

ORDINANCE NO 2016-01-26-001
Revision of 2003-11-25-002
(Amending 2016-01-12-001)

AN ORDINANCE OF THE CITY OF KEMPNER, TEXAS, PROVIDING FOR THE ABATEMENT OF NOISE NUISANCES; PROVIDING PENALTIES FOR VIOLATIONS; REPEALING CONFLICTING ORDINANCES; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN OPEN MEETINGS CLAUSE.

WHEREAS, the City of Kempner, Texas (the "City") is authorized by State law to establish ordinances to protect the health, safety and general welfare of its residents; and

WHEREAS, by this the City seeks to abate and otherwise control noise nuisances within the City;

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

Section I. Findings. That the above premises and findings of fact are found to be true and correct and are incorporated into the body of this ordinance as if copied in their entirety.

Section II. Definitions. All terms not defined herein shall be interpreted as defined by common usage or legal precedent when applicable. For the purposes of this ordinance the following definitions will apply unless context clearly indicates or requires a different meaning.

Device - Any mechanism that is intended to produce, or that actually produces sound when operated or handled.

Emergency Work - Work required to restore property to a safe condition following a public calamity or to protect persons or property from imminent exposure to danger or harm.

Emergency Vehicle - Any vehicle or motor vehicle, as defined by the Texas Transportation Code Sections (546.001 -546.021, 547.702) or as otherwise provided by law.

Motor Vehicle - Any vehicle as defined in the Texas Transportation Code under section 502.001.

Noise - Any sound that by its nature, volume, or duration is unwanted and, as a result, annoys or disturbs the quiet, comfort or repose of a reasonable person of ordinary sensibilities while in his or her private dwelling or its environs.

Noise Nuisance/Disturbance - Any occasion or incident where sounds are produced that meet the definition of *Noise* above.

Person - Any individual, public or private corporation, partnership, association, firm, trust, estate, the state or any of its departments or political subdivisions, institution, bureau or agency thereof, county, city, or any other entity recognized by law.

Plainly Audible Sound - Any sound, the source or nature of which can be identified by the listener, including but not limited to voice, musical instruments, sound reproduction devices such as television and radio sets, record, tape, compact disc players, mechanical devices and machinery, and the sounds emitted by animals and any of the foregoing amplified by any amplification device.

Public Safety Device - Any device used or intended to be used for the warning of inhabitants of the community of impending danger or emergencies. To include but not limited to storm sirens and public address systems (PA's) operated by Public Safety personnel.

Property Boundary - An imaginary line that at the ground surface and its vertical extension that separates the real property of one person from another.

Public Right-of-Way - Any street, avenue, boulevard, highway, alley, roadway or similar place controlled by the public or governmental entity.

Sound - Temporal and spatial oscillation in pressure, or other physical quantity with interval forces that cause compression or rarefaction of the medium and that propagates at finite speed to distant points.

Voice - Spoken speech by human beings, regardless of comprehension of content, but including whether a voice is raised or normal.

Section III. Noises Prohibited. Any and all sounds that meet the definition of *Noise* are prohibited between the hours of 10:00 PM and 7:00 AM, after the effective date hereof, and is hereby declared to be a nuisance. Such sounds include but are not limited to those generated by:

- a. Sound reproduction devices such as television and radio sets, record, tape, and compact disc players.
- b. Sound amplification devices such as mechanical or electrically amplified loud speakers and electrically amplified musical instruments.
- c. Unamplified musical instruments and any other novelty devices that generate sound.
- d. Mechanical devices, and machinery such as tools, motor vehicle engines and exhaust systems, and the operation of these in a manner to create sounds such as spinning or sliding vehicle tires
- e. Activities such as construction or demolition, trash collection, and other commercial type activities before sunrise and after sunset weekdays and at any time on weekends.
- f. Commercial or business activities such as automotive repair or salvage which involve running motors for tuning, autobody repair which involves cutting and hammering body parts, manufacturing and other production These same activities are included when done by any private individual at his or her home.
- g. Hobby activities that involve internal combustion engines such as model airplanes, building and tuning race cars, tuning boat motors, motorcycles,

- h. Land clearing or landscaping and home repair whether done by the homeowner, resident, or commercial repairman.
- i. Loud voices, particularly when the content or tone suggests personal conflict and possible harm to persons or property
- j. Sound produced by the discharge of pyrotechnic devices.
- k. Sounds emitted by any animal maintained or housed by any person or commercial activity.

