

ORDINANCE

AN ORDINANCE AMENDING ARTICLE 1, "PARKS AND RECREATION DEPARTMENT; RULES AND REGULATIONS," OF CHAPTER 58, "PARKS AND RECREATION," OF THE CODE OF ORDINANCES, CITY OF BURLESON, TEXAS BY ADDING ELECTRIC MOTORCYCLES TO THE LIST OF PROHIBITED MOTOR VEHICLES IN CITY PARKS AND BY ADDING ELECTRIC BICYCLES TO THE LIST OF WHEELED EQUIPMENT THAT MAY BE PROHIBITED AT CITY PARKS IF DESIGNATED BY PROPER SIGNAGE; AMENDING ARTICLE 1, "IN GENERAL," OF CHAPTER 78, "TRAFFIC AND VEHICLES," OF THE CODE OF ORDINANCES, CITY OF BURLESON, TEXAS BY ADDING THE PROHIBITION OF OPERATING AN ELECTRIC MOTORCYCLE, POCKET BIKE, MINI-MOTORBIKE, AND ALL-TERRAIN VEHICLES ON CITY PROPERTY, BY ADDING THE PROHIBITION OF ANY CHILD TO OPERATE CERTAIN WHEELED DEVICES WITHOUT A HELMET; AND BY ADDING THE PROHIBITION FOR ANY PARENT OR GUARDIAN TO PERMIT A CHILD TO OPERATE CERTAIN WHEELED DEVICES WITHOUT A HELMET; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY FOR VIOLATIONS HEREOF; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Burleson, Texas ("City") 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 Texas Local Government Code; and

WHEREAS, the City Council, after due and careful consideration, has determined that it is reasonable and appropriate to limit the type of motor vehicles and other wheeled equipment operated in and on City parks and other real property owned by the City; and

WHEREAS, the City Council, after due and careful consideration, has additionally determined that it is reasonable and appropriate to require helmets be worn by children when operating bicycles, electric bicycles, motor-assisted scooters, or devices attached to bicycles or electric bicycles; and

WHEREAS, the City Council has determined that it is reasonable and appropriate to identify specific defenses, affirmative defenses, and penalties to that requirement that helmets be worn by children when operating bicycles, electric bicycles, motor-assisted scooters, or devices attached to bicycles or electric bicycles; and

WHEREAS, the City Council hereby finds and determines that the amendments and regulations set forth herein are in the best interest of the public and are adopted in furtherance of the public health, safety, welfare, morals, and general welfare.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BURLESON, TEXAS, THAT:

SECTION I.

Section 58-6, “Off-road recreational motor vehicles in parks,” of Article 1, “Parks and Recreation Department; Rules and Regulations,” of Chapter 58, “Parks and Recreation,” of the Code of Ordinances, City of Burleson, Texas is hereby amended to read as follows:

“§ 58-6. Off-road recreational motor vehicles in parks.

The riding of off-road recreational motor vehicles, including, but not limited to, motorcycles (commonly referred to as "dirt bikes"), electric motorcycles (commonly referred to as “e-motorcycles”), unless the electronic motorcycle is designed for use on a highway and eligible for a certificate of title under V.T.C.A., Transportation Code, Chapter 501, and operating in a location authorized for motor vehicles, golf carts, as defined by V.T.C.A., Transportation Code § 551.401, recreational off-highway vehicles, as defined by V.T.C.A., Transportation Code § 551A.001, sand rails, as defined by V.T.C.A., Transportation Code § 551A.001, and all-terrain vehicles (ATVs), as defined by V.T.C.A., Transportation Code § 551A.001, is prohibited in all city parks except when such use is by a city employee or contractor in the exercise of their official duties on behalf of the city.”

SECTION II.

Section 58-23, “Bicycles, roller blades, skateboards, and other wheeled equipment,” of Article 1, “Parks and Recreation Department; Rules and Regulations,” of Chapter 58, “Parks and Recreation,” of the Code of Ordinances, City of Burleson, Texas is hereby amended to read as follows:

“§ 58-23. Bicycles, roller blades, skateboards and other wheeled equipment.

It shall be unlawful for any person to use a bicycle, roller blades, skateboard, scooters, electric bicycles (commonly referred to as “e-bikes”), as defined by V.T.C.A., Transportation Code § 664.001, or other wheeled equipment, excluding wheeled equipment for the disabled, in designated parks or recreation areas or any portion of parks or recreation areas where such use is prohibited and has been so designated by signs indicating such prohibition.”

SECTION III.

Article 1, “In General,” of Chapter 78, “Traffic and Vehicles,” of the Code of Ordinances, City of Burleson, Texas is hereby amended by adding Section 78-6, “Electric motorcycles, pocket bikes, mini-motorbike, and ATVs on city property,” to read as follows:

“§ 78-6. Electric motorcycles, pocket bikes, mini-motorbike, golf carts, recreational off-highway vehicles, sand rails, and ATVs on city property.

