

**ORDINANCE NO. 2019 ORD013**

**AN ORDINANCE OF THE CITY OF DOUBLE HORN, TEXAS ADOPTING A NOISE PROHIBITION ORDINANCE; CREATING MINIMUM AND MAXIMUM PENALTIES FOR NOISE VIOLATIONS; DECLARING SUCH OFFENSES TO BE NUISANCES; PROVIDING A PENALTY; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; AND PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE.**

**WHEREAS**, pursuant to Sections 51.001 and 51.032 of the Local Government Code, the City Council of the City of Double Horn (the “City Council”) may adopt an ordinance, rule, or police regulation that is for the good government, peace, or order of the City of Double Horn, Texas (the “City”) or for the trade and commerce of the City and is necessary or proper for carrying out a power granted by law to the City or to an office or department of the City, not inconsistent with state law, that the City Council considers proper for the government of the City; and

**WHEREAS**, pursuant to Subsection 217.022 of the Local Government Code, the City Council shall prevent to the extent practicable any nuisance within the limits of the City and shall have each nuisance removed at the expense of the person who is responsible for the nuisance or who owns the property on which the nuisance exists; and

**WHEREAS**, the City Council has determined that a need exists to establish noise and sound regulations; and

**WHEREAS**, the use of amplified sound devices in public places creates a public nuisance, interfering with the quiet enjoyment of parks, waterways and public spaces; and

**WHEREAS**, the City wishes to protect its citizens from loud and excessive sounds and noises that disturb the peace and quiet of their neighborhoods; and

**WHEREAS**, the Council has decided that sound and noise levels should be established by ordinance in order to preserve the peace and quiet of our residential and commercial communities and neighborhoods; and

**WHEREAS**, the City Council now deems it appropriate to establish regulations related to noise regulated herein within the city limits.

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

Section 1. Findings Incorporated. The above and foregoing premises are true and correct and are incorporated into the body of this Ordinance as if fully set forth herein.

Section 2. Adopted. The regulations set forth in Exhibit “A”, attached hereto and incorporated as if fully set forth herein for all purposes, are hereby adopted. This Ordinance

shall be maintained by the City Secretary and a copy shall be available for public inspection during regular business hours.

Section 3. Savings/Repealing Clause. All City Ordinances shall remain in full force and effect, save and except as amended by this or any other Ordinance. 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 for violation of the repealed or amended ordinance, nor shall the repeal or amendment prevent a prosecution from being commenced for any violation if occurring prior to the repeal or amendment of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

Section 4. Severability. 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. Double Horn 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. Effective Date. This Ordinance shall be in full force and effect from and after its date of passage and approval, and publication as provided by law.

Section 6. Penalties. Penalties and enforcement of this Ordinance shall be in accordance with Attachment "A".

**DULY ADOPTED** by the City Council of the City of Double Horn, Texas on the 23<sup>rd</sup> day of October 2019.

\_\_\_\_\_  
Cathy Sereno, Mayor

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Karen Maxwell, City Secretary

\_\_\_\_\_  
Patty L. Akers, City Attorney

## **EXHIBIT “A”**

### **NOISE**

#### Section 1. General regulations.

(a) Scope. This article applies to the control of all sound and noise existing within the city limits of the city. Provided however, that noise associated with blasting is not covered by this Ordinance.

(b) Overview. This article is designed to regulate noise in order to minimize exposure of citizens to the psychological and physiological harm of excessive noise and to protect, promote, and preserve the public peace, health, comfort, convenience, safety, and welfare. It is the intent of the City to control noise in a manner that promotes commerce, protects the sleep and repose of citizens, promotes the use, value, and enjoyment of property, and preserves the quality of the environment.

Section 2. Definitions. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. All technical terminology not defined in this article shall be interpreted in conformance with applicable American National Standards Institute noise specifications.

A-weighted sound level. The sound pressure level in decibels as measured on a sound level meter using the A-weighting network. The level so read is designated dB(A) or dBA.

City Secretary. The individual appointed by the City Council of the City of Double Horn as the city secretary.

Commercial. Any real property that is not a Residential Area as defined in this Article, includes any real property zoned for commercial or industrial use in accordance with the city's zoning ordinance.

Daytime. One hour before the sunrise until one hour after sunset.

Decibel (dB). Is the unit of measurement for sound pressure level at a specified location.