Section IV. Noises/Sounds Not Prohibited. The following sounds are deemed necessary and appropriate and are not prohibited by this Ordinance:

- a. Sounds produced by necessary and properly operating safety signals, warning devices, or public safety devices.
- b. Sounds from any authorized emergency vehicle while responding to any emergency.
- c. Noises resulting from emergency repair work and any other necessary services.
- d. Church bells or chimes when sounded in conjunction with services. Tolling at other times requires a permit.
- e. Noises resulting from activities of temporary duration permitted by law for which a permit has been approved by the city.

Section V. Permits for Sound Producing Devices and Activities. Any person may request permission to operate sound producing devices or to conduct activities that produce sound that by its nature, volume, or duration may be unwanted and may annoy or disturb the quiet, comfort or repose of some persons.

- a. Request for a permit for relief of the noise restrictions of this ordinance shall be made in writing to the city.
 - (1) The request shall specify the date(s), times of day, and location of this activity.
 - (2) The requester will be required to notify any residents affected by the activity, either verbally, in writing, or by posting of notices to provide them an opportunity to express their opinions to the City before the request is acted upon.
 - (3) The requester will have to appear before the City Council for approval of the permit. Upon approval, an administrative fee will apply, according to a schedule of fees established by the City.
 - (4) If denied, applicant may request appeal to the Mayor and then City Council.

Section VI. Violations. The following having been declared to be a nuisance, it shall be unlawful for any person to:

a. Speak or sing, to allow animal noises, to operate, permit the operation, or cause the operation of any sound producing device, to include motor vehicles, any of which emits any sound which can be discerned or perceived by any person at or beyond the property line of the source if the source is on private property, or from the source to a public place, or public right of way. It shall be unlawful for any person to permit or fail to control these acts that occur upon property which is under said person's control at the time the unlawful action occurs.

b. Speak or sing, to allow animal noises, to operate, permit, or cause the operation of any sound producing device, to include motor vehicles, that emits any sound which can be discerned or perceived by any person at or within his or her property line, if the source is on a public place, or public right of way. If the source is a motor vehicle, it shall also be unlawful for the owner of the vehicle to permit or fail to control these acts when that vehicle is not under the owner's control at the time the unlawful act occurs.

Section VII. Enforcement. Enforcement shall be the shared responsibility of citizens and Law Enforcement Officers of the City or the County pursuant to any Interlocal agreements.

a. Officers who observe violations of this Ordinance may issue a citation/summons for the violation(s) in accordance with established procedures.

b. Citizens may notify Kempner City Hall of violations of the Ordinance that have occurred and file a complaint with the City.

Section VIII. Penalties. Any person, firm or corporation adjudged guilty of violating any provision of this Ordinance shall be fined not less than \$25.00 for the first offense nor 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 IX. Severability. Should any section or part of this ordinance be held unconstitutional, illegal, or invalid, or the application to any person or circumstance thereof ineffective or inapplicable, such unconstitutionality, illegality, invalidity, or ineffectiveness of such section or part shall in no way affect, impair or invalidate the remaining portion or portions thereof; but as to such remaining portion or portions, the same shall be and remain in full force and effect and to this end the provisions of this ordinance are declared to be severable.

Section X. Repeal of Conflicting Ordinances. All ordinances or parts of ordinances inconsistent with or in conflict with this ordinance are hereby repealed to the extent of such inconsistency or conflict.

Section XI. Savings Clause. All rights and remedies of the City are expressly saved as to any and all violations of the provisions of any ordinances affecting noise or the regulation of noise as a nuisance within the City which have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

Section XI. Effective Date. That this ordinance shall take effect immediately from and after its passage and publication in the manner required by the Tex. Loc. Gov't. Code.

Section XII. **Open Meetings.** It is hereby officially found and determined that the meeting at 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, *Chapt. 511, Tex. Gov't. Code.*

PASSED AND APPROVED on this the 26th day of January 2016.

THE CITY OF KEMPNER, TEXAS

Carolyn Crane
Carolyn Crane, Mayor

ATTEST:

Trudy Davis
Trudy Davis, City Secretary