

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF IOWA COLONY, TEXAS FOR THE PURPOSE OF REGULATING NOISE; PROVIDING OFFENSES AND PENALTIES UP TO \$500.00 PER VIOLATIONS; PROHIBITIONS OF NOISE, PROVIDING MAXIMUM SOUND LEVELS, DEFENSES, METHODS OF MEASUREMENT, PERMITS, OTHER REGULATIONS, AND RELATED PROVISIONS

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

SECTION 1. Findings of Fact

That the City Council of the City of Iowa Colony, Texas (“the City”) hereby finds that the following facts and all other facts stated in any part of this ordinance are true:

- a. This ordinance promotes the public health, safety, and general welfare of the people of Iowa Colony.
- b. A violation of this ordinance is a public nuisance.
- c. A violation of this ordinance is a danger to public health.
- d. This ordinance is authorized by Section 217.042 of the Texas Local Government Code, the Home Rule Charter of the City, and all applicable law.

SECTION 2. Definitions

That the following words, terms and phrases, when used in this ordinance, shall have the meanings ascribed to them in this section, unless the context of their usage clearly indicates another meaning:

Daytime hours mean the hours between 7:00 a.m. on one day and 9:00 p.m. the same day.

dB(A) means the intensity of a sound expressed in decibels.

Emergency means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage or loss that demands immediate action.

Emergency work means any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency, or which is otherwise necessary to restore property to a safe condition following a fire, accident, or natural disaster, or which is required to protect persons or property from exposure to danger, or which is required to restore public utilities.

Engine Breaking, commonly known as Jake-Braking, means the use or operation of any mechanical exhaust device designed to aid in the braking, decompression, or deceleration of any motor vehicle which results in the excessive, loud, unusual, or explosive noise from such vehicle.

Nighttime hours mean the hours between 9:00 p.m. on one day and 7:00 a.m. the following day.

Person means any individual, association, partnership, or corporation, governmental unit, or other legal entity.

Property line means the line along the ground surface, and its vertical extension, which separates the real property owned, leased, or occupied by one person from that owned, leased, or occupied by another person and the imaginary line which represents the legal limits of property of any person who owns, leases, or otherwise occupies an apartment, condominium, hotel or motel room, office, or any other type of occupancy.

Public right-of-way means any street, avenue, boulevard, highway, road, thoroughfare, sidewalk, alley, or any other property that is owned or controlled by a governmental entity.

Residential property means any location used for noncommercial purposes as a place of abode by any person.

Sound means any pressure variation that can be detected by the human ear.

Sound amplifying equipment means any machine or device for the amplification of the human voice, music, or other.

Vibration means an oscillatory motion of solid bodies described by displacement, velocity or acceleration.

SECTION 3. Prohibitions

(a) That it shall be unlawful for any person to make, cause, assist, or allow the making or continuance of any sound that either exceeds the maximum permitted sound levels specified in this ordinance or which otherwise unreasonably disturbs, causes material distress, injures or endangers the comfort, repose, health, peace or safety, that is offensive to the sensibilities of a reasonable and prudent person within the city limits, or to make an unreasonable noise in a public place other than a sport shooting range, as defined by Section [250.001](#), Local Government Code, or in or near a private residence that the person has no right to occupy; or otherwise violates this ordinance.

(b) That it shall be unlawful for the driver of any motor vehicle to use, or to operate or to cause to be used or operated, at any time and on any street or road over which the city has jurisdiction, any mechanical exhaust or decompression device which results in the practice known as “engine-braking” or commonly known as “jake-braking”.

That the provisions of this section shall not apply to the application of unmuffled compression brakes where necessary for the protection of persons and/or property which cannot be avoided by application of an alternative braking system. Noise caused by the application of engine compression brakes, otherwise known as “engine-braking” and commonly known as “jake-braking” which is effectively muffled or if the application is necessary for the health, safety, and welfare of the community is exempt from the provisions of this section.

That the City is hereby authorized and directed to post, at reasonable locations within the city, signs indicating the prohibition of “engine-braking” and/or “jake-braking”.

