

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, AMENDING SECTION 8.02.002, "PROHIBITED," OF ARTICLE 8.02, "NUISANCES," OF CHAPTER 8, "OFFENSES AND NUISANCES," OF THE TOWN'S CODE OF ORDINANCES BY ADDING A PROVISION THAT AN AREA WITHIN 5,000 FEET OF THE TOWN'S CORPORATE LIMITS MAY BE SUBJECT TO REGULATION; REPEALING EXISTING ARTICLE 8.06 "NOISE CONTROL," OF CHAPTER 8, "OFFENSES AND NUISANCES," OF THE TOWN'S CODE OF ORDINANCES IN ITS ENTIRETY AND REPLACING IT WITH A NEW ARTICLE 8.06, "NOISE CONTROL," BY UPDATING PROVISIONS THEREOF TO BE IN ACCORD WITH RECENT JUDICIAL INTERPRETATIONS; MAKING FINDINGS; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR REPEALING, SAVINGS, AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.**

**WHEREAS**, the Town of Prosper, Texas ("Town"), is a home-rule municipality under the laws of the State of Texas and is duly incorporated; and

**WHEREAS**, the Town possesses the full power of self-government, as authorized by the Texas Constitution and the Town's duly adopted Charter; and

**WHEREAS**, as an additional means to address noise-related complaints, it is necessary to amend the Town's current noise ordinance and nuisance provisions as set forth in this Ordinance; and

**WHEREAS**, pursuant to Texas Local Government Code Section 217.022, the governing body of a municipality may undertake measures to address any nuisance within the limits of the municipality; and

**WHEREAS**, the Town, as a home-rule municipality, pursuant to Texas Local Government Code Section 217.042, may define and prohibit any nuisance within the limits of the municipality and within five thousand feet (5,000') outside the corporate limits of the municipality and further, may enforce all ordinances necessary to prevent and summarily abate and remove a declared nuisance; and

**WHEREAS**, the Town Council has determined that this Ordinance is in the best interests of the Town and the health, safety and welfare of its residents.

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

**SECTION 1**

The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

## SECTION 2

From and after the effective date of this Ordinance, Section 8.02.02, "Prohibited," of Article 8.02, "Nuisances," of Chapter 8, "Offenses and Nuisances," of the Town's Code of Ordinances is hereby amended to read as follows:

### **"§ 8.02.002. Prohibited.**

No nuisance shall be created, maintained, or allowed to exist anywhere within the town limits. Unless specifically stated otherwise, any nuisance as defined within this Chapter is hereby declared a nuisance if it exists within the corporate limits of the town or within 5,000 feet of such limits. It shall further be unlawful for a person who owns, manages, or controls a property to allow such property to be used in a manner that violates this section."

## SECTION 3

From and after the effective date of this Ordinance, existing Article 8.06, "Noise Control," of Chapter 8, "Offenses and Nuisances," of the Town's Code of Ordinances is hereby repealed in its entirety and replaced with a new Article 8.06, "Noise Control," to read as follows:

### **"§ 8.06.001. Purpose/findings incorporated.**

The purpose of this article is to make it unlawful for any person or entity to make, cause to be made, or allow any unreasonably loud and disturbing noise of such a character, intensity and duration as to be detrimental or offensive to the ordinary sensibilities of the citizens of the town and/or which renders the enjoyment of life, health or property uncomfortable or interferes with the public peace and comfort.

### **§ 8.06.002. Compliance by contractors and proposed developments.**

It is the policy of the town that all contractors and subcontractors be included as those required to comply with the provisions and intent of this article in their operations.

### **§ 8.06.003. Town contracts to be conditioned upon compliance.**

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

### **§ 8.06.004. Definitions.**

(a) For the purposes of this article, the following words have the meanings hereinafter designated:

Construction means 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.

Demolition means any dismantling, intentional destruction or removal of public or private right-of-way surfaces, structures, utilities or similar property.

Device means any mechanism which is intended to produce or which actually produces, noise when operated or handled.

Emergency vehicle means a motor vehicle used in response to a public calamity or to protect persons or property from an imminent exposure to danger.

Motor vehicle means any vehicle propelled by mechanical power, such as, but not limited to, any passenger car, truck, truck-trailer, semitrailer, camper, motorcycle, minibike, go-cart, dune buggy or racing vehicle.

