parking citation serves as summons and notice of the administrative adjudication hearing under this article.

(b) A parking citation may be issued by a parking technician, a park ranger, a police officer, a code enforcement officer, or any other authorized parking enforcement agent designated by or upon authority of the city.

(c) If the owner or operator of the vehicle is not present at the time the citation is issued, the person issuing the citation may affix the citation to the vehicle in a conspicuous place.

(d) The citation shall include:

(1) The charged offense;

(2) **The** date, time and location of the violation;

- (3) The make, model and state license plate number of the vehicle, or if the license plate number is not visible or legible, the VIN number or state inspection number in lieu of the license number;
- (4) Notice of the recipients right to an instant hearing within ten days, that such right shall be exercised by either requesting a hearing by mail postmarked within ten days of the date of citation or appearing before a hearing officer within ten days of the date of citation, and the hours instant hearings are available; and,
- (5) Notice that failure to answer the citation or appear within ten days is considered an admission of liability.

SECTION 3. Section 82.159 is amended to read as follows:

Sec. 82.159. Penalties for parking violations.

(a) A person who violates this article shall be liable for a civil penalty of not more than \$200.00 but not less than the following (except for disabled parking violations):

- (1) *Level one violations* \$20.00
 - Parked overtime
 - Parked within 20 feet of crosswalk
 - Wheels over 18 inches from the curb
 - Parked on wrong side of the street
 - Parking within four feet of a residential mailbox during prohibited hours
- (2) *Level two violations* \$30.00
 - Backed into parking space not designated for back-in parking or parked head-in into a parking space designated for back-in parking
 - Oversize vehicle in angle parking
 - Parked for sale or repair
 - No parking zone
 - Blocking alley
 - Blocking crosswalk
 - Blocking driveway of business or residence
 - Parked on sidewalk
 - Double parked
 - Parked in loading zone
 - Parked in lane of traffic
 - Parked in intersection

Large motor vehicle, travel trailer, personal watercraft or boat, either attached or unattached to a motor vehicle on street in a residential area

- (3) *Level three violations* 50.00
Commercial vehicle, semi-trailer, pole trailer, construction vehicle or farm equipment on street in residential area
Parked in fire zone
Parked within 15 feet of a fire hydrant
Parked in front or side yard or vacant lot
Parked in a bicycle lane

- (4) *Level four violations* 250.00
Violations regarding disabled parking (Pursuant to Chapter 681 of the Texas Transportation Code)

(b) Any penalty not paid within 15 days of the date due is subject to an additional fee of 50 per cent of the original penalty.

(c) In addition to the penalties provided for in subsection (a), a vehicle with three or more unpaid adjudicated parking violations ~~within a calendar year~~ may be either immobilized by the attachment of a vehicle immobilizing device ~~and~~ or impounded and towed to a vehicle storage facility at the owner's expense in accordance with the provisions of this article.

(d) An administrative fee of \$5100.00 to defray the city's costs in administering and enforcing orders pursuant to this article will be charged for each vehicle ordered immobilized or impounded.

SECTION 4. Sections 82.175 through 82.180 are amended to read as follows:

Sec. 82.175. Administrative adjudication hearing; notice to city attorney; orders; hearing on immobilization or impoundment.

- (a) Administrative adjudication hearings before a hearing officer:
- (1) The defendant may admit, admit with an explanation, or deny the allegation.
 - (2) The person who issued the citation is not required to attend the hearing.
 - (3) The city attorney is not required to appear at the hearing. However, if the person charged is represented by legal counsel at the hearing, the hearing officer shall notify the city attorney's office so that the

city attorney or the city attorney's designated agent may appear on behalf of the city at the hearing.

- (4) No formal or sworn complaint shall be necessary. At the hearing, the hearing officer shall examine the contents of the citation and the evidence related to ownership of the vehicle in question, the presumptions and other prima facie evidence established by this article and other applicable state law, and the testimony and evidence presented by the defendant and the city.
- (5) If the hearing officer determines by a preponderance of the evidence that the defendant committed the violation, he shall find the defendant liable for all fees and fines.
- (6) At the conclusion of the hearing, the hearing officer shall issue an order stating:
 - a. Whether the person charged with the violation is liable for the violation;
 - b. The amount of any fine, cost, or fee assessed against the person; and
 - c. A statement that the order may be enforced by the methods provided in this article.
- (7) The order shall be filed with the municipal court clerk and shall be kept in a separate index and file. The order may be recorded using microfilm, microfiche, or any data processing techniques.

