

ORDINANCE NO. 094-089

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS AMENDING CHAPTER 10 (OFFENSES - MISCELLANEOUS) BY AMENDING SECTION 10-7 PROHIBITING CERTAIN UNREASONABLE NOISES BY DECLARING AS A PUBLIC NUISANCE THE GENERATION OR MAINTENANCE OF ANY LOUD AND RAUCOUS NOISE; PROVIDING DEFINITIONS; PROVIDING A LIST OF PROHIBITED NOISE ACTIVITIES WHICH CONSTITUTE A PUBLIC NUISANCE; PROVIDING CERTAIN EXEMPTIONS; PROVIDING FOR THE ISSUANCE OF A PERMIT FOR A MECHANICAL SOUND PRODUCING DEVICE, AND PROVIDING FOR THE RIGHT OF APPEAL; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Addison, Texas (the "City") is authorized and empowered to protect the public health, safety and welfare of its citizens, including the tranquility, quiet enjoyment, and well-being of the public and the community, and to protect from disruption the reasonable conduct of basic human activities such as conversation and sleep; and

WHEREAS, in order to so protect the community, the City Council desires to regulate the creation and maintenance of loud and raucous noises within the City, which sounds can be anticipated to offend the reasonable person or an individual of common sensibilities.

Now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

Section 1. Incorporation of premises. The above and foregoing premises are true and correct and are incorporated herein in their entirety.

Section 2. Amendment. Chapter 10 ("Offenses - Miscellaneous") of the Code of Ordinances of the Town of Addison, Texas (the "City") is hereby amended by amending Section 10-7 relating to unreasonable noises, and all other chapters, sections, paragraphs, sentences, phrases and words are not amended but are hereby ratified and affirmed:

A. Section 10-7 is hereby amended so that it shall hereafter read as follows (additions are in normal type; deletions are ~~struck through~~):

~~"Sec. 10-7. Noise. Unreasonable noise prohibited—In general.~~

A. Loud and Raucous Noise Prohibited. The generation or maintenance of any loud and raucous noise within the City limits is hereby declared to be a public nuisance. It shall be unlawful for any person to willfully make, continue,

or cause to be made or continued any loud and raucous noise, which term shall mean any sound which, because of its volume level, duration, and/or character, annoys, disturbs, injures or endangers the comfort, health, peace, or safety of reasonable persons of ordinary sensibilities within the City limits. The term "loud and raucous noise" shall include, but shall not be limited to, the kinds of noise generated by the activities enumerated in subsection B. of this Section 10-7, except as provided in subsection C hereof. The term shall be limited to loud and raucous noise heard upon the public streets, in any public park, in any school or public building, or upon the grounds thereof while in use, in any church, synagogue, or other place of worship, or hospital, or upon the grounds thereof while in use, in any parking lot open to members of the public as invitees or licensees, or in any occupied residential dwelling unit or upon the grounds thereof. The term is further limited to noise which is clearly audible at a distance of more than fifty (50) feet from the source of the noise, measured in a straight line from the noise source.

B. Prohibited Noise Activities. The following acts, as limited by subsection A. and subject to the exemptions of subsection C., are hereby declared to be public nuisances in violation of subsection A., but the acts enumerated in this subsection shall not be deemed to be exclusive:

1. The use or operation of any mechanical or electrical device, apparatus, or instrument to amplify, intensify, or reproduce the human voice, or to produce, reproduce, intensify, or amplify any other sound when the sound from such activity is clearly audible more than fifty (50) feet from the device, apparatus, or instrument.

2. The playing or operation of any radio, cassette tape player, compact disk player, or any other sound producing instrument, device, or apparatus installed or located in a motor vehicle when the speaker volume is elevated to such an extent that the sound is clearly audible more than fifty (50) feet from the vehicle. The provisions of this subsection shall apply regardless of whether the vehicle is traveling upon the streets of the City, parked on public or private property, or stopped in traffic.

3. The sounding of any horn or signal device on any automobile, motorcycle, bicycle, bus, or other vehicle, except as a danger signal, so as to create an unreasonably loud or harsh sound, or the sounding of such device for an unreasonable period of time, or the use of siren horns on bicycles, automobiles, or other vehicles except upon automobiles and other apparatus of the police and fire departments or upon authorized emergency service vehicles.

4. The playing of any radio, cassette tape player, compact disk player, phonograph, or mechanical or nonmechanical musical or sound producing instrument, during the hours between 11:00 p.m. and 7:00 a.m. on any day and

in such a manner or with such volume that the sound therefrom creates a loud and raucous noise.