Noise disturbance means 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 or property uncomfortable or interferes with public peace and comfort.

Noise disturbance per se means not requiring extraneous evidence or support to establish the existence of a noise disturbance.

Nonresidential district means any district not classified by the town's Zoning Ordinance, as amended, as containing residential homes, apartments or condominiums.

Person means any individual, firm, association, partnership, corporation or any other entity, public or private.

Power equipment means any motorized electric or fuel-powered equipment, including, but not limited to, tractors, lawnmowers and all other motorized electric or fuel powered equipment.

Powered model vehicle means any self-propelled airborne, waterborne, 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.

Property boundary means 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.

Quiet zone means property on which a school, hospital, clinic, library or other noise disturbance sensitive facility, as determined by the town and declared via an ordinance of the town, is operated.

Residential district means any district classified by the town's Zoning Ordinance, as amended, as containing residential homes, apartments or condominiums.

Within 500 feet of any residence or quiet zone means the shorter of the following two distances, measured in a direct line:

- (1) From the property line of the source of the subject noise disturbance nearest the property line of the subject residence or quiet zone to the aforementioned property line of the subject residence or quiet zone; or
  - (2) From the source of the subject noise disturbance to the property line of the subject residence or quiet zone.
- (b) All terminology used in this article 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 Webster's Collegiate Dictionary.

**§ 8.06.005. Specific noise disturbance prohibited.**

- (a) No person shall allow, make or cause to be made any unreasonably loud or disturbing noise in the town which is offensive to the sensibilities of a reasonable, prudent adult person, renders the enjoyment of life or property uncomfortable, interferes with public peace and comfort, or causes a noise disturbance as defined herein. Such action is hereby declared to be a public nuisance and a violation of this article.
- (b) The following list includes, but is not limited to, activities which can create unreasonably loud or disturbing noises in violation of this article, unless an exemption exists pursuant to § 8.06.006 or a permit of variance was first obtained as provided in § 8.06.007:
  - (1) Animals. Owing, keeping, possessing, or harboring any animal or animals which, by frequent or habitual noisemaking, unreasonably disturbs or interferes with the peace, comfort or repose of the citizens of the town, or causes a noise disturbance as defined herein. The provisions of this article shall apply to all private or public facilities including any animal shelters or commercial kennels which hold or treat animals.
  - (2) Radios, television sets, musical instruments, loudspeaking amplifiers and similar devices.
    - (A) The using, operating or permitting to be played, used or operated any sound production or reproduction device, radio, receiving set, musical instrument, drums, phonograph, television set, loudspeakers and sound amplifiers or other machine or device for the producing or reproducing of sound within a residential district or quiet zone, or within 500 feet of any residence or quiet zone, in such a manner as to cause a noise disturbance.
    - (B) The using, operating or permitting to be played, used or operated any sound production or reproduction device, radio, receiving set, musical instrument, drums, phonograph, television set, loudspeakers and sound amplifiers or other machine or device for the producing or reproducing of sound within a nonresidential area in such a manner as to cause a noise disturbance.
    - (C) The using, operating or permitting to be played, used or operated any sound production or reproduction device, radio, receiving set, musical instrument, drums, phonograph, television set, loudspeakers and sound

amplifiers or other machine or device that produces or reproduces sound for the purpose of attracting attention to any cause or demonstration, or to any performance, show, sale or display of merchandise so as to attract attention to such cause, demonstration or premises when such use is done in a manner which causes a noise disturbance.

- (D) The using, operating or permitting to be played, used or operated any sound production or reproduction device, radio, receiving set, musical instrument, drums, phonograph, television set, loudspeakers and sound amplifiers or other machine or device on trucks or other moving vehicles for the purpose of attracting attention to any cause or demonstration, or for advertising any show, sale or display of merchandise when such use is done in a manner which causes a noise disturbance.

(3) Vehicular sound amplification systems.

Operating or controlling a motor vehicle in either a public or private place within the town and operating any sound device which is part of, or connected to, any radio, stereo receiver, compact disc player, cassette tape player, or other similar device in the motor vehicle, in such a manner that, when operated, it is audible at a distance of 30 feet, or when operated, causes a person to be aware of the vibration accompanying the sound at a distance of 30 feet from the source when such operation is done in a manner which causes a noise disturbance.

