

**ORDINANCE NO. 2022-01-25-001**

**AN ORDINANCE OF THE CITY OF KEMPNER, TEXAS, PROHIBITING TRUCK USE OF MOTOR ENGINE BRAKES WITHIN THE CITY LIMITS; PROVIDING REPEAL OF SUCH CURRENT PROVISIONS RELATING TO ENGINE BRAKING; PROVIDING FOR SIGNAGE, ENFORCEMENT AND PENALTIES FOR FAILURE TO COMPLY WITH SUCH ORDINANCE; PROVIDING FINDINGS, EFFECTIVE DATE, SEVERABILITY AND OPEN MEETINGS CLAUSES; AND PROVIDING FOR RELATED MATTERS.**

**WHEREAS**, the City of Kempner, a general law city, (the "City") is permitted by State law to establish ordinances that protect the health, safety and general welfare of its residents; and

**WHEREAS**, the City Council finds that unreasonable noise emitting from the use of braking systems of trucks traveling within the City Limits of the City to be nuisances which detract from the health, safety, and general welfare of residents and are disruptive to the businesses located within the City; and

**WHEREAS**, the City previously sought to abate and otherwise control such noise nuisances within the City limits, but staff has reviewed and desires to repeal and replace such current provisions to bring them better in line with current state law; and

**WHEREAS**, the City seeks to continue to promote health and safety within the City Limits by prohibiting the particular vehicle operations which create the specific noise nuisance:

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

**Section 1. Findings of Fact.** The above and foregoing recitals are hereby found to be true and correct and are incorporated herein as findings of fact. The City Council hereby further finds and determines that the rules, regulations, terms, conditions, provisions and requirements of this ordinance are reasonable and necessary to protect the public health, safety and quality of life.

**Section 2. Repeal.** The City Council desires to repeal the current ordinance 2005-09-27-002 in its entirety and replace with the provisions set out herein.

**Section 3. Engine Brake Prohibited.** The City Council hereby finds the operation of engine or motor brakes contributes to the destruction of pavement and produces unreasonably loud, disturbing, and unnecessary noise, and hereby declares such to be a nuisance and hereby declares it to be unlawful for an operator of a vehicle to use such an engine braking system within the City limits as more fully set forth in Exhibit "A" which is attached hereto and incorporated herein for all purposes.

**Section 4. Definitions.**

(a). "Engine braking" and "Engine Compression Brake" shall mean the use or operation of any mechanical exhaust or retarding device designed to aid in the braking, decompression or deceleration of a motor vehicle, rather than by using the vehicle's foundation brakes which results

in the excessive, loud, unusual or explosive noise from such vehicle in excess of state or federal noise standards for said vehicles.

(b) "Motor vehicle" shall have the same meaning as the term is defined by the Texas Transportation Code §541.201, as amended.

**Section 5. Offense.** Engine braking, as defined in this Ordinance, shall be unlawful within the City limits of Kempner, Texas. Therefore, it shall be an offense for the driver of any motor vehicle to use or operate or cause to be used or operated within the city limits any engine brake, jake brake, compression brake, dynamic braking system, mechanical exhaust device, or other similar device designed to aid in the braking or deceleration of any motor vehicle that results in excessive, loud, unusual or explosive noise from such vehicle.

**Section 6. Exceptions.**

- (a) Sounds created by emergency equipment for emergency purposes shall be exempt.
- (b) Sounds created by City-owned equipment for emergency purposes shall be exempt.

**Section 7. Defenses.** It is an affirmative defense to conviction of an offense under this section that the engine braking system was used to slow the motor vehicle in order to avoid imminent danger.

**Section 8. Signage.** The City Manager is hereby directed to ensure signs are installed at appropriate locations within the City rights-of-way prohibiting the use of engine braking exhaust systems except during emergency operations as set forth in this ordinance and to coordinate any necessary actions by and through TxDOT and/or Lampasas County for any rights-of-way that may require such coordination. Signage shall be in conformance with Texas Manual on Uniform Traffic Control Devices (TMUTCD).

**Section 9. Enforcement.** The City of Kempner Police Department shall enforce this Ordinance.

**Section 10. Penalties.** A violation of this ordinance is a Class C misdemeanor punishable by a fine of not more than Five Hundred Dollars (\$500.00) for each offense, and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

**Section 11. Presumption.** Whenever a violation of this section occurs, it is presumed that the registered owner of the vehicle for which the citation was issued is the person who committed the violation, either personally or through an agent or employee. Proof of ownership may be made by a computer-generated record of the registration of the vehicle with the Texas Department of Transportation (or the vehicle registration agency of any other state in which the vehicle is currently registered) showing the name of the person to whom state license plates were issued. This proof is prima facie evidence of the ownership of the vehicle by the person to whom the certificate of registration was issued.

**Section 12. Conflicting Ordinances.** Any Ordinances or parts thereof conflicting or inconsistent with the provisions of this ordinance as adopted, are hereby amended to the extent of such conflict. In the event of a conflict or inconsistency between this ordinance and any other ordinance of this City, the provisions of this ordinance shall govern.

**Section 13. Severability.** If any section, paragraph, sentence, clause or phrase of this Ordinance shall be adjudged to be invalid by a court of competent jurisdiction, such invalidity shall not effect the remaining sections, paragraphs, sentences, clauses or phrases which can be given effect without the invalid provision, and to this end the provisions of this Ordinance are declared to be severable.


**Section 14. Effective Date.** This ordinance shall become effective immediately from and after its passage and publication in accordance with the provisions of the Texas Local Government Code and the City Charter.


**Section 15. Open Meeting.** It is hereby officially found and determined that the meeting in which this Ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551, and Texas Government Code.

PASSED AND APPROVED on the 25<sup>th</sup> day of January, 2022.

ATTEST:

CITY OF KEMPNER, TEXAS

  
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Hayleigh Talasek, City Secretary

  
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John Wilkerson, Mayor