~~(b) Hearings on immobilizing or impounding vehicles:~~

- ~~(1) All hearings regarding the immobilizing or impoundment of motor vehicles will be conducted before a municipal court judge or associate judge.~~
- ~~(2) The only issues to be decided at the immobilization or impoundment hearing are whether there are three or more unpaid adjudicated parking violations within a calendar year related to the vehicle and whether a compelling reason exists not to immobilize or impound the motor vehicle.~~

Sec. 82.176. Appeal.

- (a) A person whom the hearing officer determines to be in violation of a vehicle parking or stopping ordinance may appeal the determination by filing a

petition with the clerk of the municipal court and paying the costs required by law for municipal court not later than the 30th day after the date on which the order is filed.

(b) The municipal court clerk shall schedule an appeal hearing and notify the appellant and the city attorney of the date, time, and place of hearing.

(c) The appellate hearing shall be a de novo review by whichever of the municipal court judge or the associate municipal court judge that did not preside at the original hearing. The judge hearing the appeal shall use the same criteria as the administrative adjudication hearing. If the judge determines by a preponderance of the evidence that the person committed the parking offense, the judge shall find the defendant liable.

(d) An appeal does not stay enforcement and collection of the judgment unless the person, before filing an appeal, posts bond in the amount of the fine assessed by the municipal court with the municipal court clerk.

Sec. 82.177. Enforcement.

(a) An order filed pursuant to this article may be enforced by:

- (1) Impounding or immobilizing the vehicle if the offender has committed three or more parking or stopping offenses in the past calendar year; and
- (2) Imposing an additional fine if the original fine is not paid within a specified time.

(b) Provided however that no vehicle shall be impounded or immobilized under this article unless written notice is mailed to the last known registered owner, or current owner if that information is contained in the order filed pursuant to [F.S.] 82.175, of the vehicle by certified mail return receipt requested with a ten-day return at least ten business days before the vehicle is impounded or immobilized notifying the registered owner or driver has been notified that the vehicle is subject to impoundment or immobilization under this article and of the right to a hearing regarding same.

Sec. 82.178. Orders for impoundment or immobilization.

(a) *Procedures for impoundment or immobilization.*

- (1) If a vehicle owner does not request a hearing or pay the penalty as provided by this article, the vehicle may be immobilized or impounded after notice and opportunity for a hearing has been provided to the last known registered owner of the motor vehicle.

(2) Written notice shall be ~~sent by certified mail, return receipt requested, to the last known registered owner of a vehicle subject to a request for an impoundment or immobilization order. The notice affixed to the windshield of or other conspicuous location on the vehicle and~~ shall contain at a minimum the following information.

a. The vehicle license plate number;

b. ~~The name of the last registered owner of the vehicle;~~

~~eb.~~ The date issued, ~~fine amounts, costs and fees for all outstanding parking citations;~~

~~dc.~~ A statement that a request for a hearing to determine whether or not the motor vehicle will be immobilized or impounded must be made to the municipal court in writing, without requirement of bond, within ten days after the date the notice was ~~mailed affixed to the vehicle;~~

~~ed.~~ A statement that failure to request a hearing before the expiration of the ten-day period, or failure to appear at a requested hearing will constitute a waiver of the opportunity to oppose the proposed impoundment or immobilization; and

~~fe.~~ A statement indicating that the registered owner of the vehicle, in addition to being responsible for all outstanding parking citations, will be responsible for all fees and costs incurred in immobilizing and impounding the vehicle, including storage fees.

(b) ~~Issuance of immobilizing and impoundment order~~Hearing.

(1) ~~If a hearing is requested, and the judge determines that a vehicle will be immobilized or impounded, the judge will issue a written order directing any police officer or parking technician of the city to immobilize and impound the vehicle. The municipal court will also charge a hearing fee of \$50.00 that is separate from the immobilization fee. If a hearing is conducted with the vehicle owner present, and the judge determines that a vehicle will be immobilized or impounded, the judge will issue a written order directing any police officer or parking technician of the city to immobilize and impound the vehicle. The municipal court will also charge a hearing fee of \$50.00 that is separate from the immobilization fee.~~

