

ORDINANCE NO. 397

AN ORDINANCE PROHIBITING PLACING RECREATIONAL EQUIPMENT ON OR WITHIN FIVE FEET OF THE STREET PAVEMENT; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of West Orange is a Home Rule City acting under its Charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, numerous complaints have been received regarding potential traffic hazards caused by recreational equipment being placed out in, or near, the street(s); and

WHEREAS, when recreational equipment is set out in, or near, the street it blocks the ability of efficient street drainage to effectively manage storm water flow; and

WHEREAS, it has been commonly accepted that the roadway pavement is for vehicular traffic and not for use as a playground or basketball court; and

WHEREAS, the Police Chief deems that recreational equipment when placed in the street does in fact create an obstruction and potential traffic and/or safety hazard; and

WHEREAS, the City Council has concluded after due and careful consideration that it is necessary to establish prohibitions against any type of recreational equipment being placed in the street that could effectively jeopardize the safety of the general public.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST ORANGE:

**SECTION 1.
GENERAL**

That the City of West Orange officially adopts this Ordinance prohibiting recreational equipment from being placed in or within five feet of the street pavement to read as follows:

A. Recreational Equipment

- (a) It shall be unlawful for any person owning, leasing, claiming, occupying, or having supervision or control of any real property, occupied or unoccupied, improved or unimproved, within the corporate limits of the City, to permit or allow equipment that includes but is not limited to basketball backboard(s) or hoop(s), play set(s), ball net(s), bicycle ramp(s) and skateboard ramp(s) from being placed upon or within five feet of the street that may interfere with, or cause, or create an obstruction to motorists using the roadway.
- (b) Recreational Equipment shall be deemed to interfere with or create or cause an obstruction to motorists or pedestrians if it obscures or hampers the motorists' or pedestrians' view of any street intersection, traffic flow, sign or traffic-control device or if it otherwise causes or creates a hazard that could reasonably cause property damage or personal injury.

B. Definitions

Recreational Equipment shall include, but is not limited to, basketball backboard(s) or hoop(s), play set(s), ball net(s), bicycle ramp(s) and/or skateboard ramp(s), whether portable in nature or not.

Public/Street Right-of Way: means the area on, beside, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the municipality has an interest.

Right-of Way: area of land at least 20-foot in width covered by a hard surface roadway including asphalt, road base, shell or concrete that may lawfully be used for the passage of public vehicular traffic and is deemed to be a public street.

C. Notice of Violation

Notwithstanding the provisions of this article, the City shall, prior to filing a complaint in the City Municipal Court or seeking injunctive or other legal relief, be required to give notice to any person owning, leasing, claiming, occupying or having supervision or control of any real property, occupied or unoccupied, improved or unimproved, within the corporate limits of the City, of a violation of this article. This Notice requirement may be waived if it is found that the obstruction or hazard is of concern for the safety of others, or if no person claims ownership or responsibility of the recreational device(s). If the owner cannot be determined, it may be tagged for removal by attaching the notice of violation to the recreational device.

D. Failure to Comply

If such person fails or refuses to comply with the provisions of this article within twenty-four (24) hours after the date and time of notification as provided above, is subject to the issuance of municipal citations by the City official for being in violation. Each and every day that the owner of such property remains to be in violation is considered to be a separate and distinct violation and is punishable as such.

E. Removal of Violation

The City shall have the right to remove the recreational equipment after providing the notice as stated above. Any recreational equipment removed by the City shall be claimed within ten days; otherwise it will be disposed of. If the owner or person responsible for the recreational equipment wishes to re-claim it, the owner or person responsible for the recreational equipment shall be required to reimburse the City for the expenses incurred in the removal and/or return of the equipment, if applicable.

F. Penalty for Violation

Any person, firm or corporation, who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this article shall be fined an amount allowed by state law for violation(s) of City Ordinances or as the case may be, Laws of the State of Texas, for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

Section 2. CUMULATIVE

This Ordinance shall be cumulative of all provisions of Ordinances of the City, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

**SECTION 3.
SEVERABILITY**

It is hereby declared to be the intentions of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this ordinance shall be declared unconstitutional by a valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

**SECTION 4.
SAVINGS**

All rights and remedies of the City of West Orange are expressly saved as to any and all violations of the provisions of the City of West Orange Code of Ordinances or any other ordinances which have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.


**SECTION 5.
PENALTY**

In accordance to the City of West Orange Code of Ordinances as adopted and as amended; whenever in this code or in any ordinance of the City an act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or whenever in such code or ordinance the doing of any act is required or the failure to do any act is declared to be unlawful, and no specific penalty is provided therefore, the violation of any such provision of this code or any such ordinance shall be punished by a fine of not exceeding an amount allowed by State Law for violation of City Ordinance(s). Each day any violation of this code or of any ordinance shall continue shall constitute a separate offense.

**SECTION 6.
EFFECTIVE DATE**


This Ordinance shall be in full force and effect after its passage as required by law, and it is so ordained.

PASSED AND APPROVED THIS THE 22nd DAY OF JULY 2013.


Roy McDonald, Mayor

Approved and Attested by:


Theresa Van Meter, City Secretary


Joe Alford, City Attorney