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

Emergency situation. A situation which jeopardizes the health, safety, or welfare of the public.

Emergency work. Any work or action immediately necessary to deliver essential services including, but not limited to, repairing water, gas, electric, telephone, sewer facilities, or public transportation facilities, removing fallen trees on public rights-of-way, or abating life-

threatening conditions.

Mayor. The mayor of the City of Double Horn.

Motor vehicle. Any vehicle that is propelled or drawn on land by an engine or motor.

Nighttime. One hour after sunset to one hour before sunrise.

Person. Any individual, firm, business, entity, association, partnership, joint venture, or corporation.

Right-of-way. Any street, avenue, boulevard, highway, sidewalk, alley, or similar place normally accessible to the public.

Public space. Any real property or structure(s) on real property, owned or controlled by a government entity and normally accessible to the public, including but not limited to parks and other recreational areas.

Real property line. Either:

- (1) The imaginary line, including its vertical extension, that separates one parcel of real property from another; or
- (2) The vertical and horizontal boundaries of each unit of a multi-unit building which is under separate ownership or tenancy.

Residential area. Any real property zoned for residential use in accordance with the city's zoning ordinance, all other real property which has been platted for residential use on which persons reside, and the public rights-of-way abutting any such real property. In a building with a commercial use on the bottom floor and residential use on the floors above, the horizontal boundary between the residential floors and commercial floor shall serve as the real property line and the residential floors shall be treated as a residential area.

Sound equipment. A loudspeaker, public address system, amplification system, musical instrument, radio, CD player, or other sound-producing device.

Sound level. The instantaneous sound pressure level measured in decibels obtained by the use of a sound level meter set for A-weighting on slow integration speed, unless otherwise noted.

Sound level meter. An instrument which includes a microphone, amplifier, RMS detector, integrator or time averager, output meter, and weighting network used to measure sound pressure levels conforming to type 1 or type 2 standards as specified in the latest version of the American National Standards Institute specifications for sound level meters (ANSI Standard S1.4-2014).

Section 3. Restrictions on decibel levels.

(a) Maximum decibel levels. No person shall cause, suffer, allow, or permit the making of noise, excluding routine property maintenance activities such as lawn care, gardening, and lot clearing which exceeds 85 dB(A) during the Daytime or 65 dB(A) during the Nighttime hours.

(b) Method of noise measurement. Whenever portions of this article prohibit noise over a certain decibel limit, measurement of said noise should be made with a sound level meter meeting the standards prescribed by the American Standards Association and using the A-weighted scale. Prior to taking a measurement of the noise in question, the environment shall be observed to determine whether background noise is so close to the level of the sound being measured that a proper measurement is not possible. Measurements recorded shall be taken so as to provide a proper representation of the noise being measured. The microphone shall be screened from wind and water and otherwise used in accordance with the manufacturer's specifications. Measurements of noise emanating from private property shall be taken from the real property line of the property from which the noise is being generated. Measurements of noise being generated on public right-of-way or a public space shall be taken from a distance greater than or equal to 300 feet from the source of the noise.

Section 4. Certain construction noises prohibited without permit.

No person shall cause, suffer, allow or permit during the Nighttime hours, before 8:00 am on a Saturday or anytime on a Sunday, Christmas Day, New Year's Day, Thanksgiving Day, or any federally observed holiday, the creation of noise in connection with construction, drilling, earthmoving, excavation, demolition, alteration or repair work or the operation of any tools or equipment used for any such work, in a residential area or within 600 feet of a residential area without first obtaining a permit pursuant to section 9. Such noise is declared to be a nuisance and does not have to exceed the specifications for sound levels contained in this article or disturb a particular person in order to constitute a violation of this section. This section does not apply to such work, construction, repairs or alterations that constitute an urgent necessity for the benefit and interest of the public safety, health or general welfare, such as repairs and emergency installations by any utility. The requirements of this article are independent of and in addition to any other permits, certificates of occupancy, zoning or platting requirements or other requirements of the law and the fact that a person or an entity has acquired any other such authorization from the city shall not exempt them from the requirements of this article.

Section 5. Specific noises prohibited.