- (2) If the municipal court does not receive a request for a hearing from the owner of the motor vehicle or the owner's representative within ten days from the date the notice required by this section was mailed, or if affixed to the vehicle, any city officer or parking technician may immobilize or impound the vehicle as provided in Section 82.179. If the owner or owner's representative fails to attend a requested hearing, the judge will issue a written order directing the immobilizing and impoundment of the vehicle. If the owner or the owner's representative fails to attend a requested hearing, the municipal court will charge a \$50.00 hearing fee that is separate from the immobilization fee.
- (3) ~~Upon a determination by the judge that a vehicle should be immobilized or impounded, the judge or the clerk of the municipal court will inform the owner or the owner's representative of the determination, in person if they appear at a hearing or by certified mail to the last known registered owner of the vehicle if they do not appear at a hearing.~~ Upon a determination by the judge that a vehicle should be immobilized or impounded, the judge or the clerk of the municipal court will inform the owner or the owner's representative of the determination, in person if they appear at a hearing or by certified mail to the last known registered owner of the vehicle if they do not appear at a hearing.

Sec. 82.179. ~~Execution of i~~Immobilization order or impoundment.

(a) Any city officer or parking technician may immobilize a vehicle under ~~a municipal court order~~ this article by:

- (1) the installation or attachment of a device designed to restrict the normal movement of a vehicle; ~~;~~ or
- (2) impounding the vehicle.

(b) When a vehicle is immobilized as provided in Section 82.178, the person executing the order will conspicuously attach to the vehicle a written notice on a form provided by the city, worded substantially as follows:

- (1) The vehicle has been immobilized pursuant to this article or municipal court order, and any attempted movement may cause damage to the vehicle;
- (2) It is unlawful for any person to tamper with, deface, damage, or attempt to remove an immobilization device when it has been attached to a vehicle;

- (3) Instructions on having the vehicle released may be obtained by calling the municipal court or the City Marshal's office;
 - (4) The vehicle may be towed and impounded if the owner of the vehicle or the owner's representative has not arranged to have the immobilization device removed by the city before 4:00 p.m.; and
 - (5) The owner of the vehicle is responsible for payment of all applicable fees for towing, impoundment and storage of the vehicle, in addition to the fines, costs and fees for any outstanding parking citations.
- (c) Nothing under this section shall be construed to restrict or limit the authority of police officers to tow and impound vehicles under other applicable law.

(d) Any immobilized vehicles may be impounded by 5:00 p.m. the day of installation or as soon thereafter as is determined feasible by the City if the municipal court clerk has not been contacted for appeal or payment.

Sec. 82.180. Reclaiming immobilized or impounded vehicles.

(a) The owner or a person with the right to possession of a vehicle which has been immobilized or impounded under this article may reclaim the vehicle by appearing at the municipal court Monday through Friday, between the hours of 8:00 a.m. and 5:00 p.m., and during all other times at the police department, and meeting the following requirements:

- (1) Present satisfactory evidence of the person's identity and of the person's ownership or right to possession of the vehicle; and
- (2) Pay the accumulated amount of fines, costs and fees related to the vehicle.

(b) Upon compliance with subsection (a), the person will be authorized to reclaim the impounded vehicle or to have the immobilization device removed during regular City business hours.

(c) The municipal court judge, or the City Marshal, the chief of police or their designees, are authorized to issue a written order releasing an impounded vehicle to its owner or to a person determined to have the right to possession of the vehicle. Nothing in the order shall authorize or imply the waiving of costs and fees associated with the impoundment and storage of the vehicle.

(d) Upon payment of all impoundment and storage fees, presentment of either a signed release from the municipal court judge, or the City Marshal, the chief of police or their designees and proof of identity to the person in possession

of the vehicle, the impounded vehicle shall be released to the person indicated in the release.

SECTION 5. In codifying the changes authorized by this ordinance, paragraphs, sections and subsections may be renumbered and reformatted as appropriate consistent with the numbering and formatting of the San Marcos City Code.

SECTION 6. If any word, phrase, clause, sentence, or paragraph of this ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, the other provisions of this ordinance will continue in force if they can be given effect without the invalid portion.

SECTION 7. All ordinances and resolutions or parts of ordinances or resolutions in conflict with this ordinance are repealed.

SECTION 8. This ordinance will take effect after its passage, approval and adoption on second reading and publication or waiting period, if applicable under the City Charter.

PASSED AND APPROVED on first reading on June 6, 2023.

PASSED, APPROVED AND ADOPTED on second reading on June 20, 2023.

Jane Hughson
Mayor

Attest:

Approved:

Elizabeth Trevino
City Clerk

Samuel J. Aguirre
City Attorney