(c) That it shall be unlawful for any person to use or operate, or cause to be used or operated, any mechanical or electrical device, machine, apparatus or instrument to intensify, amplify, or reproduce the human voice or to produce, reproduce, intensify or amplify any sound in any building

or on any premises of the city for any purpose whereby the sound therefrom is cast directly upon the public streets or places, or which is so placed or operated that the sound coming therefrom can be heard on the streets or on neighboring premises to the annoyance or inconvenience of a reasonable person having normal sensibilities, and being of ordinary tastes, habits and modes of living.

(d) That in determining whether a violation of this ordinance occurs, the following may be considered:

1. The level, frequency or duration of the noise;
2. The proximity of the noise to the dwelling or business;
3. The nature and zoning of the area within which the noise occurs;
4. The time of day or night the noise occurs.

That nothing in this ordinance shall require a complaint as a condition of a violation.

(e) That any noise that by its character, intensity, or duration, whether by one of those factors or by more than one in combination, either: (1) substantially interferes with the peaceful and comfortable enjoyment of a private home, business, or property by a person of ordinary sensibilities; or (2) otherwise violates this ordinance; is hereby declared to be a nuisance and is hereby prohibited. The following acts, among others, are declared to be examples of loud, disturbing, and unnecessary noises that shall be prima facie evidence in violation of this section and shall not require measurement or proof of a dB(A) in order to establish a violation unless the specific provision requires a maximum dB(A):

(1) *Horns or other signaling devices.* The sounding of any horn or signaling device on any automobile or other vehicle on any street or public place of the city, except as a danger warning; the creation by means of any such signaling device of any unreasonably loud or harsh sound; and the sounding of any such device for an unnecessary and unreasonable period of time.

(2) *Exhausts.* The discharge into the open air of the exhaust of any internal combustion engine, other engine, or motor vehicle except through a muffler or other device that effectively prevents loud or explosive noise from that source.

(3) *Defect in vehicle or load.* The use of any automobile or other vehicle so out of repair, loaded, modified, or used as to create loud grating, grinding, rattling, or other noise.

(4) *Noise near schools, courts, churches, or hospitals.* The creation of any excessive noise on any street adjacent to any school, church, or court while in use, or adjacent to any hospital, which unlawfully interferes with the workings of such institution, or which unreasonably disturbs or unduly annoys patients in the hospital, provided conspicuous signs are displayed in adjoining streets to indicate the presence of a school, church, hospital or court.

(5) *Pile drivers, hammers and other machinery.* The operation between the hours of 9:00 p.m. and 7:00 a.m. of any pile driver, excavator, earth moving equipment, powered hammer, derrick or other appliance or machinery that produces loud or unusual noise.

(6) *Vehicular sound systems.* Any radio or other device made, adapted, or used to produce or play music or other sound, which device is connected to, located in, or located on a motor vehicle, and which device is operated at a volume that causes material distress, discomfort, or injury to a person of ordinary sensibilities in the vicinity thereof. If the sound is audible at a distance of

thirty (30) feet from the source or causes a person to be aware of or feel the vibration accompanying the sound at a distance of thirty (30) feet from the source, a prima facie case is established that the device is being operated at a volume that causes material distress, discomfort, or injury to a person of ordinary sensibilities.

SECTION 4. Agricultural Operations

That this ordinance does not apply to an agricultural operation to the extent the operation is protected by Texas Agriculture Code chapter 251.

SECTION 5. Maximum Sound Levels

(a) That no person shall conduct, assist, allow, or cause any activity or sound source that produces a noise that exceeds any one or more of the following decibel levels:

- (1) a decibel level of 85dB(A) during daytime hours;
- (2) a decibel level of 65 dB(A) during nighttime hours.

(b) That the dB(A) levels set forth in this section apply to the property where the sound is being received. Any sound that when measured at the property where the sound is being received exceeds the dB(A) levels set forth in this section is a violation of this ordinance.

(c) That the evidence that an activity or sound source produces a sound that exceeds the dB(A) levels specified in this section, when measured at the site where the sound is being received, if available, shall be prima facie evidence that the sound is unreasonable, is a nuisance, and violates this ordinance.

