

## **ORDINANCE NO. 184-09**

**AN ORDINANCE OF THE CITY OF HACKBERRY, TEXAS, ESTABLISHING NOISE CONTROL WITHIN THE CITY OF HACKBERRY, TEXAS; REPEALING ORDINANCE NO. 76-00; PROVIDING FOR THE REGULATION OF NOISE DISTURBANCE WHICH IS DETRIMENTAL TO LIFE AND HEALTH, OR WHICH INTERFERES WITH THE ENJOYMENT OF PROPERTY OR THE PUBLIC PEACE AND COMFORT; DEFINING THOSE NOISES WHICH ARE UNLAWFUL; PROVIDING FOR EXEMPTIONS, VARIANCES AND APPEALS; PROVIDING A REQUIREMENT THAT CONTRACTS WITH THE AND CONDITIONED UPON COMPLIANCE WITH THIS ORDINANCE; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR SEVERABILITY, REPEALING AND SAVING CLAUSES; PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, it is hereby declared to be the policy of the City of Hackberry, Texas ("City") to minimize exposure to the physiological and psychological harm of excessive noise and to protect, promote and preserve the public health, comfort, convenience, safety and welfare; and

**WHEREAS**, it is the express intent of the City Council of the City of Hackberry, Texas ("Council"), to control the level of noise in a manner which protects the sleep and repose of citizens and to preserve the quality of life and the environment; and

**WHEREAS**, the Council finds that noise pollution is a serious concern to all inhabitants of the community, and that it is in the best interest of the citizens of Hackberry to adopt this Ordinance.

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

### **SECTION 1. PURPOSE.**

The purpose of this Ordinance is to make it unlawful for any person or entity to make or cause to be made any loud and raucous noise in the City of Hackberry which is offensive to the ordinary sensibilities of the inhabitants of the City, which noise renders the enjoyment of life or property uncomfortable or interferes with public peace and comfort.

### **SECTION 2. REPEALING CLAUSE**

Ordinance Number 076-00 is hereby repealed.

### **SECTION 3. COMPLIANCE BY CONTRACTORS AND PROPOSED DEVELOPMENTS.**

It is the policy of the City that all contractors and subcontractors are required to comply with the provisions and intent of this Ordinance in their operations.

### **SECTION 4. CITY CONTRACTS TO BE CONDITIONED UPON COMPLIANCE**

Any written agreement, purchase order, or instrument committing an expenditure of Hackberry funds in return for work, labor, services, supplies, equipment, materials, or any combination of the foregoing, shall be subject to the provisions of this Ordinance, and the person or entity entering into the contract must operate, construct, conduct, or manufacture its business without violation of this Ordinance.

### **SECTION 5. RESTRICTED USES AND ACTIVITIES.**

- (1) Personal or commercial music amplification or reproduction equipment shall not be operated in such a manner that it is plainly audible at a distance of 50 feet in any direction from the operator between the hours of 8:00 a.m. and 9:00 p.m. during weekdays, and 8:00 a.m. and 10:00 p.m. during weekend. Sound from such equipment shall not be plainly audible at a distance of 25 feet in any direction from the operator between the hours of 9:00 p.m. and 8:00 a.m. during weekdays and 10:00 p.m. and 8:00 a.m. during weekends.
- (2) Self-contained, portable, hand-held music or sound amplification or reproduction equipment shall not be operated on a public space or public right-of-way in such a manner as to be plainly audible at a distance of 50 feet in any direction from the operator between the hours of 8:00 a.m. and 9:00 p.m. during weekdays and 8:00 a.m. and 10:00 p.m. during weekends. Sound from such equipment shall not be plainly audible by any person other than the operator between the hours of 9:00 p.m. and 8:00 a.m. during weekdays and 10:00 p.m. and 8:00 a.m. during weekends,

### **SECTION 6. NOISE PROHIBITIONS.**

- (1) It shall be unlawful for any person to operate or cause to be operated any horn, player piano, radio, phonograph or other loud-speaking or noise-making device or attachment on the public sidewalks, streets and other public places within the City before the hour of 8:00 a.m. or after the hour of 9:00 p.m. of any day in a way or manner reasonably calculated to disturb others in the vicinity of such public place, but nothing herein shall be construed to affect the usual and reasonable operation of railroads and motorbuses or to prohibit the reasonable use of automobile warning signals or the reasonable ringing of church bells or the reasonable or ordinary noises attendant upon athletic contests or lawful public or semipublic meetings, parades or celebrations.