The following specific noises that violate the sound levels as listed in section 3 shall be prohibited:

- (a) Operation of any electronic or mechanical sound-making devices from a motor vehicle in a manner which emits sound audible on a public right-of-way, street, or highway as measured from a distance of 30 or more feet from the motor vehicle. It shall be presumed that the driver of any such vehicle is the operator of the sound-making device(s).

- (b) Operating or permitting to be operated any equipment used in commercial construction, repair, alteration, or demolition work on buildings, structures, streets, alleys, or appurtenances measured on the property line of the receiving land use.
- (c) Operating or permitting to be operated any power equipment in Residential Areas between the Nighttime hours.
- (d) The international sounding or permitting the sounding outdoors of any fire, burglar, or civil defense siren, alarm, whistle, or similar stationary emergency signaling device for more than ten (10) minutes during any consecutive sixty (60) minutes period.

Section 6. Exemptions.

The following acts and sounds shall be exempt from the requirements of this article.

- (1) The generation of sound for the purpose of alerting persons to the existence of imminent danger or an actual emergency;
- (2) The generation of sound in the performance of emergency work;
- (3) Sirens, whistles, or bells, lawfully used by emergency vehicles, or any alarm systems used by government entities in case of fire, collision, civil defense, police activity, or imminent danger;
- (4) Engine braking systems for emergency response vehicles and when used by commercial vehicles in an emergency situation;
- (5) Repairs or excavations of bridges, streets or highways by the city, the state, or the federal government during the nighttime when public welfare and convenience renders it impractical to perform the work during daylight hours;
- (6) Athletic events in a stadium, ballpark, or on public or private school grounds, which are conducted in accordance with the manner in which such spaces are generally used, including but not limited to, school athletic events;
- (7) Law enforcement motor vehicles equipped with any communication device necessary in the performance of law enforcement duties or emergency vehicles equipped with any communication device necessary in the performance of any emergency procedures;
- (8) Noise made by a horn or other warning device required by federal or state law;
- (9) Sound produced by permitted parades and events sponsored and held by the city on public property for the general public, and pyrotechnic displays

approved by the fire marshal;

(10) Special events authorized by city council in which the city council specifically authorizes exemption or modification of this article;

(11) An employee of a governmental entity engaged in the employee's official duty;

(12) A person operating bells, chimes or similar musical device for a religious activity;

(13) The unamplified human voice in the normal course of residential activities, such as children playing, etc.;

(14) The operation of property maintained residential-type air conditioning, ventilating, or heating devices (if within sound levels specified by the manufacturer or similar to sound levels produced by equivalent, adjacent devices);

(15) The use of lawn maintenance equipment during the Daytime hours (starting at 9:00 a.m. on Sundays);

(16) Repair of a personal use vehicle during the Daytime hours (starting at 9:00 a.m. on Sundays);

(17) Home repair of a place of residence during the Daytime hours (starting at 9:00 a.m. on Sundays); or

(18) Loading and unloading operations that impact residential areas, during the Daytime hours (starting at 9:00 a.m. on Sundays).

#### Section 7. Enforcement.

(a) The City may appoint a code compliance officer or official to have primary responsibility for the enforcement of the noise regulations contained herein, and may contract with a third-party to do the same. Nothing in this article shall prevent the city from having the authority to obtain voluntary compliance by way of warning, notice or education.

(b) If a person's conduct would otherwise violate this article and consists of speech or communication delivered to others who have gathered to hear or observe speech or communication; or to others who have gathered to picket or otherwise express in a nonviolent manner a position on social, economic, political or religious questions; the person who is in violation of this article shall be ordered to, and have the opportunity to, move, disperse, or otherwise remedy the violation, prior to arrest or a citation being issued.

(c) This violation of any provision of this article is a Class C Misdemeanor and shall be

cause for a citation to be issued by the city. In the event the noise violating this article is not stopped following issuance of a citation, the city may issue an administrative stop order to any person having possession or control over noise generating property to immediately halt the making of any sound which exceeds the decibel levels prescribed in section 3 of this article.

(d) Nothing herein shall prevent the city from exercising any other rights or remedies available under this article or by other laws.

#### Section 8. Penalties.

(a) It shall be unlawful for any person to violate any provision of this article, and any person violating or failing to comply with any provision hereof shall be fined, upon conviction, in an amount of not less than one dollar (\$1.00) and not more than five hundred dollars (\$500.00), and a separate offense shall be deemed committed each day during or on which a violation occurs or continues. For purposes of this subsection, allegation and evidence of a culpable mental state is not required for the proof of an offense under this article.

