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ORDINANCE NO.

AN ORDINANCE AMENDING CITY CODE TITLE 12 (*TRAFFIC REGULATIONS*) TO ADD A NEW CHAPTER 8 ESTABLISHING ROUTES AND PROCEDURES FOR THE TRANSPORTATION OF NON-RADIOACTIVE HAZARDOUS MATERIALS, REPEALING CITY CODE SECTION 12-1-28 (*TRANSPORTING HAZAROUS MATERIAL*), CREATING OFFENSES, AND ESTABLISHING A PENALTY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. City Code Section 12-1-28 (*Transporting Hazardous Material*) is repealed and this section is reserved for the expansion of the Code.

PART 2. City Code Title 12 (*Traffic Regulations*) is amended to add a new Chapter 8 relating to routes for the transportation of Non-Radioactive Hazardous Materials and to read as follows:

CHAPTER 8. NON-RADIOACTIVE HAZARDOUS MATERIALS (NRHM) ROUTES.

§12-8-1 – APPLICABILITY.

This Chapter applies to the transportation of Non-Radioactive Hazardous Materials (NRHM) within the corporate boundaries of the City.

§12-8-2 -- DEFINITIONS.

(A) In this Chapter:

- (1) **CITY TERMINAL** means a business or location within the City boundaries that serves as a point of origination or receipt for shipments of NRHM.
- (2) **LOCAL DELIVERY** means delivery of any regulated material that originates within the corporate boundaries of the city of Austin, or is bound for delivery within the corporate boundaries of the city of Austin.
- (3) **NON-RADIOACTIVE HAZARDOUS MATERIALS (NRHM)** means non-radioactive materials classified as hazardous by the United States Secretary of Transportation.

- 37 (4) NRHM TRANSPORTATION means motor vehicle transportation of
38 NRHM in such quantities that the vehicle is required to carry and exhibit
39 placards pursuant to the Code of Federal Regulations.
- 40 (5) NRHM VEHICLE means a motor vehicle transporting regulated
41 materials subject to this Chapter.
- 42 (6) VEHICLE REQUIRING PLACARDS means any vehicle transporting
43 hazardous materials in sufficient quantity to require placarding as set
44 forth in the United States Department of Transportation Hazardous
45 Materials Regulations.
- 46 (7) REGULATED MATERIAL means NRHM.
- 47 (8) THROUGH TRAFFIC TRANSPORTATION means transportation of
48 any regulated material that originates outside of the City with no
49 deliveries or pick-ups within the City.

50 **§12-8-3 – TRANSPORTATION OF NRHM.**
51

52 A person shall not transport, contract, arrange, or participate in the transport,
53 contract, or arrangement to transport NRHM unless the destination or point of departure
54 is a City Terminal and the transport is in compliance with this Chapter.

55 **§12-8-4 – ROUTES FOR LOCAL DELIVERY.**
56

57 (A) A carrier shall use the safest route available by the best use of the highest
58 classified roadway, as classified in Subsection (B) of this section, when a NRHM
59 Vehicle is carrying NRHM to any point of origin or destination located within the
60 corporate limits of the City.

61 (B) The Federal Highway Administration (FHWA) classifies roadways from
62 highest to lowest as follows:

- 63 (1) designated Interstate Highway;
- 64 (2) designated United States Highway;
- 65 (3) designated State Highway;
- 66 (4) other designated Freeways and Expressways;
- 67 (7) principal arterial street (roadways providing a high degree of mobility
68 and serving long distance trips);
- 69 (8) minor arterial street (roadways serving moderate length trips);

- (9) collector street (roadways serving short length trips from arterial to local streets); and
- (10) local street (roadways providing the highest degree of access and lowest mobility).

(C) The public health and safety reason for use of the highest classification of roadway, is to reduce the risk and severity of potential harm to persons and property that may result from a spill of regulated or hazardous material.

§12-8-5 – ROUTES FOR THROUGH TRAFFIC.

(A) A person shall only transport NRHM on SH 130 and those highways that connect to SH 130 which are set forth below:

- (1) both directions of the following roadways within the jurisdiction of the City:
- SH 130 within the city limits
 - SH 45 South from IH 35 to city limits
 - IH 35 from south city limits to SH 71/US 290
 - SH 71 from west city limits to east city limits
 - US 290 from west city limits to IH 35
 - US 290 from east city limits to SH 130
 - SH 45 north from US 183 east to city limits

(B) A person shall comply with all provisions of this Chapter pertaining to necessity for placarding vehicles transporting regulated materials in the City, regardless of route.

(C) It is an affirmative defense to a departure from the permissible route that:

- (1) the vehicle in question is immediately and directly destined for a location providing food, fuel, rest, safe haven, or repair; or
- (2) the vehicle is using access, frontage, or intersecting roadways as needed to enter and leave the location providing food, fuel, rest, safe haven or repair.

§12-8-6 – PLACARD REQUIREMENTS.