- (2) It shall be unlawful for any person to play or operate or permit to be played or operated, within the City, any phonograph, radio or any loud-speaking or noise-making device or attachment on any premises under the ownership, management or control of such person, when such premises are being used as a place of business to which the public generally is invited, in such a manner or in such volume which is plainly audible and is reasonably calculated to disturb the peace or to be unreasonably offensive to the public or to the occupants of other premises in such vicinity.
- (3) It shall be unlawful for any person, between the hours of 9:00 p.m. and 8:00 a.m. the following morning during weekdays and between the hours of 10:00 p.m. and 8:00 a.m. the following morning during weekend, in either a public or private place or house in the City, to create, make or cause to be made upon musical instruments, horns or bugles, or by any other means, any loud noise which is plainly audible and reasonably calculated to disturb others in the vicinity of any such public or private place or house.
- (4) It shall be unlawful for any person to operate any gravel pit, rock crusher or other machinery for the separation, gathering, loading or unloading of sand, rock or gravel within 600 feet of any private residence, church or hospital in the City between the hours of 7:00 p.m. and 7:00 a.m. if the operation of such plant or machinery is attended with load noise or noises reasonably calculated to disturb the inhabitants of any such private residence, church or hospital.
- (5) The following acts, among others, are declared to create loud and raucous noise in the City which is offensive to the ordinary sensibilities of the inhabitants of the City, which noise renders the enjoyment of life or property uncomfortable or interferes with public peace and comfort.
  - (a) The sounding of any horn or signal device or any automobile, motorcycle, bus, streetcar, or other vehicle, except as a danger signal as required by state law.
  - (b) The playing of any radio, phonograph, or musical instrument in such a manner, or with such volume as to disturb the peace, quiet, comfort, or repose of persons in any dwelling.
  - (c) The keeping of any animal or fowl which emits or makes a loud and raucous noise.
  - (d) The use of any automobile, motorcycle, bus, streetcar, or other vehicle so out of repair or so loaded, which emits or creates loud grating, grinding, or rattling noise.
  - (e) The blowing of any steam whistle attached to any stationary boiler, except to give notice of the time to begin or stop work or as a warning of danger.
  - (f) The discharge into the open air of the exhaust of any stationary steam engine, stationary internal combustion engine, or motor boat engine, except through a muffler or other device which will effectively and efficiently prevent loud noises.
  - (g) The discharge into the open air of the exhaust from any motor vehicle except through a muffler, or other device, which will effectively and efficiently prevent loud and raucous noises.
  - (h) The erection, including excavation, demolition, alteration, or repair of any building in or adjacent to a residential area other than between the hours of 7:00

a.m. and 6:00 p.m. on weekdays, except in the case of urgent necessity in the interest of public safety, for which a permit must be obtained from the director of public works and transportation of the City.

- (i) The creation of loud and raucous noise on any street adjacent to any school or court which is in session or adjacent to any hospital; provided, that conspicuous signs are located in such streets indicating that schools, hospitals, and courts are adjacent thereto.
- (j) The shouting and crying of peddlers, hawkers and vendors which disturbs the quiet and peace of the neighborhood.
- (k) The use of any drum or other instrument or sound amplifying equipment for the purpose of attracting attention by the creation of noise, to any performance, show, sale, or display of merchandise as to attract customers to any place of business.
- (l) The use of mechanical loudspeakers or sound amplifiers on trucks or other moving vehicles for the purpose of advertising any show, sale, or display of merchandise.
- (m) Operating or permitting to be operated any power equipment within a residential district or quiet zone, or within 500 feet of any non-residential, residence or quiet zone, in such a manner as to cause a noise disturbance between the hours of 9:00 p.m. and 8:00 a.m.
- (n) Causing impulsive sound sources including, but not limited to, the use of fireworks, explosives, the firing of guns or other explosive devices within the City in such a manner as to cause a noise disturbance. This is not intended to preclude any existing ordinances prohibiting such acts.
- (o) The flying of model aircraft powered by internal combustion engines, whether tethered or not, or the firing or operating of model rocket vehicles or other similar noise producing devices, within a non-residential or residential district or quiet zone, or within five hundred feet (500') of any residence or quiet zone, in such a manner as to cause a noise disturbance. Furthermore, any such activity shall create a noise disturbance if conducted between the hours of 9:00 p.m. and 8:00 a.m.
- (p) Using or causing the use of any device that creates any ground vibration which is perceptible without instruments at any point on or beyond the property boundary of the source.
- (q) Sounding or permitting the sounding of any electronically activated or amplified signal from any stationary bell, chime, siren, whistle, or similar device, intended primarily for non-emergency purposes. Except such signaling device is allowed if used as a danger signal, and/or as required by law if a vehicle is backing, starting or turning in such a way as to likely cause a collision.

## **SECTION 7. EXEMPTIONS.**

The following sources of potential noise disturbances shall be exempt from the regulations of this Ordinance.

- (1) Safety signals, storm warning sirens or horns and the testing of such equipment, emergency vehicle sirens or horns used when responding to an emergency, and emergency pressure relief valves.
- (2) Sound caused in the performance of emergency or public service work, including police, fire and public utility operations, acting in the performance of lawful duties to protect the health, safety or welfare of the community.
- (3) Sounds caused by natural phenomena.
- (4) Activities conducted on public parks and playgrounds which are approved, sponsored or sanctioned by the City. Activities conducted on public or private school grounds including, but not limited to, school athletic and school entertainment events which are approved, sponsored or sanctioned by the school.