(b) A violation of this article is a nuisance. The penal provisions imposed under this Article shall not preclude the city from filing suit to enjoin the violation. The city retains all legal rights and remedies available to it pursuant to local, state and federal law.

#### Section 9. Temporary permit.

(a) Eligibility to apply for temporary permits. A person may apply for a temporary permit to create or allow noise generating construction which would otherwise be prohibited by this article without such permit in section 4.

(b) Application. A person seeking a permit under this section shall complete and file a written application for a permit with the city secretary on a form provided by the city at least fourteen (14) business days prior to the anticipated construction activity. Such application shall identify the nature and location of the noise source for which the application is made; the time during which the noise will be generated and the level of noise that will occur; reason for which the permit is requested, including potential hardships that will result to the applicant, his/her client or the public if the permit is not granted; and a description of noise control measures to be taken by the applicant to minimize noise and the impacts occurring therefrom and the schedule under which said measures will be implemented.

(c) Restrictions on issuance of permit. No permit shall be approved unless the city secretary is satisfied based upon the application and other proof provided by the applicant that:

(1) Total noise levels occurring during the requested period from any multiple sources from the property will not constitute a danger to public health;



- (2) Compliance with this article would impose an unreasonable hardship on the applicant or the public without greater benefits to the public; and
  - (3) The applicant has fully complied with the application procedures.
- (d) Considerations in determining whether to grant permit. In making the determination of whether to grant a permit, the city secretary shall consider:
  - (1) The character and degree of injury to, or interference with, the health and welfare or the reasonable use of property that is caused or threatened to be caused;
  - (2) The ability of the applicant to apply the best practical noise control measures; and
  - (3) Proximity to residences at which reasonable persons would be disturbed by the noise.
- (e) Other restrictions.
  - (1) The city secretary shall consider each application on the same basis as that used for other similarly situated applicants and shall make each variance decision free from consideration of race, sex, national origin, religion, the content of speech, or any other factors not provided for in the article;
  - (2) No permit shall be issued for the operation of sound equipment at any time from a motor vehicle or for a location within 100 feet of a residential area; and
  - (3) No permit shall be issued if the applicant has been convicted of more than two violations of a regulation under this article or there have been more than two convictions for violations of this article at the location for which the permit is sought in the year prior to the date on which the application is submitted.
- (f) Issuance or denial of permit. The city secretary shall be responsible for issuing or denying a temporary permit under subsection (a) above within ten (10) days of having received an application. If after the tenth (10<sup>th</sup>) day no permit is issued to the applicant, then the same shall be considered as a denial of the application.
- (g) Time and frequency limits on permit.
  - (1) For a person seeking a permit under subsection (a) above, a permit shall be issued for the expected duration of the construction noise for which the permit is issued. A permit may not exceed thirty (30) days in duration and

maybe issued for a shorter period. A new permit application shall be required, and a new permit issued for any subsequent period.

(c) In all other cases, including special events, the time and frequency restrictions shall be at the discretion of the city secretary, or city council if appealed in accordance with subsection 9(i).

(h) Revocation of permit. The permit may be revoked by the city secretary if the terms of the permit are violated; if it is learned that there were material misrepresentations made in the permit application; the applicant receives two convictions for violations of this article, as modified by the permit, take place within one year; or if there is a material change in any of the circumstances relied upon by the city secretary, city council or mayor in granting the permit.

(i) Appeal of denial or revocation of permit.

(1) If the city secretary denies or revokes a permit under this article, an applicant may appeal the city secretary's decision to the city council by filing a written statement of the decision being appealed and the grounds for the appeal with the city secretary no later than the seventh (7<sup>th</sup>) business day after the date on which notice of the decision is delivered to the applicant or permit holder or sent by certified mail return receipt requested addressed to their last known address.

(2) The city council shall consider the appeal on or before the first regular city council meeting following the tenth (10<sup>th</sup>) business day after receiving a request for an appeal. If the city council determines that a permit should be issued pursuant to the criteria established in this section, a permit shall be issued which states the type of sound permitted, the location at which the sound will be permitted, and how long the permit shall be valid for.

(3) The city council may sustain, reverse, or modify the action appealed based on criteria established in this article. The city council's decision is final.