- (4) Yelling, shouting, etc. The yelling, shouting, crying, hooting, whistling or singing of peddlers, hawkers or any other person within the town in such a manner as to cause a noise disturbance.

- (5) Loading operations. The loading or unloading of any vehicle within the town in such a manner as to cause a noise disturbance.

(6) Construction/maintenance work.

- (A) Operating or permitting to be operated any equipment used in construction, maintenance, repair, alteration or demolition work on buildings, structures, streets, alleys, lawns, golf courses or appurtenances thereto and/or the erection, including excavation, demolition, alteration or repair of any building within a residential district or quiet zone, or within 500 feet of any residence or quiet zone, in such a manner as to cause a noise disturbance. A noise disturbance is not created by residential lawn maintenance or in the event emergency repairs are required on personal property.

- (B) Operating or permitting to be operated any equipment used in construction, maintenance, repair, alteration or demolition work on buildings, structures, streets, alleys, lawns, golf courses or appurtenances thereto within a non-residential district in such a manner as to cause a noise disturbance.

(7) Batch plants.

- (A) Operating or permitting to be operated any gravel pit, rock crusher or other machinery, equipment and/or motor vehicle used for the separation,

gathering, grading, loading or unloading of sand, rock or gravel and/or any other machinery, equipment and/or motor vehicle used in the production of concrete or asphalt, within a residential district or quiet zone, or within 500 feet of any residence or quiet zone, in such a manner as to cause a noise disturbance.

- (B) Operating or permitting to be operated any gravel pit, rock crusher or other machinery, equipment and/or motor vehicle used for the separation, gathering, grading, loading or unloading of sand, rock or gravel and/or any other machinery, equipment and/or motor vehicle used in the production of concrete or asphalt within a nonresidential district in such a manner as to cause a noise disturbance.

(8) Power equipment.

- (A) Operating or permitting to be operated any power equipment (as defined herein and excluding construction equipment which is specifically regulated by subsection (6), above) within a residential district or quiet zone, or within 500 feet of any residence or quiet zone, in such a manner as to cause a noise disturbance.
- (B) Operating or permitting to be operated any power equipment (as defined herein and excluding construction equipment which is specifically regulated by subsection (6), above) within a nonresidential district in such a manner as to cause a noise disturbance.

(9) Motor vehicles-repairs or testing.

- (A) The repairing, rebuilding, modifying or testing of any motor vehicle (including off-road vehicles) or watercraft within a residential district or quiet zone, or within 500 feet of any residence or quiet zone, in such a manner as to cause a noise disturbance.
- (B) The repairing, rebuilding, modifying or testing of any motor vehicle (including off-road vehicles) or watercraft within a nonresidential district in such a manner as to cause a noise disturbance.

(10) Motor vehicles-running loud or out of repair.

- (A) The use of any automobile, motorcycle or other vehicle so out of repair, so modified, or so loaded, which emits or creates loud or unnecessary grinding, grinding or rasping noise, the excessive spinning of the tires, or the racing of a motor vehicle engine unnecessarily within a residential district or quiet zone, or within 500 feet of any residence or quiet zone, in such a manner as to cause a noise disturbance.
- (B) The use of any automobile, motorcycle or other vehicle so out of repair, so modified, or so loaded, which emits or creates loud or unnecessary grinding, grinding or rasping noise, the excessive spinning of the tires, or the racing of a motor vehicle engine unnecessarily within a nonresidential district in such a manner as to cause a noise disturbance.

- (11) Motor vehicles-exhaust. The discharge into the open air of the exhaust of any motor vehicle in such a manner as to cause a noise disturbance, except as discharged through a muffler or other device which effectively and efficiently prevents loud and unusual noises and annoying smoke.
- (12) Powered model mechanical devices.
  - (A) 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 residential district or quiet zone, or within 500 feet of any residence or quiet zone, in such a manner as to cause a noise disturbance.
  - (B) 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 nonresidential district in such a manner as to cause a noise disturbance.
- (13) Refuse compacting vehicles. Operating or permitting to be operated any refuse compacting, processing or collection vehicle or parking lot sweeper in any residential district or quiet zone, or within 500 feet of any residence or quiet zone in such a manner as to cause a noise disturbance.
- (14) Quiet zone. Creating a noise disturbance on any street adjacent to any school, hospital, clinic, library or other noise sensitive facility, as determined by the town.
- (15) Vibration. 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.
- (16) Stationary nonemergency signaling devices. 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 nonemergency purposes, from any place for more than five minutes during any consecutive sixty-minute period which causes a noise disturbance. Except such signaling device is allowed if used as a danger signal and/or as required by law if vehicle is backing, starting or turning in such a way as to likely cause a collision.