#### **SECTION 8. PERMITS OF VARIANCE.**

- (1) The Council is authorized to grant permits for relief of any provision in this Ordinance on the basis of undue hardship in causes where:
  - (a) The sound source will be of short duration and the activity cannot be conducted in a manner as to comply with this Ordinance; or
  - (b) Additional time is necessary for the applicant to alter or modify their activity or operation to comply with this Ordinance; or
  - (c) No reasonable alternative is available to the applicant.
- (2) An automatic variance will be granted without the payment of permit fees for the purpose of conducting City and church sanctioned public events, including but not limited to, parades, fund raisers, revivals, festivals, and carnivals, provided that any noise disturbance created by such activity will be abated when such a request is made by the City Marshal.
- (3) The Council may prescribe any reasonable conditions or requirements deemed necessary to minimize adverse effects and may suspend any permit issued for violating any provisions prescribed in the permit of variance.
- (4) A fee of \$25.00 shall be charged to each applicant for processing the permit application.

#### **SECTION 9. DEFINITIONS.**

- (1) **Construction** – Any site preparation, assembly, erection, substantial repair, alteration, or similar action (excluding demolition) of public or private right-of-way surfaces, structures, utilities or similar property.
- (2) **Demolition** – Any dismantling, intentional destruction or removal of public or private right-of-way surfaces, structures, utilities or similar property.

- (3) **Device** – Any mechanism which is intended to produce, or which actually produces noise when operated or handled.
- (4) **Emergency Vehicle** – A motor vehicle used in response to a public calamity or to protect persons or property from an imminent exposure to danger.
- (5) **Motor Vehicle** – Any vehicle propelled by mechanical power, such as, but not limited to, any passenger car, truck, truck-trailer, semi-trailer, camper, motorcycle, mini-bike, go-cart, dune buggy or racing vehicle.
- (6) **Noise Disturbance** – Any sound which annoys or disturbs, or which causes or tends to cause an adverse psychological or physiological effect upon the sensibilities of a reasonable, prudent, adult person; any unreasonably loud or disturbing noise which is offensive to the sensibilities of a reasonable, prudent, adult person; and any unreasonably loud or disturbing noise which renders the enjoyment of life and property uncomfortable or interferes with public peace and comfort.
- (7) **Person** – Any individual, firm, association, partnership, corporation or any other entity public or private.
- (8) **Non-Residential District** – Any district not classified by the City’s zoning ordinance as containing residential homes, mobile homes or apartments.
- (9) **Plainly Audible** – Any sound that can be detected by a person using his or her unaided hearing faculties. As an example, if the sound source under investigation is portable or personal vehicular sound amplification or reproduction device, the enforcement officer need not determine the title of a song, specific words, or the artist performing the song. The detection of the rhythmic base component of the music is sufficient to constitute a plainly audible sound. *Plainly Audible* does not require extraneous evidence or support to establish the existence of a noise disturbance.
- (10) **Power Equipment** – Any motorized electric or fuel powered equipment, including but not limited to, tractors, lawnmowers and other similar device or equipment.
- (11) **Powered Model Vehicle** – Any self-propelled air-borne, water-borne, or land-borne plane, vessel, or vehicle, which is not designed to carry persons, including, but not limited to, any model airplane, boat, car or rocket.
- (12) **Property Boundary** – An imaginary line exterior to any enclosed structure, at the ground surface and its vertical extension, which separates the real property owned by one person from that owned by another person.
- (13) **Quiet Zone** – Property on which a school, hospital, clinic, library or other noise disturbance sensitive facility is operated.
- (14) **Residential District** – Any district classified by the City’s zoning ordinance as containing residential homes, mobile homes, and/or apartments.

All terminology used in this Ordinance and not specifically defined above shall retain its meaning in conformance with applicable publications of the American National Standards Institute (ANSI) or its successor body and/or the latest volume of the Webster’s Collegiate Dictionary.

**SECTION 10. PENALTY.**

An offense under this Ordinance is punishable by a fine not to exceed five hundred dollars (\$500.00). The penal provisions imposed under this Ordinance shall not preclude the City from filing suit to enjoin violation. The City retains all legal rights and remedies available to it pursuant to local, state and federal law.

**SECTION 11. SEVERABILITY.**

Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clause and phrase be declared unconstitutional or invalid.

**SECTION 12. SAVINGS.**

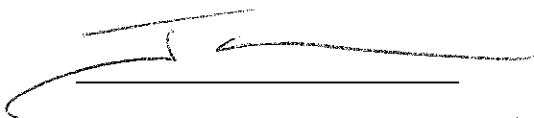
This Ordinance shall be cumulative of all other ordinances of the city and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of, and only to the extent, those ordinances are in direct conflict with the provisions of this Ordinance.

**SECTION 13. EFFECTIVE DATE.**

This ordinance shall become effective from and after its adoption and publication as required by law.

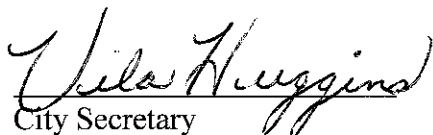
ADOPTED by the City Council of the City of Hackberry, Texas, on this the 10th day of March, 2009.

**APPROVED:**



Jeromy Cannon, Mayor

Attest:

  
City Secretary