

CITY OF EVERMAN, TEXAS

ORDINANCE NO. 810

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF EVERMAN, TEXAS, CHAPTER 10 “HEALTH, SAFETY AND NUISANCES”, ARTICLE V “NOISE”, BY AMENDING SECTIONS 10-91 AND 10-92; PROVIDING FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, City staff has recommended amendment of the City’s noise regulations to remove references to decibel or sound pressure levels as an aid to enforcement; and

WHEREAS, the City Council of the City of Everman, Texas, has determined that it is in the best interest of the City and serves the general welfare of the citizens to amend the Code of Ordinances to remove references to decibel or sound pressure levels from the City’s noise ordinance;

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

SECTION 1: That the Code of Ordinances of the City of Everman, Texas is hereby amended at Chapter 10 “Health, Safety and Nuisances”, Article V, “Noise”, by amending Sections 10-91 “Definitions” and 10-92 “Offenses; nuisance declared” to read in their entirety as follows:

“CHAPTER 10 HEALTH, SAFETY AND NUISANCES

...

ARTICLE V NOISE

Sec. 10-91. – Definitions.

Clearly audible means sound that can be heard without the assistance of any device.

Commercial means *property* used for purposes other than residential or agricultural regardless of whether the property has a commercial zoning designation.

Construction means any phase of the on-site erection or removal, including, but not limited to, excavation, demolition, alteration or repair of any building or structure conducted on that site.

Daytime means the hours from 7:00 a.m. to 9:00 p.m.

Director means the director of the city department of public safety or the director's authorized representative.

Governmental entity means any department, board, committee, or unit of the school districts within the city, the city municipal government, or the state or the federal government, including but not limited to the school board, joint-use committee, city council, planning and zoning commission, park board, and city departments.

Immediate vicinity means any distance within one hundred (100) feet of the noise source, or any area within the property line of the parcel or lot upon which the source of noise is emanating, whichever is the greater distance from the noise source.

Nighttime means the hours from 9:00 p.m. until 7:00 a.m.

Noise means any sound which annoys or disturbs humans of reasonable sensibilities, or which causes or tends to cause an adverse psychological or physiological effect on humans.

Person means any individual, corporation, business or other entity.

Repetitive incident of noise means a recurrence of any sound from the same source which repeats itself three (3) or more times per day, whether at routine cyclical periods or random periods.

Residential means any property used for temporary or permanent dwelling purposes.

Sec. 10-92. – Offenses; nuisance declared.

- (a) *Noise and vibration nuisance.* A person shall not create, assist in creating, permit or continue any excessive or unnecessary noise or vibration of a volume, intensity, or duration that unreasonably disturbs, annoys, or endangers the calm, comfort, quiet, repose, health, peace or safety of persons of ordinary sensibilities. Such noise or vibration shall be a violation of this Article and is hereby declared a nuisance.
- (b) *Prima facie violation.* The following acts of noise or vibration are prima facie evidence of a violation of this article:
 - (1) Permitting an unreasonably loud, harsh, or prolonged sounding of any horn, alarm, or other signal device on any vehicle, unless:
 - a. Necessary to ensure safe operation as authorized by state law; or
 - b. Caused by mechanical failure beyond the operator's control and the operator takes all reasonable measures to stop the noise made by the horn, alarm, or other device.

(2) Playing or use of any sound producing or amplifying device, speaker, or instrument, including a musical instrument, in such a manner or in such loud volume or intensity, at any time or place, so as to disturb, destroy, or endanger the peace, comfort, repose, or rest of persons of ordinary sensibilities.

(3) Creating a loud noise or disturbance in or with a motor vehicle or any appurtenance to such vehicle, including without limitation, a bed, trailer, or other equipment connected in any manner to the vehicle, so as to disturb, destroy, endanger the peace, comfort, repose or rest of persons of ordinary sensibilities beyond the immediate vicinity of the source of the noise when such noise exceeds the dBA levels shown in Table 1, herein below.

(4) Operating a motor vehicle that is not equipped with a muffler in good working order and in use at all times.

(5) Using any mechanical device operated by compressed air, unless the noise is effectively muffled and reduced to levels that do not disturb, destroy, or endanger the peace, comfort, repose, or rest of persons of ordinary sensibilities.

(6) Permitting any loud, harsh, or prolonged sounding of any burglar or fire alarm or other distress signal on any dwelling, commercial building, or other premises, unless:

a. Authorized by law; or

b. Caused by mechanical failure beyond the operator's control and the operator takes all reasonable measures to stop the noise made by the alarm or other device.

(7) Operating any heavy equipment, machinery or apparatus used in any exterior or outdoor construction, repair, remodeling, demolition, drilling, excavation, grading, earth moving, paving, cement laying or pouring, or other work of any nature during the nighttime or anytime on Sunday within one thousand (1,000) feet of any residential property, unless otherwise indicated in the exceptions set forth in section 10-94.

(8) Creating any loud or raucous noise or vibration within one thousand (1,000) lineal feet of any school building or court that is in session or adjacent to any hospital building or similar care facility, provided that conspicuous signs located on the premises identify the premises.

(9) Operating, as a part of any business, any equipment or machinery, including, but not limited to, combustion engines, fans, blowers, grinders, welders, loaders, washers, winches, lifts, and hoists, whether independent or attached to a motor vehicle, during the nighttime within one thousand (1,000) lineal feet of any residential

dwelling, unless otherwise indicated in the exceptions set forth in the exceptions set forth in section 10-94.

(10) Discharging into the open air the exhaust of any steam engine, stationary internal combustion engine, or motor vehicle engine or boat engine, except through a muffler or other device which will effectively prevent loud or explosive noises or vibrations.

(11) Conducting any commercial or industrial trash or waste pickup within one thousand (1,000) lineal feet of any residential dwelling during the nighttime.

(12) The continuous barking, howling, crowing or other loud noises by an animal for more than fifteen (15) minutes near a private residence that the animal's owner or person in control of the animal has no right to occupy, unless otherwise indicated in the exceptions set forth in section 10-94.

(13) Loud grating, grinding, banging, rattling, back-firing noises or vibrations caused by the use of any automobile, motorcycle or other vehicle that is out of repair or poorly or improperly loaded.

(14) The shouting and crying or peddlers and vendors, or the use of any drum, musical instrument, loud speakers or sound amplifying equipment, for the purpose of advertising or attracting attention by the creation of noise, without first obtaining a permit pursuant to section 10-95.

(15) The operation of sound equipment, including a car stereo, in a motor vehicle in such a manner that the noise is so audible or causes such a vibration as to unreasonably disturb the peace, quiet, or comfort of persons of ordinary sensibilities.

(16) Any offense as set forth in Texas Penal Code, Section 42.01(a)(5).”

SECTION 2: All ordinances, orders, or resolutions heretofore pass and adopted by the City Council of the City of Everman, Tarrant County, Texas are hereby repealed to the extent that said ordinances, orders, or resolutions, or parts thereof, are in conflict herewith.

SECTION 3: Should any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance, which shall remain in full force and effect.

SECTION 5. This ordinance shall be effective from and after its passage.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Everman, Tarrant County, Texas this the 5th day of March, 2024.

APPROVED:

Ray Richardson, Mayor

ATTEST:

APPROVED AS TO FORM:

Mindi Parks, City Secretary

Lan'Tiqua Burks, Asst. City Attorney
4860-8808-9769, v. 1