

**ORDINANCE NO. O-2018-76**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING CHAPTER 4, "OFFENSES AND MISCELLANEOUS PROVISIONS," ARTICLE VI, "MISCELLANEOUS OFFENSES" BY AMENDING THE UNLAWFUL NOISE PROVISIONS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, it is the intent of the City Council to protect the public health, safety, and welfare; and

**WHEREAS**, municipalities may, under their police powers, enact reasonable regulations to promote the health, safety and welfare of citizens; and

**WHEREAS**, the City of Tyler is a home-rule municipality acting under its Charter adopted by the electorate pursuant to Article 11, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

**WHEREAS**, Texas Local Government Code Section 51.072(a) states that a home-rule municipality has full power of self-government; and

**WHEREAS**, Texas Local Government Code Section 51.072(b) provides that the grant of powers to a municipality under the Texas Local Government Code does not prevent, by implication or otherwise, the municipality from exercising the authority incident to self-government; and

**WHEREAS**, Section 1 of the Tyler City Charter states that the City of Tyler may make any and all rules and regulations by ordinances and resolutions; and

**WHEREAS**, Section 1 of the Tyler City Charter provides that the City of Tyler may define, prohibit, abate, suppress and prevent all things detrimental to the health, morals, comfort, safety, convenience and welfare of the inhabitants of the City, and all nuisances and causes thereof; and

**WHEREAS**, Section 1 of the Tyler City Charter states that the City of Tyler may make and enforce local police, sanitary, and other regulations, and may pass such ordinances as may be expedient for maintaining and promoting the peace, good government and welfare of the City, and for the performance of the functions thereof; and

**WHEREAS**, Section 1 of the Tyler City Charter provides that the City shall have all powers that now are, or hereafter may be granted to municipalities by the constitution or laws of Texas, and that all such powers, whether express or implied, shall be exercised and enforced, in the manner prescribed by the Charter, or when not prescribed by the Charter, in such manner as shall be provided by ordinances or resolutions of the City Council; and

**WHEREAS**, Section 2 of the Tyler City Charter states that the enumeration of particular powers by the Charter shall not be held or deemed to be exclusive, but in addition to the powers enumerated in the Charter, the City shall have, and may exercise all other powers which, under the constitution and laws of Texas, it would be competent for the Charter specifically to enumerate; and

**WHEREAS**, Section 6 of the Tyler City Charter states that pursuant to the provisions of and subject only to the limitations imposed by the State law and the Charter, all of powers of the

City shall be vested in an elective Council, which shall, among other duties, enact legislation; and

**WHEREAS**, Texas Local Government Code Section 51.001(1) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is for the good government, peace, or order of the municipality; and

**WHEREAS**, Texas Local Government Code Section 51.001(2) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is necessary or proper for carrying out a power granted by law to the municipality or to an office or department of the municipality; and

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS;**

**PART 1:** That Tyler City Chapter 4, "Offenses and Miscellaneous Provisions," Article VI., "Miscellaneous Offenses", Section 4-90, "Loud and Raucous Noises", is hereby amended by amending Section 4-90, subsection to read as follows:

**Sec. 4-90. Unlawful Noise**

**A. Definitions.**

**Construction** shall include: the erection, excavation, demolition, alteration, repair or maintenance of any building, structure, or property.

**Decibel (dBA)** shall mean: the unit of measurement for sound pressure at a specific location.

**Residential Property** shall mean: property zoned for residential use in accordance with the City's zoning ordinance.

**Sound Equipment** shall mean: a loud speaker, public address system, amplification system, musical instrument, radio, CD player, or any other sound producing device.

**Unreasonable Noise** shall mean:

1. Any unreasonably loud, disturbing, unusual, excessive, explosive or unnecessary noise sound, or vibration, or any noise of such character, intensity and continued duration, that is capable of causing material distress, discomfort, or injury, or which substantially interferes with the comfortable enjoyment of public or private property, by or to ordinary reasonable persons of common sensibilities in the vicinity thereof; or
2. Any noise or sound that exceeds the maximum permitted sound levels as specified in the time periods set forth below.

**B. Maximum Permitted Sound Levels**

1. All areas and zoning districts, except DBAC, shall comply with the noise limits in this Section B.1. as follows:
  - i. 75 dB (A) from 7:00 a.m. to 10:00 p.m., and extended to 11:00 p.m. on Fridays and Saturdays.
  - ii. 63 dB (A) from 10:01 p.m. to 6:59 a.m., and extended to 11:01 p.m. to 6:59 a.m. on Fridays and Saturdays.
2. Properties with a DBAC zoning classification shall comply with the following noise limits:
  - i. 75 dB (A) from 7:00 a.m. to 11:00 p.m., and extended to midnight on Thursdays, Fridays and Saturdays.
  - ii. 63 dB (A) from 11:01 p.m. to 6:59 a.m., and extended to 12:01 a.m. to 6:59 a.m. Fridays, Saturdays and Sundays.

