

AN ORDINANCE OF THE TOWN OF PROSPER, TEXAS, REPEALING EXISTING SECTION 12.01.003, "ENGINE (JAKE) BRAKES," OF ARTICLE 12.01, "GENERAL PROVISIONS," OF CHAPTER 12, "TRAFFIC AND VEHICLES," AND REPLACING IT WITH A NEW SECTION 12.01.003, "ENGINE (JAKE) BRAKES"; AMENDING ARTICLE 12.01, "GENERAL PROVISIONS," OF CHAPTER 12, "TRAFFIC AND VEHICLES," BY ADDING A NEW SECTION 12.01.004, "MOTOR VEHICLE IDLING"; MAKING FINDINGS; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATION OF THIS ORDINANCE; PROVIDING FOR THE PUBLICATION OF THE CAPTION OF THIS ORDINANCE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Prosper, Texas ("Town"), is a Texas home-rule municipal corporation possessing the full power of local self-government, pursuant to Article XI, Section 5 of the Texas Constitution, Section 51.072 of Texas Local Government Code and its Home Rule Charter; and

WHEREAS, the Town desires to amend its engine (jake) brake ordinance to update its provisions; and

WHEREAS, the Town also desires to address motor vehicle idling in the Town to limit emissions as well as reduce the noise associated with motor vehicle idling; and

WHEREAS, the U.S. Environmental Protection Agency ("EPA") and the Texas Commission on Environmental Quality ("TCEQ") jointly have considered emission reductions to control air pollution from motor vehicles, and the Texas Legislature has created the Texas Clean Air Act ("Act"), found in the Texas Government Code and which addresses that purpose; and

WHEREAS, Section 382.113 of the Act provides authority for municipalities to enact and enforce local laws and ordinances for the control and abatement of air pollution; and

WHEREAS, Locally Enforced Idling Restrictions is a Voluntary Mobile Source Emissions Reduction Program commitment in the Dallas-Fort Worth 8-Hour Ozone Attainment Demonstration State Implementation Plan ("SIP"); and

WHEREAS, the Town Council finds that the adoption of this Ordinance serves a public purpose, and protects the health, safety, and welfare of the citizens of the Town of Prosper by further limiting the pollution created by motor vehicles unnecessarily idling within the Town's jurisdiction.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, THAT:

SECTION 1

All of the above premises are found to be true and correct and are incorporated into the body of this Ordinance as if copied in their entirety.

SECTION 2

Existing Section 12.01.003, "Engine (Jake) Brakes," of Article 12.01, "General Provisions," of Chapter 12, "Traffic and Vehicles," of the Code of Ordinances of the Town of Prosper, Texas, is hereby repealed in its entirety and replaced with a new Section 12.01, 003, "Engine (Jake) Brakes," to read as follows:

"§ 12.01.003. Engine (Jake) Brakes.

- (a) Definitions. For purposes of this section, the terms below shall have the following meanings:
- (1) Engine brake. Any device used to slow a vehicle by slowing the engine, which is also commonly called, among other names, engine brake, compression brake, jake brake and dynamic brake, regardless of the manufacturer.
 - (2) Vehicle. A device that can be used to transport or draw persons and/or property on a highway or street, including but not limited to a car, truck, trailer, truck-tractor, semitruck, tractor-trailer, 18-wheeler or motorcycle.
- (b) Unlawful use; offense established; nuisance established. It shall be unlawful for the driver of any vehicle to use or operate or cause to be used or operated within the town limits, as they may presently or in the future exist, any engine brake. A person commits an offense by violating any provision of this section. The use of an engine break is hereby declared to be a nuisance.
- (c) Signs. The Town Manager or designee shall be responsible for installing signs and/or markings to properly notify the public that the use of engine brakes is prohibited within the Town, and/or the Town Manager or designee shall cooperate with and assist the Texas Department of Transportation in installing such signs and/or markings.
- (d) Enforcement. The police chief, or his/her authorized representative, is authorized to issue citations to any driver or owner of a vehicle who has violated this section. The town shall not be responsible or liable for any damage to any vehicle or personal property caused by the prohibition on the use of engine brakes pursuant to this section and shall not be responsible for any damage resulting from the failure to exercise the authority granted under this section.
- (e) Defense established. It shall be a defense to prosecution for an offense established by this section if the use of engine brakes was necessary to avoid imminent danger to persons or property."

SECTION 3

Article 12.01, "General Provisions," of Chapter 12, "Traffic and Vehicles," of the Code of Ordinances of the Town of Prosper, Texas, is hereby amended by adding a new Section 12.01.004, "Motor Vehicle Idling," to read as follows:

"12.01.004. Motor Vehicle Idling.