The operator of a vehicle used to transport hazardous materials requiring placards shall:

(A) Apply and display appropriate placards meeting United States Department of Transportation specifications on each end and each side of the vehicle; and

(B) Before operation, inspect the vehicle to determine that:

- (1) the brakes and tires are in good working condition;
- (2) the steering mechanism is in good working condition;
- (3) the electrical wiring is well insulated and firmly secured; and
- (4) the vehicle is in a condition adequate to safely transport hazardous materials.

§12-8-7 – LOCAL DELIVERY ROUTES; OFFENSE; AND BURDEN OF PROOF.

(A) A person engaged in the transportation, arrangement, contact, or any participation in transport of arrangement, or contract for transportation of local delivery of NRHM on any street or roadway within the City shall make the best use of the highest classification of roadway available to:

- (1) protect neighborhoods and the traveling public from nuisance, inconvenience, or disturbance of normal sensibilities of any person; and
- (2) minimize exposure of neighborhoods and the traveling public to harm that may result from a spill of regulated or hazardous material.

(B) A person commits an offense if the person transports, arranges, contracts, or participates in transport of arrangement, or contract for local delivery of NRHM on any street or roadway within the City which route is not based on the best use of the highest classification of roadway.

(C) A person engaged in transport, arrangement, or contract for transport of regulated materials shall have the affirmative duty to determine, devise, and restrict local delivery to such restricted route for the benefit of the public health, safety, and welfare.

(D) A responsible person has the burden of proof to demonstrate best use of the highest classification of roadway.

(E) A formal complaint, properly drawn and corroborated as may be required by law, shall create a rebuttable presumption that the responsible person violated the best use standard for highest classification roadway transportation or delivery of NRHM.

§12-8-8 - EMPTY VEHICLES.

(A) Subject to Subsection (B), this Chapter does not apply to an empty vehicle that has been used previously to transport regulated materials.

- (B) A vehicle that has transported NRHM in bulk packaging, or in any other type of container, and that is required to be placarded pursuant to the Code of Federal Regulations shall remain placarded when it is empty unless it is:
- (1) sufficiently cleaned of residue and purged of vapors to remove any potential hazard; or
 - (2) refilled with a material requiring different placards or no placards, to such an extent that any residue remaining in the packaging is no longer hazardous.

§12-8-9 - OFFENSE FOR USE OF PROHIBITED ROUTES.

- (A) An operator of a motor vehicle transporting NRHM scheduled for delivery to or from a City of Austin terminal, or found or apprehended on any public roadway in the City, shall not transport those materials on any street or public highway, or segment of a street or public highway designated a "prohibited NRHM route."
- (B) A person commits an offense if that person transports, arranges to transport, or contracts for transport of NRHM on any public roadway or street designated a prohibited NRHM route.
- (C) A person commits an offense if that person transports, arranges to transport, or contracts for transport of NRHM, required under state or federal regulation to be transported under placard, without an appropriate placard.

§12-8-10 – AUSTIN POLICE DEPARTMENT (APD) DISCRETION AND PUBLIC SAFETY.

- (A) APD may temporarily suspend the operation of any vehicles carrying regulated NRHM, without notice whenever road, weather, traffic, or other exigent circumstances warrant such action.
- (B) APD may redirect through traffic vehicles carrying regulated NRHM onto any highway or roadway, public or private, when the through traffic route is blocked or otherwise deemed necessary. Such redirection is deemed as for benefit of public safety and has the authority of law.

§12-8-11 - EMERGENCY RESPONSE VEHICLE CARRYING FUEL.

It shall be permissible and is an affirmative defense to a violation of this Chapter that the vehicle transporting a regulated material is carrying fuel directly to the scene of an emergency, or for a public emergency purpose, specific to the function of fueling equipment used to respond to or address the emergency.

175 **§12-8-12- PROHIBITED PARKING AND STANDING.**

176 (A) A person shall not permit a vehicle transporting regulated NRHM to park or
177 stand at any location within the City, except for purposes of loading or unloading.
178

179 (B) This Section does not apply to:

180 (1) vehicles parked in designated truck parking areas of locations providing
181 food, fuel, rest, safe haven, or repair; or

182 (2) vehicles parked in the parking areas of businesses engaged in the
183 transportation, storage, or production of hazardous materials.

184 **§12-8-13- OFFENSE.**

185 (A) Violation of any of the provisions of this Chapter shall constitute an offense
186 punishable by a fine of not less than five hundred dollars (\$500.00) and not to
187 exceed two thousand dollars (\$2,000.00), to the extent such violation may pose a
188 fire or public health threat.
189

190 (B) The City shall be entitled to pursue all remedies, at law and in equity,
191 including but not limited to injunctive relief, with attendant civil penalties as may
192 be provided under state statute, which remedies shall be cumulative of the criminal
193 laws, none of which shall be mutually exclusive of the other.
194

195 **PART 2.** This ordinance takes effect on _____, 2021

196 **PASSED AND APPROVED**

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198
199 §
200 §
201 §
202 _____, 2021 § _____

Steve Adler
Mayor

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206
207 **APPROVED:** _____ **ATTEST:** _____
208 Anne L. Morgan Jannette S. Goodall
209 City Attorney City Clerk
210
211