**C. Prohibition Against Unlawful Noise;**

1. It shall be unlawful for any person to make, assist in making, permit, continue, or cause to be made any Unreasonable Noise which:
  - i. Exceeds the maximum permitted sound levels during the specified timeframe, after the person or business making the unreasonable noise received reasonable notice from a magistrate or peace officer that the noise is unreasonable and deemed a public nuisance; or
  - ii. Causes material distress, discomfort, or injury, or which substantially interferes with the comfortable enjoyment of public or private property, by or to the ordinary reasonable person of common sensibilities in the vicinity thereof;
  - iii. Is from the operation of sound equipment in such a manner as to be plainly audible at a distance of fifty (50) feet from a vehicle or in such a manner that the vibration accompanying the sound from the device can be plainly felt at a distance of fifty (50) feet from the vehicle; or
  - iv. Is from the keeping or harboring of any animal or bird (fowl) which emits or makes any noise or sound which is offensive to ordinary reasonable persons of common sensibilities in the vicinity thereof; or
  - v. Is from the discharging es into open air of the exhaust of any steam or internal combustion engine, whether moveable or stationary, except through a muffler or other device that will effectively prevent the emission of unreasonable noise therefrom; or
  - vi. Is from the use or operation of any device that is equipped on any motor vehicle and that is designed to aid in braking, decompression or deceleration, in such a manner or at such a time that results in an excessive, loud, unusual or explosive noise from such vehicle; or

**D. Unreasonable Noise Presumption Considerations.**

In determining whether a noise is loud, unreasonable, or unlawful, the following factors may be considered: time of day or night; proximity of noise to complainant as measured from residential and other structures being utilized; whether the noise is recurrent, intermittent, or

constant; whether the owner or occupant has been previously warned; the volume and intensity of the noise; proximity to residential and other structures; whether the noise or sound has been enhanced in volume or range by any type of electronic or mechanical means; and whether the noise is subject to being controlled without unreasonable effort or expense to the creator thereof.

**E Affirmative Defenses for Unlawful Noise Violation.**

1. It is an affirmative defense to prosecution of an offense under this section that, at the time of the offense, the emission of any noise or sound was:

- i. for the purpose of alerting persons to the existence of an emergency, danger, or attempted crime;
- ii. made in the performance of official duties by or for an official of Federal, State, or Local government, or to members of the United States armed forces or of the State;
- iii. made by or for persons engaged in the present performance or rendition of emergency medical services.
- iv. made in the performance of City sanctioned events, including special events conducted in park or recreation areas, pursuant to a special event permit.
- v. made in the performance of any events that receive a Temporary Use Permit and have obtained separate authorization from the City Manager or designee, provided that the authorized noise limits shall not exceed 75 dB (A) and the event time does not exceed 12:30 a.m.
- vi. made in the performance of Public parades duly permitted.
- vii. made in the performance of Public or private school sponsored activities.
- viii. made from the use of sound amplification, intercom, or paging devices within the interior of a church, school, auditorium, convention center, government building or similar public meeting place.
- ix. made in the performance of construction activities which meets the best practices of building construction, and have been permitted by the City.
  - a. In granting the permit, the following factors may be considered:
    1. whether the proposed time or nature of the work is necessary to ensure the public health and safety;
    2. proposed length or duration of the proposed construction;
    3. specific methods of construction being utilized;
    4. the possible effect of weather, temperature, light or other factors on the workers, the proposed construction, or on the equipment or materials used in the activity; or
    5. any other factors determined to be relevant by the permitting department.
  - b. Prior to construction, permittee shall:
    1. give notice of said permit to the Chief of Police or designee; and
    2. post said permit on the construction premises.

**F. Enforcement; Penalty**

Any violation of this section shall constitute a public nuisance, is unlawful, and shall be subject to a penalty as set forth in Sec. 1-4.

**PART 2:** That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

**PART 4:** That any person, firm, or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as provided in Section 1-4 of the Tyler Code. Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Since this ordinance has a penalty for violation, it shall become effective upon its publication in the newspaper as provided by Section 85 of the Charter of the City of Tyler, Texas, which date is expected to be October 5, 2018.

PASSED AND APPROVED this 26<sup>th</sup> day of September, A. D., 2018.



MARTIN HEINES, MAYOR  
OF THE CITY OF TYLER, TEXAS

ATTEST:

APPROVED:

  
CASSANDRA BRAGER, CITY CLERK



  
DEBORAH G. PULLUM,  
CITY ATTORNEY