SECTION 6. Defenses

That the following defenses shall apply to any offense established in this ordinance:

(a) That the emission of the sound was for the purpose of alerting persons to the existence of an emergency, danger, or attempted crime.

(b) That the sound was produced by an authorized emergency vehicle.

(c) That the sound was produced by emergency work as herein defined.

(d) That the sound was generated:

(1) At a lawfully scheduled stadium event, and the sound was normal and customary for that type of event;

(2) By a permitted parade and spectators or participants on the parade route during that parade, and the sound was normal and customary for that type of event;

(3) By spectators or participants at a lawfully scheduled amphitheater event, and the sound was normal and customary for that type of event;

(4) By patrons and participants using cannons and gunfire during historical battle reenactments or by a pyrotechnic display for which a pyrotechnic permit was obtained, and for which the explosives were inspected by the fire marshal;

(5) By spectators or participants of any outdoor event, fun run, race, festival, fiesta, or concert that was sponsored, cosponsored, or permitted by the city, and the sound was normal and customary for that type of event; or

(6) By any other otherwise lawful activity that constitutes protected expression pursuant to the First Amendment of the United States Constitution.

(e) The sound was produced by aircraft in flight or in operation at an airport, or by railroad equipment in operation on railroad rights-of-way.

(f) The sound was produced by a type of power equipment such as a mechanically powered saw, drill, sander, router, grinder, lawn or garden tool, lawnmower, or any other similar device used between the hours of 7:00 a.m. and 9:00 p.m., and which device did not produce a sound exceeding 85 dB(A) when measured from the nearest residential property where the sound is being received, and which device was being used for the maintenance or upkeep of the property on which it was used.

(g) The sound was generated as authorized under the terms of a permit issued under **section 8**.

(h) The sound was produced by the operation of any air conditioning unit that did not produce a sound exceeding 65 dB(A) when measured at least 15 feet from that air conditioning unit.

(i) The sound was produced by church bells or church chimes, when used as part of a genuine religious observance or service during daytime hours, and which did not exceed five continuous minutes in duration in any one-hour period.

SECTION 7. Methods of Sound Measurement

(a) That whenever portions of this ordinance prohibit sound over a certain decibel limit, measurement of that sound shall be made with a Type 1 or Type 2 calibrated sound level meter utilizing the A-weighting seals and the slow meter response as specified by the American National Standards Institute (ANSI S1.4-1984/85A).

(b) That noise levels shall be measured in decibels and A-weighted. The unit of measurement shall be designated as dB(A). Meters shall be maintained in calibration and good working order. Calibrations shall be employed which meet ANSI S1.40-1984 prior to and immediately after every sampling of sound. Measurements recorded shall be taken so as to provide a proper representation of the sound being measured. The microphone of said meter shall be positioned so as not to create any unnatural enhancement or diminution of the measured sound. A windscreen for said microphone shall be used. Measurements shall be taken at or near the nearest property line of the property where the sound is being received.

(c) That however, regardless of any other provision, nothing in this ordinance shall require measurement or proof of a decibel level in order to establish a violation of any provision of this ordinance that is not stated in terms of a specific maximum number of decibels allowed.

SECTION 8. Permits

(a) That no person shall use or cause to be used any loudspeaker, loudspeaker system, sound amplifier, or any other machine or device that produces, reproduces, or amplifies sound outside

of buildings or other enclosed structures in a manner that violates this ordinance, without first obtaining a permit to do so.

(1) Such permit may be obtained by making application to the director of the city department so designated by the city manager.

(2) Such permit requires payment of a \$20.00 fee for the administrative costs of issuing the permit.

(3) Such permit is valid for one period not to exceed 14 hours and not between the hours of 9:00 p.m. and 7:00 a.m.

(4) Such permit shall not be issued for the same location more than twice during any 30-day period.

(5) Such permit shall not authorize, allow, or otherwise permit the production, reproduction, or amplification of sound that exceeds 75 dB(A) when measured from the nearest receiving property.

(b) That the use of any loudspeaker, loudspeaker system, sound amplifier, or any other similar machine or device pursuant to a permit under this ordinance is subject to the following regulations:

(1) The only sound permitted shall be music and human speech.