**§ 8.06.006. Exemptions.**

The following sources of potential noise disturbances shall be exempt from the regulations of this article:

- (1) Emergency 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 town. 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. Activities related to the maintenance of a public or private golf course, but not earlier than 6:00 a.m.

**§ 8.06.007. Permits of variance.**

- (a) The Town Manager, or designated representative, is authorized to grant permits for relief of any provision in this article on the basis of undue hardship in cases where:
  - (1) The sound source will be of short duration and the activity cannot be conducted in a manner as to comply with this article;
  - (2) Additional time is necessary for the applicant to alter or modify their activity or operation to comply with this article; or
  - (3) No reasonable alternative is available to the applicant.
- (b) An automatic variance will be granted without the payment of permit fees for the purpose of conducting parades or other public events provided that any noise disturbance created by such activity will be abated when such request is made by the Town Manager, or designated representative.
- (c) The Town Manager, or designated representative, 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.
- (d) A fee of \$100.00 shall be charged to each applicant for processing permit applications.

**§ 8.06.008. Appeals.**

- (a) Any applicant who has been denied a permit of variance or any permittee whose permit has been suspended, shall have the right to a hearing before the Town Council.
- (b) Requests for a hearing shall be made in writing and received by the Town Manager, or designated representative, within ten days of the date of the denial or the date of the notice of the suspension. The Town Manager may review the appeal at a staff level and has the authority to reject the action of the designated representative and order that a permit be granted or to reinstate a suspended permit. However, should the Town Manager uphold the denial or suspension of a permit, he/she shall, or designated representative shall, schedule a hearing before the Town Council within 30 days of receipt of the request.
- (c) The Town Council shall have the authority to review all pertinent files and information regarding the applicant/permittee which are in the custody of the Town Manager, or designated representative. Additionally, the Town Council shall have the authority to accept written and verbal testimony from the Town Manager, designated representative, any appropriate town staff member, applicant/permittee and interested citizens. The Town

Council shall also have the authority to place time restrictions on the testimony to be given at the hearing.

- (d) The Town Council shall have the authority to assess whether the Town Manager, or designated representative, acted properly within the powers granted under this article in the denial or suspension of a permit. A majority vote of a quorum of the Town Council shall determine whether to uphold or reject the Town Manager's, or designated representative's action. Upholding the action of the Town Manager, or designated representative, shall affirm the denial or suspension. Rejection of the Town Manager's, or designated representative's, action shall automatically grant a permit or reinstate a suspended permit. The decision of the Town Council shall be final.
- (e) No person whose permit has been denied or suspended, shall create or allow the creation of the noise disturbance in dispute prior to final determination by the Town Council.

**§ 8.06.009. Penalty.**

Any person, firm or corporation violating any provision of this article, as amended, shall be deemed guilty of a misdemeanor, and upon conviction therefor, shall be fined in a sum not to exceed \$500.00, and each and every day such violation continues shall be considered a separate offense; provided, however, such penal provision shall not preclude a suit to enjoin such violation."

**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, sentence, 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**

All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution from being commenced for any violation if occurring prior to the repeal of the Ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

**SECTION 6**

Any person, firm, corporation, or business entity violating this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine not to exceed the sum of five hundred dollars (\$500.00), and each and every day such violation shall continue shall constitute a separate offense.

**SECTION 7**

This Ordinance shall become effective 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 10TH DAY OF MARCH, 2026.**

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**David F. Bristol, Mayor**

**ATTEST:**

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**Michelle Lewis Sirianni, Town Secretary**

**APPROVED AS TO FORM AND LEGALITY:**

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**Terrence S. Welch, Town Attorney**