5. The use of any automobile, motorcycle or vehicle so out of repair or so loaded, or in such manner or combination with other vehicles as to create by virtue of its grating, grinding, or rattling sound, a loud and raucous noise.

C. Exemptions. The following acts or activities are exempt from the provisions of this Section:

1. The use of a permanently installed loud speaker or public address system at athletic stadiums to announce athletic contests, provided such use does not take place between the hours of 11:00 p.m. and 7:00 a.m. on any day.

2. Musical chimes or the sounding of bells emanating from a public or religious institution or facility, provided the sound is less than fifteen (15) minutes in duration, occurs not more than five (5) times within any twenty-four hour period, and does not occur between the hours of 11:00 p.m. and 7:00 a.m. on any day.

3. Sounds emanating from any authorized emergency vehicle responding to an emergency or acting in the time of emergency.

4. Noise sources associated with or created by construction, repair, maintenance, remodeling, demolition, or grading of any real property, provided such activities do not take place between the hours of 10:00 p.m. and 7:00 a.m. on any day, except in the case of an urgent public necessity in the interest of public safety and convenience and for which an application for a permit has been issued for such use in accordance with subsection D. of this Section.

5. Noise emanating from any burglar alarm or security device on any building, dwelling, or vehicle, provided such noise terminates within thirty (30) minutes of being activated.

6. Any activity to the extent regulation thereof has been pre-empted by state or federal law.

7. The use of a sound producing or sound amplifying device, instrument, or apparatus for nonadvertising purposes when a permit has been issued for such use pursuant to subsection D., provided such activity is conducted in conformity with the permit.

8. The use or operation of any power lawnmowers or other lawn equipment or any equipment used for agricultural purposes or lawn maintenance, provided such use or operation does not take place or occur between the hours of 11:00 p.m. and 7:00 a.m. on any day.

9. The operation of any aircraft within the parameters and guidelines prescribed by the Federal Aviation Administration and the rules and regulations of the City.

10. The operation and conducting of any special events taking place within the City. The term "special events" shall mean events which are authorized by, approved by, or sponsored in whole or in part by the City and which events may result in noise from fireworks, bands, or sound systems, exhibiting aircraft, race cars, or other noise-producing mechanisms.

D. Permit for sound producing device.

1. Application. Each applicant for a permit to use or operate a sound producing device, instrument or apparatus within the City limits shall complete and sign an application on a form supplied by the City and file the same with the Chief of Police at least seven (7) days prior to the date upon which the sound producing equipment is to be used or operated. Where good cause is shown, or when the activity would involve significant political or religious features and therefore be entitled to enhanced deference or protection under the state or federal constitutions, the Chief of Police shall consider applications filed after the deadline. The application shall describe the sound producing equipment, state the specific location at which such sound producing equipment is to be used or operated, the day and the hour or hours during which it is proposed to be used or operated, and such other pertinent information as is necessary for the Chief of Police to carry out the Chief's duties under this Section. If the sound producing equipment is to be used or operated on private property, the owner of such property must consent in writing.

2. Issuance of Permit. The Chief of Police shall issue a permit for the use of the requested sound producing instrument, device, or apparatus to any applicant who complies with the provisions of this section unless the Chief finds in writing that one or more of the special restrictions specified in subsection 3. hereof apply, or unless the issuance of a permit for the time and location requested would overlap a previously applied for permit. Each permit issued pursuant to this section shall describe the specific location or locations at which such sound producing equipment may be used or operated thereunder, the period of time for which the sound producing equipment may be operated in such location, and shall specify such other terms and conditions as are essential to secure and protect the public safety. The person signing the application shall be required to be present at the time and place the sound producing equipment is operated or used and the permit shall be invalid unless in such person's possession.

3. Special Restrictions. The Chief of Police shall not issue any permit for the use of a sound producing instrument, device, or apparatus:

- (i) At any location within five hundred (500) feet of a school, courthouse, synagogue, church or other place of worship, during the hours of normal use of such school, courthouse, church, synagogue or other place of worship, respectively, or within five hundred (500) feet of any hospital, nursing home, or other institution caring for the sick, aged, or infirm;
- (ii) At any location where the Chief of Police, upon investigation, shall determine that the conditions of vehicular or pedestrian traffic or both are such that the use of a sound producing instrument, device or apparatus will constitute a threat to the safety of pedestrians or vehicle operators;
- (iii) At any location where the Chief of Police, upon investigation, shall determine that the conditions of overcrowding or of street repair or other physical conditions are such that the use of a sound producing instrument, device or apparatus will deprive the public of the reasonable right to safe and peaceful enjoyment of any public street, park, or other public place, or will constitute a threat to the safety of pedestrians or vehicle operators;
- (iv) For a period of continued use exceeding two (2) hours without a thirty (30) minute break, unless the Chief of Police, upon investigation, determines that a longer period of time will not annoy or disturb reasonable persons of ordinary sensibilities residing in the area;
- (v) In or on any vehicle or other device while it is in motion; or
- (vi) Between the hours of 11:00 p.m. and 7:00 a.m.