(2) The volume of the sound amplified pursuant to this section shall not exceed 75 dB(A) when measured from the nearest receiving property.

(3) No equipment permitted pursuant to this section shall be operated during the hours between 9:00 p.m. and 7:00 a.m.

(c) The application for the permit under this section shall contain the following information:

(1) The date of the application and the date and hours for which the permit is requested.

(2) The name and address of the applicant.

(3) The name and address of the person who will have charge of the sound amplifying equipment at the permitted event.

(4) The purpose for which the sound equipment will be used.

(5) The address and a description of the location where the sound equipment will be used.

(6) A description of the type of sound amplifying equipment to be used.

(7) Any other information reasonably pertinent to the permit and requested by the city official administering the permit application.

(d) That if an applicant for a permit under this section is unable to pay the full amount of the permit fee pursuant to **subsection (a)** of this section, then the fee shall be reduced to that amount the applicant is able to pay, provided the applicant submits a sworn affidavit containing the following information:

(1) A statement that the applicant and the group or organization on whose behalf the applicant is making the application are unable to pay the full amount of the permit fee.

(2) A statement that the applicant and the group or organization on whose behalf the applicant is making the application have made diligent efforts to raise money to pay the permit fee.

(3) A statement of the exact amount the applicant and the group or organization, on whose behalf he is making the application are able to pay for the permit fee.

SECTION 9. Conflicts in Terms

That in the event of a conflict of terms between this ordinance and any other ordinance or other law, the more restrictive provision shall govern and control.

SECTION 10. Offenses, Penalties, and Remedies

(a) That any references in this Ordinance to “the penalty provisions of this Ordinance” or similar phrases shall refer to this section and the penalties herein.

(b) That any person who intentionally, knowingly, recklessly, or with criminal negligence violates any provision of this Ordinance shall be guilty of a misdemeanor and upon conviction shall be fined in an amount not to exceed \$500.00. Each calendar day or portion of a calendar day a violation continues, occurs, or recurs shall constitute a separate offense.

(c) That the City shall have the right to enforce this ordinance and the Codes hereby adopted by injunction and by other actions in a civil court and/or by any and all remedies from any and all sources.

(d) That all rights and remedies of the City provided in this ordinance shall be cumulative of all other rights and remedies provided herein, by other ordinances, or by any applicable law. Furthermore, the exercise of one right or remedy by the City shall not be construed as an election of remedies and shall not impair any other right or remedy of the City. The City may exercise any right or remedy herein either alone or together with any other right or remedy under this ordinance, any other ordinance, or any applicable law. Without limiting the generality of the foregoing, pursuing or receiving any civil remedy for any violation of this ordinance shall not preclude the pursuit or receipt of any criminal penalty for any violation hereof.

SECTION 11. Nonwaiver

That the failure or omission of the City, upon one or more occasions, to enforce any right, obligation, or remedy under this Ordinance or any other law concerning utilities shall never be construed as a waiver of the City’s right to strictly enforce such right, obligation, or remedy, and the City may resume such strict enforcement without advance notice.

SECTION 12. Nonwaiver of Immunity

That nothing in this Ordinance or in any other law concerning utilities shall ever be construed as a full or partial waiver of governmental immunity, official immunity, or any other immunity of the City or its officers, agents, employees, or representatives.

SECTION 13. Nonliability

That neither the City, nor its officers, employees, agents, or representatives shall be liable to any person, other than the City, for any act, omission, or condition in any way concerning this ordinance or the subject matter hereof.

Sec. 14. Severance Clause

That if any portion, of any size, of this ordinance is for any reason invalid, then the remainder of this ordinance shall remain valid.

Sec. 15. Effective Date

That this ordinance shall be effective upon passage, approval, and adoption.

PASSED AND APPROVED ON FIRST READING ON JULY 17, 2023.

PASSED, APPROVED, AND ADOPTED on second and final reading on _____.

CITY OF IOWA COLONY, TEXAS

**By: _____
WIL KENNEDY, MAYOR**

ATTEST:

**_____
KAYLEEN ROSSER, CITY SECRETARY**

Iowa/Ordinance/Regulating Noise (July 17, 2023)