It shall be unlawful for any person to operate an electric motorcycle (commonly referred to as an “e-motorcycle”), unless the electronic motorcycle is designed for use on a highway and eligible for a certificate of title under V.T.C.A., Transportation Code, Chapter 501, pocket bike or mini-motorbike, as those terms are defined by V.T.C.A., Transportation Code § 551.351, golf carts, as defined by V.T.C.A., Transportation Code § 551.401, recreational off-highway vehicle, as defined by V.T.C.A., Transportation Code § 551A.001, a sand rail, as defined by V.T.C.A., Transportation Code § 551A.001, or all-terrain vehicle (ATV), as defined by V.T.C.A., Transportation Code § 551A.001, on any sidewalk or in or on any real property, including any parking lot, owned or maintained by the City of Burleson, except when such use is by a city employee or contractor in the exercise of their official duties on behalf of the city.”

SECTION IV.

Article 1, “In General,” of Chapter 78, “Traffic and Vehicles,” of the Code of Ordinances, City of Burleson, Texas is hereby amended by adding Section 78-7, “Helmet required,” to read as follows:

“§ 78-7. Helmet required.

- (a) It shall be unlawful for any child to operate or ride upon a bicycle, electric bicycle, motor-assisted scooter, or any side car, trailer, child carrier, seat, or other device attached to a bicycle or electric bicycle, unless the child is wearing a helmet.
- (b) It shall be unlawful for a parent to permit a child to operate or ride upon a bicycle, electric bicycle, motor-assisted scooter, or any side car, trailer, carrier, seat, or other device attached to a bicycle unless the child is wearing a helmet.
- (c) It is a defense to prosecution that the bicycle or electric bicycle was not being operated upon a public way at the time of the alleged offense.
- (d) It is an affirmative defense to prosecution under this section, upon first offense only, that the person owns or has acquired a helmet prior to the court hearing and promises the court that the helmet will be used in the future.
- (e) Penalty.
 - (1) Any person who violates any provision of this section shall be guilty of a misdemeanor and upon conviction shall be fined an amount not exceeding \$50 upon first conviction and an amount not exceeding \$100 upon the second and each subsequent conviction.
 - (2) The purpose of this section is to promote bicycle safety by encouraging the use of helmets. In keeping with that purpose, the municipal court is urged to consider deferred dispositions under Tex. Code of Criminal Procedure Article 45.051 whenever the circumstances warrant deferred dispositions. Conditions of the deferral may include that the defendant, if financially able, obtain a helmet and promises the court that the helmet will be used in the future.

- (f) For purposes of this section, the following words and phrases shall be defined as follows:
- (1) “Bicycle” means every device propelled by human power upon which any person may ride, having two tandem wheels which are more than 14 inches in diameter.
 - (2) “Child” means any person 16 years of age and under.
 - (3) “Electric bicycle” shall have the same meaning as that term is defined by V.T.C.A., Transportation Code § 664.001.
 - (4) “Helmet” means a properly fitted bicycle helmet that is not structurally damaged and that conforms to the standards of the American National Standards Institute, the American Society for Testing and Materials, the Snell Memorial Foundation or any federal agency having regulatory jurisdiction over bicycle helmets, as applicable, at the time of the manufacture of the helmet.
 - (5) “Motor-assisted scooter” means a self-propelled device with: (i) At least two wheels in contact with the ground during operation; (ii) A braking system capable of stopping the device under typical operating conditions; (iii) A gas or electric motor not exceeding 40 cubic centimeters; (iv) A deck designed to allow a person to stand or sit while operating the device; (v) The ability to be propelled by human power alone; and (vi) Does not include a pocket bike or a mini-motorbike.
 - (6) “Parent” means the natural or adoptive parent or court-appointed guardian or conservator of a child.
 - (7) “Pocket bike” or “Mini-motorbike” shall have the same meaning as those terms are defined by V.T.C.A., Transportation Code § 551.351.
 - (8) “Public way” means any property that is publicly owned or maintained, including, but not limited to, a street or highway, a publicly maintained trail, a public right of way, any public parks facility, property owned by the City of Burleson, Texas, and facilities and parking lots owned by the City of Burleson, Texas.
 - (9) “Wearing a helmet” means that the person has a helmet fastened securely to the person’s head with the straps of the helmet securely tightened.”

SECTION V.

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 VI.

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable and if any phrase, clauses, sentence, paragraph, or section of this Ordinance shall be declared unconstitutional by the 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 its ordinance of any such unconstitutional phrase, clause, sentence, paragraph, or section.

SECTION VII.

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 Ordinance shall be fined not more than \$500.00 for each offense; provided, however, that any person, firm, or corporation who violates, disobeys, omits, neglects, or refuses to comply with or who resists the enforcement of Section 78-7 set forth in Section IV of this Ordinance shall be fined not more than \$50.00 upon first conviction of an offense and not more than \$100.00 upon the second and each subsequent conviction for an offense.

SECTION VIII.

All rights and remedies of the City are expressly saved as to any and all violations of the provisions of Chapter 58, Article 1 and Chapter 78, Article 1 of the Code of Ordinances, City of Burleson, Texas and 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 IX.

The City Secretary is hereby directed to publish the caption and penalty clause of this Ordinance as required by state law.

SECTION X.

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

AND IT IS SO ORDAINED.

PASSED AND APPROVED this _____ day of _____, 20____.

First Reading: the _____ day of _____, 20____.

Final Reading: the _____ day of _____, 20____.

Chris Fletcher, Mayor
City of Burleson, Texas

ATTEST:

APPROVED AS TO FORM:

Amanda Campos, City Secretary

E. Allen Taylor, Jr., City Attorney