4. Alternate Permit. The Chief of Police, in denying any application as submitted under this subsection, may grant a permit for a date, time, or place different from that requested by applicant, or subject to different requirements or conditions than requested by an applicant. An applicant desiring to accept an alternate permit shall, within twenty-four (24) hours after notice of the action of the Chief of Police, file a written note of acceptance with the Chief of Police on a form supplied by the City.

5. Processing Time; Notice, Right of Appeal.

(a) Applications for permits to use a sound producing instrument, device or apparatus shall be processed and decisions made as expeditiously as possible, and in any event before 5:00 p.m. on the fifth business day following the day of receipt. If the application was submitted more than ten (10) days in advance of the event, the permit, alternate permit, or written notice of denial shall be mailed

to the applicant. If the application was submitted less than ten (10) days in advance of the event, the Police Department shall exercise reasonable diligence in attempting to notify the applicant of the action taken as soon as possible by telephone or other means.

(b) Any person aggrieved by action taken on a permit application may file a written notice of appeal, first with the City Manager or the Manager's designee and then with the City Council. The notice of appeal must be filed within seven (7) days from date notice of the action is received by the applicant, regardless of the means used to convey such notice. The City Manager or the Manager's designee shall act on the appeal as expeditiously as possible. The City Council shall hear any appeal taken from the decision of the City Manager or the Manager's designee at its next regularly scheduled meeting. In hearing any appeal, the City Manager or the City Council may reverse or affirm, wholly or in part, the action of the Chief of Police, or may grant an alternate permit for a date, time, or place different from that requested by the applicant or subject to different requirements or conditions than requested by an applicant. An alternate permit must be accepted in writing within twenty-four (24) hours after notice that it is available.

6. Revocation of permit. The Chief of Police may revoke any permit issued hereunder for the following reasons or causes:

- (a) the substantial violation of this Section or the terms and conditions of a permit; or
- (b) a material misstatement of any fact on the application for a permit.

7. Defense. If conduct that would otherwise violate this Section consists of speech or other communication, of gathering with others to hear or observe such speech or communication, or of gathering with others to picket or otherwise express in a nonviolent manner a position on social, economic, political, or religious questions, the actor must be ordered to move, disperse, or otherwise remedy the violation prior to the actor's arrest if the actor has not yet intentionally harmed the interests of other which this Section seeks to protect. Such an order may be given by a peace officer, a fireman, a person with authority to control the use of the premises, or an person directly affected by the violation. It is a defense to prosecution under this Section that:

- (a) in circumstances in which this subsection requires an order no order was given;
- (b) an order, if given, was manifestly unreasonable in scope; or
- (c) an order, if given, was promptly obeyed."


~~No person, corporation, partnership or any other entity shall make or cause to be made any unreasonably loud, disturbing and unnecessary 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, nor shall make or cause to be made any unreasonably loud, disturbing or unnecessary noise in the city. This section shall not apply to noise associated with special events taking place within the city. The term "special events" shall mean events which are authorized by, approved by, or sponsored in whole or in part by the city and which events may result in noise from fireworks, bands, or sound systems, exhibiting aircraft, race cars, or other noise-producing mechanisms.~~

Section 3. Savings. This Ordinance shall be cumulative of all other ordinances of the City affecting noise and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of those Ordinances are in direct conflict with the provisions of this Ordinance.

Section 4. Severability. The sections, paragraphs, sentences, phrases, clauses and words of this Ordinance are severable, and if any section, paragraph, sentence, phrase, clause or word in this Ordinance or application thereof to any person or circumstance is held invalid or unconstitutional by a Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance, and the City Council hereby declares that it would have passed such remaining portions of this Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

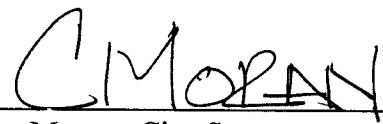
Section 5. Effective date. This Ordinance shall become effective from and after its date of passage as provided by law.

13th PASSED AND APPROVED by the City Council of the Town of Addison, Texas this the DECEMBER day of 1994.



Rich Beckert, Mayor

ATTEST:



Carmen Moran, City Secretary

[SEAL]

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APPROVED AS TO FORM:

Ken Dippel, City Attorney

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