- (a) *Definitions.* In this section:
- (1) *Commercial passenger transportation* means a mode of transportation provided by a bus or motor coach designed to accommodate more than ten (10) passengers (including the operator) for compensation and that is powered by a primary propulsion engine, but specifically excluding the modes of railroad, light rail, or taxicabs.
 - (2) *Idle* means the operation of an engine in the operating mode where:
 - (a) The engine is not engaged in gear;
 - (b) The engine operates at a speed at the revolutions per minute specified by the engine or vehicle manufacturer for when the accelerator is fully released; and
 - (c) There is no load on the engine.
 - (3) *Mechanical operations* means the use of electrical tools or equipment in construction, maintenance, or repair of facilities.
 - (4) *Passenger transit operations* means a regional mode of public transportation that is funded through a portion of sales tax for the region being served.
 - (5) *Primary propulsion engine* means a gasoline or diesel-fueled internal combustion engine that:
 - (*) Is attached to a motor vehicle; and
 - (b) Provides the power to propel the motor vehicle into motion and maintain motion.
- (b) *Idling prohibited.* A person commits an offense if he causes, suffers, allows, or permits the primary propulsion engine of a motor vehicle to idle for more than five (5) consecutive minutes when the motor vehicle is not in motion.
- (c) *Defenses.* It is a defense to prosecution under this section that:
- (1) The motor vehicle has a gross vehicle weight rating of fourteen thousand (14,000) pounds or less;
 - (2) The motor vehicle is greater than fourteen thousand (14,000) pounds and is equipped with a 2008 or subsequent model year heavy-duty diesel engine or liquefied or compressed natural gas engine that has been certified by the United States Environmental Protection Agency or another state environmental agency to emit no more than thirty (30) grams of nitrogen oxides emissions per hour when idling;
 - (3) The motor vehicle was forced to remain motionless because of traffic conditions over which the operator had no control;

- (4) The motor vehicle was being used by the United States Military, National Guard, or Reserve Forces, the Town or as an emergency or law enforcement motor vehicle;
 - (5) The primary propulsion engine of the motor vehicle was providing a power source necessary for a mechanical operation of the vehicle, other than propulsion or passenger compartment heating or air conditioning;
 - (6) The primary propulsion engine of a motor vehicle was being operated:
 - (A) For maintenance or diagnostic purposes;
 - (B) To defrost a windshield;
 - (C) To provide air conditioning or heating necessary for the health and safety of employees in an armored vehicle while the employee remains inside the vehicle to guard the contents or while the vehicle is being loaded or unloaded;
 - (D) To provide air conditioning or heating necessary for the health and safety of an employee who is using the vehicle to perform an essential job function related to roadway construction or maintenance;
 - (E) To provide heat or air conditioning necessary for passenger comfort or safety in vehicles intended for commercial or public passenger transportation, or passenger transit operations, in which case idling up to a maximum of thirty (30) minutes is allowed.
 - (7) The person charged with the offense was the owner of a motor vehicle that had been rented or leased to the person operating the vehicle at the time of the offense, if the vehicle operator was not employed by the vehicle owner; or
 - (8) A motor vehicle when idling is necessary to power a heater or air conditioner while a driver is using the vehicle's sleeper berth for a government-mandated rest period and is not within two (2) miles of a facility offering external heating and air conditioning connections at a time when those connections are available.
- (d) *Penalties.*
- (1) An offense under this section is punishable by a fine not to exceed five hundred dollars (\$500.00). Each instance of a violation of this section is a separate offense.
 - (2) Prosecution for an offense under this section does not preclude the use of other enforcement remedies or procedures that may be available to the Town.
- (e) *Application of TCEQ Rules.* The Town Council hereby adopts the Texas Commission on Environmental Quality (TCEQ) Idling Limitations Rule as published in the Texas Administrative Code, Title 30, Part 1, chapter 114, Subchapter J, Operational Controls for Motor Vehicles, Division 2, Locally Enforced Motor Vehicle Idling Limitation, as amended, and the Town Council approves the adoption and implementation of the TCEQ Idling Limitation Rule by reference. The provisions of the state rules are included

in the remainder of this article, but where there is a conflict between the state rule and any provision of this article, the state rules shall prevail.”

SECTION 4

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 Town 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, clauses and phrases be declared unconstitutional or invalid.

SECTION 5

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

DULY PASSED, APPROVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, ON THIS 12TH DAY OF NOVEMBER, 2024.

David F. Bristol, Mayor

ATTEST:

Michelle Lewis Sirianni, Town Secretary

APPROVED AS TO FORM AND LEGALITY:

Terrence S. Welch, Town Attorney